

ENVIRONMENTAL HEALTH GROUP

The Environmental Health Group of the Directors of Public Protection (Wales) comprises a number of Technical Panels made up of experienced practitioners who work together to provide guidance and expertise on matters of interest to officers working in the field of Environmental Health in Wales.

The comments set out below are from the Licensing Technical Panel and are made in response to the DCMS document, 'Consultation: Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations'.

There were 2 Options put forward by DCMS: -

Option 1: Prescribing the exact form of the regulations, including the methods for preparing, reviewing, revising and publishing the Licensing Policy Statements.

Option 2: Do not make regulations, thereby giving full discretion to Licensing Authorities as to the form, including the methods for preparing, reviewing, revising and publishing the Policy statements.

DCMS' choice is an in-between of these 2 options. They propose to impose minimum statutory requirements on all licensing authorities and have advised that the Draft Regulations reflect this.

In conclusion they asked for comments in respect of 3 areas of the regulations. These are detailed below.

Is there anything else you think ought to be included in the Licensing Policy Statement Regulations and why?

Lacors have stated that the Policy statement is not to act as "Guidance for applicants/residents" but that it is to be considered as a high-level Policy document. Therefore, a requirement will still exist for Licensing Authorities to provide a further document providing guidance to all concerned unless the Gambling Commission or DCMS undertake to provide such a document or provide for this in Regulations. This is not considered by the Panel as appropriate to feature only in the Gambling Commission's Guidance, as this will not be for use by applicants or residents but by Licensing Authorities.

Lacors recommends that the Policy does not set out the application process. Their draft template reflects this approach. The Panel feel that it would be more appropriate to set out the application process in a clear, transparent

document where all concerned will be aware of what is required. It has proved helpful whilst dealing with the Licensing Act 2003, not only to applicants but to some Local Authority Officers to have the application procedure outlined in the Policy document. It is felt by the Panel that Lacors have recommended the omission of the applications process due to the timescales outlined by DCMS in relation to administration/procedural requirements not being available to Local Authorities until December 2006. However, it is felt by the Panel that it would be more appropriate to delay the 1st appointed day to ensure that all available information and guidance documents required to prepare and publish the Policy Statement can be utilised.

In addition, DCMS' "Introduction" to its consultation document states that the Policy Statement is to "assist authorities in undertaking these new responsibilities, and to provide transparency for those wishing to apply to an Authority for a permission under the Act". The Panel suggests that to meet this requirement the application process would need to be clearly spelt out in the Policy. Providing sound advice/guidance to all at this point would alleviate the potential for uncertainty from applicants, residents and responsible authorities thereafter.

Is there anything that we intend to include in the Licensing Policy regulations that you disagree with and why?

Regulation 4(1)

At present this contradicts the Gambling Commission's Guidance document at 6.3. The Regulations should make it clear that either the Introduction is separate to the policy or it should include the licensing objectives that the Policy will promote.

Regulation 4(2)(d)

The Panel disagree with the need to list all those who have been consulted in the production of the document within the Introduction Section.

Rather than listing those persons/businesses it would be better if the Licensing Authority were allowed the discretion to mention generally about the consultation and list those consulted with and their responses as an Annex to the Policy document.

Regulation 5(a)

The Panel disagree with the wording of the regulation.

The Licensing Authority is to designate a body that is competent to advise on protection of children from harm. This is not a licensing objective and should be expanded to include the full objective i.e. "protecting children and other vulnerable persons from being harmed or exploited by gambling".

Deeming someone competent in respect of protection of children from harm will not mean they are competent in respect of "other vulnerable persons".

Regulation 5(b)

The Panel disagree with the wording of the Regulation.

The wording of the Regulation does not allow the Licensing Authority to consider each case on its own merits. If something is fixed in a policy such as this it could give rise to judicial reviews of policies and procedures and potentially more appeals against decisions made.

Regulation 5(c)

The Panel disagree with the need for this to be in the Policy Regulations.

Licensing Authorities are obliged to share data under the Act itself under Section 350. It may be more beneficial to ensure transparency etc that a statement be added onto the application forms themselves to the effect that: -

"In accordance with Sections 29 and 30 of The Gambling Act 2005 all information provided on this form will be used by the Licensing Authority in whatever capacity it thinks fit in promoting the three licensing objectives".

Regulation 5(d)

The Panel disagree with requirement for inspection principles.

If this regulation is kept then it will only allow Licensing Authorities to make a bland statement about what type and how it may carry out inspections. The Gambling Commission is due to publish draft guidance in respect of Compliance and Enforcement at the end of June 2006 with the final document published at the end of September 2006. This will not allow Licensing Authorities the opportunity to develop a relevant section of their policy consult and adopt by full Council within the appropriate timescales. This again proves to the Panel that the 1st appointed day should be delayed to ensure inclusion of relevant information to the Policy Statement.

Regulation 7

The Panel disagree with the requirement as set out in Regulation 7.

Why the added cost and fitting into an already very tight timeframe of submitting an advert to say what we have to do anyway. As per Lacors comments all relevant persons will have been consulted with and will be aware of when a Policy must be published by. The Panel does not see the need to advertise that we are publishing a policy that has to be made available on the website and be available for the general public.

Where will Licensing Authorities recoup the fee for this?

Any other comments or suggestions

Generally, the draft regulations appear to the Panel to be misaligned with the Draft Guidance issued by the Gambling Commission. Both appear to be trying to do the same thing and this will only add to the confusion already being experienced by Licensing Authorities and trade representatives alike.

Clarity should be sought to differentiate between the 2 documents. This may be due to one Guidance document having been issued prior to the other.

It is the belief of this Panel that the best way to promote a full and comprehensive Licensing Policy Statement which includes all the elements in detail that have been mentioned in the Draft Regulations would be to delay the 1st Appointed Day from 31st January 2007 to a date in late April 2007. This would then allow all Licensing Authorities the extra time required to consider all aspects of the three phases of Guidance due to be issued and have a full and valid consultation exercise prior to adopting their policies.

The Gambling Act 2005 will not have as big an impact as the Licensing Act 2003 in respect of applications being made and therefore more time spent preparing Policies and procedures would enable an easier transition.

I hope that this information will be of assistance to you.

Steve Clinton
Secretary to the Licensing Technical Panel