

Casino Operators' Association of the UK

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Dear Ms McKenzie

CONSULTATION: GAMBLING ACT 2005
(LICENSING AUTHORITY POLICY STATEMENT)
(ENGLAND AND WALES) REGULATIONS

Thank you for the opportunity to comment on the above Consultation Paper, draft Statutory Instrument and Partial Regulatory Impact Assessment.

The COA(UK) has difficulty in making full comment on the proposals because they are inherently incomplete and out of proper context. The draft SI is at first glance non-contentious, indeed simplistic: to provide a legal administrative framework for the Licensing Authorities (LAs) to produce a Statement or a Revision of their Policy under the Gambling Act 2005, s.349(1) and (2) et al; a list of factors to be included in the Statement or Revision; and notes on the Procedure to be followed.

However, it makes, for instance, no mention of any intentions, limits or curtailments that have been previously indicated by government in the process leading up to the Act. This is borne out by the Consultation Paper itself which makes no mention of the crucial factor of accountability and how, in giving the LAs the powers, those affected by them may appeal. **This is of particular importance to the current casino industry and its treatment under Grandfather Rights provision.**

Licensing Authorities should be obliged to recognise, inter alia, such Rights in its Policy Statements and Revisions. LAs cannot be given untrammelled powers, and the limits should be made clear.

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The major reason why such factors cannot sensibly be taken into account during this consultation is because several – indeed, many – vital elements have yet to be decided and will be forthcoming, we trust, in the outcome of the next Gambling Commission Consultation Paper, “Guidance to Licensing Authorities”.

Two examples may illustrate our unease:

a) Gambling Commission Interface

What is the final position between an Authority “aiming to permit” or “having regard” to what the Commission puts forward to them? Should there be a conflict between the two viewpoints, which is the definitive view that an operator must follow? Is not this SI, or another, an appropriate way to resolve such differences?

b) Policy Statement Revisions

Whilst acknowledging that one purpose of the SI is to provide for the ability of a Local Authority to revise its Policy Statement, what provision is there to protect or compensate an operator where business is undermined by one or more revisions? Could revisions be used as a vehicle to drive an operator out of an otherwise previously accepted and legitimate business in line with the original three-year policy statement or an earlier revision? Should the SI prohibit such practice? Is the consultation process alone sufficient? Is there an appeal procedure competent in such circumstances, and at appropriate proportionate cost? Judicial Review can be overwhelmingly expensive.

Allied to the unease expressed above is the concern that, because the chosen Option Three is not fully explicit and allows for local variation, there is the danger that LAs will duplicate, or worse, add to, Gambling Commission regulations/guidance; this dichotomy must be properly resolved. A degree of local variation may be government policy, but it must be expressed so that all parties are aware of the parameters or chaos will reign. Of course, it is not only Gambling Commission Guidance that may conflict or duplicate – other regulations may need careful harmonisation too.

Advertising and Publication

At paragraph 5 of the paper, views were sought on the provisions relating to the advertisement and publication of statements and revisions. It is conceivable that the process could be substantially weakened or circumvented by poor advertisement and publication. Despite the diversity of appropriate local facilities, more specific wording in the SI is needed. The accountability of the local authority needs to be strengthened and the method whereby the active seeking of information about the local policy by interested parties to assure the intent of the SI must be robust and uncomplicated.

Conclusion

The COA(UK) believes that the draft SI offered is not complete and needs revision of such importance and detail that a redraft is necessary followed by further consultation.

It is noted that the intention is to lay the SI before parliament on 10 March 2006 (ten days before the Gambling Commission Consultation on Guidance to LAs is concluded) and is due to come into effect on 31 March 2006. How such a revision and adequate consultation can be achieved in the time of two weeks is not clear, but the COA(UK) is willing to discuss the matter further if it would help. Perhaps a delay until after the Gambling Commission Guidance is preferable, rather than publication of the SI followed by a revised version.

Brian Lemon
General Secretary