

Gambling Act 2005 – Summary of comments made by Counsel in consideration of the LBB Draft Statement of Gambling Licensing Policy, in the light of the content of the response received from the Association of British Bookmakers (ABB), and of amendments made to the policy				
Amend No	Section	Original text	Counsel Comment	Response and / or amended version
1	Executive summary - Third paragraph	It is understood that as many as 600,000 individuals nationally face deep personal consequences from their relationship with gambling. While a thriving gambling industry may be good for the economy, the success of the industry cannot be at the expense of families affected by problem gambling.	This figure is the subject of some comment – I have no idea of its provenance but since it has been challenged it would be sensible to attribute it.	This section amended following receipt of new figures, as follows However, the Assessment of National Gambling Behaviour published by the Gambling Commission in August 2017 and prepared by NatCen Social Research states that 1.4% of gamblers were classed as ‘problem gamblers’ (0.8% of the population), with 6.4% at risk (3.9% of the population). Gambling Commission Executive Tim Miller is quoted as stating that “Whilst overall problem gambling rates in Britain have remained statistically stable, our research suggests that in excess of two million people are at-risk or classed as problem gamblers, with very many more impacted by the wider consequences of gambling-related harm.” While a thriving gambling industry may be good for the economy, the success of the industry cannot be at the expense of families affected by problem gambling.

Appendix 3

2	Executive summary - Fourth paragraph	Gambling related harm is recognised as a 'co-morbidity' (i.e. one of a range of conditions existing in an individual that exacerbates pre-existing conditions and contributes toward a reduced life expectancy). It is usually observed in people who suffer from poor mental health; stress or anxiety; substance misuse; and financial difficulties.	I would be happier with 'often' here	Gambling related harm is recognised as a 'co-morbidity' (i.e. one of a range of conditions existing in an individual that exacerbates pre-existing conditions and contributes toward a reduced life expectancy). It is often observed in people who suffer from poor mental health; stress or anxiety; substance misuse; and financial difficulties.
3	Section 12 – The aim of the policy	<p>First bullet point</p> <ul style="list-style-type: none"> • To reinforce to elected members on the Licensing and Regulatory Board, the powers available to the local authority as licensing authority 	I might put this bullet a bit further down the list – the next bullet ought to be the first. I might even put it last in the list.	Bullet point relocated to last of 5.
4	Section 26 - Consideration of planning permission and building regulations	This Authority does expect, however, applications for premises licences to be made for premises either with relevant planning permission in place or for applications for the relevant consents to be made concurrently	I think this is ok, but I just wonder what would happen if it was not complied with – i.e. if an applicant without planning permission applied for a licence and did not also apply for planning permission – perhaps because he intended to do so only if the licence was granted. I don't think there is any power in those circumstances to reject the application. If that's right, what is the purpose of this paragraph?	While Counsel's comments are noted, it remains the position that this Authority would wish an application for relevant planning permission to be made firstly, albeit there is no power to insist upon this.

Appendix 3

5	Section 27 – Human Rights Act 1998	Human Rights Act 1998	Is this section even necessary I wonder?	This section is included as helpful context
6	Section 37 – The local area profile	As has been recognised by the Responsible Gaming Strategy Board, there is evidence that some groups in the population may be more vulnerable to gambling related harm. This not only applies to people on low incomes but also people who are less able to make reasoned decisions because of poor mental health or addiction, and some BME groups . Children and young people may be particularly susceptible, as their youth and inexperience may make them more inclined to risk-taking behaviour and less able to manage the consequences of those decisions.	I've no doubt this is true but I wonder if it might just be re-drafted so that these are a different category of group – all the others are examples of groups with impaired capacity of some sort – whether through low income, mental health, addiction, or age – whereas BME groups are qualitatively different and (I suspect) the manifestation of statistical phenomena rather than inherent vulnerability. This probably ought to be made clear. Distinction understood and section has been redrafted	As has been recognised by the Responsible Gaming Strategy Board, there is evidence that some groups in the population may be more vulnerable to gambling related harm. This not only applies to people on low incomes but also people who are less able to make reasoned decisions because of poor mental health or addiction. Children and young people may be particularly susceptible, as their youth and inexperience may make them more inclined to risk-taking behaviour and less able to manage the consequences of those decisions. Statistics indicate that some BME groups may also be vulnerable
7	Section 38 – The local area profile	To help support applicants and licence holders to better understand their local environment, an analysis of gambling related harm has been prepared as a 'local area profile'. This can be viewed by visiting - https://lbbd.sharepoint.com/sites/IntTp/HE/Pages/GamblingRelatedHarm.aspx . By drawing on relevant and reliable published socio-economic and public health data sets together with local	Presumably this will be an appendix in hard copy, ultimately. I cannot really comment on whether it is a robust document. The representations made by Gosschalks clearly suggest otherwise but this kind of statistical analysis is always open to criticism. I assume	The document is appended in hard copy. All information was sourced from reliable publicly available data sets by the analysts

		<p>police data concerning anti-social behaviour, the local area profile uses special analysis techniques to provide a model of area-based vulnerability to gambling related harm across the borough.</p>	<p>LBBB is happy with its contents and findings, such as they are.</p>	
8	Section 42 – The local area profile	<p>This position gives rise to serious concerns around the impact that further growth in the local gambling opportunity may have in the most vulnerable and ‘at risk’ areas of the borough. Because of this, this Authority considers that it is necessary to limit facilities for gambling in areas where its most vulnerable residents may be placed at increasing risk. It is this Authority’s position that all areas shown within the local area profile as being at high overall risk of gambling related harm are inappropriate for further gambling establishments. Operators are asked not to consider locating new premises or relocating existing premises within these areas would be consistent with the licensing objectives.</p>	<p>I have tweaked this to give a bit more of a nod to the ‘aim to permit’ approach, and to match a bit more clearly the fact that we can’t really ‘limit’ numbers because each application is to be judged on its own merits.</p> <p>Amended version shown as highlighted</p>	<p>This position gives rise to serious concerns around the impact that further growth in the local gambling opportunity may have in the most vulnerable and ‘at risk’ areas of the borough. Because of this, <i>and in line with the duty to aim to permit gambling insofar as it is reasonably consistent with the pursuit of the licensing objectives (and in particular the objective of protecting children and other vulnerable people from harm)</i> this Authority considers that it is necessary to <i>seek to strictly control the number of</i> facilities for gambling in areas where its most vulnerable residents may be placed at increasing risk. It is this Authority’s position that all areas shown within the local area profile as being at high overall risk of gambling related harm are <i>generally considered</i> inappropriate for further gambling establishments, <i>which would tend to raise the risk of gambling related harm to vulnerable people</i></p>

				<i>living in those areas</i> . Operators are asked to consider very carefully whether seeking to locate new premises or relocating existing premises within these areas would be consistent with the licensing objectives .
9	Section 43 – Local area profile	Elsewhere, operators should consider, having regard to the individual mapping provided, each of the specific characteristics of their local area. Each premises’ specific risk-assessment should recognise these and provide appropriate proactive mitigation or control measures.		Wherever the facilities are proposed, operators should consider, having regard to the individual mapping provided, each of the specific characteristics of their local area. Each premises’ specific risk-assessment should recognise these and provide appropriate proactive mitigation or control measures.
10	Section 44 – Local area profile	Sixth bullet point <ul style="list-style-type: none"> Known problems in the area such as problems arising from street drinkers, youths participating in anti-social behaviour, drug dealing activities, or other street related disorder. 	This comes under attack but I don’t see the point really – this is obviously potentially relevant to a local risk assessment given its close connection with ‘crime’.	No change made given Counsel’s comments.
11	Section 47 – How applications for premises licences will be assessed	While it will continue to be the case that each application will be considered upon its own merits with all relevant matters –taken into account, this Authority will expect that each applicant for a licence will:	Insert ‘including the requirement to ‘aim to permit gambling’ where to do so is reasonably consistent with e.g. the licensing objectives – see paragraph 16 above ‘	While it will continue to be the case that each application will be considered upon its own merits with all relevant matters – including the requirement to ‘aim to permit gambling’ where to do so is reasonably consistent with e.g.

				<i>the licensing objectives – see paragraph 16 above</i> - taken into account, this Authority will expect that each applicant for a licence will:
12	Section 49 - Factors it is likely the local authority will take into account in determining applications	In considering applications for new licences; variations to existing licences and licence reviews, this Authority will take into account the following matters: <ul style="list-style-type: none"> • The type of premises • The location of the premises • The proposed or current hours of operation of the premises • The configuration and layout of the premises • The levels and types of crime in the local area and the levels of deprivation 	Amend text of introductory paragraph and fifth bullet point as highlighted	In considering applications for new licences; variations to existing licences and licence reviews, this Authority will be likely to take into account some or all of the following matters: <ul style="list-style-type: none"> • The type of premises • The location of the premises • The proposed or current hours of operation of the premises • The configuration and layout of the premises • The nature of the local area, and the implications for the risk of gambling related harm, including where appropriate the recorded levels and types of crime and/or the levels of deprivation
13	Section 51 - Conditions	Where there are risks associated with a specific premises or class of premises, the licensing authority may consider it necessary to attach conditions.	Amend as highlighted	All licences granted are subject to the mandatory and default conditions provided for by law. Where there are risks associated with a specific premises or class of

Appendix 3

				premises, the licensing authority may consider it necessary to attach additional conditions
14	Section 53 - Conditions	Where its discretion has been engaged through the representations process, this Authority will impose conditions where it considers that it is necessary to do so in order to address relevant local circumstances. Conditions imposed by this Authority will be proportionate to the circumstances they are seeking to address. In particular, conditions will be:	Counsel comment - This language is a bit reminiscent of the LA03 approach, which is not quite the same – but I think you are talking about hearings here, and one can only impose additional conditions if it holds a hearing, so on balance this does not need to be altered.	No change.
15	Section 59 - Applications	<ul style="list-style-type: none"> The prescribed documents, namely a plan of the premises (at 1:100 scale, unless otherwise agreed with the Authority) 	Amend bullet point as highlighted	<ul style="list-style-type: none"> The prescribed documents, namely a plan of the premises (ideally at 1:100 scale, unless otherwise agreed with the Authority)
16	Section 71 – Interested parties	This Authority will only consider ‘relevant’ representations, i.e. representations that relate to the licensing objectives or to issues that are raised within this statement of policy. Any representation that is considered to be ‘frivolous’ or ‘vexatious’ may be disregarded. Relevant considerations in interpreting these phrases may include:	This phrase does not come from the Act – and is reminiscent of the LA03 language - but it must be right that representations should be relevant in order to be taken into account.	No change

Appendix 3

17	Section 80 - Provisional statements and applications for premises licences requiring works or right to occupy	However, this Authority understands that, as the Court has held in the case of the Queen (on the application of) Betting Services Ltd Vs Southend on Sea Borough Council, operators may apply for a full premises licence in respect of premises which have still to be constructed or altered and licensing authorities are required to determine such applications on their merits. In such cases, this Authority will consider such applications in two stages:	I think it helps make the policy a bit more future-proof not to specify the case. Reference to case law deleted accordingly.	However, case law provides that operators may apply for a full premises licence in respect of premises which have still to be constructed or altered and licensing authorities are required to determine such applications on their merits. In such cases, this Authority will consider such applications in two stages:
18	Section 89 - The first licensing objective	Licensees will be expected to demonstrate that they have given careful and adequate consideration to this objective. Where representations are received to premises licence applications under the crime and disorder licensing objective, this Authority will also give appropriate consideration to issues such as:	I'm not sure this is quite right – you don't need a representation in order to consider these factors per se. The discretion arises regardless of whether a representation is made. Section amended as highlighted	Licensees will be expected to demonstrate that they have given careful and adequate consideration to this objective. <i>In considering whether to grant a premises licence</i> , this Authority will also give appropriate consideration to issues such as:
19	Section 95 – The third licensing objective	Licensees and applicants will be expected to demonstrate that they have given careful and appropriate consideration to measures intended to protect children. Where representations are received to the third licensing objective, this Authority will give appropriate consideration to issues such as:	Amend as highlighted	Licensees and applicants will be expected to demonstrate that they have given careful and appropriate consideration to measures intended to protect children. <i>In considering whether to grant a premises licence</i> , this Authority will give appropriate consideration to issues such as:
20	Section 103 – Protecting	In order that this Authority may make a proper informed judgement as to the	There is a valid point here – why should LBBB want to scrutinise	This request is included within the policy in order that the Authority has

	vulnerable adults	effectiveness of these policies and procedures, it is requested that copies of the relevant documentation are submitted for consideration as part of any application for a new or varied premises licences. These will be considered upon their individual merits.	paperwork that has already been 'passed' as acceptable by the Commission? That said I don't think what is said here is unlawful.	full information to consider when determining applications for licences.
21	Section 105 - Location	Location of the premises has already been raised within this policy under the first licensing objective. However, location carries broader considerations that can potentially impact on each of the licensing objectives and beyond.	Add 'That said this Authority recognises that betting shops have always been situated in areas of high population, where there are likely to be high numbers of children nearby, and this is not of itself a problem where appropriate steps have been taken to minimise the risk of children being attracted to gambling.'	Location of the premises has already been raised within this policy under the first licensing objective. However, location carries broader considerations that can potentially impact on each of the licensing objectives and beyond. <i>That said this Authority recognises that betting shops have always been situated in areas of high population, where there are likely to be high numbers of children nearby, and this is not of itself a problem where appropriate steps have been taken to minimise the risk of children being attracted to gambling.</i>
22	Section 106 - Location	This Authority will give careful consideration to any application in respect of premises that are located in close proximity to..... Bullet points 8 and 9	Presumably this is the point, rather than moral considerations? Amended as highlighted	<ul style="list-style-type: none"> Faith premises and places of public worship (including churches, temples, mosques and other), <i>which may tend to be frequented by children and/or vulnerable people.</i>

		<ul style="list-style-type: none"> • Faith premises and places of public worship (including churches, temples, mosques and other) • Areas that are prone to issues of youths participating in anti-social behaviour, activities such as graffiti / tagging, underage drinking etc. 		<ul style="list-style-type: none"> • Areas that are prone to issues of youths congregating, including (but not limited to) for the purposes of participating in anti-social behaviour, activities such as graffiti / tagging, underage drinking etc.
23	Section 109 – Challenge 25	All premises should operate a proof of age compliance scheme. This Authority recommends that any proof of age scheme should be based on the principles of ‘Challenge 25’ and should involve	I think this is fine, and your call. So long as the policy permits of an exception to this on proper evidence – i.e. challenge 21 having been operated successfully for many years – there is no issue.	No change
24	Section 118 - Betting	This Authority has particular concerns over the use of the B2 Fixed Odds Betting Terminals (FOBTs) within betting shops. While it is appreciated that it is permissible for a betting operator to provide solely FOBTs as their allocation of gaming machines, the high prize, high stake gaming provided enables considerable sums of money to be spent in a very short period of time. In the light of this, this Authority must be satisfied that the primary use of the premises is to operate as a betting shop. An applicant will be expected to	Amend as highlighted	This Authority has particular concerns over the use of the B2 Fixed Odds Betting Terminals (FOBTs) within betting shops. While it is appreciated that it is permissible for a betting operator to provide solely FOBTs as their allocation of gaming machines, the high prize, high stake gaming provided enables considerable sums of money to be spent in a very short period of time, which increases the risk of gambling related harm . An applicant will in each case be expected to

Appendix 3

		demonstrate that they can offer sufficient facilities for betting.		demonstrate that they can offer sufficient facilities for betting.
25	Section 121 - Betting	Licensed betting premises are only permitted to offer gambling facilities between 0700 and 2200 hours, unless the local authority has agreed an extension of operating hours. This Authority is also concerned that longer operating hours may attract the more vulnerable, such as those who may be intoxicated or have gambling addictions. Consequently, this Authority is unlikely to grant any extension of operating hours unless it is satisfied that robust measures will be in place to protect the vulnerable.	This is totally fine and permits of an 'each application on its merits' approach.	No change
26	Section 137 – Premises licence reviews	Requests for a review of a premises licence may be made by an interested party or a responsible authority, in which circumstances it is for this Authority to decide whether to carry out a review. In addition, s.200 of the Act provides that licensing authorities may initiate a review in relation to a particular premises licence or a class of premises licence.	Do you want to include a bit about the principles on which it will decide whether to grant or reject an application for a review here? Additional text added	By virtue of s.198, an application may, but need not, be rejected if the licensing authority thinks that the grounds on which the review is sought: <ul style="list-style-type: none"> • Are not relevant to the principles that must be applied by the licensing authority in accordance with s.153, namely the licensing objectives, the Commission's codes of practice and this Guidance, or the licensing authority's statement of policy • Are frivolous • Are vexatious

Appendix 3

				<ul style="list-style-type: none"> • 'Will certainly not' cause the licensing authority to revoke or suspend a licence or to remove, amend or attach conditions on the premises licence • Are substantially the same as the grounds cited in a previous application relating to the same premises • Are substantially the same as representations made at the time the application for a premises licence was considered.
27	Section 144 – Unlicensed family entertainment centres	This Authority may only grant a permit if satisfied that the premises will be used as an uFEC and if the chief officer of the police has been consulted on the application. The permit cannot, for example, be used for an entire shopping centre.	Where does this wording come from? I don't recognise it.	The wording comes from the Gambling Commission information sheets on uFECs and gaming machine provision. The wording will be clarified in the final policy document.