

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

Summary of Consultation Responses and Government's Response

1. Introduction

- 1.1 The Department would like to thank those individuals and organisations that responded to this consultation exercise. The Department received 34 responses and these can be viewed in their entirety, along with a full of list of the respondents on the DCMS website.
- 1.2 A large number of the responses received were from local authority representative groups and individual licensing authorities. However, responses were also received from representatives of the gambling industry, social responsibility groups and the Association of Chief Police Officers.
- 1.3 The responses were largely supportive of the Government's proposed approach and welcomed the discretion afforded to licensing authorities through the imposition of minimum statutory requirements.
- 1.4 This document provides a summary of the main issues raised through the consultation exercise and the Department's response to those issues.

2. The Main Issues Raised

- (i) A number of responses questioned the need for Regulations to be made, emphasising the need for local discretion and autonomy. The responses suggested that the policy aims could be achieved through a non-statutory policy statement produced by LACORS.
- (ii) In contrast, a number of responses stated that the Regulations are not prescriptive enough and allow authorities too much discretion in regard to policy statements, to the detriment to the gambling industry.

Whilst the Government supports LACORS in its development of a policy statement framework and template, this cannot be viewed as a replacement for making Regulations. Authorities will be under no statutory obligation to use the LACORS template, and as such, there would remain a risk that key information may be absent from a number of policy statements, adversely affecting the gambling industry in those authority areas.

A policy statement template therefore, would not achieve the objectives set out in paragraph 3.2 of the Consultation Document, to *'provide transparency, and to some extent, consistency, for persons wishing to apply for a licence or permission under the Act, whilst minimising the imposition of unnecessary financial or administrative burdens on licensing authorities and the industry, and enabling local circumstances to be reflected in licensing policy statements'*.

The Regulations set out minimum requirements, in relation to certain areas that the Government considers are particularly important to be dealt with, that must be dealt with separately in all licensing policy statements to provide a degree of consistency for the gambling industry. In addition to the statutory requirements, and the suggested information set out in the Gambling Commission guidance, authorities are able to include any other information that they feel is helpful, which will also assist them in dealing with local circumstances.

The Department is satisfied that the Regulations strike the right balance between local licensing authority discretion and a national consistent approach for industry and the public.

- (iii) A number of responses asked that the Regulations include a requirement for licensing authorities to undertake a formal, written consultation of no less than 12 weeks.

The Government recommends that licensing authorities follow the Cabinet Office Code of Practice on Consultation, which states that a minimum of 12 weeks for written consultation should be allowed. It is possible that this recommendation, plus the suggestion of consulting relevant trade associations could be included in the Gambling Commission Guidance. The Department has passed this information on to the Commission for their consideration.

- (iv) Some responses indicated that the requirements in Regulations 4 and 5 may cause authorities to produce statements that are awkward to read. Some respondents also questioned the requirements in Regulation 4(2): "the introductory section is also to include (a) a description of the geographical area in respect of which the authority exercises functions under the Act, and (b) a list of the persons whom the authority has consulted in preparing the statement"

The Government is satisfied that the Regulations and the draft Gambling Commission Guidance effectively complement each other in terms of information to be included in licensing policy statements. The requirements set out in Regulations 4 and 5 should not cause authorities to produce statements that are awkward in terms of structure and the separate sections in relation to the areas listed in Regulation 5 are important for the purpose of consistency. It should be noted that, in general, the Regulations do not stipulate where these separate sections must be located, therefore enabling authorities to draft their policy statements in any format they wish so long as the matters are separately dealt with.

In regards to Regulation 4(2), whilst it may be true to say that *most* interested parties and responsible authorities will not require a description of the area or a map to assist them, the Government considers that such information is essential to ensure that *all* interested parties and responsible authorities are aware of the local area to which the statement relates. We consider that the information will be of benefit to the industry, particularly in terms of companies with national coverage, including bookmakers who have previously dealt with local justices rather than the local licensing authority.

Section 349(3) of the Act is drafted widely in order that licensing authorities have significant discretion in terms of the specific organisations or persons

consulted under the wider headings of "one or more persons appearing to represent the interests of persons carrying on gambling businesses in the area" (which could include existing operators, nationally recognised trade associations, local trade networks, the small business service, the CBI, unions, or some or all of the above) and "one or more persons appearing to represent the interests of persons likely to be affected by the exercise of the authority's functions under the Act" (again, the list of organisations/persons under this heading is likely to differ considerably between authorities). Given the discretion that authorities have been given in this area, the Department considers that it is important for licensing policy statements to contain a full list of those persons consulted.

- (v) Some respondents questioned the need for Regulation 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"

Section 157(h) of the Act enables licensing authorities to designate, in writing, a person or body competent to advise the authority about the protection of children from harm. The Government considers that the most appropriate body/person may differ between licensing authorities, depending on local circumstances and as such, the authority should be required to set out the principles it will apply and the criteria it is likely to use when considering which body/person is most appropriate to perform this role.

- (vi) Some respondents expressed concern regarding the requirements in Regulation 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"

Whilst the Department agrees that each representation will indeed need to be considered on its merits, we think it beneficial for those persons who may make representations to be aware of the types of issues the authority may look at when determining whether a person is an interested party.

The Department is not suggesting that licensing authorities should set out who will be an interested party, but authorities must have in mind factors that will be relevant to that determination. The Gambling Commission has set out examples of factors that might be relevant in its draft Guidance to Licensing Authorities, and we would expect licensing authorities to look to that Guidance for help in deciding what should be contained in their statement. In addition, in the view of the Department, it is not the Regulations that require licensing authorities to set out their approach to determining who is an interested party. That requirement arises from section 349 itself, which requires licensing authorities to prepare a statement of principles that they propose to apply when exercising their functions (one of which is determining who is an interested party). All the Regulations do is require that function to be given particular prominence in the statement.

As such, the Department is satisfied that this should remain a statutory requirement within the Regulations.

- (vii) Some respondents expressed concern regarding the requirements in Regulation 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 other persons listed in Schedule 8 of the Act" and in relation to the requirements in 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."

The Government considers it important for licensing authorities to set out as much information as possible as regards their approach in these areas. It will be of particular interest for the industry as well as those concerned about gambling to know whether a licensing authority intends to put in place a risk-based inspection programme, as is recommended by the Government and the Gambling Commission, rather than a routine inspection programme. Additionally, it will be of interest to the industry, and to the public, to be aware of any information exchange protocols the licensing authority has established with other bodies, including law enforcement and regulatory bodies. Sections 30 and 350 of the Act enable information exchange between the Commission and any persons listed in Schedule 6 and between any bodies listed in Part 1 of Schedule 6: they do not require it.

The Government recognises the concerns raised in regard to initial policy statements, given the current lack of established detail on these areas. However, whilst the initial policy statement may contain little in terms of detail, further detail can be included in subsequent statements or revisions following publication of the Commission's guidance on these areas. We are therefore content that these provisions should remain in the Regulations.

- (viii) A number of responses expressed concern over the requirement to publish notice of publication of the licensing policy statement (or any revision) two weeks in advance of publication.

The Government considers the requirement to advertise publication of the policy statement to be fundamental in ensuring that the industry and other persons interested in the authority's approach to gambling in their area are able to access the statement as soon as it is published. However, we consider, on reflection, that this can be achieved by enabling authorities to advertise the publication of the policy statement on the same day as the statement is published. As such, we have amended the final Regulations to this effect.

- (ix) Some respondents raised concerns in relation to the advertisement and publication of licensing policy statements and revisions and authorities' discretion in this area.

The Government is confident that licensing authorities will exercise all of their functions under the Act in a fair and consistent manner, including choosing the most appropriate methods for informing, consulting and notifying persons

interested in the development and publication of licensing policy statements in their area. The Regulations stipulate minimum requirements as to the advertisement and publication of the statements and enable authorities to select methods most appropriate to their area. The Department is content that all of the publication methods listed in the Regulations are suitable vehicles for advertising and publishing statements or revisions. In addition to the statutory requirements, authorities are also able to consult and advertise using methods that are not listed in the Regulations, such as contacting trade associations or notifying all existing gambling premises. As such, the Government is satisfied that this flexible approach does not require amendment in the final Regulations.

- (x) A number of respondents identified some incorrect references within the draft Regulations

These errors will be corrected in the final Regulations.

- (xi) Some respondents felt that the phrase 'principal office' needed defining, and noted that there may be difficulties complying with the requirements in the Regulations where the licensing functions of an authority were not located at its principal office.

The Department is content that the term 'principal office' is well understood and a well used term in legislation. There are a number of instances in other legislation where the term 'principal office' of an authority is used without further definition. As such we do not intend to seek to define the term within the remit of these Regulations. However, the Department does accept that licensing authorities might have good reasons for allowing viewing of the statement at premises other than the principal office. The Regulations have therefore been amended to permit the statement to be viewed at premises stipulated in the notice which advertises publication of the statement.

3. Next Steps

- 3.1 The Department hopes to lay the final Regulations on 10 March 2006 in order that they will come into effect on 31 March 2006 to enable licensing authorities to begin drafting their three-year licensing policy statements as soon as possible thereafter.