

Jill McKenzie  
The Department for Culture Media & Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

17<sup>th</sup> February 2006

Dear Jill

Re. Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations

The following constitutes LACORS'<sup>1</sup> response to the draft Regulations issued by the Department for Culture, Media & Sport (DCMS) in November 2005, as regards licensing policy statements.

*"Less is more<sup>2</sup>"*

LACORS wants to see reduced regulatory burdens placed upon local government by central government. Our view is that the requirements for policy statements of this kind are unnecessary. It is not believed that the proposals reduce any kind of burden upon business; they do not make for more structured, concise policy statements, nor will they ensure useful or clear information is provided. We believe that the best way for these objectives to be achieved is by LACORS working with all parties to produce a policy statement template. This will provide a consistent, yet flexible structure which can be altered in the future as experience is gained by all involved.

The government's view of the need of local authorities to take account of local circumstances is, in our view, limited. There is also a need for documents which are structured in the best way for readability, that they provide meaningful information to stakeholders, that they are flexible to changing circumstances and guidance, and that they are produced in an efficient manner without having to take account of regulations and guidance from a plethora of sources.

It should also be noted that no such regulations have been made as regards how the Gambling Commission should produce its guidance.

The Local Government Association has also noted to LACORS its view that these regulations are unnecessary and constitute undue interference and micro management by the government of local authority matters.

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<sup>1</sup> LACORS (Local Authorities Coordinators of Regulatory Services) is a central body created by the UK local government associations to support local authority regulatory and related services. Through its business plan 2005/2006 'Excellence through partnership', LACORS aims to actively support the LGA and its partners in raising the profile of regulatory services and promote the significant contribution they make to the wider community well-being agenda.

<sup>2</sup> This quote refers to the report of the Better Regulation Task Force "Regulation – Less is More. Reducing Burdens, Improving Outcomes" published in March 2005.

Specific comments as regards some of the regulations are listed below. Nevertheless, LACORS is still of the view that no regulations as regards the contents of policy statements are necessary (i.e. Option 2).

*Form of the statement or revision*

4. (1) *The statement shall include an introductory section at or near the beginning summarising the matters dealt with in the statement* – This does not fit well with the Gambling Commission's draft guidance for local authorities which states "All licensing authority policy statements should begin by stating the three licensing objectives, which the licensing policy will promote" (Gambling Commission draft Guidance for local authorities 6.3)

LACORS' view is that when these regulations comment on the structure of the licensing policy statements they will cause authorities to produce statements which are awkward in terms of structure rather than following a natural/easier to read format. Thus the regulations will do nothing to improve the readability of the document for business/interested parties and will potentially make them harder to absorb.

5. *"The following matters shall each be contained in a separate section within the statement"* – Why is there a desire to enforce a structure upon local authorities in this way? It creates problems in interpretation (does it mean that each part has to be in a 'stand alone' section or can it be mixed in with other points?) and could result in policy statements that are awkward to read, being led by the requirements in the regulations rather than by the natural flow of sections/sentences. For example, authorities may wish to include other comments about responsible authorities but will they have to have a separate section just for the item under (5a) as regards the body responsible for the protection of children from harm? Or an authority may wish to include a section about representations but will it have to have a separate section about the definition of interested parties? Another example is that the authority may wish to include the information exchange items in the same part as that about enforcement. The worst case scenario is that a local authority receives legal challenges that it has structured its document in the wrong way. Having to deal with such a challenge would be a waste of public money that need not be an issue.

5. (a) *"the principles to be applied by the authority in exercising the powers under section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm"*. - LACORS believes this is completely unnecessary and cannot see that it will be of remote interest to business. What 'principles' could there be? The Act states it is for the local authority to decide the body and it should be left at that.

5. (b) *"the principles to be applied by the authority in exercising the powers under section 158 of the Act to determine whether a person is an interested party in relation to a premises licence, or an application for or in respect of a premises licence;"* - LACORS understands that business would like a clear cut statement as to who interested parties (residents or businesses) are, and are not. However, local authorities cannot provide this; all they can do is abide by the definition in the Act and judge each case on its merits. Public law is such that public authorities cannot provide policies as rigid rules. To do so would open the local authority to judicial review for tying its hands in its decision making. Thus, the 'problem' that this regulation is seeking to solve is not solvable.

Whilst a local authority may decide to have a guideline (e.g. kilometres from the premises concerned), each case must be decided on its merits and other representations must at least be considered. LACORS is also aware that many authorities choose not to decide upon a guideline, on the basis they that wish to be very clear that they will judge each case on its merits. It is LACORS' view that they should be able to do this.

The only place where clarity can really be achieved is via case law. This may mean that policy statements will need to be updated every time there is case law on the matter. LACORS' website item on 'vicinity', which is a comparable matter under the Licensing Act, is as follows.

LACORS has been asked whether it has issued any guidance as regards the term 'vicinity' with respect to whether representations made by interested parties are deemed 'relevant' (Section 13(3) Licensing Act 2003).

LACORS is not issuing guidance on this matter but emphasises that, as in other areas of public law, local authorities are free to have 'policies' but these should not be rigid rules. There are a number of cases on this topic such as *British Oxygen Co v Board of Trade (1971) AC 610*, *Sagnata Investments v Norwich Corporation (1971) 2 QB 614*, *A-G ex rel Tulley v Wandsworth LBC (1981)*, and *R v Secretary of State ex parte Brent LBC (1983)*. It may also be worth considering *R (on the application of Chorion plc) v Westminster City Council (2002)* as regards the notion of a 'strong presumption' being possible but not a rigid rule.

LACORS advisors have virtually all stated that they are not setting geographical limits and that they feel it is important that each representation should be decided on its merits. Where advisors have set limits they emphasise that these are not rigid and inflexible limits; representations are considered on their merits.

DCMS Guidance on the matter is at 5.33 of its Statutory Guidance.

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5. (c) *"the principles to be applied by the authority in exercising the functions under section 29 and 30 of the Act with respect to exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act;"* - LACORS cannot understand the reasoning behind this requirement in the regulations. It cannot see that business would be interested in such detail (except perhaps business' lawyers who would be able to read the Act). The Act sets out the limits of information exchange very clearly. There is certainly nothing at this stage to add to this as the Gambling Commission has not discussed this with LACORS as yet. Even when we are in a position to know what information will be exchanged regularly etc. we still cannot see how it would be of benefit or particular interest to business. Surely business will assume that any information provided to local authorities will be available to the Commission, subject of course to data protection law. Again, this is seen as unnecessary and over regulation.

5. (d) *"the principles applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified in that section."* - LACORS cannot see that any meaningful information can be provided in this regard, especially at the time of drafting policy statements. Gambling Commission guidance on enforcement will not be finalised until much later in 2006. Even at this time, it is not clear how any comment can be made about prosecutions for offences; the powers are set down in the Act.

LACORS would like to emphasise that it has noted reference in the Commission's guidance to both standard inspections but also to risk based inspections so it is clear that there is a lot more to be discussed as to what is appropriate. There is also much on-going work as a result of the Hampton review and the Better Regulation Executive's agenda. If authorities in the future have something helpful/useful to include in their policy statements in this regard then LACORS can recommend that they

do. It is also believed that enforcement / inspection policies must be flexible to changing risks and regulatory environment rather than set rigidly into policy statements.

*Procedures - 7(1)* - LACORS believe that this requirement to publish a notice before publishing the statement is a completely unnecessary regulatory burden. There is no evident explanation as to the perceived benefit. Businesses / interested parties who are interested in the policy statement will be part of the consultation and will therefore be informed about the timeframe for publication etc. It seems ridiculous to LACORS to require a publication about the publication of something. It will result in a waste of time and resources which will need to be covered by the fees. It is also believed by LACORS that this requirement may result in unnecessary time delays in the publication of the policy statement as the notice needs to be published 2 weeks before the policy statement is published. One can assume that authorities may not wish to publish the notice until their policy statement is actually ready for publication itself.

Finally, the consultation document asked for views on the term "principal office" of the authority. LACORS has received feedback that this term is understandable.

LACORS will be sending DCMS and the Gambling Commission an updated version of its licensing policy statement framework with a template included. This will also be made available to industry organisations for comment. You will be able to see how the various requirements from yourselves and the Commission make for a rather lengthy document. It is to be emphasised that the incitement for this is not necessarily from local authorities themselves, and it may just be due to the complexity of the regulatory task.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Du Val', with a horizontal line underneath it.

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