

22 February 2006

Jill Mckenzie  
Gambling and National Lottery Licensing  
Division  
Department for Culture, Media and Sport  
2-4 Cockspur Street  
LONDON  
SW1Y 5DH

*My Ref:* PW/TC/3.1.1  
*Your Ref:*  
*Ask for:* Paul Weller  
*Direct Line:* 01638 719313  
*email:* paul.weller@forest-heath.gov.uk

Dear Ms McKenzie

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

Thank you for your invitation to comment on the draft Regulations relating to the policy statements to be prepared by licensing authorities under the Gambling Act 2005.

Licensing should be a predominately local activity, affecting local communities. Therefore, licensing authorities should have the discretion to apply the relevant legislation in the manner best suited to the needs of their area

Whilst a standard form of licensing policy statement may be advantageous in terms of clarity, openness and consistency, I am not convinced that prescriptive regulation is the best way to achieve this for two reasons:

- setting national minimum standards in this way removes a great deal of local discretion, and increases rather than diminishes the bureaucracy that the Gambling Act is intended to remove; and
- It is unlikely that national minimum standards of policy statements would be of widespread benefit other than perhaps to a handful of licence applicants with nationwide interests.

National consistency would be better achieved by precise non-statutory advice issued by the Secretary of State to licensing authorities, which would also be more capable of being reviewed and updated in the light of experience, or by incorporating it into the guidance to licensing authorities issued by the Gambling Commission. As the draft guidance from the Commission also contains information on the requirements for policy statements, there will in fact be very little discretion left for licensing authorities.

My comments on the four options are set out below:

**Option 1: Prescribing the exact form of the Regulations, including the methods for preparing, reviewing, revising and publishing the licensing policy statements**

This option appears to remove almost all discretion from a licensing authority in developing a statement of licensing policy, and would be likely to constrain its ability to suit local circumstances. Such an approach may also impose unnecessary financial or administrative burdens on licensing authorities.

There is also concern that delay in developing such a statement would adversely affect the implementation of the Act by the Licensing Authority.

**Option 2: Do not make the Regulations, thereby giving full discretion to licensing authorities as to the form, including the methods for preparing, reviewing, revising and publishing the licensing policy statements**

Without guidance published by the Gambling Commission, this option fails to provide transparency for the gambling industry, local authorities or interested parties.

**Option 3: Imposing minimum statutory requirements on all licensing authorities (in England and Wales)**

This is the preferred option, providing a degree of consistency and transparency to all parties (licensing authorities, gambling industry and interested parties). Comments on the specific content of the regulations are set out below. It does seem that certain matters with respect to information exchange and publication may be overly prescriptive, and could be addressed by other means. Some matters currently identified in the regulations appear to be a duplication of Councils' obligations under the Gambling Act itself.

Another concern relates to the cost of preparing this statement. Experience from the Licensing Act is that the actual cost of implementation exceeded everyone's expectations.

**Option 4: Introduce the preferred option with amendments emerging from the public consultation**

In principle this appears to be the best option. My concern is based on previous experience of the regulations published under the Licensing Act 2003. A delay in the publication of amended regulations following public consultation could pose a serious threat to Licensing Authorities' ability to produce and publish a licensing statement of policy by the prescribed date which complies with the regulations. This would place an additional financial or administrative burden on the licensing authorities which it may not subsequently be able to pass on to the gambling industry.

These are the comments on the draft regulations are set out below:

Clause 4(2)(a): Most interested parties and responsible authorities under the Act will be aware of the relevant licensing authority for their area, and will not require a description of the geographical area or a map of the area to assist them. The experience the Licensing Act 2003 – with far greater applications than will be the case under the Gaming Act 2005 – did not show widespread confusion amongst applications as to which authority they should submit applications. There is no reason to require this although some authorities may, at their discretion, wish to include something similar.

Clause 4(2)(b): Section 349(3) of the Gambling Act is specific about the classes of people whom licensing authorities must consult in preparing their policy statements. There should not be a need for a statutory requirement to list them, given that there is a statutory duty to consult in the first instance.

Clause 5(a): Locally difficulties were experienced in respect of the Licensing Act when the responsibility Authority in respect of the Protection of Children from Harm seemed, almost, needing to be cajoled into responding to local licensing authorities. I do not see what purpose is achieved by requiring licensing authorities to justify (as opposed to declaring) why they have chosen one body over another to advise them on child protection issues.

It would be of greater assistance for the Secretary of State to advise on the relative merits of, for example, the expertise of the police on these matters over those of the NSPCC or other organisations.

Licensing authorities are in any case likely to publicise the details of their nominated body, as copies of applications may have to be served on them under section 160.

Clause 5(b): The definition of an interested person should remain, for the time being, one of local discretion to be decided on a case by case basis. An authority cannot be expected to lay down principles that would be relevant in every circumstance – the draft guidance to licensing authorities issued by the Gambling Commission emphasises the need for each case to be considered on their merits.

Defining an interested party by reference to their distance from the applicant premises is inappropriate. Defining it by the impact on their personal interests and property might include some and exclude others. Whether or not someone is an interested party is a delicate exercise which licensing authorities have generally exercised well in the past, with each case being decided on its' merits.

This requirement is confusing and duplication, given the definition in section 158 of the Act and that the subject is covered in part 8 of the draft Gambling Commission guidance to licensing authorities.

Clause 5(c): There should be no need for separate agreements between individual licensing authorities and the Gambling Commission (or other bodies) on how information should be exchanged. The Commission is in a position to publicly declare the grounds on which it will seek information from, and provide information to, licensing authorities. This can be extended to the other schedule 6 bodies; guidance from the Commission to licensing authorities can encourage the terms on which this information is to be provided on application forms and other relevant literature.

Clause 5(d): That the Gambling Commission must publish guidance on enforcement and sanctions in due course. Whilst licensing, inspection and enforcement of licensed premises is not a new function for licensing authorities, conducting those activities in relation to gambling premises is of course new.

The approach for locally developed risk-based inspection/compliance and prosecution regimes to be published in the interests of openness and fairness is supported, but this should not be made a mandatory statutory burden on licensing authorities.

Clauses 7 and 8: These clauses appear to be overly prescriptive, given that that licensing authorities have no discretion as to whether they published statements of licensing policy. A requirement to publish the statement and give notice of this fact would be sufficient, given that this will be a function that will fall on every licensing authority at approximately the same time – and which may be of interest to only a limited audience.

In summary, some of the matters proposed to be covered in the regulations can be adequately dealt with by way of advice and guidance to licensing authorities, and for them to exercise their own judgement in these matters. It may be that, contrary to the expressed intention in paragraph 3.1 of the consultation paper, these regulations result in the imposition of unnecessary financial or administrative burdens on licensing authorities. Clear guidance on matters which it is considered would be proper to include in a licensing statement of policy, together with an obligation placed on licensing authorities to have regard to the guidance issued by the Gambling Commission, should be sufficient to ensure transparency and consistency, whilst at the same time ensuring that licensing authorities can take account of their local circumstances and ensure that these can be reflected in licensing policy statements.

If you require any further clarification on these points, please feel free to contact me

Yours sincerely

Paul Weller  
Legal Executive