



City of Westminster Council Report

Meeting or Decision Maker:	Full Council
Date:	9 November 2022
Classification:	General Release
Title:	The Council's New Gambling Policy
Wards Affected:	All Wards
Report of	Cabinet Member for Communities and Public Protection
Fairer Westminster:	Fairer Communities and Fairer Economy
Key Decision:	No
Financial Summary:	There are no financial impacts associated with this report
Report Author and Contact Details	Kerry Simpkin, Head of Licensing, Place and Investment Policy. Email: ksimpkin@westminster.gov.uk

1. Executive Summary

- 1.1 The Licensing Authority's statutory consultation on the proposed New Gambling Policy ran for 9 weeks between 27 September 2021 and 28 November 2021. The Licensing Authority received 12 responses from a total of 25 organisations (including some joint responses). These organisations were:
- 12 Operators
 - 8 Business Improvement Districts
 - 3 representative organisations
 - 1 Amenity Society
 - 1 other organisation (Citizen's Advice Bureau)
- 1.2 The consultation covered the Licensing Authority's proposals to introduce new Gambling Policy that set out the Council's approach and expectations on the consideration and determination of gambling applications under the Gambling

Act 2005. At the time the Council also consulted on the ancillary Local Area Profile, which analyses potential vulnerabilities and vulnerable locations to gambling related harm in Westminster.

- 1.3 Following an assessment of responses, officers have set out the Licensing Authority's approach to each of the points raised by the respondents. The Licensing Authority's position is set out within this report and is summarised in Appendix 2.
- 1.4 On the 27 October 2022 the Cabinet Member for Communities and Public Protection approved the draft policy and has recommended it to Full Council for adoption so that it can come into force from the 12 December 2022.

2. Recommendations

- 2.1 That the Council, in line with the recommendation from the Cabinet Member for Communities and Public Protection adopt the new Gambling Policy, attached to this report as Appendix 1 in accordance with section 349 of the Gambling Act 2005 (the Act) and agree that it will come into effect on the 12 December 2022.

3. Background

- 3.1 In December 2021 the Council published an updated Gambling Policy to apply when exercising its functions under the Gambling Act 2005. This policy was an updated version of the policy already in place which expired on 30th January 2022 and was intended to act as a temporary measure to ensure that the Licensing Authority met its statutory obligations whilst allowing for a longer period of consultation and engagement on this new policy.
- 3.2 The Council proposed to extend its existing Gambling Policy beyond the 3-year statutory period until such time as this new Gambling Policy was adopted.
- 3.3 The proposed new policy is a significant enhancement on the current policy. This policy establishes a new policy framework which will set out the Council's approach to considering and determining applications under the Act. The new policy is based on a similar approach that is taken under the Licensing Act 2003. This policy is focused on the licensing objectives, hours, spatial and then premises use or other permission policies. Within these sections there are numerous smaller but specific policy approaches.
- 3.4 The new policy is a significant departure from the previous version. It includes more information on the approach that the Council will have when considering and determining gambling applications or approvals within Westminster. The policy has increased from 60 pages to over 300. The level of information and detail within the new policy is a culmination of the considerations on what the Council's approach should be to gambling for the next three years. Since the introduction of the Geofutures Gambling Vulnerability Index in 2016 officers have considered a wide array of

information, research, and cases. Officers have also taken a steer and the views of the Licensing Committee on what it felt should be considered and included within this policy to assist members in considering and determining gambling applications.

- 3.5 The new policy is intended to be a tool that can be used by all stakeholders involved in the licensing process. The level of detail, and in some cases the repetition of the requirements in the legislation, Codes of Practice and Guidance is necessary to better inform the relevant stakeholder using the policy who may have little to no understanding of the legislative framework for gambling. Some respondents made reference to the Regulators Code and that the draft policy did not meet that code. The Council does not agree that the draft policy does not comply with the Regulators' Code and the Code was considered in the initial drafting of the policy.
- 3.6 The Council intends that this policy will be used by applicants so that they provide the Council with an application that will likely meet the policy requirements and contain sufficient information and associated documents to demonstrate that. The policy is also intended to be used by responsible authorities, residents and businesses when considering applications and deciding whether to make a representation to the application.
- 3.7 The new policy is very much based on the assessment of the risk of a gambling activity, its operation and where it is located within the city. To assist applicants and other parties using this policy the Council has produced a Local Area Profile (LAP) for gambling which provides detail on local demographic and social economic factors, spatial based information on sensitive buildings and our gambling vulnerability index methodology, evidence base and findings. The LAP has been linked with the new policy through a set of spatial policies. Applications in areas identified within the spatial policies will be expected to assess the risk and specific points identified within the LAP as part of their gambling risk assessment which will accompany any application.
- 3.8 The Policy adoption has been delayed as the Council changed its administration and the new Cabinet Member for Communities and Public Protection reviewed the policy approach. The Cabinet Member has now fully approved this policy and recommends it to Full Council for adoption.

4. Consultation

- 4.1 Before the Licensing Authority can formally adopt and publish a revised Gambling Policy, it is required under Section 349 of the Act to consult the following:
 - (a) Police,
 - (b) Fire Authority,
 - (c) Public Health,
 - (d) any persons who represent personal licence holders,

- (e) any persons who represent premises licence or club premises certificate holders,
- (f) any persons who represent businesses, and,
- (g) any persons who represent residents.

4.2 On the 27 September 2021, the Council began its consultation on proposed revisions to its Gambling Policy in accordance with the Act. In addition to contacting the statutory consultees referred to in 4.1(a) to (g) this consultation was promoted to the public, resident associations, amenity societies and businesses. The consultation ran for a period of nine weeks and ended on 28 November 2021.

4.3 The Council provided an online survey throughout the consultation period for statutory consultees, residents, and other interested parties. This survey set out questions relating to the proposed revisions to the Gambling Policy, along with questions to identify in what capacity they were completing the survey, e.g. resident or business. In addition to the survey, the Licensing Authority also received responses via email. These email responses have been combined with the submissions made via the online survey.

4.4 The consultation on the proposed revisions of the Gambling Policy set a number of questions relating to these proposals. Some of the questions were whether the respondent agreed or disagreed (yes or no) with the proposals. We also asked for views on the proposals and whether respondents had further comments, which they could explain in writing.

5. Summary of Consultation Responses

5.1 The Council received 12 responses from a total of 25 organisations (including some joint responses) to the consultation. These organisations were:

- 12 Gambling Operators or their legal representatives
- 8 Business Improvement Districts
- 3 representative organisations
- 1 Amenity Society
- 1 other organisation (Citizen's Advice Bureau)

5.2 Officers have reviewed the responses and, where the respondent has not specifically stated the revision, they are commenting on, have assigned comments based on the relevant content. A summary of the submissions to the consultation is included at Appendix 2 with the Licensing Authority's response.

5.3 In considering the consultation responses, particularly from the gambling sector officers offered to meet with all of the gambling operators or trade associations who responded to the consultation as these often included some challenges to the proposed policy approaches. A number of operators and trade organisations accepted the invitation to meet and engage on the proposed new policy and provide greater clarity on their response to the consultation. Officers met with representatives and their legal advisers from William Hill, Paddy Power, Rank Group, BACTA, Bingo Association and the

Betting and Gaming Council. These engagement meetings took place between January and February and were extremely constructive. The outcome of these meetings provided officers with a greater understanding of their concerns.

6. Policy Approach Following Consultation Responses

- 6.1 Although officers have summarised the responses to the consultation and the Council response to those points in Appendix 2 it is important to set out the changes that the Council has made to the specific policies and the reasons for the proposed changes.

Gambling Risk Assessment Policy C1

- 6.2 The Gambling Risk Assessment Policy sets the standard on what the Council expects of applicants and licensed premises operators with respect to their gambling risk assessment. Operators must produce a gambling risk assessment for each gambling premises by the Gambling Commissions Licence Conditions and Codes of Practice social responsibility code provision 9.1.1.
- 6.3 This policy is based on the previous guidance on risk assessments that was published by the Council. The policy expects applications for provisional statements, new and variation applications to accompany their applications with their gambling risk assessment. This risk assessment must include the consideration and mitigation proposed to address four elements, the local risks as identified by the operator or the Council's LAP, the gambling operational risks associated with the new premises operation or variation of the existing operation, an assessment of the design risks associated with the proposed operation internally and externally and an assessment of the control measures based on systems, design and physical measures that will be or are in place to eliminate or mitigate the risks identified.
- 6.4 The Council has provided a template gambling risk assessment form as an appendix to the policy which applicants or existing licensees can use.
- 6.5 Generally there was limited comments on this specific policy. However, William Hill felt that the wording within this policy implied that the Council expected applicants to use its risk assessment template and did not mention that applicants or licensees would have their own version.
- 6.6 The Council did not intend to imply within this policy that operators must use the Council's own risk assessment template. To ensure clarity on this point the policy has been amended to make it clear that operators can use their own risk assessment format or the version provided by the Council.

Licensing Objective Policies D1 – D3

- 6.7 The proposed policy sets out the Council's approach that it will have to the consideration of applications and their impact on the licensing objectives.

These new policies set out, in far greater detail than had previously been provided, the key considerations that the Licensing Authority will have when considering the application and the impact on the Licensing Objectives. These licensing objective policies are:

- (a) Preventing Gambling from Being a Source of Crime or Disorder, Being Associated with Crime or Disorder or Being Used to Support Crime Policy (D1)
- (b) Ensuring that Gambling is Conducted in a Fair and Open Way Policy (D2)
- (c) Protecting Children and Other Vulnerable Persons from Being Harmed or Exploited by Gambling Policy (D3)

Preventing Gambling from Being a Source of Crime or Disorder, Being Associated with Crime or Disorder or Being Used to Support Crime Policy D1

- 6.8 The new Crime and Disorder Policy sets out the Council views on how it will consider applications associated with this licensing objective. It sets out several key criteria and considerations that the Licensing Authority will have when determining applications under this policy. Although the Licensing Authority will aim to permit applications, in accordance with Section 153 of the Gambling Act, this policy confirms the Licensing Authority's approach to applications that are not reasonably consistent with this licensing objective. Such applications that are not reasonably consistent with the criteria and the considerations of this policy will not meet this objective's requirement and may be refused.
- 6.9 Counter Terrorism is a significant area of consideration in light of recent attacks within Westminster, London and the UK. The risk of terrorism is a constant threat, and any terrorist activity is a criminal act. The Council, in partnership with the Metropolitan Police, as a responsible authority under the Act expects new and existing gambling operators to consider and mitigate the risk of terrorism in or around their premises. Gambling premises range in size and scale but all premises operators must consider the risk associated with terrorism based on the risk associated with their premises, the number of customers, the location of that premises and the likely profile of their premises or location. Premises, such as casinos in the heart of the West End may have a greater risk than a small Adult Gaming Centre in Edgware Road. However, all gambling premises need to be aware and take action on preventing terrorism in and around their premises.
- 6.10 In the original draft of the policy it was required that all applicants must consider the likely risk of their operation, their location and history relating to terrorism in the City. This was included as a criteria to the consideration of all applications under the Crime and Disorder objective. However, following comments from Paddy Power and further consideration on the implication of the number of assessments the Metropolitan Police Service would need to assess, even in areas of low risk the Council has decided to amend this policy to encourage the completion of these assessments.

- 6.11 The amended policy will now encourage applicants to undertake the terrorism risk assessments based on the risk of their venues. This is not a mandatory requirement, and the Licensing Authority will not be expecting applicants to produce these assessments as part of their application nor will the Licensing Authority request to see such documents. The Police, outside of the context of the Gambling Act 2005 may ask to see these documents based on business risk. This will be a matter between the operator and the Police who are carrying out their role to deter and prevent terrorism.

Ensuring that Gambling is Conducted in a Fair and Open Way Policy D2

- 6.12 The new Fair and Open Way Policy sets out the Council's views on how it will consider applications associated with this licensing objective. It sets out several key criteria and considerations that the Licensing Authority will have regard to when considering whether applications meet this policy. Although the Licensing Authority will aim to permit applications this policy confirms its approach to applications that do not meet the licensing objective. Such applications that fail to meet the criteria and the considerations of this policy and therefore not meet this objective requirement will not be granted.
- 6.13 There was limited to no comments about this policy. The Council will make some very minor typographical amendments, but the policy approach will remain unchanged.

Protecting Children and Other Vulnerable Persons from Being Harmed or Exploited by Gambling Policy D3

- 6.14 The new Protecting Children and Other Vulnerable Persons Policy sets out the Council's views on how it will consider applications associated with this licensing objective. It sets out a number of key criteria and considerations that the Licensing Authority will have when considering whether applications meet this policy. Although the Licensing Authority will aim to permit applications this policy confirms its approach to applications that do not meet the licensing objective. Such applications that fail to meet the criteria and the considerations of this policy and therefore not meet this objective requirement will not be granted.
- 6.15 In developing this policy the Council set out the criteria and considerations it will have when considering whether an application was reasonably consistent with this policy and the licensing objective. One of the growing factors that concerns the Council is around the protection of children and specifically around safeguarding and child sexual exploitation. The new policy included a number of specific criteria that the Council expected applicants to address, including staff training, systems to record and report concerns and having a senior manager who will champion child safety within the organisation. The intention of the policy and the inclusion of safeguarding and child sexual exploitation was to ensure that staff were trained and understood what to look out for when either interacting with children or where children were present inside or directly outside the venue.

- 6.16 The Council also included criteria and considerations specifically around the protection of vulnerable persons and safeguarding vulnerable adults. The Council set out its expectations on operators to train staff, put systems in place to deal with any concerns about a vulnerable adult and who to report it to.
- 6.17 A number of gambling operators challenged the level of detail and the scope of the requirements. Some also stated that the proposed policy went beyond the scope that the objective requires. Gambling operators stated that safeguarding of children and adults and preventing child sexual exploitation were really important. However, the Council, within the policy was creating a significant burden on operators without adequately considering that a large proportion of gambling premises would be very low risk. The views of gambling operators were sought by officers at the meetings arranged following the close of the consultation period. These meetings enabled gambling operators and trade associations to explain the challenges that they would face in meeting this policy and why they felt it was unreasonable and went beyond the scope of the licensing objective under the Act.
- 6.18 Officers took on board the comments made by the gambling operators and trade associations. The key issue was the level of detail and requirements within the original draft of the policy. The Council still believes that applicants and licensed operators should consider safeguarding of adults and children and child sexual exploitation as part of the considerations around their operation and that this would be reasonably consistent with this licensing objective.
- 6.19 The Council now intends to amend this policy and remove the detailed criteria from the policy. The Council, within this policy will now expect applicants and licensed premises operators to develop and maintain systems to adequately safeguard children and other vulnerable persons and that those systems may include the designation of one or more senior staff members to champion the protection of children and other vulnerable persons, and the applicant intends to implement safeguarding training to ensure staff have a basic awareness of safeguarding children and other vulnerable adults.
- 6.20 Having listened to gambling operators and their views we acknowledge that they will be best placed to assess the risks associated with this licensing objective and identify key mitigation and control measures to eliminate or minimise any harm. However, the Council does believe that safeguarding should be part of all gambling operators' considerations and it should not be limited to children. Vulnerable adults are particularly susceptible to being exploited or, due to mental impairment, not fully understand the risks associated with gambling. We want all gambling operators to champion safeguarding within their organisation and we will continue to support them in achieving this if required.
- 6.21 Although the Council has amended the main policy as described above, we have chosen to retain the detail and information around safeguarding children and adults and child sexual exploitation. This provides information that may

be useful to applicants and licensees when considering potential safeguarding training for staff or looking to do more to support potential vulnerable adults.

Hours Policy

- 6.22 The new Hours policy sets out the Licensing Authority's approach to the hours in which gambling activities can be provided. This policy is intended to set out the key considerations that the Licensing Authority will have relating to the hours when determining applications.
- 6.23 The hours when a gambling premises is operating will have a significant impact on the risks associated with that operation, its customers and the wider community. Whilst the Council acknowledges that it cannot restrict the hours, in some circumstances when certain gambling activities can be provided (e.g. gaming machines) it can restrict the hours of the main gambling activities. The default hours specified in the Gambling Act 2005 (Mandatory and Default) (England and Wales) Regulations 2007 (the 2007 Hours Regulations) are considered to be reasonable and appropriate for the general operation of premises uses to which they apply, namely casinos, bingo and betting premises.
- 6.24 Westminster has an extremely large and vibrant evening and night-time economy. This attracts significant numbers of people into the city in the evening and at night. We are also aware that research into gambling behaviour, such as the NatCen Patterns of play: analysis of date from machines in bookmakers 2014 identified that those who play gaming machines after 8pm at night have very distinct patterns of play and that higher risk category B gaming machines increased in popularity in the evening. The Council is concerned that due to the significant numbers of people in the evening and night-time economy and the availability of gambling premises there is a greater risk of harm to persons who may be at greater risk of gambling related harm. Westminster also has the highest concentration of alcohol licensed premises in the Country and alcohol can be an additional risk factor for those gambling late at night.
- 6.25 The original draft of this policy duplicated the default hours specified in the 2007 Hours Regulations for casinos, bingo and betting premises. Applicants would be expected to make applications with these hours and if they wished to operate beyond them outside a Gambling Vulnerability Zone they would be considered on their own merits and subject to the specific considerations within that clause of the policy. For applications for premises that were inside a Gambling Vulnerability Zone the policy would be to refuse such applications.
- 6.26 For casinos operators, they are able to apply to vary their premises licence and move it to another premises within the city. However, in moving that business, if the operational hours for the current licence were beyond the hours specified within the original draft policy, they would be expected to demonstrate why those hours should be permitted having taken account of the relevant risks in that area.

- 6.27 For the gambling premises uses that do not have default hours, adult gaming centres, family entertainment centres and unlicensed family entertainment centres the policy referred to the hours that these premises must operate to under the Council's Pleasure Fairs (Amusement Premises) Byelaws, made by and adopted in pursuant with Section 75 of the Public Health Act 1961, as amended by Section 22 of the Local Government (Miscellaneous Provisions) Act 1976. The current hours contained within Regulation 4 of the Byelaw is 9am to midnight seven days a week and this is referenced in the policy.
- 6.26 All of the gambling operator and gambling sector trade associations made a representation to this policy. The general view from the casino, bingo and betting premises operators and trade associations was that the Council should not be specifying an hour and the default hours were not mandatory. There were also questions about whether the proposed policy to refuse applications beyond the hours met the Section 153 principle that the Council must aim to permit gambling.
- 6.27 The British Amusement Catering Trade Association (BACTA) had a specific view on the interpretation of the use of the Council's Byelaw hours for adult gambling centres, family entertainment centres and unlicensed family entertainment centres. They do not believe that the Byelaws apply to these licensed premises and that they were therefore able to operate up to 24 hours a day.
- 6.28 The casino sector were also concerned about the original drafting of the policy and the uncertainty that a casino operator would have if they had to move their premises from their current location to a new building located in a Gambling Vulnerability Zone. In those circumstances the policy could lead the Licensing Authority to limit their operation or even refuse the application to vary that licence to the new location if the hours were beyond the policy hours.
- 6.29 The hours policy was discussed with the gambling operators and trade associations during meetings following the close of the consultation period. The views around this policy were expressed and each sector had their own view on the implications of this policy on their sector.
- 6.30 The Council has considered the views in the responses to the consultation and from those expressed during engagement meetings between some respondents and officers. The Council, having considered these views intend to amend elements of this policy.
- 6.31 Westminster has the largest number of casino premises in the country, and they do attract customers more widely than within the area they are located. Some of these casinos are particularly popular with tourists, being in the heart of the West End. Casinos are also unique in that the Licensing Authority cannot grant any new licences and existing casino licences cannot be moved outside of Westminster. Therefore, these licences are very different to those of bingo and betting premises which have no restrictions on the operator

seeking new licences in or beyond Westminster. All of the casinos in Westminster have licences that permit them to provide casino games and gambling activities 24 hours a day.

- 6.32 Having considered the points raised by casino operators and some other respondents the Council has amended the policy to set out the current hours of operation for the licensed casinos within Westminster. The policy hours for casinos will state that the policy hours are 24 hours a day. The potential uncertainty that the original policy drafting had for casino operators who may wish to move their venue from its current location into an area designated as a Gambling Vulnerability Zone has also been addressed. The amendment to the hours for casinos now means that any variation to move the premises will not be subject to a specific hours policy clause to justify the hours to which they are already permitted to operate. It is expected that, subject to the operator satisfying the Licensing Authority that they meet the other policies within the statement the licence would be varied from one premises to another within a Gambling Vulnerability Zone with the same hours as they are currently permitted to operate too.
- 6.33 The Council does not intend to amend the hours for bingo and betting premises. However, it has agreed to amend the original drafting of the policy relating to refusing applications beyond the policy hours for these venues within a Gambling Vulnerability Zone. The policy has been amended to remove the presumption to refuse and set out the Council's approach in line with the requirements of Section 153 of the Act. The Licensing Authority will aim to permit gambling but, none the less may refuse applications within a Gambling Vulnerability Zone unless the authority is satisfied that the application should be granted in accordance with the licensing objectives and with regard to the specified matters within Clause B of the policy. This amendment to the policy better sets out the approach that the Licensing Authority may take and what applicants are therefore expected to demonstrate if they are seeking longer hours than those specified in this policy within a Gambling Vulnerability Zone.
- 6.34 The Council has considered the views of BACTA with regard to the interpretation and reference to the hours within the Council's Pleasure Fairs (Amusement Premises) Byelaws, made by and adopted in pursuant with Section 75 of the Public Health Act 1961, as amended by Section 22 of the Local Government (Miscellaneous Provisions) Act 1976. However, it is the Council's view that these Byelaws do apply, and it is right to make reference to them within this policy. This provides clarity and transparency around the expectations and requirements for operators of these premises in respect of operating hours within Westminster.

Spatial Policies F1 – F2

- 6.35 The new policies for spatial considerations are based on the evidence presented in the Council's LAP. The LAP provides information that will assist applicants complete their local gambling risk assessments and provide localised information on at risks areas, groups and locations which will help

inform applicants, responsible authorities, residents, businesses, and Licensing Sub-Committees when considering applications. The policies associated with the spatial considerations are:

- (a) Location Policy (F1)
- (b) Gambling Vulnerability Zones Policy (F2)

- 6.36 A number of respondents referred to the evidence base and the LAP as part of their submission. It is important to note that the gambling vulnerability index within the LAP is based on the model developed by Geofutures for the Council in 2016. The gambling vulnerability index within the LAP includes the most recent data available to the Council. The Council has also added to the original data sets that were used by Geofutures so as to better represent some of the groups identified as being at greater risk to gambling related harm. The model that Geofutures produced and to which the LAP gambling vulnerability index is modelled on is accepted as good practice by the Gambling Commission.
- 6.37 The data that was used for the LAP's gambling vulnerability index was also confirmed as the most relevant data in the Public Health England's: Gambling-related harms: evidence review which was published in September 2021. That evidence review confirmed the data sets that the Council used as part of its LAP and gambling vulnerability index modelling.
- 6.38 The LAP is a key document for the Council's entire Gambling Policy and is an important tool for perspective applicants, responsible authorities, residents and businesses. The LAP and its findings have been key in providing an evidence base for our spatial policies.

Location Policy F1

- 6.39 There were limited comments on this specific policy but there were general comments about location and the consideration of risk. The Council intends to make some very minor amendments associated with typographical changes. This predominantly relates to Clause C where the original drafted policy only referenced premises that are within close proximity to an identified hot spot and/or Gambling Vulnerability Zone. However, as the scale of the hotspot within the mapping is 50 meters by 50 meters it is possible that an application could be made within the actual hotspot. The wording of this policy has been slightly amended to reflect this possibility.

Gambling Vulnerability Zones Policy F2

- 6.40 This policy received a number of comments, particularly from the gambling sector respondents. The key issues were the evidence base, the size of the Gambling Vulnerability Zones and the policy approach to refuse applications that are beyond the hours specified within the Hours Policy E1 within a Gambling Vulnerability Zone.

- 6.41 The original policy required applicants to consider the Council's LAP and the specific local risks within the Gambling Vulnerability Zone where the premises will be or is located. The policy sets out an expectation that the applicant would set out the considerations they have had with regard to the location and the LAP, considered any other information that may be relevant to local risks to the licensing objectives, which could include representations for responsible authorities or residents and put forward sufficient control measures that were above and beyond what was expected from a similar application outside of a Gambling Vulnerability Zone. The policy also stated that the Licensing Authority would refuse applications within one of the Zones if the hours were more than the relevant hours for that premises use within the Hours Policy. The policy designated seven Gambling Vulnerability Zones to which this policy would apply.
- 6.42 The Council met with several respondents from the gambling sector and this policy was discussed in some detail. Several respondents from the gambling sector questioned the legality of the wording and that they felt that the presumption to refuse didn't meet the aim to permit principle within Section 153 of the Act. The size of the zones was also commented upon as taking up a considerable area of the city.
- 6.43 William Hill commented on why, if there was a risk-based approach to the policy, should this policy demand applicants and licensees to put forward measures that are above that which would be expected from similar premises outside of a Gambling Vulnerability Zone. They made the point that in some cases the measures that are already in place may be sufficient to address the perceived risk inside that zone. They stated that the current drafting of Clause B.3 assumes that any measures that are already in place are not adequate.
- 6.44 Having reviewed the responses received following the consultation and the views expressed to officers during the engagement meetings with gambling operators and gambling trade associations the Council intends to make some amendments to this policy.
- 6.45 To address the point raised by William Hill over Clause B3 and the expectation that applicants would need to provide measures above that which would normally be expected of applications outside of a Gambling Vulnerability Zone the Council will amend this sub-clause. This revised wording will be in line with the wider risk-based policy approach that runs through the statement of principles and will ensure that applicants understand that the Licensing Authority will expect the local risks within the zone to be reviewed and mitigated. Such mitigation may be measures that are already in place and are deemed suitable based on the level of risk.
- 6.46 The Council has redrafted Clause C which originally stated the Council would refuse applications within a Gambling Vulnerability Zone that sought hours beyond those specified in the hours policy. The revised clause will be in line with the aim to permit principle under Section 153 of the Act but will remove the reference to the hours policy. The emphasis of this policy relates to the

application within a Gambling Vulnerability Zone. The hours of operation for the premises will be considered under the Hours Policy instead. The policy approach will therefore be that the Licensing Authority will aim to permit applications, but none the less may refuse applications that seek to provide gambling facilities within a Gambling Vulnerability Zone unless sufficient reasons and risk mitigation have been provided and the Licensing Authority is satisfied that the application should be granted in accordance with the Gambling Commissions Codes of Practice and Guidance to Licensing Authorities, that it is reasonably consistent with the Licensing Objectives and that it meets all matters identified within this policy and any other policies within the Council's Statement of Principles for Gambling.

- 6.47 The Council does not intend to change the size or designated Gambling Vulnerability Zones under this policy. The zones have been identified from the areas within the LAP that have the highest levels of risk within the gambling vulnerability index. It is reasonable and proportionate to highlight these zones within this policy so that applicants are aware that there is a need to specifically identify and assess the risk associated with their gambling operation and the risk of gambling related harm to those living or working in the area.

Betting Premises Clusters Policy

- 6.48 This policy was referenced in some of the responses to our consultation and particularly those from the betting sector. The policy was intended to highlight the potential elevated levels of risk associated with a cluster of betting premises and B2 gaming machines on those who live within close proximity to the premises. In 2016 Geofutures published a report called "Examining the effects of proximity and concentrations of B2 machines to gambling places". This report identified that there was a greater prevalence of people who had higher scores on the problem gambling severity index who lived in closer proximity (200 meters) to a cluster of betting premises (3 or more betting premises within 200 meters of each other). This study looked at player behaviour and the spatial distribution of betting premises to problem gambling.
- 6.49 The concerns from residents associated with the clustering of betting premises has been raised since there was an increase in betting premises following the introduction of the Gambling Act. The most significant concerns have focused on the B2 gaming machines, commonly referred to as Fixed Odds Betting Terminals (FOBT's). The game play of these machines are considered to be attractive and popular with betting premises customers. However, the gameplay linked with the ability to place up to £100 stake at any one time was a considerable concern and many case studies were highlighted in the press around the perceived risks associated with these machines and gambling related harm. The Government, in 2018 acted on this concern and reduced the stake from £100 to £2.
- 6.50 This change in the stake along with consolidation of estates within the betting sector has resulted in a reduction of betting premises across the Country. In

Westminster the reduction in betting premises has been significant with over 45% of betting premises closing within two years.

- 6.51 This policy required applicants to consider if a premises is located in or will create a betting cluster consisting of 3 or more betting premises within 200 meters of each other. The original drafted policy set out the Licensing Authority's approach to determining applications. Applications that were outside a Gambling Vulnerability Zone would be considered on their own merits and subject to the application is not contrary to any other policies within the statement, the applicant had assessed the risks associated with its operation and the betting cluster, and that the applicant had put forward control measures that would mitigate or eliminate any risks to the licensing objectives. The policy also stated that applications within a Gambling Vulnerability Zone that created or added to an existing betting premises cluster would be refused.
- 6.53 The key concern from the respondents to the consultation who commented on this policy focused on the policy to refuse applications within a Gambling Vulnerability Zone that created or added to a betting premises cluster. During conversations with betting operators and officers this policy was discussed and the same concerns from the betting sector were raised.
- 6.54 The Council has carefully considered the responses to the consultation and the views of betting operators during the engagement meetings with officers. The Council has also reflected on the evidence base and whether it is sufficiently robust to support the introduction of this policy. In light of those responses and discussions from betting sector operators the Council has decided to remove this policy for the final draft of the Council Gambling Policy.

Premises Use Policies

- 6.55 The Council, in developing its new Gambling Policy implemented a new policy framework that was like the approach taken within its Licensing Policy. The Premises Use policies are intended to focus on specific policy considerations associated with that premises gambling use. It was found in the previous versions of the Council's Gambling Policy that applicants often dismissed elements of policies as they didn't relate to their gambling operation. This new policy approach means that applicants can now focus on the relevant premises use policies that applies to their proposed or current gambling premises. This approach has meant that some policies are duplicated across different gambling premises uses.
- 6.56 The Council has also added significant detail to the policies associated with the premises use and operation. This is necessary as the Council intends the statement of principles for gambling to be a key tool for different stakeholders when assessing applications. This includes the Council's own Licensing and enforcement officers.

Casino Policies G1

- 6.57 The Council has considered the responses received following the consultation period and the discussions it has had with the casino sector. The Council does not intend to make significant changes to reduce the number of policies or the level of detail within them. The level of detail is necessary to inform and guide applicants and other parties on the Council's considerations when determining gambling applications.
- 6.58 The Council has made some amendments to policies where they reference other policies that have been amended following the consultation period. Following comments from the casino sector Policy G1-A has been amended to provide some level of assurance, within the bounds of not impacting the licensing objectives, that any premises moved from one location to another will generally be permitted to operate to their current hours permitted on the licence at the new location. The policy references to refusing applications beyond the Hours Policy hours have also been removed due to the amendment that has been made within that policy to state that casinos can operate for 24 hours a day.
- 6.59 After careful consideration of the responses received during the consultation period the Council will remove Clause A.2 from the Gaming Machines within Casino Premises Policy G1-F. This clause required operators to provide weighted or secured seating for gaming machine customers. Other measures, in addition to weighted chairs or stools may be appropriate to manage any risk associated with the use of such furniture to cause damage or injury. It is also intended to remove Clause 5 from this policy which required the operator to enable a facility that staff could remotely disable gaming machines if there was a need to prevent a customer from using a gaming machine. After considering the responses received during the consultation period this clause is no longer required, and it will be for the operator to assess the risk and determine what measures they put in place relating to customer protections.
- 6.60 Several responses questioned whether the current wording of Clause D within the Casino Non-Gambling Areas Policy G1-G would meet the aim to permit principle under Section 153 of the Act. The Council will amend this clause to fit with the other amended policies where the original draft policy referred to refusal. This clause will now refer to the Licensing Authority's approach to aim to permit applications but that it may refuse applications if they do not meet this policy unless it is satisfied that they application should be granted in accordance with the relevant regulations, codes of practice, guidance to licensing authorities and the licensing objectives. However, the Council will retain the requirement for what would constitute a non-gambling area which currently supports the Gambling Commissions guidance. These areas should be used for customers to get away from gambling. The use of toilets, back of house and lobby areas only may not be sufficient to meet the requirements of this policy.
- 6.61 The Council will also make some other minor amendments to either address typographical issues in the original drafting or to further clarify some points

that have been raised by respondents to the consultation process which do not impact the policy approach within this section.

Bingo Premises Policies G2

- 6.62 The Council has amended the Bingo Policy G2-A to remove Clause C and D from the original draft. Several responses questioned whether the current wording of the policy that would refuse applications within a Gambling Vulnerability Zone that were beyond the hours specified in the Hours Policy E1 would meet the aim to permit principle in Section 153 of the Act. The Council has considered these responses and reviewed the wording of this and other similar policies within this section of the statement. As this policy specifically references that an applicant must meet other policies within this statement and in this clause specifically Policy E1 the Council believes that these Clauses are no longer necessary and will be deleted.
- 6.63 After careful consideration of the responses received during the consultation period the Council will remove Clause A.2 from the Gaming Machines within Bingo Premises Policy G2-E. This clause required operators to provide weighted or secured seating for gaming machine customers. Other measures, in addition to weighted chairs or stools may be appropriate to manage any risk associated with the use of such furniture to cause damage or injury. It is also intended to remove Clause 5 from this policy which required the operator to enable a facility that staff could remotely disable gaming machines if there was a need to prevent a customer from using the machine. After considering the responses received during the consultation period this clause is no longer required, and it will be for the operator to assess the risk and determine what measures they put in place relating to customer protections.
- 6.64 The Council identified a drafting error about the Bingo Premises Door Supervisors and Security Personnel Provisions Policy G2-J. In the original drafting the policy did not take in to account that door supervisors or security personnel who are directly employed by a bingo premises operator are not required to be licensed by the Security Industry Authority (SIA). However, if a bingo operator contracts out its door supervisors or security personnel to a third party then those door supervisors and security personnel must be licensed by the SIA. This has been addressed with an amended Clause C and further clarification on this point within the rationale for the policy.
- 6.65 The Council will also make some other minor amendments to either address typographical issues in the original drafting or to further clarify some points that have been raised by respondents to the consultation process which do not impact the policy approach within this section.

Betting Premises Policies G3

- 6.66 The Council has amended the Betting Shop Policy G3-A2 to remove Clause A.4 and B.4 to reflect the removal of the Betting Cluster policy. Clause C, D, E, F and G have been removed following several respondents questioned

whether the current wording relating to the policy to refuse applications that do not meet this policy would meet the aim to permit principles within Section 153 of the Act. In line with the wider approach taken within this policy the Council has decided that these clauses are no longer necessary within this policy and will be deleted.

- 6.67 Following the meeting between officers and William Hill's representatives it was identified that there are variations in approaches around the location of betting premises cashier counters. Within the rationale for the Betting Premises Cashier Counters Policy G3-B the Council had stated that locating a cashier counter near the entrance of the premises would be preferable to reduce the risk associated with access attempts, security, etc. However, it was clear that there are a number of factors that need to be considered and gambling operators are best placed to consider and set out their approach within their gambling risk assessment. Therefore, paragraph G3.23 would be deleted.
- 6.68 The Council has decided to retain the requirement in betting premises that they ensure that stools or seating for gaming machines are sufficiently secured or weighted to prevent them from being used to cause criminal damage or assault staff or other customers. There has been evidence that gaming machine stools or seating have been used to cause damage or been thrown and caused injury to staff or customers. The betting sector often place weighted stools or secured seating and therefore this sub-clause should remain for betting premises uses only. The sub-clause relating to the requirement on the operator to have a facility to enable staff to remotely disable gaming machines may not be possible in some premises and therefore Clause A.5 of this policy will be deleted. It will be for the gambling operator to adequately assess the risk and identify how staff will interact with customers over their behaviour or at-risk game play.
- 6.69 The Council will also make some other minor amendments to either address typographical issues in the original drafting or to further clarify some points that have been raised by respondents to the consultation process which do not impact the policy approach within this section.

Adult Gaming Centres and Family Entertainment Centres Policies G4 and G5.

- 6.70 After careful consideration of the responses received during the consultation period the Council will remove Clause A.2 from the Gaming Machines within Adult Gaming Centres Policy G4-F and Gaming Machines within Family Entertainment Centres G5-F. These sub-clauses required operators to provide weighted or secured seating for gaming machine customers. Other measures, in addition to weighted chairs or stools may be appropriate to manage any risk associated with the use of such furniture to cause damage or injury. It is also intended to remove Clause 5 from this policy which required the operator to enable a facility that staff could remotely disable gaming machines if there was a need to prevent a customer from using the machine. After considering the responses received during the consultation period this clause it no longer required, and it will be for the operator to assess the risk

and determine what measures they put in place relating to customer protections.

- 6.71 The Council will also make some other minor amendments to either address typographical issues in the original drafting or to further clarify some points that have been raised by respondents to the consultation process which do not impact the policy approach within this section.

Unlicensed Family Entertainment Centres Policies H1 to H4.

- 6.72 There were limited to no comments on these policies and apart from minor typographical amendments the Council does not intend to make any significant changes to these policies.

Club Permits and Entitlements Policies I1

- 6.73 There were no comments on this policy and apart from minor typographical amendments the Council does not intend to make any significant changes to these policies.

Prize Gaming Policies J1 to J3

- 6.74 There were no comments on these policies and apart from minor typographical amendments the Council does not intend to make any significant changes to these policies.

Alcohol Licensed Premises, Notifications, Permits and Entitlements Policy K1

- 6.75 It was noted by some respondents that the requirement to undertake a gambling risk assessment for an Alcohol Licensed Premises Gaming Machine Permit was a significant burden on licensed premises operators and machine suppliers. It was questioned whether this was reasonable and what the benefits would be to the Licensing Authority. After consideration of the views and reasons for this policy approach the Council has accepted that this could be over burdensome on permit applicants and have limited value. Therefore, Clause A3 requiring a gambling risk assessment has been deleted.

Temporary and Occasional Use Notices Policies L1 and L2

- 6.76 No comments on these policies were received and no amendments will be made to these policies.

Small Society Lotteries

- 6.77 No comments were received in relation to this section of the policy and the Council does not intend to make any amendments.

Post Serious Incident Assessment, Review of Gambling Premises Licences, Cancellations of Permits and Removal of Automatic Entitlements Policies N1 to N5

6.78 No comments were received in relation to this section of the policy and the Council does not intend to make any amendments.

7. Legal Implications

7.1 Section 349 of the Gambling Act 2005 requires the Statement of Licensing Principles for Gambling (“Statement”) to be reviewed by the council (as Licensing Authority) no later than every three years. Any amendments to that Statement are required to be formally considered and approved by full Council following a consultation exercise. The Statement must be published before the expiry of each three-year policy period. The Council has met this statutory requirement with the re-adoption of the previous periods policy which was adopted at Full Council in November 2021 and came into force at the end of the previous policy period on the 30 January 2022. This new policy would replace the current version and its policy period would end on the 30 January 2025.

7.2 Section 349(2) of the Gambling Act 2005 allows the Licensing Authority to review its Statement from time to time if it is deemed necessary. If the Statement is revised further, following that review, the revised Statement will have to be formally considered and approved by full Council and published by the council.

7.3 The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 (“Regulations) specify the legal requirements and procedure for drafting and preparing the Statement and any revision to that Statement.

7.4 The Cabinet Member for Communities and Public Protection has considered and agreed to recommend the new Gambling Policy for adoption at Full Council. Only Full Council can agree to adopt the Council’s Gambling Policy.

7.5 Regulation 7 of the Regulations sets out the procedure for publishing the Statement or revised Statement on the council’s website and placing copies of these documents for inspection in any of the following places, including:-

7.5.1 public libraries within Westminster and

7.5.2 other premises within Westminster as the council considers appropriate.

7.6 A notice regarding the adoption of the Statement and any revised Statement must also be published in either a local newspaper, a local newsletter for the borough or on a public notice board at City Hall or other Council buildings, such as its libraries and its website. The Council’s preferred option will be to publish the notice of adoption of the new Gambling Policy on its website and public notice boards at City Hall and selected libraries.

7.7 The new Gambling Policy is a significantly different policy approach than any previous version the Council has produced. It is also very different than any

other gambling policy in England and Wales and pushes the boundaries on policy development for gambling. This has resulted in some detailed and challenging responses that were received during the consultation period on the proposed policy. The respondents that were particularly challenging to the Council's policy approach were from the gambling industry or their trade organisations.

- 7.8 With any new or different policy approaches there is a risk that those who do not agree with it or feel the process or evidence that has been used to justify it may consider and instigate a legal challenge. Any such legal challenge is likely to be either a Judicial Review or once the policy is in place an appeal associated with a decision the Licensing Authority has made with respect to the policy. The likelihood of a legal challenge is high, particularly from the gambling industry. A Judicial Review will require the Council to defend its policy and address any points raised by the claimant. Whilst every effort has been taken to ensure the new Gambling Policy is robust and can be defended there is no guarantee that the Council will be successful in defending such challenges. In the event that the Council did lose such a challenge the Council would be liable for the claimants' costs as well as our own. This could be significant.
- 7.9 If the Council were to lose a challenge it may be required to amend part of or produce a new Gambling Policy. This would require the Council to consult on any revision or new policy and go through the formal statutory process for adoption.
- 7.10 Legal advice has been provided, please refer to the exempt Appendix 4 for the legal implications. Officers and members should have regard to the advice in making their recommendations and taking the decision.

8. Financial Implications

- 8.1 As a result of the proposed policy changes, there will be no impact on either the number of businesses which are required to obtain a licence and no impact on the price of the licence being charged. There is therefore no impact on the income generated by the Council from these changes. Also there will be no additional costs arising from implementing the changes or from the ongoing management of the licensing activity.
- 8.2 However, as the adoption of this new and innovative policy could lead to a legal challenge by way of a Judicial Review the defence of such a challenge would be costly. The financial implication of such a challenge would relate to the defence of such a challenge at court and the associated legal costs. If the Council was to be successful in any challenge it would seek to recover the costs incurred in the defence of that challenge. However, if the challenge was successful and a cost order is awarded against the Council then the costs could be a significant financial implication to existing budgets.

9. Equalities Impact Assessment

- 9.1 The council, when taking decisions in relation to any of its functions, must comply with its public sector equality duty as set out in Section 149 of the Equality Act 2010 in relation to persons who have protected characteristics.
- 9.2 Equality and diversity is not a parallel process or something to think about once a year. It is a fundamental part of improving services for everyone. It is nothing to do with ticking boxes or bureaucracy, and everything to do with making Westminster a place where anyone can be happy to live or work. It is central to delivering high quality customer services in the heart of London. We identify and actively address inequality, where evidence shows that it exists.
- 9.3 This diversity and the changing nature of Westminster's population makes Westminster a culturally and socially rich city, which benefits from the different experiences, perspectives, and respect for others that this diversity brings.
- 9.4 Officers have carried out an Equality Impact Assessment and as a result of that assessment there are no anticipated impacts as a result of the proposed revisions of the Council's Gambling Policy and Council's ability to meet its duties under the Equality Act. A copy of the Equalities Impact Assessment is attached for reference as Appendix 3.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

Mr Kerry Simpkin, Head of Licensing, Place & Investment Policy
Innovation and Change
Tel: 07583 108491, Email: ksimpkin@westminster.gov.uk

Mr Aaron Hardy, Principal Policy Officer
Innovation and Change
Tel: 07971 026070, Email: ahardy1@westminster.gov.uk

APPENDICES

- Appendix 1 - New Gambling Policy following Formal Consultation
Appendix 2 - Summary of consultation submissions and Licensing Authority response.
Appendix 3 - Approved Equalities Impact Assessment (EQIA)
Appendix 4 - Confidential Legal Advice to Council.

BACKGROUND PAPERS:

- Westminster City Council's current Gambling Policy – Effective 30 January 2022.
- Gambling Act 2005 and associated Regulations.
- Gambling Commission Revised Guidance issued under Section 25 of the Gambling Act 2005 – May 2021

- Westminster City Council's Local Area Profile for Gambling Risk – October 2021
- Consultation responses received during the consultation period.