



# The Institute of Licensing

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21 February 2006

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

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. I am responding on behalf of the Institute of Licensing.

The Institute of Licensing is the predominant organization within England and Wales representing professionals from the public and private sector with an interest in licensing. Over three quarters of local licensing authorities subscribe to our services, as well as lawyers and others with an interest in licensing and registration issues. It is managed on a regional basis by a Board of Directors, who have approved this response.

The Institute's starting point is that licensing is predominately a 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. We believe that this also accords with the Government's ethos towards licensing which, in general, has been deregulatory and liberalising.

Whilst we are of the opinion that a standard form of licensing policy statement would be advantageous in terms of clarity, openness and consistency, we are not convinced that achieving this by regulation is the best way to achieve this for two reasons. First, 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. Second, we do not feel that national minimum standards of policy statements would be of widespread benefit other than perhaps to a handful of licence applicants with nationwide interests.

We feel that national consistency would be better achieved by 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 As the draft guidance from the Commission also contains information on the requirements for policy statements, there will in fact be very little discretion left for licensing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.

In relation to the draft regulations, we have the following particular comments to make:

Clause 4(2): We fail to see why licensing authority statements should be required to state the matters that will be dealt within it. The statement itself is too broad as to be meaningless: does it require, for example, that policy statements should recite the licensing objectives verbatim? We foresee that most licensing policy statements will be relatively short documents in any case, which raises the merit of having a summary at all. This should be left to the discretion and experience of the licensing authority in drafting its' statement.

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 of our Members in implementing 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 on this point either. We can see no reason for requiring it.

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. It does not seem to us that there are so many bodies falling within these classes that there needs to be a statutory requirement to list them, given a statutory duty to consult in the first case.

Clause 5(a): We 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 perhaps be helpful 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 would in any case anticipate publicising the details of their nominated body, given the likelihood that copies of applications may have to be served on them under section 160.

Clause 5(b): It would seem to us that 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. Some authorities might wish to

approach the issue on a subjective basis; others on an objective basis. However, 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.

We would point to two examples which could occur within one licensing authority area. A resident lives on farmland adjacent to a race-course where betting regularly takes place. Another resident lives in the town centre, next door to a betting office. What principles should the licensing authority draw up in their statements to cater for the eventuality – however remote – that both of these residents would make representations? 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 exclude 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.

We would also see this requirement as duplicitous and confusing, 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): We would hope that there would be no need for over four hundred separate agreements between individual licensing authorities and the Gambling Commission (or other bodies) on how information should be exchanged. In our view, 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 of this information to be provided on application forms and other relevant literature.

Clause 5(d): As we understand the position, the Gambling Commission will be publishing 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 Institute fully supports the approach for locally developed, risk-based inspection/compliance and prosecution regimes to be published in the interests of openness and fairness. Given our suggestions in relation to the other matters contained in the draft regulations however, we do not support this being made a mandatory statutory burden on licensing authorities.

Clauses 7 and 8: If licensing authorities had a discretion as to whether they published statements of licensing policy, we could accept the mandatory public notification requirements being proposed. However, as 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 - we fail to see the benefit of these clauses.

In summary, we feel that 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

If you require any further clarification on these points, please feel free to contact me via [licensing\\_circles@hotmail.com](mailto:licensing_circles@hotmail.com)

Yours sincerely

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