

Report To: Environment and Regeneration Committee **Date:** 30 October 2014

Report By: Corporate Director, Environment Regeneration and Resources **Report No:** E&R/14/10/05/SJ/NMcL

Contact Officer: Stuart W Jamieson **Contact No:** 01475 712420

Subject: Scottish Government Consultation on Planning Controls, Pay Day Lending and Betting Offices

1.0 PURPOSE

- 1.1 The Scottish Government considers that the planning system can be used to address concerns about the levels of problem gambling and personal indebtedness by controlling the prevalence of betting shops and premises selling high interest short term loans, often referred to as pay day lending.
- 1.2 This consultation implements the Scottish Government's commitment to consult on changes to planning legislation and views are sought by 14 November 2014. The purpose of this report is to seek approval from the Committee to submit a response on behalf of the Council.

2.0 SUMMARY

- 2.1 The regulation of gambling and financial services is currently a reserved matter for the UK Government and Parliament. The Scottish Government and Parliament cannot at present legislate to regulate these matters directly to restrict the numbers of betting shops or premises selling pay day loans, or regulate how these activities are conducted to address concerns about, for example, gambling addiction or excessive indebtedness. Nevertheless, following a summit on Gambling and Pay Day Lending in Scotland's Town Centres and Neighbourhoods, the Scottish Government is taking steps within its current devolved powers to address concerns about these matters where it can. The Scottish Government considers that the planning system can contribute to the solution.
- 2.2 The consultation poses 14 questions, which it is proposed to respond to as detailed in paragraphs 4.19 to 4.32.

3.0 RECOMMENDATION

- 3.1 It is recommended that the Committee approves the consultation response.

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Corporate Director, Environment, Regeneration and Resources

4.0

BACKGROUND

- 4.1 Concerns have been expressed in recent years about the levels of problem gambling and personal indebtedness and the prevalence of betting shops and premises selling high interest short term loans, often referred to as pay day lending.
- 4.2 The regulation of gambling and financial services is currently a reserved matter for the UK Government and Parliament. The Scottish Government and Parliament cannot at present legislate to regulate these matters directly to restrict the numbers of betting shops or premises selling payday loans, or regulate how these activities are conducted to address concerns about, for example, gambling addiction or excessive indebtedness. Nevertheless, following a summit on Gambling and Pay Day Lending in Scotland's Town Centres and Neighbourhoods, the Scottish Government is taking steps within its current devolved powers to address concerns about these matters where it can.
- 4.3 There are two planning strands; the requirement for planning permission; and the planning policy base on which planning applications are determined. This paper is concerned with the requirement for planning permission.
- 4.4 The Town and Country Planning (Use Classes) (Scotland) Order 1997 specifies classes of use of land and premises; changes between uses in the same class are not "development" and do not, therefore, require planning permission. The Order groups uses with similar planning implications together so as to remove unnecessary planning applications. Where a change of use is not included, then planning permission would be required. The Order also grants planning permission for changes between certain use classes.
- 4.5 Class 2 of the Order covers financial services, professional services and any other services (including use as a betting office) "which it is appropriate to provide in a shopping area and where the services are provided principally to visiting members of the public." In order to increase the potential for planning control on premises changing use to betting shops or pay day lenders, legislative change would be required.
- 4.6 The Scottish Government proposal is to remove reference to "betting offices" from Class 2 and add "betting offices" to the list of uses in article 3(5). Article 3(5) provides that a use listed there does not fall within any of the classes. Listed in article 3(5) includes amusement arcades, public houses, theatres and hot food takeaways. In addition the Order would be amended so that while changes of use to betting offices may require planning permission, as far as possible the current freedoms from planning control to change from a betting office to other uses would remain.
- 4.7 The Scottish Government also proposes specifying that the definition of "betting offices" should follow section 150(e) of the Gambling Act 2005. This is premises licensed under that Act for "the provision of facilities for betting, whether by making or accepting bets, by acting as a betting intermediary or by providing other facilities for the making or accepting of bets".
- 4.8 The Scottish Government also understand that fixed odds betting terminals are classed as B2 gaming machines in Gambling legislation, and that these would only be available in betting offices and casinos. The Scottish Government does not anticipate that increasing planning controls on betting offices would displace this type of activity to other premises which might then start to cluster.
- 4.9 Moving on to pay day lenders, existing operations will not require planning permission for their activities as a result of any changes. Only the change of use of premises made after a legislative change would be affected. The relevant trigger for requiring planning permission in this context is where there is a material change in the use of land or buildings. While the planning system may control material changes

in the use of premises from a shop to an office offering services to the public, it does not seek to control the range of goods and services being sold from a shop or from an office. Planning controls aim not to overlap with other legislation and certain goods and services have separate controls; examples include licensing of gambling, alcohol sales, selling knives, the presence of hazardous substances, emissions controls.

- 4.10 Selling pay day loans is not specifically mentioned, although on its own in planning terms it is evidently a financial service. This is confirmed by the Financial Conduct Authority's definition that a pay day lender offers high cost short term credit where APR is equal to or higher than 100%, credit is provided for any period up to 12 months and credit is not secured by a mortgage, charge or pledge. The service can be offered from a variety of premises; those which specialise in such lending or others which offer it as part of a range of products or services, such as pawn broking, cheque cashing, money transfers, foreign exchange other financial services or a combination of any of these. In many cases pay day lending may form only a limited aspect of the range of financial services offered and may be a part, indeed perhaps only a very small part, of the overall use of the premises.
- 4.11 The Scottish Government also recognises another challenge in applying planning controls is that, despite definitions provided by the likes of the Financial Conduct Authority, it is not straightforward to identify a suitable one for planning purposes. Any definition needs to be sufficiently broad to catch the wide range of potential activities that should be included, otherwise slight changes in loan terms might avoid controls. At the same time, it should not be so broad as to capture a much wider range of activities unnecessarily. In practice, premises engaged in pay day lending typically fall within Class 2.
- 4.12 In order to achieve any additional planning control over changes of use within the financial services sector, a wider range of activities would be likely to have to be removed from Class 2. The Scottish Government presents two options:
- 1) continue to include financial services within Class 2 but subject to certain exclusions; or
 - 2) replace the general reference to financial services with references to specific financial activities.
- 4.13 Option 1 seeks to identify and exclude from Class 2 the sorts of businesses likely to offer pay day lending and which the Scottish Government consider are likely to cluster in shopping areas. The Scottish Government is of the view that this is undermining the character or amenity of area and the wellbeing of communities. The candidates for activities to be removed from Class 2 and added to the list in article 3(5) are uses involving: "money service business" (operating a currency exchange office and/or transmits money by any means or cashes cheques which are made payable to customers), "pawn broking", "premises for buying goods from visiting members of the public", "financial lending other than by deposit takers (banks, building societies, credit unions and friendly societies)". This approach may not sufficiently cover all premises which might engage in pay day lending as a secondary or ancillary activity and such premises that might cluster.
- 4.14 Option 2 seeks to identify and include the sorts of financial services business less likely to either engage in pay day lending or to cluster in shopping areas, and which it considers are, therefore, less likely to be associated with negative impacts. This would limit the "financial services" in Class 2 to a number of more specific uses unlikely to raise the sorts of "planning" concerns even if some may have products which would be regarded as within some definition of a pay day loan. The proposed limited list of "financial services" to be included in Class 2 is "accountancy services", "insurance services" and "deposit takers" (banks, building societies, credit unions and friendly societies). This approach would not include explicit exemptions for "professional services" or "other services" who may be engaged in some "financial

services" as part of an overall package of services, e.g. estate agents' or solicitors' offices. As with other mixed uses, it would be for the planning authority in individual cases to consider whether the extent of any financial services provided by such premises was material change of use requiring planning permission.

- 4.15 The Scottish Government considers that while this has the advantage of applying control to a wider range of uses that might also offer pay day loan services, it is likely to mean that more financial services activities that are not of concern would in future require planning permission.
- 4.16 With both options the Scottish Government proposes to use the Order to retain, as far as possible, the existing freedoms from planning control for changes from uses associated with other uses.
- 4.17 The Scottish Government does not propose to amend Class 1 (Shops) on the basis that it considers their main characteristic is that of shops selling goods to the public; that they may be offering pay day loans as a side line would, the Scottish Government consider, be less likely to materially affect the character or amenity of shopping areas or the wellbeing of communities. As with other mixed uses, it would be for the planning authority to judge whether the activities at a particular shop meant it had gone beyond a Class 1: Shops use and required planning permission for other uses, such as financial services.
- 4.18 This consultation implements the Scottish Government's commitment to consult on changes to planning legislation and views are sought by 14 November 2014. The purpose of this report is to seek approval from the Committee to submit a response on behalf of the Council. The consultation seeks responses to 14 questions.

- 4.19 **Q1. Do you agree with this approach to dealing with betting offices? If not, please specify why not.**

Response: Yes. It is recognised that betting offices are in effect a "leisure" use more related to amusement centres than to the typical financial and professional services that fall within Class 2.

- 4.20 **Q2. Do you consider there to be a more effective approach to changes around betting offices? If so, please describe the approach.**

Response: Inverclyde Council is comfortable with the approach being considered. It is recognised that betting offices are an appropriate town centre use in the same way that amusement arcades, public houses and hot food takeaway facilities, but that they fall outwith the core functions of retailing and financial service provision necessary to maintain the vitality and viability of town centres and as a consequence require special consideration.

- 4.21 **Q3. Do you believe that a specific definition of pay day lenders, similar to the Financial Conduct Authority's definition should form part at least of the exclusion of uses from the Order? If so what should the definition be?**

Response: No. Pay day lending typically represents only a portion of a business and is not always evident from outwith the premises. If the Scottish Government is minded to control pay day lending then it is more appropriate to identify the types of businesses that provide the service.

- 4.22 **Q4. Do you agree that Class 1 (Shops) should be excluded from any changes regarding pay day lending? If not, why not?**

Response: Yes.

- 4.23 **Q5. Do you think Option 1 would represent an effective and proportionate approach to addressing the concerns about clustering and over provision of**

pay day lenders? If not, why not?

Response: No. Simply referring to "uses involving" provides no flexibility for ancillary activities. The range of uses covered under option 1 would appear to include travel agents as operators of currency exchange offices, and this is clearly not an area of target concern for the Scottish Government.

- 4.24 **Q6. What other activities which might be involved in pay day lending should be added to the exclusions? Please explain why and provide any examples.**

Response: None.

- 4.25 **Q7. What other exceptions to the exclusion of financial lending should be included (i.e. alongside "deposit takers")? Please explain why and provide examples.**

Response: No comment.

- 4.26 **Q8. Do you think Option 2 would represent an effective and proportionate approach to addressing the concerns about clustering and over provision of pay day lenders? If not, why not?**

Response: No. A fuller explanation is provided under Q12.

- 4.27 **Q9. Should the exclusions from the Order be extended beyond those described in this option? If so please explain and provide examples.**

Response: No.

- 4.28 **Q10. What other exceptions to the exclusion of financial services should be included (i.e. alongside "deposit takers" etc.)? Please explain and provide examples.**

Response: No comment.

- 4.29 **Q11. Which approach would you prefer, Option 1 or Option 2? Please explain your answer.**

Response: Option 2 would be easier to monitor and enforce.

- 4.30 **Q12. Do you have any other comments or suggestions? Please elaborate.**

No planning case has been presented to indicate why pay day lending merits specific land use planning controls. The only suggestion in support of planning control is that otherwise there is likely to be overprovision and a cluster of pay day lone outlets in shopping areas, undermining the character or amenity of the area and the wellbeing of communities. In Inverclyde there is no evidence to support the land use elements of this supposition. For example, within Greenock town centre there are only four units that clearly indicate the availability of pay day lending, three of which in terms of shopfront display and range of services suggest a strong emphasis on retailing. Even if clustering was to occur, which there is no evidence of in Inverclyde, this is not an unreasonable economic concept; traders of a similar type often are found in close proximity, benefiting shoppers who are able to compare value and choice. Traditional town centres as is clearly evident face occupancy challenges; Greenock, Port Glasgow and Gourock for example will face greater competition in the future with the designation of Braehead as a town centre. With the possibility of increased unoccupancy rates the presence of businesses properly controlled by the Financial Conduct Authority may reasonably be considered preferable to a vacant unit; certainly three of the four pay day lenders contribute a strong retailing element to the benefit of the vitality and viability of Greenock town centre. Furthermore, unlike other "sui generis" uses, pay day lending premises are not recognised as generators of

noise, activity, odours or traffic to the detriment of nearby businesses or residents. None of this should be considered as the Council supporting the concept of pay day lending. It is clearly evident that the concerns relate to the financial regulation of pay day lenders and the consequence for customers. The Council is simply questioning the validity of abusing the planning system by introducing controls that have no basis in land use planning.

- 4.31 **Q13. BRIA - Can you identify likely costs and benefits associated with the potential changes discussed in this paper which should be covered in the BRIA?**

Response: No comment.

- 4.32 **Q14. EqIA - Please provide details of any specific issues for any of the equality groups (including race, disability, age, sexual orientation, gender or religion and belief) which you think may arise in relation to the potential changes discussed in this paper.**

Response: None.

5.0 IMPLICATIONS

Finance

- 5.1 There are no direct financial implications arising from this report.

Financial Implications

One off Costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Legal

- 5.2 There are no direct legal implications arising from this report.

Human Resources

- 5.3 There are no direct human resource implications arising from this report.

Equalities and diversity

- 5.4 There are no direct equalities implications arising from this report.

Repopulation

- 5.5 There are no direct repopulation implications arising from this report.

6.0 CONSULTATIONS

- 6.1 **Chief Financial Officer:** no requirement to comment.

6.2 **Head of Legal and Property Services:** no requirement to comment.

6.3 **Head of Organisational Development, HR and Communications:** no requirement to comment.

7.0 **BACKGROUND PAPER**

Scottish Government – Planning Controls, Pay Day Lending and Betting Offices Consultation Paper on Changes to Planning Legislation, August 2014.

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