

**BARNSELEY METROPOLITAN BOROUGH COUNCIL**

**This matter is a Key Decision within the Council's definition and has been included in the relevant Forward Plan**

**Report of Executive Director,  
Customer & Neighbourhood  
Services**

**GAMBLING ACT 2005 – STATEMENT OF LICENSING POLICY****1. Purpose of Report**

- 1.1 The Council as a Licensing Authority under the provisions of the Gambling Act 2005 must have a robust policy in place which sets out its approach to gambling and gambling enforcement and once adopted must be reviewed at intervals of not more than three years. The current statement of licensing policy was adopted by the Council in January 2007. Consultation on the original and revised policy has been essential to gain a community focus, setting the policy into local context. The revised policy will provide the framework within which applications and other gambling permissions will be considered.

**2. Recommendation**

- 2.1 **That this report be received and that the Gambling Act Statement of Licensing Policy is recommended for adoption by Full Council.**
- 2.2 **That Members re-affirm the adoption of a 'No Casino' resolution in accordance with the provisions of Section 166 of the Gambling Act 2005.**

**3. Introduction**

- 3.1 The Barnsley Metropolitan Borough Council is the Licensing Authority for the purposes of the Gambling Act 2005 and has a Statutory Duty to publish a Gambling Licensing Policy under the Act. The publication of the policy will support the development of the Safer and Stronger Communities Objective and will assist the Council to meet its sustainable community strategy ambitions and Local Area Agreement outcomes.
- 3.2 The Gambling Act 2005 requires the Licensing Authority to review their statement of licensing policy at intervals of not more than three years and as such the revised policy should be adopted by the 31st January 2010.
- 3.3 There are currently no casinos within the metropolitan borough of Barnsley. Consultation was undertaken during 2007 on this matter, at the request of Members, and a 'No casinos resolution' was adopted by the Council and added to the statement of gambling policy. Members may wish to reaffirm the continuation of this resolution within the new policy.

- 3.4 The Policy sets down the principles the Council will adopt and apply to applications. The revised draft Gambling Statement of Policy was issued for consultation and placed on the Council website during September and October 2009, with copies also sent to the Statutory Consultees as defined in the legislation and Responsible Authorities.

#### **4. Consideration of Alternative Approaches**

- 4.1 The Barnsley Metropolitan Borough Council is the Licensing Authority for the purposes of the Gambling Act 2005 and has a statutory duty to publish a Gambling Licensing Policy under the Act, no other approaches are available.

#### **5. Proposal and Justification**

- 5.1 The Borough Council is a Licensing Authority for the purposes of the Gambling Act 2005 and has a Statutory Duty to publish a statement of licensing policy under the Act at intervals of not more than three years. Failing to approve the Gambling Licensing Policy would result in the Council being unable to meet its statutory functions in that applications for licences and permits together with reviews of licenses have to be dealt with in line with the adopted policy.
- 5.2 During the last three years no objections or comments have been received regarding the content of the Council's existing policy in this matter.
- 5.3 The revised draft policy has been amended to take account of additional guidance and regulations that have been issued since the original policy was adopted by the Council. All details relating to the transitional arrangements for the implementation of the Act have also been removed as they are no longer relevant. The amended policy is attached at Appendix B and a schedule of these amendments at Appendix C.
- 5.4 In accordance with the legislation consultation has been undertaken with the prescribed statutory consultees, responsible authorities, parish councils, together with a selection of schools, church organisations and those involved with gambling within the Borough.
- 5.5 During consultation one minor comment was received from a Responsible Authority, however, this relates solely to a change of name of the organisation/department and as such does not significantly affect the content of the policy. No other representations have been received.

#### **6. Delivering Sustainable Community Strategy Ambitions and Local Area Agreement Outcomes**

- 6.1 The adoption of the statement of licensing policy is a legal requirement, although the over arching ethos of the policy is to ensure that the licensing objectives are met throughout the Authority and that communities are not undermined through illegal gambling. This policy should assist the Council to meet its sustainable community strategy ambitions and Local Area Agreement outcomes.

## **7. Long Term Sustainability of the Proposal**

- 7.1 The provisions of the Gambling Act 2005 are such that the Council can regularly review and update the statement of gambling policy at any time and in any event the policy must be reviewed every three years.

## **8. Impact on Local People**

- 8.1 Wide ranging consultation has taken place in respect of the draft gambling statement of licensing policy and as such no significant comments or representations have been received from the statutory consultees, responsible authorities, public or trade in relation to this matter.
- 8.2 The Gambling Act does however enable citizens to partake in gambling if they wish, but introduced three licensing objectives, to ensure where possible local people are not adversely affected by Gambling. These licensing objectives are:
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.
  - Ensuring that gambling is carried out in a fair and open way.
  - Protecting children and other vulnerable persons from being harmed or exploited by gambling.

## **9. Compatibility with European Convention on Human Rights**

- 9.1 The implementation of the Gambling Statement of Licensing Policy will not interfere with the convention on Human Rights. However, decisions made by the Board in relation to applications for Licences and reviews of licences will be affected by Human Rights Legislation, in particular Article 6 (the right to a fair trial).

## **10. Promoting Equality and Diversity and Social Inclusion**

- 10.1 Subjecting vulnerable adults or children to gambling could lead to these people being harmed or exploited and care must be taken to ensure that all applications are dealt with in accordance with the statement of licensing policy.
- 10.2 Adopting a 'No Casino' resolution may reduce the risk of vulnerable adults getting into debt from gambling and thus improve social inclusion.

## **11. Reduction of Crime and Disorder**

- 11.1 In investigating the options set out in this report, the Council's duties under Section 17 of the Crime and Disorder Act 1998 have been considered.

Two of the three licensing objectives have a direct impact on the reduction of crime and disorder and these are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.
- Ensuring that gambling is carried out in a fair and open way,

**12. Conservation of Biodiversity**

12.1 Not applicable.

**13. Risk Management Issues, including Health and Safety**

13.1 Failure to approve the revised statement of licensing policy by 31<sup>st</sup> January 2010, could result in the Authority being unable to undertake their statutory function in accordance with the Gambling Act 2005.

**14. Financial Implications**

14.1 Consultations have taken place with representatives of the Executive Director of Finance, and there are no financial implications arising from this report.

**15. Employee Implications**

15.1 There will be no specific employee implications in reviewing and updating this policy.

**16. Glossary**

16.1 None.

**17. List of Appendices**

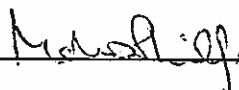
17.1 Appendix B Revised Draft Statement of Licensing Policy  
Appendix C Schedule of Amendments

**18. Background Papers**

18.1 Gambling Act 2005 and associated Regulations

**Office Contact: Kevin Rowland Tel No: 01226 772614 Date: 5<sup>th</sup> Dec 2009**

Financial Implications/Consultations



## **ANNEX**

### **GAMBLING ACT 2005 – STATEMENT OF LICENSING POLICY**

#### **Consultations**

(a) **Financial Implications**

No consultation necessary.

(b) **Employee Implications**

No consultation necessary.

(c) **Legal Implications**

This is a process the Council has to go through every three years. There are no specific legal implications, other than the fact that the Council has to have a policy in place in order that it can meet its legal obligations in considering issues related to the Gambling Act.

(d) **Policy Implications**

Comments have been received and incorporated into this report.

(e) **ICT Implications**

No consultation necessary.

(f) **Local Members**

No specific issues for local members.

(g) **Health and Safety Considerations**

No consultation necessary.

(h) **Property Implications**

No consultation necessary.

(i) **Implications for Other Services**

No consultation necessary – no changes to existing arrangements.

(j) **Implications for Service Users**

No changes to existing arrangements.

(k) **Communications Implications**

The policy will be a publicly available document through the normal channels – website etc. The proposed policy has already been publicly available as part of the consultation process.



**BARNSLEY**  
Metropolitan Borough Council

# **Gambling Act 2005**

## Statement of Licensing Policy

Revised Draft 1 - December 2009

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**REGULATORY SERVICES**

# Barnsley Metropolitan Borough Council

## Statement of Licensing Policy

### Index

|  |    |
|--|----|
| <i>Statement of Licensing Policy</i> .....                 | 4  |
| <i>Part A - General</i> .....                              | 4  |
| 1.1 <i>Introduction</i> .....                              | 4  |
| 1.2 <i>The Borough of Barnsley</i> .....                   | 4  |
| 1.3 <i>Glossary of Terms</i> .....                         | 6  |
| 1.4 <i>Licensing Objectives</i> .....                      | 8  |
| 1.5 <i>Responsible Authorities</i> .....                   | 8  |
| 1.6 <i>Interested Parties</i> .....                        | 9  |
| 1.7 <i>Exchange of Information</i> .....                   | 10 |
| 1.8 <i>Enforcement</i> .....                               | 11 |
| 1.9 <i>Licensing Authority Functions</i> .....             | 12 |
| <i>Part B - Premises Licences</i> .....                    | 13 |
| 2.1 <i>General Principles</i> .....                        | 13 |
| 2.2 <i>Definition of “premises”</i> .....                  | 14 |
| 2.3 <i>Location</i> .....                                  | 15 |
| 2.4 <i>Duplication with other regulatory regimes</i> ..... | 16 |
| 2.5 <i>Licensing Objectives</i> .....                      | 16 |
| 2.6 <i>Codes of Practice</i> .....                         | 17 |
| 2.7 <i>Vulnerable Persons</i> .....                        | 17 |
| 2.8 <i>Conditions</i> .....                                | 17 |
| 2.9 <i>Door Supervisors</i> .....                          | 18 |
| 2.10 <i>Adult Gaming Centres</i> .....                     | 19 |
| 2.11 <i>(Licensed) Family Entertainment Centres</i> .....  | 20 |
| 2.12 <i>Casinos</i> .....                                  | 20 |
| 2.13 <i>Bingo Premises</i> .....                           | 21 |
| 2.14 <i>Betting Premises</i> .....                         | 21 |
| 2.15 <i>Tracks</i> .....                                   | 22 |
| 2.16 <i>Travelling Fairs</i> .....                         | 24 |

|  |   |    |
|--|---|----|
| 2.17   | <i>Provisional Statements</i> .....   | 24 |
| 2.18   | <i>Reviews</i> .....  | 25 |
| 2.19   | <i>Decision Making</i> .....  | 26 |
| <i>Part C – Permits / Temporary And Occasional Use Notices</i> ..... |   | 28 |
| 3.1  | <i>Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits - Schedule 10 paragraph 7)</i> ..... | 28 |
| 3.2  | <i>(Alcohol) Licensed premises gaming machine permits - (Schedule 13 paragraph 4(1))</i> .....  | 29 |
| 3.3  | <i>Prize Gaming Permits</i> .....   | 30 |
| 3.4  | <i>Club Gaming and Club Machines Permits</i> .....  | 31 |
| 3.5  | <i>Temporary Use Notices</i> .....  | 32 |
| 3.6  | <i>Occasional Use Notices</i> .....   | 32 |
| <i>Part D – Legislation, Policies and Strategies</i> .....           |   | 33 |
| 4.1  | <i>Legislation</i> .....  | 33 |
| 4.2  | <i>National Strategies</i> .....  | 33 |
| 4.3  | <i>Local Strategies and Policies</i> .....  | 33 |
| 4.4  | <i>Integrating Strategies</i> .....   | 33 |
| <i>Annex 1 – Delegations of Licensing Functions</i> .....            |   | 36 |
| <i>Annex 2 – Definition of Gaming Machines</i> .....                 |   | 37 |
| Gaming machines on arcade premises .....                             |   | 39 |
| Gaming machines on betting premises.....                             |   | 39 |
| <i>What gaming machines can betting premises offer?</i> .....        |   | 39 |
| Gaming machines on bingo premises.....                               |   | 39 |
| <i>What gaming machines can bingo premises offer?</i> .....          |   | 40 |
| Gaming machines on casino premises .....                             |   | 40 |
| Pubs, clubs, and other qualifying alcohol licensed premises.....     |   | 40 |
| Clubs or miners' welfare institutes .....                            |   | 40 |
| Permits for additional gaming machines.....                          |   | 40 |
| Travelling fairs.....  |   | 41 |
| <i>Appendix A – Map of Barnsley Metropolitan Borough</i> .....       |   | 42 |
| <i>Further Information</i> .....                                     |   | 43 |



## ***Statement of Licensing Policy***

### ***Part A - General***

#### **1.1 Introduction**

1.1.1 Barnsley Metropolitan Borough Council are the Licensing Authority under the Gambling Act 2005 and the Council is responsible for granting premises licences and permits in the Metropolitan Borough of Barnsley in respect of:-

- a) Casino premises;
- b) Bingo premises;
- c) Betting premises, including tracks;
- d) Adult Gaming Centres;
- e) Family Entertainment Centres;
- f) Permits, Temporary & Occasional Use Notices

1.1.2 The Gambling Act 2005 requires the Council to prepare and publish a “Statement of Licensing Policy” that sets out the policies that the Council will generally apply to promote the Licensing Objectives when making decisions on applications made under the Act.

1.1.3 Each Policy lasts for a maximum of three years, but can be reviewed and revised by the Council at any time.

1.1.4 This “Statement of Licensing Policy” has been prepared having regard to the provisions of the Guidance issued by the Gambling Commission and the licensing objectives of the Gambling Act 2005. Wide ranging consultation has taken place and full consideration given to the responses received.

1.1.5 The formal Statement of Licensing Policy will be available on Barnsley Metropolitan Borough Council’s website.

1.1.6 The policy will come into effect on the date of adoption by the Council and in any event must be adopted by the end of January 2010.

#### **1.2 The Borough of Barnsley**

1.2.1 The Barnsley Sustainable Community Strategy ambitions together with the ‘One Barnsley’ strategic partnership define an achievable vision of a future in which Barnsley is an innovative and vibrant 21st-Century market town at the centre of a modern

dynamic economy and a “great place to live”. Priorities within the Community Plan to transform the Borough include bringing about a step change in our approach to provision of regeneration in the Borough, ensuring that we achieve a new and sustainable economic future in the community and to tackle antisocial behaviour and drug use.

- 1.2.2 The urban core of Barnsley is home to 82,000 people. Barnsley town centre is the focus of the Borough's main shopping, administrative, commercial and entertainment activities. It is long famous for its market and more recently has become noted for its expanding club scene and nightlife. To the west of the urban core is the lightly populated attractive hilly country centred on the market town of Penistone. To the south and east there are a number of dispersed towns and villages, separated by open land of the former coalfield, which are home to some 95,000 people. Remaking Barnsley is a long-term strategy to revitalise Barnsley town centre and the wider economy. The Barnsley urban area will play a pivotal role and the town centre in itself will be transformed into a modern urban living space offering shoppers and visitors exciting retail, recreational, entertainment and cultural experiences that will enable it to compete successfully with neighbouring centres.

### **1.3 Glossary of Terms**

#### **1.3.1 Within this Statement of Policy, the following words and terms are defined as stated:**

|                      |   |
|----------------------|---|
| Licensing            | As defined in section 1.4.1 below   |
| Objectives:          |   |
| Council:             | Barnsley Metropolitan Borough Council   |
| Borough:             | The area of South Yorkshire administered by Barnsley Metropolitan Borough Council (Map appended at Appendix A)  |
| Licences:            | As specified in section 1.9.1 below   |
| Applications:        | Applications for licences and permits as defined in section 1.9.1 below   |
| Notifications:       | Means notification of temporary and occasional use notices  |
| Act:                 | The Gambling Act 2005   |
| Regulations:         | Regulations made under the Gambling Act 2005  |
| Premises:            | Any place, including a vehicle, vessel or moveable structure  |
| Code of Practice:    | Means any relevant code of practice under section 24 of the Gambling Act 2005   |
| Mandatory Condition: | Means a specified condition provided by regulations to be attached to a licence   |
| Default Condition:   | Means a specified condition provided by regulations to be attached to a licence, unless excluded by Barnsley Metropolitan Borough Council   |
| Interested Party:    | For the purposes of this Act, a person is an interested party in relation to a premises licence if, in the opinion of the Licensing Authority which issues the licence or to which the application is made, the person:- <ul style="list-style-type: none"><li>a) Lives sufficiently close to the premises to be likely to be affected by the authorised activities;</li><li>b) Has business interests that might be affected by the authorised activities;</li><li>c) Represents persons who satisfy a) or b) above.</li></ul> |

Responsible  
Authority:

For the purposes of this Act, the following are responsible authorities in relation to premises:

- a) The Licensing Authority in whose area the premises are wholly or mainly situated ("Barnsley Metropolitan Borough Council");
- b) The Gambling Commission;
- c) The Chief Superintendent, South Yorkshire Police, Barnsley H.Q., Churchfields, Barnsley, S70 2DW;
- d) The Chief Fire Officer, South Yorkshire Fire and Rescue Services, Dearne District Fire Safety, Broadway, Barnsley, S70 6RA
- e) Planning and Transportation/Building Control, Assistant Director (Planning and Transportation) Barnsley Metropolitan Borough Council, P.O. Box 604, Barnsley, S70 9FE
- f) Pollution Control Team, Regulatory Services, Barnsley Metropolitan Borough Council, P.O. Box 602, Barnsley, S70 9FB
- g) Barnsley Area Child Protection Committee. C/O Licensing Sergeant, South Yorkshire Police, Barnsley HQ, Churchfields, Barnsley, S70 2DW
- h) HM Customs and Excise.

In the case of vessels, the following should also be included:

- i) Environment Agency
- j) British Waterways Board
- k) The Secretary of State (Note: in practice, the Secretary of State for Transport who acts through the Maritime and Coastguard Agency).

#### **1.4 Licensing Objectives**

1.4.1 The Gambling Act 2005 requires that the Council carries out its various licensing functions with a view to promoting the following three licensing objectives:-

- 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 carried out in a fair and open way;
- c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.

1.4.2 The Gambling Commission has stated: *"the requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling"*

#### **1.5 Responsible Authorities**

1.5.1 Responsible authorities are public bodies that must be notified of applications and are entitled to make representations to the licensing authority in relation to applications for, and in relation to, premises licences. Section 157 of the Act identifies the bodies that are to be treated as responsible authorities. They are: -

- a licensing authority in England and Wales in whose area the premises is wholly/partly situated;
- the Gambling Commission;
- the chief officer of police/chief constable for the area in which the premises is wholly or partially situated;
- the fire and rescue authority for the same area;
- the local planning authority;
- an authority which has functions in relation to pollution to the environment or harm to human health;
- anybody, designated in writing by the licensing authority as competent to advise about the protection of children from harm;
- HM Revenue & Customs; and
- any other person prescribed in regulations by the Secretary of State.

1.5.2 Responsible authorities also include navigation authorities that have statutory functions in relation to the waters where the vessel is usually moored or berthed or any water where

it is proposed to be navigated at a time when it is used for licensable activities. This would include:-

- Environment Agency;
- British Waterways Board; and
- Secretary of State. (Note: in practice, the Secretary of State for Transport who acts through the Maritime and Coastguard Agency).

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

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

1.5.4 In accordance with the Gambling Commission's Guidance for local authorities, the Council designates the Local Safeguarding Children Board for this purpose.

## **1.6 Interested Parties**

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

*"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)".*

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

- Each case will be decided upon its merits. The Council will not apply a rigid rule to its decision making and will consider the examples of considerations provided in the Gambling Commission's Guidance for local authorities. It will also consider the Gambling Commission's Guidance that "has business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.
- Interested parties can include trade associations and trade unions, and residents' and tenants' associations but the Council will not however generally view these bodies as interested parties unless they have a member who can be classed as an interested person under the terms of the Gambling Act 2005, i.e. lives sufficiently close to the premises to be likely to be affected by the activities being applied for.
- Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested person will be required as long as the councillor / MP represents the ward likely to be affected. Likewise, parish councils likely to be affected will be considered to be interested parties. Other than these however, the Council will generally require written evidence that a person/body (e.g. an advocate / relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation is sufficient.

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

## **1.7 Exchange of Information**

1.7.1 Barnsley Metropolitan Borough Council will ensure it exercises its functions in accordance with the laws on exchange of information with respect to the exchange of information between it and the Gambling Commission, and its functions under the Act with the respect to the exchange of information between it and other persons listed in Schedule 6 to the Act.

1.7.2 The Council will act in accordance with the provisions of the Act in its exchange of information which includes complying with the Data Protection Act 1998 provisions. The Council will have regard to any guidance issued by the Gambling Commission as well as

any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

- 1.7.3 Where local protocols are established as regards to information exchange with other bodies these will be made available on request.

## **1.8 Enforcement**

- 1.8.1 Barnsley Metropolitan Borough Council will have regard to the Enforcement Concordat and will follow the principles set out in it. The Concordat is based around the principles of consistency, transparency and proportionality.

- 1.8.2 The Licensing Section has adopted and will have regard to the principles set out in a Licensing Enforcement Policy which follows the principles of the Enforcement Concordat, but relates specifically to licensing issues.

- 1.8.3 The Enforcement Concordat and Licensing Enforcement Policy (available upon request) set out that a graduated response is taken where offences against legislation are found or where licence conditions have been contravened. An isolated administrative offence, such as failing to maintain certain records, may be dealt with by way of a written warning. More serious offences may result in a referral to Sub-Committee, the issue of a Formal Caution or a referral for prosecution.

- 1.8.4 Barnsley Metropolitan Borough Council will use appropriate enforcement to promote the licensing objectives. Once licensed, it is essential that premises are monitored to ensure that they are run in accordance with their operating schedules, in compliance with the specific requirements of the Act and in compliance with any licence conditions. It will also be important to monitor the Borough for unlicensed premises.

- 1.8.5 The Council will seek to work actively with the Police in enforcing licensing legislation and has established protocols with The South Yorkshire Police, Barnsley Trading Standards and South Yorkshire's Fire and Rescue Service on enforcement issues to ensure an efficient deployment of police and council officers.

- 1.8.6 In accordance with the Gambling Commission's Guidance the Council will endeavour to avoid duplication with other regulatory regimes so far as is reasonably possible.

- 1.8.7 The main enforcement and compliance role for Barnsley Metropolitan Borough Council in terms of the Gambling Act 2005 will be to ensure compliance with the premises licences and other permissions it authorises.

- 1.8.8 The Gambling Commission will be the enforcement body for the operating licences and personal licences it issues. The Council will not deal with concerns about manufacture,



supply or repair of gaming machines. The Council will however notify the Gambling Commission of any significant issues relating to operating licences, personal licences and the supply, manufacture or repair of gaming machines that arise.

### **1.9 Licensing Authority Functions**

1.9.1 Barnsley Metropolitan Borough Council is required under the Act to:-

- be responsible for the licensing of premises where gambling activities are to take place by issuing Premises Licences;
- issue Provisional Statements;
- regulate members' clubs and miners' welfare institutes who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits;
- issue Club Machine Permits to Commercial Clubs;
- grant permits for the use of certain lower stake gaming machines at unlicensed Family Entertainment Centres;
- receive notifications from alcohol licensed premises (under the Licensing Act 2003) for the use of two or fewer gaming machines;
- issue Licensed Premises Gaming Machine Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two machines;
- register small society lotteries below prescribed thresholds;
- issue Prize Gaming Permits;
- receive and Endorse Temporary Use Notices;
- receive Occasional Use Notices;
- provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange'); and
- maintain registers of the permits and licences issued under these functions.

1.9.2 The Council will not get involved in licensing remote gambling at all. This will fall to the Gambling Commission and be controlled through the issue of operating licences.

## ***Part B - Premises Licences***

### **2.1 General Principles**

2.1.1 Premises licences will be subject to the requirements set-out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which will be detailed in regulations issued by the Secretary of State. Licensing authorities will also be able to exclude default conditions and also attach others, where it is believed to be appropriate.

2.1.2 Nothing in this Statement of Policy will:-

- a) Undermine the rights of any person to apply under the Act for a variety of permissions and have the application considered on its individual merits; OR
- b) Override the right of any person to make representations on any application or seek a review of a licence or permit where they are permitted to do so under the Act.

2.1.3 The starting point in determining applications will be to grant the application without conditions. Conditions will only be considered where they are needed to meet the requirements of the licensing objectives, and any conditions applied will not be overly onerous and will be proportionate to the scale of the application and the risks involved. Conditions will generally be considered unnecessary if they are already adequately covered by other legislation.

2.1.4 All applicants for Premises Licences will be required to set out how they will promote the licensing objectives, as specified in section 1.4.1 above, and what measures they intend to employ to ensure compliance with them.

2.1.5 When determining an application to grant a Premises Licence or review a Premises Licence, consideration will be taken regarding the proximity of the premises to schools, vulnerable adult centres or residential areas where there may be a high concentration of families with children. The proximity of premises taken into consideration will vary depending on the size and scope of the gambling premises concerned. Each case will, however, be decided on its merits. Therefore, if an applicant can effectively demonstrate how they might overcome licensing objective concerns, this will be taken into account.

2.1.6 Licensing is about the control of licensed premises, temporary use notices or occasional use notices within the terms of the Act. Conditions may be attached to licences that will cover matters that are within the control of individual licensees.

2.1.7 When considering any conditions to be attached to licences, the Council will primarily focus on the direct impact of the activities taking place at licensed premises on members of the public living, working or engaged in normal activity in the area concerned. The Secretary of State may by regulation provide for specified conditions to be attached to a premises licence as either “mandatory” or “default” conditions. In determining an application the Council can not take into account the expected demand for the facilities, which it is proposed to provide.

2.1.8 The Council recognises that, apart from the licensing function, there are a number of other mechanisms available for addressing issues of unruly behaviour that can occur away from licensed premises, including:-

- a) Planning controls;
- b) Ongoing measures to create a safe and clean environment in these areas in partnership with local businesses, transport operators and other Council departments;
- c) Regular liaison with the Police on law enforcement issues regarding disorder and anti-social behaviour;
- d) The power of the Police, other responsible authorities or local residents and businesses to seek a review of the licence.

2.1.9 Objectors will be required to relate their objection to one of more of the Licensing Objectives, as specified in section 1.4.1 above, before the Council will be able to consider it.

2.1.10 The Council, in undertaking its licensing function, will have due regard to the need to eliminate unlawful discrimination and to promote equality and good relations between persons of different racial groups.

## **2.2 Definition of “premises”**

2.2.1 Definition of “premises” – ‘Premises’ is defined in the Act as “any place”. 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 will always be a question of fact in the circumstances. Notwithstanding, the Gambling Commission does not consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises.

2.2.2 The Council takes particular note of the Gambling Commission's guidance for local authorities which states that:-

- licensing authorities should 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 they should be aware that entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not 'drift' into a gambling area; and
- licensing authorities should pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Clearly, there will be specific issues that authorities should consider before granting such applications, for example, whether children can gain access; compatibility of the two establishments; and ability to comply with the requirements of the Act. But, in addition an overriding consideration should be whether, taken as a whole, the co-location of the licensed premises with other facilities has the effect of creating an arrangement that otherwise would, or should, be prohibited under the Act.

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

### **2.3 Location**

2.3.1 Barnsley Metropolitan Borough Council is aware that 'demand' issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can. The Council will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each

application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.

#### **2.4 Duplication with other regulatory regimes**

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

#### **2.5 Licensing Objectives**

2.5.1 Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, the Council has considered the Gambling Commission's Guidance to local authorities and these are referred to in 2.5.2, 2.5.3 and 2.5.4 below.

##### **2.5.2 Licensing Objective: 'Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime'**

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

##### **2.5.3 Licensing Objective: 'Ensuring that gambling is conducted in a fair and open way'**

Barnsley Metropolitan Borough Council recognises that the Gambling Commission does not generally expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. There is however, more of a role with regard to tracks (see section 2.15).

##### **2.5.4 Licensing Objective: 'Protecting children and other vulnerable persons from being harmed or exploited by gambling'**

Barnsley Metropolitan Borough Council recognises the Gambling Commission's guidance that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children). The Council will therefore consider, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances/ machines, segregation of areas etc.

## **2.6 Codes of Practice**

2.6.1 The Council will take into account the Codes of Practice which the Gambling Commission issues from time to time with regards to the licensing objectives.

## **2.7 Vulnerable Persons**

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

## **2.8 Conditions**

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

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

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

2.8.3 The Council will consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and

the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commission's Guidance.

2.8.4 The Council will ensure that where category C (see Annex 2) or above machines are on offer in premises to which children are admitted that:-

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

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

2.8.5 The Council is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. The Council will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

2.8.6 The Council recognises that there are certain conditions which cannot be attached to premises licences which are:-

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

## **2.9 Door Supervisors**

2.9.1 The Gambling Commission guidance advises licensing authorities to consider whether there is a need for door supervisors in terms of the licensing objectives of the protection of children and vulnerable persons from being harmed or exploited by gambling, and in terms of preventing premises becoming a source of crime. It is also recognised that the door supervisors at casinos or bingo premises cannot be licensed by the Security Industry Authority (SIA). The Council will however consider on a case by case basis whether door supervisors are required to work at casino or bingo premises and may have specific requirements appropriate to the individual premises by attaching conditions subject to any codes of practice. This is in recognition of the nature of the work in terms of searching individuals, dealing with potentially aggressive persons.

2.9.2 For premises other than casinos and bingo premises, operators and licensing authorities may decide that supervision of entrances / machines is appropriate for particular cases but it will need to be decided whether these need to be SIA licensed or not. It will not be automatically assumed that they need to be.

## **2.10 Adult Gaming Centres**

2.10.1 Barnsley Metropolitan Borough Council will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to, for example, ensure that under 18 year olds do not have access to the premises.

2.10.2 The Council will expect applicants to offer their own measures to meet the licensing objectives however appropriate measures/ licence conditions may cover issues such as:-

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



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

## **2.11 (Licensed) Family Entertainment Centres**

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

2.11.2 The Council will expect applicants to offer their own measures to meet the licensing objectives and appropriate measures/ licence conditions may cover issues such as:-

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

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

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

## **2.12 Casinos**

2.12.1 There are currently no casinos within the metropolitan borough of Barnsley.

2.12.2 'No casinos resolution' – Barnsley Metropolitan Borough Council has undertaken full consultation under the provisions of Section 166 of the Gambling Act 2005 and has introduced a No casino resolution within the Borough.

### **2.13 Bingo Premises**

2.13.1 Barnsley Metropolitan Borough Council acknowledges the Gambling Commission's guidance to local authorities in connection with bingo premises. Paragraph 18.4 of the guidance states:-

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

2.13.2 The Council is aware that the Gambling Commission has issued guidance about the particular issues that licensing authorities should take into account in relation to the suitability and layout of bingo premises. This guidance will be considered by the Council where licence applications for these premises are made.

### **2.14 Betting Premises**

2.14.1 Betting machines - 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 or to a casino premises licence (where betting is permitted in the casino). When considering whether to impose a condition to restrict the number of betting machines in particular premises, the licensing authority, amongst other things, 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 the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable persons.”

2.14.1 Credit - section 177 does not prevent the licensee from permitting the installation of cash dispensers (ATMs) on the premises. Such machines may accept credit cards (and debit cards) and the arrangement is subject to a requirement that the licensee has no other commercial connection in relation to gambling (aside from the agreement to site the machines) with the service-provider and does not profit from the arrangement, not make any payment in connection with the machines. The licensing authority will also take note of any restrictions and requirements on the Operating Licences for betting premises as regards credit.

## **2.15 Tracks**

2.15.1 Barnsley Metropolitan Borough Council are aware that tracks may be subject to individual or multiple premises licences, provided each licence relates to a specified area of the track. In accordance with the Gambling Commission's guidance the Council will consider the impact upon the third licensing objective (i.e. the protection of children and vulnerable persons from being harmed or exploited by gambling) and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

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

2.15.3 Barnsley Metropolitan Borough Council will expect applicants to offer their own measures to meet the licensing objectives however appropriate measures / licence conditions may cover issues such as:-

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

- Notices / signage
- Specific opening hours
- Self-barring schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare

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

2.15.4 Gaming machines :- All machines must be located in accordance with Gambling Commission guidance and any special considerations that should apply in relation, for example, supervision of the machines and preventing children from playing them. The Council supports the Commission's guidance that licensing authorities need to consider the location of gaming machines at tracks, and applications for track premises licences will need to demonstrate that, where the applicant holds a pool betting operating licence and is going to use his entitlement to four gaming machines, these machines are located in areas from which children are excluded. Children and young persons will not be prohibited from playing category D gaming machines on a track.

2.15.5 Betting machines – The Council will take into account the size of the premises and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer. It also supports the Gambling Commission's suggestion that licensing authorities will want to consider restricting the number and location of such machines in respect of applications for track betting premises licences.

2.15.6 Condition on rules being displayed - The Gambling Commission's guidance advises 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."*

2.15.7 Applications and plans – All application must be made in accordance with the appropriate Regulations for premises licences and in accordance with the Gambling Commission's suggestion in it's guidance; *"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 that 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 (often 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."*

- 2.15.8 The Council accepts the Gambling Commission's view that it would be preferable for all self-contained premises operated by off-course betting operators on a track to be the subject of separate premises licences, to ensure that there is clarity between the respective responsibilities of the track operator and the off-course betting operator running a self-contained unit on the premises.

## **2.16 Travelling Fairs**

- 2.16.1 Barnsley Metropolitan Borough Council will decide whether, where category D machines and/ or equal chance prize gaming (see Annex 2) without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

- 2.16.2 The Council will also consider whether the applicant falls within the statutory definition of a travelling fair.

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

## **2.17 Provisional Statements**

- 2.17.1 Barnsley Metropolitan Borough Council notes the Guidance for the Gambling Commission 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"*.

- 2.17.2 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 unless they concern matters which could not have been

addressed at the provisional statement stage, or they reflect a change in the applicant's circumstances. In addition, the authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:-

- (a) which could not have been raised by objectors at the provisional licence stage; or
- (b) which is in the authority's opinion reflect a change in the operator's circumstances.

2.17.3 The Council recognises that, as a licensing authority, it should not take into account irrelevant matters. An example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for the proposal.

## **2.18 Reviews**

2.18.1 The Council will carry out a review of a Premises Licence where it has received a formal application for review in accordance with the Act that is relevant to one of more of the Licensing Objectives. Representations may include issues relating to the following:-

- a) Use of licensed premises for the sale and distribution of class A drugs and/or the laundering of the proceeds of drugs crimes;
- b) Use of licensed premises for the sale and distribution of illegal firearms;
- c) Use of licensed premises for prostitution or the sale of unlawful pornography;
- d) Use of licensed premises as a base for organised crime activity;
- e) Use of licensed premises for the organisation of racist, homophobic or sexual abuse or attacks;
- f) Use of licensed premises for the sale of smuggled tobacco or goods;
- g) Use of licensed premises for the sale of stolen goods;
- h) Children and/or vulnerable persons being put at risk.

Due consideration will be given to all relevant representations unless they fit the following:-

- a) The grounds are frivolous;
- b) The grounds are vexatious;
- c) The grounds are irrelevant;

- d) The grounds will not cause the Licensing Authority to revoke or suspend a licence or to remove, amend or attach conditions on the premises licence;
- e) The grounds are substantially the same as the grounds cited in a previous application relating to the same premises; or
- f) The grounds are substantially the same as representations made at the time the application for a premises licence was considered.

2.18.2 The Council (licensing authority) can also initiate a review of a licence based on any reason that it thinks is appropriate.

## **2.19 Decision Making**

2.19.1 The Council will be involved in a wide range of licensing decisions and functions and has established a Statutory Licensing Board to administer them.

2.19.2 Appreciating the need to provide a speedy, efficient and cost-effective service to all parties involved in the licensing process, the Board has delegated certain decisions and functions and has established a Sub-Committee to deal with them.

2.19.3 A Licensing Sub-Committee of three Councillors will sit to hear applications where representations have been received from interested parties and responsible authorities. Ward Councillors will not sit on a Sub-Committee involving an application within their ward.

2.19.4 The Statutory Licensing Board will also sit to determine general licensing matters that have been delegated to it by the full Council that are not associated with the Gambling Act 2005.

2.19.5 Where a Councillor who is a member of the Statutory Licensing Board is making or has made representations regarding a licence on behalf of an interested party, in the interests of good governance they will disqualify themselves from any involvement in the decision making process affecting the licence in question.

2.19.6 The Licensing Sub-Committee will also refer to the Statutory Licensing Board any matter it is unable to deal with because of the number of its members who are unable to take part in the consideration or discussion of any matter or vote on any question with respect to it.

2.19.7 The Statutory Licensing Board will refer to the full Council any matter it is unable to deal with because of the number of its members who are unable to take part in the consideration or discussion of any matter or vote on any question with respect to it.

- 2.19.8 Every determination of a licensing decision by the Statutory Licensing Board or a Licensing Sub-Committee shall be accompanied by clear, cogent reasons for the decision. The decision and the reasons for that decision will be sent to the applicant and those who have made relevant representations as soon as practicable. A summary of the decision shall also be posted on the Council's website as soon as possible after the decision has been confirmed, where it will form part of the statutory licensing register required to be kept by the Council.
- 2.19.9 The Council's Licensing Officers will deal with all other licensing applications where either no representations have been received, or where representations have been received and it is agreed by the parties that a hearing is not necessary.
- 2.19.10 Decisions as to whether representations are irrelevant, frivolous or vexatious will be made by Council Officers, who will make the decisions on whether representations or applications for licence reviews should be referred to the Statutory Licensing Board or Sub-Committee. Where representations are rejected, the person making that representation will be given written reasons as to why that is the case. There is no right of appeal against a determination that representations are not admissible.
- 2.19.11 Appreciating the need to provide a speedy, efficient and cost-effective service to all parties involved in the licensing process, the Board has delegated certain decisions and functions and has established a Sub-Committee to deal with them.
- 2.19.12 The table shown at Annex 1 sets out the agreed delegation of decisions and functions to Statutory Licensing Board, Sub-Committee and Officers.
- 2.19.13 This form of delegation is without prejudice to Officers referring an application to a Sub-Committee or Statutory Licensing Board if considered appropriate in the circumstances of any particular case.
- 2.19.14 An applicant or person making representations will have a right of appeal to the Magistrates' Court if they are unhappy with any decision made by the Council.



## ***Part C – Permits / Temporary And Occasional Use Notices***

### **3.1 Unlicensed Family Entertainment Centre gaming machine permits** **(Statement of Principles on Permits - Schedule 10 paragraph 7)**

3.1.1 Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit. Applicants must show that the premises will be wholly or mainly used for making gaming machines available for use.

3.1.2 The Gambling Act 2005 states that; “... a licensing authority may prepare a statement of principles that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it 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.” The Gambling Commission’s guidance also states; “In their three year licensing policy statement, licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications for permits....., licensing authorities will want to give weight to child protection issues.”

3.1.3 An application for a permit may be granted only if the Council (licensing authority) is satisfied that the premises will be used as an unlicensed FEC, and if the Chief Officer of Police has been consulted on the application. In addition, the Council may wish to consider asking 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 convictions (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.”

3.1.4 It should be noted that the Council (licensing authority) cannot attach conditions to this type of permit.

Statement of Principles – Barnsley Metropolitan Borough Council will expect applicants to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training

covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises. The Council will also expect 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 convictions (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.

**3.2 (Alcohol) Licensed premises gaming machine permits - (Schedule 13 paragraph 4(1))**

3.2.1 There is provision in the Act for premises licensed to sell alcohol for consumption on the premises, to automatically have 2 gaming machines, of categories C and/or D (see Annex 2). These premises merely need to notify the licensing authority. The licensing authority can remove the automatic authorisation in respect of any particular premises if:-

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

3.2.2 If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and “such matters as they think relevant.” The Council considers that “such matters” will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect applicants to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18. Notices and signage may also help. As regards the protection of vulnerable persons, applicants may wish to

consider the provision of information leaflets / helpline numbers for organisations such as GamCare.

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

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

3.2.5 Holders of permits must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

### **3.3 Prize Gaming Permits**

3.3.1 The Gambling Act 2005 states that a licensing authority may *“prepare a statement of principles that they propose to apply in exercising their functions under this Schedule”* which *“may, in particular, specify matters that the licensing authority propose to consider in determining the suitability of the applicant for a permit”*.

3.3.2 Barnsley Metropolitan Borough Council’s Statement of Principles require applicants to set out the types of gaming that they intend to offer and be able to demonstrate:-

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

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

3.3.4 There are conditions in the Gambling Act 2005 by which permit holders must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are:-

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

- participation in the gaming must not entitle the player to take part in any other gambling.

### **3.4 Club Gaming and Club Machines Permits**

3.4.1 Members Clubs and Miners' welfare institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Clubs Gaming machines permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance as set-out in forthcoming regulations. A Club Gaming machine permit will enable the premises to provide gaming machines (3 machines of categories B, C or D).

3.4.2 Members clubs 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. It is anticipated that this will cover bridge and whist clubs, which will replicate the position under the Gaming Act 1968. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations.

3.4.3 The Council may only refuse an application on the grounds that:-

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

3.4.4 There is a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10). Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the Police, and the grounds upon which an authority can refuse a permit are reduced. The grounds on which an application under the process may be refused are:-

- a) that the club is established primarily for gaming, other than gaming prescribed under schedule 12;

- b) that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- c) that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."

3.4.5 There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

### **3.5 Temporary Use Notices**

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

### **3.6 Occasional Use Notices**

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

## ***Part D – Legislation, Policies and Strategies***

### **4.1 Legislation**

4.1.1 In undertaking its licensing function under the Gambling Act 2005, the Council is also bound by other legislation, including:-

- a) Section 17 of the Crime and Disorder Act 1988;
- b) Human Rights Act 1998;
- c) Health and Safety at Work Act 1974;
- d) Environmental Protection Act 1990;
- e) The Anti-Social Behaviour Act 2003;
- f) The Race Relations Act 1976 (as amended);

However, the policy is not intended to duplicate existing legislation and regulation regimes that already place obligations on employers and operators.

### **4.2 National Strategies**

4.2.1 The Council will seek to discharge its responsibilities identified by other Government Strategies, in so far as they impact on the objectives of the licensing function.

### **4.3 Local Strategies and Policies**

4.3.1 Where appropriate, the Council will consider applications with reference to other adopted local strategies and policies, including the following:-

- The Council's Corporate Strategy;
- The Community Safety Strategy;
- Enforcement Concordat and Licensing Enforcement Policy.

### **4.4 Integrating Strategies**

4.4.1 There are many stakeholders involved in the Leisure industry and many are involved in the promotion of the licensing objectives. A number of stakeholders' plans and strategies deal with matters related to the licensing function. Where this is the case, the Council will aim, as far as possible, to co-ordinate them.

4.4.2 The Council recognises in particular the importance of the co-ordination and integration of the Gambling policy with other plans aimed at the management of town centres and the night-time economy.

Relevant plans and strategies include:-

- a) Crime and Disorder Strategy – The Council will fulfil its duty under section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the Borough. As far as possible, licensing decisions will aim to contribute to the targets set in the Crime and Disorder Strategy and conditions attached to licences and certificates will reflect local crime prevention strategies.
- b) Local Transport Plan – the Council aims to work with the local transport authority and will consider ways in which the public can be dispersed from licensed premises and events so as to avoid disturbance, crime and disorder. The Police will be encouraged to report on matters related to the swift and safe dispersal of people from licensed premises.
- c) Racial Equality – The Council is required under race relations legislation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups. The impact on these issues of the Gambling Policy will be monitored and amendments will be made as necessary.
- d) Human Rights – The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a Convention right. The Council will have particular regard to the following relevant provisions of the European Convention on Human Rights:-
  - i. 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;
  - ii. Article 8 that everyone has the right to respect for his home and private and family life;
  - iii. Article 1 of the First Protocol that every person is entitled to the peaceful enjoyment of his or her possessions, including for example the possession of a licence.
- e) The Licensing Authority's Statutory Licensing Board will provide reports, when appropriate, to its Planning Committee on the situation regarding licensed premises in the area, including the general impact of gambling related crime and disorder, to enable the Planning Committee to have regard to such matters when taking its decisions, will assure proper integration.

- f) Tourism and Town Centre Management – The Council aims to promote a high quality thriving night-time economy.
- g) The Council will ensure that the Statutory Licensing Board receives reports, when appropriate, on the needs of the local tourist economy to ensure that these are reflected in their considerations.
- h) Economic Strategies – The Council will ensure that the Statutory Licensing Board is appraised of the employment situation in the area and the need for new investment and employment where appropriate.
- i) Enforcement Policy – All licensing enforcement will be conducted in accordance with the Enforcement Concordat and the Licensing Enforcement Policy.

4.4.3 In order to avoid duplication with other statutory regimes, the Council will not attach conditions to a licence unless they are considered necessary for the promotion of the licensing objectives. Conditions will generally be considered unnecessary if they are already adequately covered by other legislation.

4.4.4 Non-compliance with other statutory requirements may be taken into account in reaching a decision about whether to grant a licence, but only if relevant representations are received.



**Annex 1 – Delegations of Licensing Functions**

| <b>MATTER TO BE DEALT WITH</b>                              | <b>FULL COUNCIL</b> | <b>SUB-COMMITTEE</b>   | <b>OFFICERS</b>  |
|---|---------------------|--|--|
| Three year licensing policy                                 | Yes                 |  |  |
| Policy not to permit casinos                                | Yes                 |  |  |
| Fee Setting - when appropriate                              |                     |  | Yes (to be approved by Executive Councillor)                           |
| Application for premises licences                           |                     | Where representations have been received and not withdrawn   | Where no representations received/ representations have been withdrawn |
| Application for a variation to a licence                    |                     | Where representations have been received and not withdrawn   | Where no representations received/ representations have been withdrawn |
| Application for a transfer of a licence                     |                     | Where representations have been received from the Commission | Where no representations received from the Commission                  |
| Application for a provisional statement                     |                     | Where representations have been received and not withdrawn   | Where no representations received/ representations have been withdrawn |
| Review of a premises licence                                |                     | Yes  |  |
| Application for club gaming /club machine permits           |                     | Where representations have been received and not withdrawn   | Where no representations received/ representations have been withdrawn |
| Cancellation of club gaming/ club machine permits           |                     | Yes  |  |
| Applications for other permits                              |                     |  | Yes  |
| Cancellation of licensed premises gaming machine permits    |                     |  | Yes  |
| Consideration of temporary use notice                       |                     |  | Yes  |
| Decision to give a counter notice to a temporary use notice |                     | Yes  |  |

## Annex 2 – Definition of Gaming Machines

### **Definition of Gaming Machines**

#### **Based on Gambling Commissions' guidance to Licensing Authorities**

Section 235 of the Act defines a “gaming machine” as; “a machine which is designed or adapted for use by individuals to gamble (whether or not it can also be used for other purposes)”. This definition is wider than those included in previous gaming legislation and covers all types of gambling activity which can take place on a machine, including betting on virtual events. However, the following should be noted:

- there remains a distinction between skill machines and gaming machines. Skill machines are unregulated; and
- section 235 contains important exemptions for equipment that is not to be considered a gaming machine, even when gambling can be performed on it. For example, a home PC is not to be classed as a gaming machine, even though someone can access remote gambling on it.

### **Categories of gaming machines**

The maximum stakes and prizes for certain gaming machines were updated by the Gambling Commission in June 2009.

| Category of machine   | Maximum Stake              | Maximum Prize  |
|---|----------------------------|--|
| A   | Unlimited                  | Unlimited  |
| B1  | £2                         | £4,000   |
| B2  | £100 (in multiples of £10) | £500   |
| B3  | £1                         | £500   |
| B3A   | £1                         | £500   |
| B4  | £1                         | £250   |
| C   | £1                         | £70  |
| D non-monetary prize (other than crane grab machines)                     | 30p                        | £8   |
| D non-monetary prize (crane grab machines)                                | 10p                        | £50  |
| D money prizes  | 10p                        | £5   |
| D combined money and non-money prize (coin pusher or penny falls machine) | 10p                        | £15 cash (of which no more than £8 may be a money prize) |

### **Age restrictions**

- Categories A, B and C machines – minimum age of 18 years for all players;
- Category D – no minimum age for players, however the Secretary of State has a reserve of power to set a minimum age for playing

category D machines with an associated power to exempt certain machines like cranes and penny pushers;

- The holder of a permit or premises licence will have to ensure that he complies with the Codes of Practice issued by the Commission on the location of and access to such machines by children and young persons, and their separation from category C and B machines where those are also located on the same premises.

## Summary of maximum number of machines by premises type

### Gaming machines on arcade premises

Gaming machines fall into categories depending on the maximum stake and prize available. Arcades are allowed to offer a certain number of gaming machines from each category:

|  | Machine category                           |    |                                      |   |
|--|--|----|--------------------------------------|---|
|  | B3   | B4 | C                                    | D |
| <b>Adult gaming centre</b>                                 | Maximum of 4 machines in category B3 or B4 |    | No limit on category C or D machines |   |
| <b>Family entertainment centre (with premises licence)</b> |  |    | No limit on category C or D machines |   |
| <b>Family entertainment centre (with permit)</b>           |  |    | No limit on category D machines      |   |

### Gaming machines on betting premises

Gaming machines can be sited on betting premises. All gaming machines sited on betting premises must comply with the Gambling Commission's gaming machines technical standards, and be tested to the appropriate standard by an approved test house.

#### *What gaming machines can betting premises offer?*

Gaming machines fall into categories depending on the maximum stake and prize available. A general betting (standard) operating licence, together with a betting premises licence, allows for up to four gaming machines from any of the following categories to be sited on that premises:

|   | Machine category                            |    |    |   |   |
|---|---|----|----|---|---|
|   | B2  | B3 | B4 | C | D |
| <b>Betting premises and tracks occupied by pool betting</b> | Maximum of 4 machines in categories B2 to D |    |    |   |   |

### Gaming machines on bingo premises

Gaming machines can be sited on bingo premises. The rules for the positioning of gaming machines, in relation to other activities on a premises, are listed in the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007 and the (Mandatory and Default Conditions) (Scotland) Regulations 2007.

All gaming machines sited on bingo premises must comply with the Gambling Commission's Gaming Machine Technical Specifications and be tested to the appropriate standard by an approved test house.

***What gaming machines can bingo premises offer?***

Gaming machines fall into categories depending on the maximum stake and prize available. A licensed bingo operator is permitted up to eight gaming machines from category B3 or B4, and any number of category C or category D machines.

|                       | <b>Machine category</b>                    |           |          |                                      |
|-----------------------|--|-----------|----------|--------------------------------------|
|                       | <b>B3</b>                                  | <b>B4</b> | <b>C</b> | <b>D</b>                             |
| <b>Bingo premises</b> | Maximum of 8 machines in category B3 or B4 |           |          | No limit on category C or D machines |

**Gaming machines on casino premises**

Barnsley Metropolitan Borough Council currently has a 'no casino resolution and therefore information relating to gaming machines on casino premises has not been included within this policy. Further information on machine categories for casinos can be found at the Gambling Commission website.

**Pubs, clubs, and other qualifying alcohol licensed premises**

**Clubs or miners' welfare institutes**

Gaming machines fall into categories depending on the maximum stake and prize available.

|  | <b>Machine category</b>                             |  |          |
|--|---|--|----------|
|  | <b>B4</b>   | <b>C</b>   | <b>D</b> |
| <b>Clubs or miners' welfare institute (with permits)</b>                 | Maximum of 3 machines in categories B3A or B4 to D* |  |          |
| <b>Qualifying alcohol-licensed premises</b>                              |   | 1 or 2 machines of category C or D automatic upon notification |          |
| <b>Qualifying alcohol-licensed premises (with gaming machine permit)</b> |   | Number as specified on permit                                  |          |

**Permits for additional gaming machines**

In addition to their automatic entitlement, pubs and other alcohol licensed premises may apply to the Council for a gaming machine permit which allows the provision of additional machines. The number of machines allowed will be specified on the permit.

### **Travelling fairs**

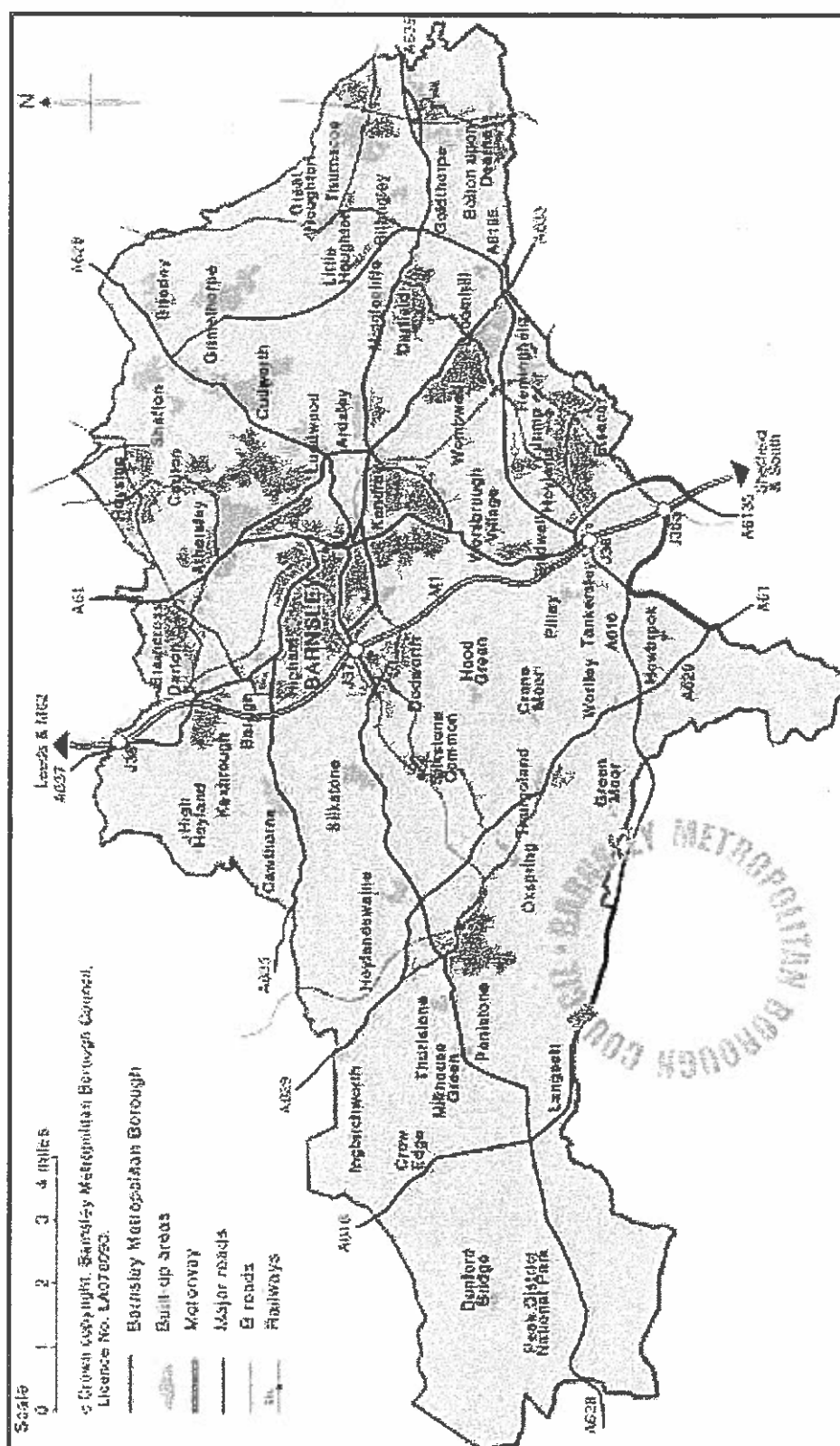
Gaming machines fall into categories depending on the maximum stake and prize available.

**Travelling fair**

#### **Machine category D**

No limit on category D machines

## Appendix A – Map of Barnsley Metropolitan Borough



### **Further Information**

Further information about the Gambling Act 2005, this Statement of Licensing Policy or the application process can be obtained from:-

Barnsley Metropolitan Borough Council  
Regulatory Services  
PO Box 602  
Barnsley  
S70 9FB

Tel: 01226 772468  
Fax: 01226 775699  
Email: [regulatoryservices@barnsley.gov.uk](mailto:regulatoryservices@barnsley.gov.uk)  
Website: [www.barnsley.gov.uk](http://www.barnsley.gov.uk)

Information is also available from:-

Gambling Commission  
Berkshire House  
168-173 High Holborn  
London  
WC1V 7AA

Tel: 020 7306 6219  
Website: [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)



### **Appendix C - Schedule of updates**

| <b>Item number</b>        | <b>Brief comment on change</b>   | <b>Reason for change</b>   |
|---------------------------|--|--|
| Front cover               | Authority address and contact details updated  | To allow improved communication with the authority   |
| Index                     | Updated to reflect changes to policy document  | Updated to reflect changes to policy document  |
| 1.1.1                     | Wording updated to present tense   | Incorrect terminology within the report  |
| 1.1.6                     | Dates updated following comments from Policy   | To ensure dates reflect appropriate timescales for implementation of the revised policy          |
| 1.2.1                     | Comments amended following advice from Policy  | To reflect changes in overarching Council Policies   |
| 1.3.1                     | Contact details updated  | To allow improved communication with the Responsible Authorities                                 |
| 1.7.3                     | None relevant information relating to discussions between the Gambling Commission and LACORs removed                               | Protocols are now in place for the submission of information to the Gambling Commission          |
| 1.8.2                     | Wording updated to present tense   | Incorrect terminology within the report  |
| 1.8.3                     | Wording updated to present tense   | Incorrect terminology within the report  |
| 2.2 & 2.2.1               | Irrelevant information relating to transitional arrangements removed (remaining paragraph numbers in document updated accordingly) | Removed as the legislation has been implemented and transitional arrangements are now irrelevant |
| 2.12.2                    | Wording relating to 'No casino resolution' updated   | Wording updated to present tense   |
| 2.12.3, 2.12.4 and 2.12.5 | Not relevant as the Council has a 'no casino resolution'   | Wording deleted as irrelevant  |
| 2.13.2                    | Wording updated to present tense   | Incorrect terminology within the report  |
| 2.15.1                    | Wording of the paragraph unclear   | Wording updated to improve clarity   |
| 2.15.7                    | Wording updated to reflect introduction of Regulations   | Wording updated to present tense following introduction of Regulations                           |
| 2.17.1                    | Error in formatting rectified  | Error in formatting rectified  |
| 3.3.2                     | Delete incorrect word  | Wording updated to improve clarity   |
| Annex 2                   | Maximum stakes and prizes for gaming machines updated to reflect recent changes legislation (June 2009)                            | To comply with changes to legislation  |
| Annex 2                   | Tables relating to the numbers and types of machines allowed in premises updated to include additional categories.                 | To comply with changes to legislation  |

