



---

**THE MORAY LICENSING BOARD**

**WEDNESDAY 19 DECEMBER 2018**

**NOTICE IS HEREBY GIVEN** at the Meeting of **THE MORAY LICENSING BOARD** is to be held within the The Moray Council, Council Chambers, High Street, Elgin on Wednesday 19 December 2018 at 10.00am.

Margaret Forrest  
DEPUTE CLERK

7 December 2018

**BUSINESS**

1. Minutes of the Meeting held on 15 November 2018

**The Licencing (Scotland) Act 2005**

2. Applications Section – Appendix 1
3. Gambling Act 2005 – Review Of Statement Of Policy

CLERK:	Alasdair McEachan
--------	-------------------

**THE MORAY LICENSING BOARD****SEDERUNT****COUNCILLOR J ALLAN****COUNCILLOR D BREMNER****COUNCILLOR G COWIE****COUNCILLOR P COY****COUNCILLOR A PATIENCE****COUNCILLOR R EDWARDS****COUNCILLOR L LAING****COUNCILLOR M MCLEAN****COUNCILLOR BROWN****CLERK TO THE BOARD: Mr A McEachan**

**THE MORAY LICENSING BOARD**

**MINUTE OF THE MEETING OF THE MORAY LICENSING BOARD**

The Moray Council Chambers, Council Headquarters, High Street, Elgin on Thursday 15 November 2018

**PRESENT**

Councillors: J Allan  
D Bremner  
F Brown  
G Cowie  
P Coy  
L Laing  
A Patience

**APOLOGIES**

Apologies were intimated on behalf of Councillors R Edwards and M McLean

**IN ATTENDANCE**

Sean Hoath, Depute Clerk to the Licensing Board

## 1. PRIOR MINUTES

- (i) The Minutes of the Meeting held on 6 September 2018 were submitted and approved
- (ii) The Minutes of the Special Meeting held on 6 November 2018 were submitted and approved.

There were no declarations of interest.

## 2. APPLICATIONS

### (i) Major Variation – Red Lion, Forres

The Applicant's representative was present and represented by Mr N. Hazard of TLT Solicitors. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant's solicitor addressed the Board and answered questions from the Board. The Convenor proposed granting the application and there being no-one otherwise minded it was agreed to grant the application.

### (ii) Major Variation – Drouthy Cobbler, Elgin

The Applicant's representative was present and represented by Mr N. Hazard of TLT Solicitors. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant's solicitor addressed the Board and answered questions from the Board. The Convenor proposed granting the application and there being no-one otherwise minded it was agreed to grant the application.

### (iii) Major Variation – Archiestown Hotel, Archiestown

The Applicant's representative, Mr Murray, was present. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant's representative addressed the

Board and answered questions from the Board. The Convenor proposed granting the application and there being no-one otherwise minded it was agreed to grant the application.

(iv) **New provisional Premises Licence – Glenrinnes Distillery**

The Applicant's representative, Ms Murdoch, was present. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant's representative addressed the Board and answered questions from the Board. The Convenor proposed granting the application and there being no-one otherwise minded it was agreed to grant the application.

(v) **New Premises Licence – The Deli, Elgin**

The Applicant's representative, Mr Gentleman, was present. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant's representative addressed the Board and answered questions from the Board. The Convenor proposed granting the application and there being no-one otherwise minded it was agreed to grant the application.

**3. Personal Licence Application – Mr McGettrick**

There was a report to the Board regarding a personal licence application by Mr McGettrick. The report confirmed the Chief Constable had given notice to the Board in response to the application consultation that the applicant had been convicted of a relevant offence. The Board, not being obliged to hold a hearing, resolved to hold a hearing to determine the personal licence application. The Board heard from the Chief Constable's representative, Constable Fyfe, as well as the applicant and asked questions. After considering the evidence Cllr Coy moved granting the licence and was seconded by Cllr Bremner. Cllr Brown proposed refusal but in the absence of a seconder the motion was carried and the licence was granted.

**4. Chief Constable's Annual Report**

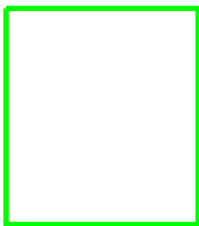
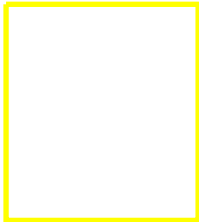
There was a report to the Board confirming the statement of policy under The Licensing (Scotland) Act 2005 had been drafted and consulted upon. The depute clerk introduced the report. The Board noted the report, made no further changes to the draft policy and agreed the recommendations. The policy was approved for publication.

## MORAY LICENSING BOARD

MEETING, 19 December 2018 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

### Licensing (Scotland) Act 2005

Type	Premises	Applicant	Date received	Comments
Major Variation	Laichmoray Hotel Maisondieu Road Elgin IV30 1QR	Laichmoray Hotels Ltd	16 October 2018	Major variation application for inclusion of the small area outside the basement and the restriction of children from this area. Operating Plan Paperwork in order No objections or representations
Major Variation	Benromach Distillery Invererne Road Forres IV36 3EB	Susan Colville Gordon and MacPhail	19 October 2018	Major variation to vary the layout plan to include an additional area. Change core on sales time. Operating Plan Paperwork in order No objections or representations



# Licensing (Scotland) Act 2005

## Licensing Objectives

Section 4 sets out the licensing objectives:

- “(1) For the purposes of this Act, the licensing objectives are—
- (a) preventing crime and disorder,
  - (b) securing public safety,
  - (c) preventing public nuisance,
  - (d) protecting and improving public health, and
  - (e) protecting children and young persons from harm.”

## Applications for a Premises Licence or Provisional Premises Licence

### Section 20 Application

By section 20 any person (over 18) may apply to the appropriate Licensing Board for a premises licence in respect of any premises.

An application under subsection must—

- (a) contain a description of the subject premises, and
- (b) be accompanied by—
  - (i) an operating plan for the subject premises,
  - (ii) a “layout plan” of the subject premises, and
  - (iii) the certificates required by section 50(1).

### Notice of Application

Notice of the application has been given to—

- (a) each person having a notifiable interest in neighbouring land *i.e. neighbours within 4 metres of the boundary of the premises*
- (b) the community council within whose area the premises are situated,
- (d) the chief constable, and
- (e) the fire service
- (f) the NHS

### Objections / Representations

By section 22 any person may, by notice to the Licensing Board—

- (a) object to the application on any ground relevant to one of the grounds for refusal (detailed below)
- (b) make representations to the Board—
  - (i) in support of the application,
  - (ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or
  - (iii) as to conditions which the person considers should be imposed.



A representation is not an objection to a licence being granted. It means the representer would like to see a changes or changes to the licence or conditions on the licence before it is granted.

Where a Licensing Board receives a notice of objection or representation the Board must—

- (a) give a copy of the notice to the applicant, and
- (b) have regard to the objection or representation in determining the application,

unless the Board rejects the notice as being frivolous or vexatious.

Where a Licensing Board rejects a notice of objection or representation as frivolous or vexatious, the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

### **Consideration and determination of a Premises Licence Application**

Section 23(4) states that:

“(4) The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies and—

- (a) if none of them applies, the Board must grant the application, or
- (b) if any of them applies, the Board must refuse the application.”

### **Possible Courses of Action**

1. Grant the licence as applied for;
2. Grant the licence with a condition(s) under s.27(6). Determine the licensing objective and how the situation can be improved and the exact terms of a condition.
3. Grant the licence with a modification to the operating plan under s.23(7) which states that  
“(7) Where the Licensing Board considers that—
  - (a) they would refuse the application as made, but
  - (b) if a modification proposed by them were made to the operating plan for the subject premises accompanying the application, they would be able to grant the application,the Board must, if the applicant accepts the proposed modification, grant the application as modified.”
4. Refuse - In section 23(5) of Act:
  - (5) The grounds for refusal are—
    - (a) that the subject premises are excluded premises,
    - (b) that the application must be refused under section 25(2) (*licence refused within the last year*), 64(2) (*licence sought for 24 hours continuous*) or 65(3) (*off sale hours outside 10am to 10pm*),
    - (ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of the premises licence,

- (c) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
  - (d) that, having regard to—
    - (i) the nature of the activities proposed to be carried on in the subject premises,
    - (ii) the location, character and condition of the premises, and
    - (iii) the persons likely to frequent the premises,the Board considers that the premises are unsuitable for use for the sale of alcohol,
  - (e) that, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises, in the locality.
5. Defer – if for example the Board wanted to arrange a further site visit.

### **Consequences of Refusal**

Section 25 says that where a Licensing Board has refused a premises licence application the Board must refuse any subsequent premises licence application in respect of the same premises before the expiry of the period of one year beginning with the date of the earlier refusal UNLESS at the time of the earlier refusal the Board directed that this provision would not apply or the Board is satisfied that there has been a material change of circumstances.

## **Applications to Vary a Licence**

### **Section 29 Application**

By section 29(1) a premises licence holder may apply to the appropriate licensing Board for a variation of the licence. Such an application must be accompanied by

- (a) the premises licence to which the application relates, or
- (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

### **Meaning of Variation**

Section 29(5) defines a variation as meaning any variation (which includes addition deletion or other modification) of:

- (a) any of the conditions to which the licence is subject (*other than those to which the licence is subject by virtue of section 27(1) which are Schedule 3 mandatory conditions and cannot be changed*);
- (b) any of the information contained in the operating plan contained in the licence;
- (c) the layout plan contained in the licence; or
- (d) any other information contained or referred to in the licence.

Generally a variation that involves a change to the information contained within the operating plan is not a minor variation and it requires to be determined by the Licensing Board.

Any variation that involves:

- (i) a change to the layout plan that does not affect the operating plan
- (ii) a restriction on the access for children/young persons
- (iii) a change of premises manager
- (iv) reduction in the alcohol display area or capacity
- (v) reduction in the core hours

can be considered to be a minor variation which must be granted and so is dealt with under delegated powers.

### **Notice of Application**

Notice of the application has been given to—

- (a) each person having a notifiable interest in neighbouring land *i.e. neighbours within 4 metres of the boundary of the premises*
- (b) the community council within whose area the premises are situated,
- (d) the chief constable, and
- (e) the fire service
- (f) the NHS

Section 22 applies the same as it does to a premises licence application and so any person may, by notice to the Licensing Board object to the application on any ground relevant to one of the grounds for refusal or make representations to the Board concerning the application.

### **Determination of the Variation Application**

Section 30(3) provides that the Licensing Board must hold a hearing for the purpose of considering and determining the application. The Board must consider whether any of the grounds for refusal applies and:

- (a) if none of them applies, the Board must grant the application;
- (b) if any of them applies, the Board must refuse the application;

Section 30(5) provides that the grounds for refusal are:

- (a) that the application must be refused under section 32(2) (*licence refused within the last year*), 64(2) (*licence sought for 24 hours continuous*) or 65(3) (*off sale hours outside 10am to 10pm*);
- (b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives;
- (c) that, having regard to the nature of the activities carried on or proposed to be carried on in the subject premises, the location, character and condition of the premises, and the persons likely to frequent the premises,

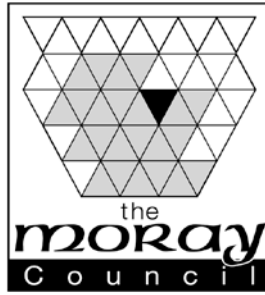
the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation;  
(d) that the Board considers that if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises (taking account of the variation), in the locality.

Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

Where the Licensing Board refuses the application the Board must specify the ground for refusal, and where relevant the Board must specify the licensing objective or objectives in question.

### **Subsequent Applications Following Refusal**

Section 32 says that where a Licensing Board has refused a premises licence variation application the Board must refuse any subsequent premises licence variation application in respect of the same premises licence, and seeking the same variation made before the expiry of the period of one year beginning with the date of the earlier refusal UNLESS at the time of the earlier refusal the Board directed that this provision would not apply or the Board is satisfied that there has been a material change of circumstances.



---

**REPORT TO: MORAY LICENSING BOARD 27 NOVEMBER 2018**

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – REVIEW OF STATEMENT OF POLICY**

**BY: CLERK TO THE BOARD**

**1. Reason for Report**

- 1.1 The reason for this report is to advise the Board with regard to the statutory obligation to develop, consult and publish a policy statement setting out the principles they propose to apply to the exercise of their functions under the Gambling Act 2005.
- 1.2 Every Licensing Board must, before the beginning of each relevant period of three years, publish a statement of their policy.
- 1.3 The current period started on the January 2016 and is due to expire at the end of December 2018. A revised policy statement must be in place and publicised by then.

**2. Recommendations**

**It is recommended that the Board:-**

- 2.1 **Note the statutory obligation to develop, consult upon and publish a statement of licensing policy and note that a revised policy must be in place for January 2019;**
- 2.2 **Note the terms of the draft revised policy as reviewed and developed by the Board following research produced at Appendix 1.**
- 2.3 **Note the draft policy has been the subject of formal consultation for the period of 29 September 2018 to 30 November 2018 and review the responses to that consultation produced at Appendix 2.**
- 2.4 **Make any changes to the draft policy that the Board deems fit;**
- 2.5 **Approve a final policy statement for publication.**

### **3. Background**

- 3.1 The Gambling Act 2005 requires the Board to publish a Statement of Policy as to how it proposes to exercise its powers under the Act.
- 3.2 The Statement of Policy must be revised in line with the 3 year cycle set by the Act. The last revised statement was published in 2016 and a new revised statement is due to be published before the the end of 2018. The Board may also review the policy at any time within the 3 year period.
- 3.3 The Board is required to consult certain persons/bodies as part of the process of preparing or revising the policy statement. Those are:
- The Chief Constable
  - One or more persons representing the interests of persons carryingon gambling business sin the area
  - One or more persons representing the interests of persons likely to be affected by gambling in the area

### **3.4 Informal Consultation and Drafting**

In order to inform on policy data from numerous sources has been collected and analysed as follows:

- 3.4.1 Research and Information Office Carl Bennett has analysed data from a great many sources including: GamCare; NHS; Gambling Commisison; Census; SALSUS Scottish Schools Adolescent Substsnace use Survey.; and other online sources. There was not much data or analysis available specifically in relation to Moray and it is worth noting that Moray doesn't have any areas classified by the Scottish Index of Multiple Deprivation as most deprived overall. A copy of the results went into the consultation but it was not really possible to draw conclusions from the same and inform policy development;
- 3.4.2 The Council's Equalities Officer was consulted on the issue of social responsibility and identified some information from the Scottish Government and other sources on gambling nationally but again it was difficult to identify any Moray-specific data or conclusions.
- 3.5 Following on from the above the Policy Statement was revised in order to proceed with formal consultation.

### **4. Further Consultation**

- 4.1 The draft revised policy statement was then subjected to a further formal and extensive consultation period of approximately 8 weeks from the 29 September 2018 up to the 30 November 2018.
- 4.2 The results of the formal consultation are produced at **Appendix 2**. Despite the number of concultations issued there was only one response.

- 4.3 The Board is requested to consider and make any final adjustments to the revised policy as the Board considers necessary or appropriate before final approval.
- 4.4 Once approved, the final policy statement will ultimately be published on both the Council's web site and at certain premises like Access points and main libraries where the document may be inspected. The publication must be available for inspection by the public free of charge.

## 5. **Implications**

### (a) **Moray 2023 A Plan for the Future/Service Plan**

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Moray 2023) in relation to healthier citizens, a growing and diverse economy and safer communities. Gambling and gambling dependency influence the health of the population. The gambling industry in terms of retail outlets aids a sustained economy. Regulation of the gambling contributes to a safer community.

The Licensing Policy Statement sets out how the Moray Licensing Board will exercise its functions under the Gambling Act 2005 and promote the licensing objectives which are:

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

The licensing objectives closely reflect some of the priorities of the 10 Year Plan.

### (b) **Policy and Legal**

Legal implications are detailed in the report.

### (c) **Financial implications**

None.

### (d) **Risk Implications**

None.

### (e) **Staffing Implications**

Consultation and preparation of revised documents has involved a considerable amount of staff time across several services. However it is anticipated that no additional resources are required.

### (f) **Property**

None.

**(g) Equalities**

As part of the consultation process this report and the draft policy has been referred to the Council's Equal Opportunities Officer for comment. Previous policies have been assessed for equalities impact and given that there has not been any major changes to policy matters there is not a need for a new assessment.

**(h) Consultations**

Extensive consultation has taken place.

**6. Conclusion**

**6.1 It is proposed that the Board note the requirement to develop, consult upon and publish a Statement of Policy as to how it will exercise its functions under the Gambling Act 2005, note the results of the formal consultation, amend the policy as the Board deems necessary or appropriate and instruct the Clerk to proceed to publish the final approved policy.**

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board  
Background Papers: There are no background papers  
Ref: SAH

Signature

Date 7 December 2018

Designation Legal Services Manager (Litigation & Licensing)  
Name Margaret Forrest



# THE MORAY COUNCIL

## STATEMENT OF LICENSING POLICY

This is the Statement of Principles (“licensing policy”) the Moray Licensing Board (“the Board”) propose to apply in the exercise of their functions under the Gambling Act 2005 (“the Act”) during the three year period from 2019 to 2022. This Statement has been prepared in terms of section 349(2) of the Act.

### Index

#### Part I

#### Background Scope and General Functions

Section	Page(s)
1. Objectives	3
2. Functions and Scope	3-4
3. Introduction to Moray	4
4. Declaration	4
5. Policy Consultation	4-5
6. Responsible Authorities	5-6
7. Interested Parties	6
8. Data Protection & Exchange of Information	6-7

#### Part II

#### Promotion of the Licensing Objectives

Section	Page(s)
9. Preventing gambling from being a source of crime or disorder being associated with crime or disorder or being used to support crime	7
10. Ensuring that gambling is conducted in a fair and open way	7-8
11. Protecting Children & Young Persons	8-9
12. Protecting Other Vulnerable Persons	9-10

### **Part III General Consideration and Determination of Applications**

<b>Section</b>	<b>Pages</b>
<b>13. General Considerations and Premises Licences</b>	<b>10-13</b>
<b>14. Duplication with other Regulatory Regimes</b>	<b>13</b>
<b>15. Conditions</b>	<b>13-15</b>
<b>16. Door Supervision</b>	<b>15</b>

### **Part IV Matters Specific to Particular Types of Application**

<b>Section</b>	<b>Pages</b>
<b>17. Casinos</b>	<b>15</b>
<b>18. Bingo</b>	<b>15-16</b>
<b>19. Betting</b>	<b>16</b>
<b>20. Track Betting</b>	<b>17</b>
<b>21. Adult Gaming Centres</b>	<b>18</b>
<b>22. Licensed Family Entertainment Centres</b>	<b>18-19</b>
<b>23. Unlicensed Family Entertainment Centres</b>	<b>19-21</b>
<b>24. Club Gaming Permit &amp; Club Machine Permit</b>	<b>21-22</b>
<b>25. Prize Gaming Permit</b>	<b>22-24</b>
<b>26. Alcohol Licensed premises Gaming Machine Permit</b>	<b>24-25</b>
<b>27. Occasional Use Notice</b>	<b>25</b>
<b>28. Temporary Use Notice</b>	<b>25-27</b>
<b>29. Provisional Statements</b>	<b>27-28</b>
<b>30. Registration of Small Society Lotteries</b>	<b>28</b>
<b>31. Travelling Fairs</b>	<b>28-29</b>

### **Part V Compliance**

<b>Section</b>	<b>Pages</b>
<b>32. Inspection of Premises</b>	<b>29</b>
<b>33. Complaints Against licensed</b>	<b>29-30</b>

ITEM: 3

PAGE: 7

<b>Premises</b>	
<b>Version Control Page</b>	<b>30</b>

## **Part I**

### **Background Scope and General Functions**

#### **1. Objectives**

The Board intends its licensing policy to promote three broad objectives set out in the Gambling Act 2005. These are:

- To prevent gambling being a source of crime or disorder, being associated with crime or disorder or being used to support crime.
- To ensure that gambling is conducted in a fair and open way.
- To prevent children and other vulnerable people from being harmed or exploited by gambling.

#### **2. Functions & Scope**

In short, the matters dealt with in this policy are: How we will approach the functions we are obliged to discharge under the Act; what we will do when faced with certain applications or situations over which we have jurisdiction; how we will operate so as to achieve the objectives of the Act.

The Board will also follow any regulations and statutory guidance issued in accordance with the Act and have regard to any codes of practice issued by the national gambling regulator, the Gambling Commission.

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

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with this document.

In particular this policy says what we will do in relation to our functions toward

- Casino premises;
- Bingo premises;
- Betting premises, including tracks;
- Adult gaming centres;
- Family entertainment centres – Licensed and Unlicensed;
- Club Gaming Permit;
- Club Machine Permit;
- Prize Gaming Permit;
- Alcohol Licensed Premises – Gaming Machine Permit;
- Occasional Use Notices;

- Temporary Use Notices;
- Provisional Statements;
- Registration of Small Society Lotteries;
- Travelling Fairs;

The geographical area covered by this licensing policy is the Moray Council local government area.

### **3. Introduction to Moray**

Moray has a population of approx. 90,000 with three quarters of those living in or around the five main centres of Elgin, Forres, Keith, Buckie and Lossiemouth.

Traditionally there has been a reliance on fishing, farming, food, forestry, textiles and whisky. Service industries, including information services, continue to grow. The two RAF bases at Kinloss and Lossiemouth contribute greatly to local earnings and bring skilled and qualified staff in the area. Unemployment rates continue to be well below the Scottish average. Main transport links are via Inverness to the west and Aberdeen to the east, both of which have their own air connections.

### **4. Declaration**

In adopting this Statement the Board has had regard to the licensing objectives of the Act, the guidance issued by the Gambling Commission and responses from persons consulted in terms of paragraph 5.

### **5. Policy Consultation**

In terms of Section 349(3) of the Act the Board has undertaken a comprehensive consultation exercise with the following parties in the preparation of its licensing policy:

- Police Scotland;
- Scottish Fire & Rescue Service;
- The Moray Local Licensing Forum;
- NHS Grampian;
- The Moray Alcohol and Drug Partnership;
- Moray Faculty of Solicitors;
- British Casino Association;
- Association of British Bookmakers Limited;
- Religious sector – Church of Scotland, Catholic Church and Non Denominational;
- The Gambling Commission;
- Bingo Association Great Britain;
- Moray Licensed Trade Association;
- Existing holders of Betting Office and Bingo Licences;

- Holders of Gaming Machine Permits (via newsletter);
- Community Councils;
- Representatives of Moray Council's Environmental Services Department.
- Community Associations
- Community Planning Partnership
- Social Services
- Moray Women's Aid

## 6. Responsible Authorities

Certain agencies act as responsible authorities so that they can employ their particular area of expertise to help promote the licensing objectives. Applicants and/or the Moray Licensing Board will give notice of certain applications to responsible authorities and those authorities are able to make representations about licence applications.

In addition a responsible authority can apply for a review of an existing licence and offer advice and guidance to applicants.

The Board is required to designate a body which is competent to advise the authority about the protection of children from harm having regard to:

- The need for the body to be responsible for an area covering the whole of the licensing authority's area;
- The need for the body to be answerable to democratically elected persons, rather than any particular vested interest group etc.

The Board has designated the ~~Integrated Children's~~ Children and Families Services Division of the Moray Council as the body competent to advise the Board about the protection of children from harm.

The contact details of all the responsible authorities under the Gambling Act 2005 are:

The Gambling Commission  
Victoria Square House, Victoria Square  
Birmingham  
B2 4BP

Tel: 0121 230 6666  
Fax: 0121 233 1096  
info@gamblingcommission.gov.  
uk

Moray Licensing Unit  
Police Scotland  
Divisional Headquarters  
Moray Street  
Elgin  
IV30 1JL

Legislative Fire Safety Officer  
Grampian Fire & Rescue Service  
Elgin City Fire Station  
Wards Road  
Elgin  
IV30 1NL  
The Moray Council  
Chief Executive's Department  
Council Offices, High Street  
Elgin, IV30 1BX

## 7. Interested Parties

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

“A person is an interested party in relation to an application for, or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person:

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

We are required by regulations to state the principles we will apply in exercising our powers under the Act to determine whether a person is an interested party.

We will decide each case on its merits. We will not apply a rigid rule to our decision making but will apply local knowledge and integrity to each decision. We will consider the examples provided in the Gambling Commission's Guidance to Licensing Authorities.

Persons desirous of making representations should note that the Gambling Act 2005 does not include as a specific licensing objective the prevention of public nuisance. Objections to new premises or requests for reviews should be based on the licensing objectives of the Gambling Act 2005.

It is intended that further more detailed guidance on making representations will be provided separately.

## 8. Data Protection and Exchange of Information

Information supplied by an applicant for licence or permission to the Board will be held and processed by the Board for its purposes as a licensing authority. That data will be disclosed to the Gambling

Commission, Police and other public bodies involved with licensing, processing and enforcement. The Board will enter data on its register of applications which may be inspected by members of the public on request and certified copies of entries on this register may be issued to members of the public on request and on payment of the appropriate fee. Applicants may check or amend data held or request deletion of data by contacting the Clerk of the Licensing Board, Council Offices, High Street, Elgin, IV30 1BX.

The Board has adopted a freedom of information scheme under section 23 of the Freedom of Information (Scotland) Act 2002. A copy of this scheme can be accessed on the Moray Council website - [www.moray.gov.uk](http://www.moray.gov.uk).

The Board is committed to tackling fraud to ensure that services and funds are provided to those who most need them. One way we may do this is to provide information about our licence holders to Audit Scotland for use in a National Fraud Initiative (NFI) data matching exercise. This exercise is completed every two years. The information we may supply would be compared with data held by various departments of the council and with information provided by other public bodies.

## Part II

### Promotion of the Licensing Objectives

#### 9. Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime

The Gambling Commission will take a lead role in keeping gambling crime free by vetting all applicants for personal and operators licences. The Board's main role is to try and promote this area with regard to actual premises. Thus, if an area is perceived to have high levels of organised crime the Board will consider carefully whether gambling premises are suitable to be located there and whether conditions may be required such as the provision of door supervision.

There is a distinction between disorder and nuisance. In order to make the distinction, when incidents of this nature occur, the Board will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see it.

Issues of nuisance cannot be addressed by the Gambling Act provisions however problems of this nature can be addressed through other legislation as appropriate.

Formatted: No bullets or numbering

Formatted: Indent: Left: 0.63 cm,  
No bullets or numbering



## 10. Ensuring that gambling is conducted in a fair and open way

The Board is aware that except in the case of tracks generally the Gambling Commission does not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences.

However the Board will familiarise itself with operator licence conditions and will communicate any concerns to the Gambling Commission about misleading advertising or any absence of required game rules or other matters as set out in the Gambling Commission's Code of Practice.

## 11. Protecting Children & Young Persons

The Act itself provides definitions of "children" and "young persons" as follows:

A "child" means an individual who is less than 16 years old.

A "young person" means an individual who is not a child but who is less than 18 years old.

The licensing objective is to protect children from being harmed or exploited by gambling however for the purpose of this section protection will be taken to include the protection of young persons.

The objective encompasses children/young persons accessing gambling in any capacity including taking part in gambling as well as advertising of gambling products and undertaking work associated with providing gambling facilities.

The Board will pay particular attention to any codes of practice which the Gambling Commission issues as regards this licensing objective in relation to specific premises.

~~The Board has designated the Integrated Children's Services Division of the Moray Council, as the body competent to advise the Board about the protection of children from harm.~~—The Board will consult with the at Division Children and Families Service on any application that indicates there may be concerns over access for children or young persons.

Significant weight will be given to all matters relating to the protection of children and young persons. An applicant for a premises licence must comply explicitly with the Act and any recognised codes of practice (including those in respect of advertising) regarding the permitted access or exclusion and participation of children and young persons. Subject to the exemptions within the Act applicants for a premises licence may also be required to provide evidence that employee age checks are carried out to ensure no child or young person is being employed when facilities for gambling are being provided. Where the Board determines that there

may be a risk of harm to children in relation to particular premises, it may (where permitted) exclude or limit the access of children to the premises at specific times or when certain activities are taking place. Where the Act permits access to children and young persons the Board will, in appropriate circumstances, attach conditions to the premises licence specifically to ensure the protection of children and young persons. Issues of concern may be:

- The location and/or configuration of the premises;
- Supervision of entrances;
- Clear signage externally regarding age restricted premises (over 18 years of age);
- Age verification checks;
- Clear segregation of gambling and non gambling areas;
- Clear signage regarding age restricted areas;
- Supervision of access to gambling areas;
- Supervision of gambling machines;
- Age verification checks of employees, and persons employed through an employment agency.

The Board may, in appropriate circumstances, attach conditions to a premises licence in order to ensure adequate supervision by adult staff. It may also set requirements regarding the appropriate number of adult staff to be present at the premises based on the numbers of children present.

## **12. Protecting Other Vulnerable Persons**

With regard to other vulnerable people the Board does not seek to prohibit particular groups of adults from gambling in the same way that it seeks to prohibit children and young persons but it will assume, for regulatory purposes, that 'vulnerable people' includes:

- People who gamble more than they want to;
- People who gamble beyond their means; and
- People who may not be able to make an informed or balanced decision about gambling due to a mental impairment, excessive alcohol consumption or drug taking.

Applicants for premises licences, permits and authorisations will be expected to have awareness that for some people gambling activities can present a potential harm. An applicant will be required to ensure that all members of their staff receive adequate training and clear instruction regarding this issue, and will also be required to comply with any code of practice and guidance issued by the Gambling Commission. The Board may also consider it appropriate to attach a condition to all premises licences requiring the holder to display in a prominent position, posters/leaflets providing the contact details for various Support Groups

and Organisations specifically set up to assist people who may wish to seek help or advice regarding gambling related issues.

Applicants may consider the following example measures for protecting and supporting vulnerable persons:

- Leaflets offering assistance to problem gamblers being made available on gambling premises in locations that are both prominent and discreet. A discreet location might be, for example, toilets;
- Training for staff members which focuses on building an employee's ability to maintain a sense of awareness of how much (e.g. how long) customers are gambling, as part of measures to detect persons who may be vulnerable;
- Trained personnel for the purpose of identifying and providing support to vulnerable persons;
- Self-exclusion schemes which may extend to co-operation amongst operators on self-exclusion schemes;
- Stickers or notices on gaming machines to identify the stakes/prizes;
- Operators should demonstrate their understanding of best practice issued by organisations that represent the interests of vulnerable people;
- Fixed Odds Betting Terminals should clearly display the odds;
- Positioning of ATM machines;
- Stickers / posters with GamCare Helpline and website in prominent locations, i.e. on ATM machines;
- Careful selection and review of the placing and content of advertisements and other promotional material.

It should be noted that some of these measures form part of the mandatory conditions placed on premises licences but the Board may consider any of the above or similar measures as licence conditions should these not be adequately addressed by any mandatory conditions, default conditions or proposals from the applicant.

### **Part III**

## **General Consideration and Determination of Applications**

The Board may issue premises licences to allow those premises to be used for certain types of gambling e.g. amusement arcades, bingo halls, bookmakers and casinos.

Applicants should also be aware that the Gambling Commission has issued Codes of Practice for each interest area for which they must have regard. The Board will also have regard to these Codes of Practice.

Section 153 of the Act requires the Board, in making decisions concerning premises licences and temporary use notices, to aim to permit the use of premises for gambling in so far as it is perceived to be:

- In accordance with any relevant code of practice issued by the Gambling Commission;
- In accordance with any relevant guidance issued by the Gambling Commission;
- Reasonably consistent with the licensing objectives; and
- In accordance with this Statement of licensing principles.

In the event that the Gambling Commission issues further guidance on any issues that should be taken into account in relation to the suitability and layout of premises and/or in relation to other permits/permissions the Board will consider such guidance ~~when it is published.~~

Nothing in this statement will:

- Override the right of any person to make an application under the Act or to have that application considered on its individual merits;
- Undermine the right of any person to make representations on an application or to seek a review of a licence where there is legal power to do so.

~~Under this legislation unmet demand is not a criterion for a licensing authority in considering an application and in accordance with Gambling Commission Guidance for Licensing Authorities, "moral objections to gambling are not a valid reason to reject applications for premises licences". Therefore w~~The Board will consider any application in accordance with the Act, on its own merits, without regard to demand or moral objection to gambling in general.

By section 155 of the Act, the Board may arrange for the delegation of certain of its functions to a Committee of the Board, the Clerk of the Board or any person appointed to assist the Clerk. We may delegate certain powers where we consider it appropriate. A copy of the Board's scheme of delegation can be accessed separately on the website at [www.moray.gov.uk/licensing](http://www.moray.gov.uk/licensing) or is available upon request to the Clerk to the Board at the Council Offices.

### Gaming Machines

The Board notes Gambling Commission Guidance and the Gambling Commission published information related to gaming machine categories here  
<http://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/Sector-specific-compliance/Arcades-and->

~~machines/Gaming-machine-categories/Gaming-machine-categories.aspx, which states that it is important that if children are allowed to enter premises, 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:~~

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

Formatted: Tab stops: Not at 1.25 cm

Formatted: No bullets or numbering, Tab stops: Not at 1.25 cm

In relation to gaming machines, the Board will normally expect the applicant to:

- identify the types of gaming machine which will be placed on the premises; and
- particularly have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling; and
- 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: proof of age schemes, CCTV, door supervisors, supervision of entrances / gaming machine areas, physical separation of areas, location of entry, location of adult gaming machines, notices / signage, specific opening hours, self barring schemes, provision of information leaflets / help line numbers for organisations such as GamCare or GamblingAware.

This list is indicative and not intended to exclude other conditions in appropriate cases.

### 13. Premises Licences

Premises licences are subject to the permissions/restrictions ~~set out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which are detailed in legislative provisions.~~ Licensing authorities are able to exclude default conditions and also attach other conditions, where it is believed to be necessary and proportionate.

~~Premises is defined in the Act as “any place”, including vessels and vehicles. Different premises licences cannot apply in respect of a single premises at different times. However, it is possible for a single building to be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. Whether different parts of a building can properly be regarded as being separate premises This will always be a question of fact and degree in all the circumstances and t. The Board will take particular care in considering applications for multiple licences, for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular the Board will assess entrances and exits from parts of a building covered by one or more licences to satisfy itself that they are separate and identifiable.~~

The Board has not adopted any specific policy in relation to areas where gambling premises should not be located. This will be kept under review, especially in the event of further information on specific areas being brought to the Board’s attention.

The Board will also pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Issues to consider before granting such applications include whether children can gain access, compatibility of the two establishments; and the ability to comply with the requirements of the Act.

The Board is aware that demand issues (e.g. the likely demand or need for gambling facilities in an area) and moral objections to gambling cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can. With regards to these objectives, particularly upon receipt of any relevant representations, it may be appropriate to look at specific location issues including:

- The possible impact a gambling premises may have on any premises that provide services to children or young people, i.e. a school, or vulnerable adult centres in the area;
- The possible impact a gambling premises may have on residential areas where there may be a high concentration of families with children;
- The size of the premises and the nature of the activities taking place;
- Any levels of organised crime in the area.

The Board will need to be satisfied that there is sufficient evidence that the particular location of the premises would be harmful to the licensing objectives. Such evidence may be used to inform the decision the Board makes about whether to grant the licence, to grant the licence with special conditions or to refuse the application. The absence of evidence to directly link granting a premises licence with harm to one or more

licensing objectives will mean that the Board may be required to grant the licence.

In the absence of a policy in relation to areas, the principle is that this policy does not preclude any application being made and each application will be decided on its merits.

The Gambling Commission's Licence conditions and codes of practice (LCCP) formalise the need for operators to consider local risks. In addition the Social responsibility (SR) code requires licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in the licensing authority's policy statement.

Formatted: No bullets or numbering

Formatted: No bullets or numbering, Don't adjust space between Latin and Asian text

#### 14. Duplication with other Regulatory Regimes

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

#### 15. Conditions

The Board is aware that mandatory and default conditions have been set which are necessary for the general good conduct of gambling premises. These make it less likely that the Board will need to impose individual conditions. If the Board is minded to do so because there is regulatory concerns of an exceptional nature, then any additional licence conditions must relate to the licensing objectives.

Where there are specific risks or problems associated with a particular locality, or specific premises, or class of premises, the Board may attach individual conditions to address this. Any conditions attached will be:

- Proportionate;
- Relevant to the need to make the proposed building suitable as a gambling facility;

- Directly related to the premises and the type of licence applied for, and/or related to the area where the premises is based;
- Fairly and reasonably related to the scale, type and location of premises;
- Consistent with the licensing objectives; and
- Reasonable in all other respects including being within the power of the licence holder.

The Board 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.

The Board will also expect the applicant to offer his/her own suggestions as to the way in which the licensing objectives can be met effectively.

Where certain measures are not already addressed by the mandatory/default conditions or by the applicant, the Board may consider licence conditions to cover issues such as:

- Proof of age schemes;
- CCTV;
- Supervision of entrances;
- Supervision of machine areas;
- Physical separation of areas;
- Location of entrance points;
- Notices / signage;
- Specific opening hours;
- A requirement that children must be accompanied by an adult;
- Enhanced CRB checks of the applicant and/or staff;
- Support to persons with gambling addiction;
- Policies to address seasonal periods where children may more frequently attempt to gain access to premises and gamble such as half terms and summer holidays;
- Policies to address the problems associated with truant children who may attempt to gain access to premises and gamble;
- Any one or a combination of the measures.

This list is not mandatory or exhaustive and is merely indicative of examples.

There are conditions which cannot be attached to premises licences and those are:

- Any condition on the premises licence which makes it impossible for the applicant to comply with an operating licence condition;



- Conditions relating to gaming machine categories, numbers, or method of operation;
- Conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and
- Conditions in relation to stakes, fees, winnings or prizes.

## 16. Door Supervision

The Board consider whether there is a need for door supervision in terms of the licensing objectives of protection of children and vulnerable persons from being harmed or exploited by gambling, and also in terms of preventing premises becoming a source of crime. It is noted though that the Gambling Act 2005 has amended the Private Security Industry Act 2001 and that door supervisors at casinos or bingo premises are not required to be licensed by the Security Industry Authority. Where door supervisors are provided at these premises the operator should ensure that any persons employed in this capacity are fit and proper to carry out such duties.

## Part IV Matters Specific to Particular Types of Application

### 17. Casinos

There is no resolution to prohibit casinos in the Board's area at present. However, the Board reserves its right to review this situation and may, at some time in the future, make such a resolution.

### 18. Bingo

An applicant for a premises licence must comply explicitly with the Act regarding the exclusion of children and young persons from any area where category C (see separately published schedule for machine categories) or above machines are made available for use. The Board will firstly expect applicants to offer their own measures to promote the licensing objectives. However the Board may attach conditions to the licence.

~~The following machines can be provided:~~

- ~~• 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~~
- ~~• Category C or D machines — any number.~~

~~Premises in existence before 13 July 2011 are entitled to make available eight category B3 or B4 gaming machines or 20% of the total number of gaming machines, whichever is the greater.~~

~~The holder of a bingo premises licence granted on or after 13 July 2011, but before 1 April 2014, is entitled to make available a maximum of eight category B3/B4 gaming machines or 20% of the total number of gaming machines, whichever is the greater. From 1 April 2014 these premises will be entitled to 20% of the total number of gaming machines only.~~

~~Regulations state that category B machines at bingo premises should be restricted to sub-category B3 and B4 machines, but not B3A lottery machines.~~

## **19. Betting**

~~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. Licence holders may, subject to certain restrictions, make available for use up to 4 gaming machines of Categories B2 to D.~~

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.

It is noted that the Gambling Commission's Guidance for Local Authorities states that Section 181 contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence. The Commission states this in connection with a restriction on the use of what are termed Self-Service Betting Terminals (SSBTs) although the power is more general in nature. When considering whether to impose a condition to restrict the number of betting machines in particular premises, the Board 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.

The Board will expect applicants to offer their own measures to promote the licensing objectives however the Board may attach conditions to the licence.

In accordance with the Gambling Commission's Guidance for Local Authorities – "Should a licensing authority receive an application to vary a premises licence for betting in order to extend the opening hours, the

authority should satisfy itself that the reason for the application is in line with the requirements of the operating licence conditions.”

## 20. Track Betting

~~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 licences, 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.~~

Children and young persons are allowed to be present on the track while a sporting event is taking place on those licensed premises. This authority will particularly consider the impact of the third licensing objective in this area.

The Gambling Commission’s Guidance that Tracks may be subject to more than one premises licence, provided each licence relates to a specified area of the track. This would ensure a clear division of responsibilities.

An application for a track premises licence will be required to submit detailed plans of the premises in order that the Board understands clearly what it is being asked to licence. This 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. Plans should make clear what is being sought for authorisation under the track betting premises licence and what other areas are to be subject to a separate application for a different type of premises licence.

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. The Board will follow guidance to be issued by the Gambling Commission 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.

An applicant for a premises licence must comply explicitly with the Act regarding the permitted access or exclusion of children and young persons from gambling areas. The Board will expect applicants to offer

their own measures to promote the licensing objectives however the Board may attach conditions to the licence.

## 21. Adult Gaming Centres

An applicant for a premises licence must comply explicitly with the Act regarding the exclusion of children and young persons. No children or young person (under 18 years old) must be permitted to have access to the premises.

~~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:~~

- ~~• 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~~
- ~~• Category C or D machines — any number.~~

~~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.~~

~~The holder of an adult gaming centre premises licence granted on or after 13 July 2011, but before 1 April 2014, is entitled to make available a maximum of four category B3 or B4 gaming machines or 20% of the total number of gaming machines, whichever is the greater. From 1 April 2014, these premises will be entitled to 20% of the total number of gaming machines only.~~

~~See separately published schedule for gaming machine categories.~~

The Board will expect applicants to offer their own measures to promote the licensing objectives however the Board may attach conditions to the licence.

## 22. Licensed Family Entertainment Centres

~~A licensed family entertainment centre consists of premises for which a premises licence is granted to provide, subject to certain restrictions, any number of Category C or D gaming machines.~~

An applicant for a premises licence may comply explicitly with the Act regarding all category C gaming machines (~~see separately published schedule for machine categorisation~~) on the premises.

No children or young persons must be permitted access to restricted areas of the premises where category C gaming machine are sited. There will need to be segregation between the different gaming machine types.

The Board will expect applicants to offer their own measures to promote the licensing objectives however the Board may attach conditions to the licence. Particularly, applicants should have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling.

In accordance with the Gambling Commission's Guidance, the Board will ensure that it is 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. It will also be aware of any mandatory or default conditions on premises licences.

### **23. Unlicensed Family Entertainment Centres (uFECs)**

~~Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply to the Board for a Gaming Machine permit. The applicant must show that that the premises will be wholly or mainly used for making gaming machines available for use.~~

~~Unlicensed FECs will be able to offer only category D machines (see separately published schedule for machine categorisation) in reliance on a gaming machine permit. Any number of category D machines can be made available with such a permit. Permits cannot be issued to vessels or vehicles.~~

We note that the Board can grant or refuse a licence but cannot attach conditions to this type of permit. However the Act imposes mandatory conditions on Unlicensed FEC gaming machine permits

The Gambling Act 2005 contains provision for local authorities to prepare a "Statement of Principles" that they propose to consider in determining the suitability of an applicant for a permit. Schedule 10, Para 7 of the Act states "In preparing this statement, and/or considering applications, the licensing authority need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under Section 25.

In line with the above provision the Board has prepared a 'Statement of Principles' in relation to unlicensed family entertainment centre gaming machines as follows:

#### **Statement of Principles for uFECs**

**Suitability of Applicant**

The Board will expect, as per the Gambling Commission Guidance, applicants to demonstrate:

- A full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
- That the applicant has no relevant conviction (those that are set out in Schedule 7 of the Act); and
- That staff are trained to have a full understanding of the maximum stakes and prizes.

**Suitability of Premises**

In relation to suitability of premises the Board will have particular regard, amongst all circumstances, to:

- The location of the premises;
- Evidence that a premises will only operate as an unlicensed family entertainment centre;
- Confirmation of intended opening hours;
- Display of posters and information leaflets for organisations set up to assist people wishing to seek help and advice regarding gambling related issues;
- Any other factors that are within the control of the permit holder or designated management.

**Policies and Procedures**

The Board will expect the applicant to show that there are policies and procedures in place to protect children from harm. Applicants should undertake a full risk assessment specific to the type of premises, location, clientele and possible harm. For the avoidance of doubt, in this context harm is not limited to harm from gambling but should include wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, they may include:

- Appropriate measures and training for staff e.g. as regards suspected truant children on the premises;
- Measures and training covering how staff would deal with unsupervised very young children being on the premises;
- Measures and training covering how staff would deal with children causing perceived problems on or around the premises;
- Detailed arrangements for the supervision of premises whether by staff or the use of CCTV. Any CCTV system installed should be to the satisfaction of the Board and Grampian police and notice must be displayed at the entrances advising that CCTV is in operation;
- Due to the nature of these premises, which are attractive to children, applicants who employ staff to supervise the premises should determine if their staff need to be background checked.

The Board recognises that it cannot attach conditions to this type of permit but can refuse applications if they are not satisfied that the issues raised in the “Statement of Principles” have been addressed through the application. Applicants only need to address the “Statement of Principles” when making their initial applications and not at renewal time.

The Board will give significant weight to all issues relating to the protection of children and young persons.

The Board may not refuse an application unless it has notified the applicant of the intention to refuse and the reasons for it, and given them an opportunity to make representations orally or in writing or both.

#### **24. Club Gaming Permit & Club Machine Permit**

~~A Club Gaming Permit authorises Members' Clubs to provide, subject to certain restrictions, no more than 3 gaming machines (categories B3A (one only), B4, C or D) (see Separately published schedule for machine categorisation), equal chance gaming and other games of chance as prescribed in regulations.~~

~~The Club Gaming Permit also allows the Club to provide facilities for Gambling provided the gambling meets a number of conditions.~~

~~If a club does not wish to have full range of facilities permitted by a club gaming permit or if they are a commercial club not permitted to provide non-machine gaming, they may apply to the Board for a club machine permit.~~

~~Members' clubs and miners' welfare institutes who do not provide other forms of gaming can hold a permit that allows them to have up to 3 gaming machines. (Categories B3A (one only) B4, C or D) (see separately published schedule for machine categorisation).~~

~~Commercial clubs (clubs established for profit) may apply for a permit that allows them to have up to 3 gaming machines in total of categories B4, C or D (not B3A).~~

~~The same criteria apply to both Club Gaming Permits and Club Machine Permits. To qualify for these special club permits a members club must have at least 25 members and be established and conducted “wholly or mainly” for purposes other than gaming, unless the gaming is permitted by separate regulations. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally.~~

Clubs must have regard to the protection of children and vulnerable persons from harm or being exploited by gambling. They must provide sufficient measures to ensure that under 18 year olds do not use the adult only gaming machines. These measures may include:

~~L:\LIC-BRD\new gambling act\Statement of Policy\Licensing Board statement of policy for 2016 to 2019.doc~~

- the machines being in close proximity to the bar, or in any other area where they are capable of being adequately supervised;
- notices and signage;
- the provision of information leaflets / helpline numbers for organisations such as GamCare.

Before granting any permit the Board will need to satisfy itself that the premises meets the requirements of a members' club and that the majority of members are over 18. The Board may request a copy of the constitution and/or other documents for this purpose.

~~The Board may grant or refuse a permit, but it may not attach any conditions. The Board may only refuse an application on the grounds that:~~

- ~~• The applicant does not fulfil the requirements of a member's or commercial club;~~
- ~~• The applicant's premises are used wholly or mainly by persons under the age of eighteen;~~
- ~~• An offence under the Act, or a breach of permit has been committed by the applicant in the course of gaming activities being carried on;~~
- ~~• A permit held by the applicant has been cancelled in the last ten years; or~~
- ~~• An objection to the application has been made by the Gambling Commission or the Police.~~

## 25. Prize Gaming Permit

~~Section 288 defines gaming as prize gaming if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming.~~

~~A prize gaming permit is a permit issued by the Board to authorise the provision of facilities for gaming and prizes on specified premises.~~

~~The Board may specify the form and manner in which an application must be made, and supporting documents will be required, including:~~

- ~~• Plans of the proposed building;~~
- ~~• Insurance certificates; and~~
- ~~• Any other documents deemed necessary or appropriate.~~

~~The Board will comply with any guidance produced by the Gambling Commission, and when considering a permit application may request further information from an applicant regarding any matters of concern.~~



The Gambling Act 2005 contains provision for local authorities to prepare a “Statement of Principles” that they propose to consider in determining the suitability of an applicant for a permit, having regard to the licensing objectives and guidance issued by the Gambling Commission. The Board has prepared a Statement of Principles in relation to prize gaming permits as follows:

### **Statement of Principles**

The Board will expect the applicant to show the applicant’s suitability to hold a permit and that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, matters to address will include:

- The location of the premises;
- Confirmation of intended opening hours;
- Confirmation of the types of gaming to be offered;
- The applicant will be required to demonstrate they fully understand the limits to stakes and prizes that are set out in Regulations;
- The applicant will be required to demonstrate the gaming offered is within the law;
- Ensuring a premises maintains acceptable levels of management supervision at all times during opening hours;
- Ensuring a premises maintains acceptable levels of security at all times during opening hours;
- CCTV provisions at the premises;
- Surveillance of the premises;
- Evidence that members of staff are appropriately trained including training for staff as regards suspected truant children on the premises and how staff would deal with children causing perceived problems on or around the premises;
- Any other factors that are within the control of the permit holder or designated management.

In line with the Act, while the council cannot attach conditions to this type of permit, the council can refuse applications if they are not satisfied that the issues raised in the “Statement of Principles” have been addressed through the application. Applicants only need to address the “Statement of Principles” when making their initial applications and not at renewal time.

There are conditions in the Gambling Act 2005 by which the permit holder must comply. The conditions in the Act are:

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

The Board may grant a permit only if the appropriate Chief Constable has been consulted about the application.

The Board may not refuse an application unless they have notified the applicant of the intention to refuse and the reasons for it, and given them an opportunity to make representations orally or in writing or both.

## 26. Alcohol Licensed Premises – Gaming Machine Permit

~~On notifying the Board, premises licensed to sell alcohol for consumption on the premises, subject to certain restrictions, have an automatic entitlement to 2 gaming machines (of category C or D).~~

~~The Board has the power to remove this right where:~~

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

~~An Alcohol Licensed Premises Gaming Machine Permit is required if more than 2 gaming machines are sought. The issue of such a permit will effectively replace, not be in addition to any automatic entitlement to 2 gaming machines.~~

The Board will comply with any guidance produced by the Gambling Commission, and when considering a permit application will take account of the licensing objectives and such other matters as are thought relevant. The Board may request further information from an applicant regarding any matters of concern, which may include:

~~L:\LIC-BRD\new-gambling-act\Statement of Policy\Licensing Board statement of policy for 2016 to 2019.doc~~

- A plan showing the location and category of gaming machine being sought; and
- Full details as to how machines will be supervised including all proposed precautions for preventing persons under eighteen from using any category of gaming machine being sought and how it would be implemented. This is especially true in alcohol licensed premises where it is stated that children and young persons may have access to all parts of the premise.

Each application will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harm or being exploited by gambling. The Board will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that children and young people under the age of 18 do not have access to the adult only gaming machines. Measures which may satisfy the Board that persons under 18 years will be prevented from using the machines may include the machines being in close proximity to the bar, or in any other area where they are capable of being adequately supervised.

It is recognised that some alcohol licensed premises may apply for a form of gambling premises licence for their non-alcohol licensed areas. Any such application would need to be dealt with under the relevant provisions of the Act.

The Board may decide to grant an application with a smaller number of machines and/or a different category of machine but cannot attach any other conditions.

## 27. Occasional Use Notices

~~Where there is betting on track on eight days or less in a calendar year betting may be permitted by an occasional use notice without the need for a full premises licence. The calendar year will commence on 1 January.~~

In considering an application for an occasional use notice the Board will consider the definition of a “track” and whether the applicant is permitted to avail him/herself of the notice.

A notice must be served on the Board and copied to the Chief Constable. The notice must be served by a person who is responsible for the administration of events on the track, or by an occupier of the track.

The notice must specify the day on which it has effect, and may be given in relation to consecutive days providing the overall limit of 8 days is not exceeded in a calendar year.

The Board will maintain a record of the number of notices served in a calendar year to ensure the limit of 8 days is not exceeded.

## 28. Temporary Use Notices

~~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. Premises that might be suitable for a temporary use notice would include hotels, conference centres and sporting venues.~~

~~An application for a Temporary Use Notice must be submitted to the Board 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:~~

- ~~• The Gambling Commission;~~
- ~~• The Chief Constable of Grampian Police;~~
- ~~• H M Revenue and Customs;~~
- ~~• Any other licensing authority in whose area the premises are situated.~~

~~The person who is giving the temporary use notice must ensure that the notice and the copies are with the recipients within seven days of the date of the notice.~~

Each application for the grant of a Temporary Use Notice will be considered and determined on its individual merits.

It is for the Board to determine in each case what constitutes premises having regard to, amongst other things, ownership, occupation and control of the premises.

~~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 that the total does not exceed 21 days.~~

Should the Board or the other bodies served with copies of the temporary use notice consider that the gambling should not take place, or take place with modifications, they will issue a notice of objection to the applicant within 14 days of the date of the temporary use notice.

Where relevant representations are made a hearing will be held before the Board or sub committee as appropriate and the application will be determined once the application and representations have been considered. If all participants agree that a hearing is unnecessary, it may be dispensed with.

~~The Board will determine the application using and considering supporting evidence from the applicant and any objectors who have made representations.~~

~~If the Board considers that a temporary use notice should not have effect a counter-notice will be issued which may:~~

- ~~• Prevent the temporary use notice from taking effect;~~
- ~~• Limit the activities that are permitted;~~
- ~~• Limit the time period of the gambling; or~~
- ~~• Allow the activity to take place subject to a specified condition.~~

~~If the Board gives a counter notice, it must give reasons for doing so and must copy the counter notice to all those who received copies of the temporary use notice.~~

~~If the Board decides not to issue a counter notice, the temporary use notice will take effect. The Board will give notice of its decision to the person who gave the temporary use notice and others to whom it was copied.~~

## 29. Provisional Statements

~~A provisional statement application allows a prospective provider of gambling facilities to examine the likelihood of whether a building which he expects to be constructed, to be altered or to acquire a right to occupy would be granted a premises licence. A provisional statement is not a licence and merely gives the holder some form of guarantee that a premises licence would be granted so it can be judged whether a development is worth taking forward in light of the need to obtain a premises licence. An applicant may also apply for a provisional statement for premises which already hold a premises licence (either for a different type of gambling or the same type).~~

The process for considering a provisional statement is the same as that for a premises licence.

The Gambling Commission's Guidance states 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.

~~Once the premises are constructed, altered, or acquired the holder of a provisional statement can put in an application for the necessary premises licence. Section 205 of the Act sets out rules on how the authority must treat this application.~~

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 they reflect a change in the applicant's circumstances.

~~In addition, the Board may refuse the premises licence or grant it on terms different to those attached to the provisional statement only by reference to matters:~~

- ~~• Which could not have been raised at the provisional licence stage; or~~
- ~~• Which, in the authority's opinion, reflects a change in the operator's circumstances.~~

The Board has noted the Gambling Commission 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.

### **30. Registration of Small Society Lotteries**

~~Small society lotteries are non-commercial societies which are established and conducted:~~

- ~~• For charitable purposes;~~
- ~~• For the purpose of enabling or participation in, or supporting, sport, athletics or a cultural activity; or~~
- ~~• For any other non-commercial purpose other than private gain.~~

~~All applications for registration must be made in the form specified by Scottish Ministers, and accompanied by any supporting documents specified by Scottish Ministers or required by the Board.~~

The Board will comply with any guidance produced by the Gambling Commission, and when considering an application for registration and may request further information from an applicant regarding any matters of concern, which may include:

- The application is on behalf of a bona fide non-commercial society;
- That all persons to be connected with the promotion of the lottery have no relevant convictions or cautions recorded against them;
- The purpose of the Society and; the purpose of the fund raising;
- Confirmation of the appointment of two members of the society who have the authority to sign and complete the required financial returns;
- Evidence that an external lottery manager holds an operators licence issued by the Gambling Commission.

If the Board is intending to refuse an application to join the register the applicant will be notified in writing of the reasons why it is considering refusal, and the evidence on which it has based that preliminary conclusion. The applicant will then be given the opportunity to provide further evidence in support of the application or to make representations regarding these matters.

### **31. Travelling Fairs**

Travelling Fairs wholly or principally provide amusements and they must be on a site that has been used for fairs for no more than 27 days per calendar year. Travelling fairs do not require a permit or licence to provide category D gaming machines or equal chance prize gaming.

The Board will also consider whether the applicant falls within the statutory definition of a travelling fair and that the facilities for gambling amount to no more than ancillary amusement. The Board will monitor the number of days a piece of land is used as a fair to ensure the maximum statutory 27 days is not exceeded in a calendar year.

## **Part V Compliance**

### **32. Inspections of Premises**

In exercising functions under the Act with regard to the inspection of premises the Board will be guided by the Gambling Commission's Guidance. Any approach will be:

- Proportionate
- Accountable
- Consistent
- Transparent
- Targeted

The Board will work with the Council to look at a risk based inspection programme. Premises may be subject to a scheme of routine inspection, the 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.

This authority will reserve stating the criteria we will use for risk base inspections. Consideration will be given to the Gambling Commission's own risk criteria and any risk model for premises licences.

The main enforcement and compliance role for this licensing authority in terms of the Act will be to ensure compliance with premises licence and other permissions, which it authorises.

### 33. Complaints Against Licensed Premises

The Board will investigate complaints against licensed premises in relation to matters relating to the licensing objectives for which it has responsibility. In the first instance, complainers are encouraged to raise the complaint directly with the licensee or business concerned to seek a resolution.

Where an interested party has made valid representations about licensed premises, or a valid application for a licence to be reviewed, the Board may initially recommend a conciliation meeting to address and clarify the issues of concern.

This process will not override the right of any interested party to ask that the Board consider their valid objections or for any licence holder to decline to participate in a conciliation meeting.

Due consideration will be given to all relevant representations unless they are considered to be frivolous, vexatious or repetitious.

#### Version Control Page

The list of sections amended in substance in January 2016 are as follows:

- 1 Update responsible authorities (page 5 section 6).
- 2 Update body responsible for advising on protection of children (page 8 section 11).
- 3 Update self-exclusion schemes (page 10 section 12).
- ~~4 Update gaming machine categorisation (page 11 and separately published schedule).~~
- ~~54~~ Update policy on areas (page 12 section 13).
- ~~65~~ Update gaming machine information for section on Bingo premises (page 15 section 18).
- ~~76~~ Update information on Gambling Commission Guidance and betting (page 16 section 19).
- ~~87~~ Update information on Track betting premises (page 17 section 20) to account for updated Gambling Commission guidance.
- ~~98~~ Update gaming machine information for section on adult gaming centres (page 18 section 21).
- ~~109~~ Update gaming machine information for section on family entertainment centres (pages 18 and 19 sections 22 and 23).
- ~~141~~~~10~~ Update gaming machine information for section on club gaming and machine permits (page 21 section 24).

~~L:\LIC-BRD\new-gambling-act\Statement of Policy\Licensing Board statement of policy for 2016 to 2019.doc~~



ITEM: 3

PAGE: 37

- | ~~42~~11 Update section on provisional premises licences to account for updated guidance (page 27 section 29).
- | ~~43~~12 Update compliance to account for updated guidance (page 29 section 32).

**APPENDIX 2**

**Supportive of the proposals**

Elgin CC