



26 February 2004

Elliot Grant  
Gambling Bill Team  
Department for Culture, Media and Sport  
2 – 4 Cockspur Street  
LONDON  
SW1Y 5DH

Dear Sir

**Draft Gambling Bill**

The Institute of Licensing is the predominant organization within England and Wales to represent over three quarters of the local authority licensing officers who will be charged with implementing various aspects of this Bill, as well as lawyers and others who have an interest in licensing and registration issues.

The Institute is grateful for the opportunity to comment on the proposals in advance and welcomes the opportunity to get involved in further development of this significant piece of legislation.

If you require any further information or clarification at this stage please contact me as shown.

Yours faithfully

  
James Button  
Chair, Institute of Licensing



## **INSTITUTE OF LICENSING COMMENT ON DRAFT GAMBLING BILL**

The Institute of Licensing is the predominant organization within England and Wales to represent over three quarters of the local authority licensing officers who will be charged with implementing various aspects of this Bill, as well as lawyers and others who have an interest in licensing and registration issues.

The comments below of the Institute of Licensing are concerned predominately with those parts of the Bill that affect local authorities. We make no comment on the general practice of gaming and/or gambling itself, only the practicalities involved in licensing those activities which Parliament accepts are lawful ones to be pursued.

We are generally pleased to see that the philosophy and approach of the Bill mirrors that of the Licensing Act 2003. The Bill represents the possibility of an enhanced responsibility for local authorities in this area, with the likelihood of additional burdens being given soon after the transfer of responsibility for liquor licensing. Implementing a similar statute to the Licensing Act will undoubtedly make the process easier.

We note however that much of the detail is to be contained in delegated legislation that is still to be consulted upon. While we may not have commented on every clause, this does not imply that we do not have reservations about the possible future implications for applicants, the public and licensing authorities in some areas. A particular example is contained in clause 131(2)(b). Whilst we welcome the notion behind a time period being stipulated for giving notice of an application, we are of course unable to comment on whether the government's envisaged time is acceptable or not.

Our comments below are linked to specific clauses in the draft Bill:

- CI 19 We would recommend that the words “within a reasonable time” be added to the end of clause 19(3). A further clause should be added:
- ‘19(4) If it is not reasonably practicable for a licensing authority to comply with a requirement under sub-section (2) it may provide the information in some other manner’.
- CI 27 We would prefer to see one interpretation clause for the whole Bill; please see our comments on section 236.
- CI 58 The Institute is concerned that the proceedings before the Commission may not fulfill the requirements of Article 6 of the European Convention on Human Rights and Fundamental Freedoms by allowing information or opinions about individual applicants to be taken into account without that applicant having prior notice or being able to comment on that information. We would recommend for the sake of clarity that a new sub-clause (3) is added:
- (3) The Commission in relation to an applicant under section 55 may take no information or opinion into account unless that information or opinion is first disclosed to the applicant and he has been given the opportunity to comment upon it.
- CI 67 We understand that applicants can apply under cl 55 for an operating licence from the Gambling Commission to provide facilities for gambling. Under cl 67(b)(i) the Commission can impose by way of condition a limit on the number of sets of premises on which the licensed activities may be carried on. The Institute understands that applicants have still then to apply to each local authority for a premises licence. We feel therefore it is wrong for the Gambling Commission to be able to impose a condition under cl 67(b)(ii) to limit the number of people allowed on any premises where those activities can be conducted. We would submit that is a question to be more properly left for local authorities to assess taking into account factors such as location, fire safety, residential amenity (especially for large casino premises licenses) and related issues.
- CI 94(3) We were pleased to see that failure to pay an annual licence fee requires the Commission to revoke a licence, as the Licensing Act 2003 does not contain a similar provision.
- cl 121 The definitions of ‘large casino premises licence’ and ‘small casino premises licence are unclear. We would recommend that sub-clause (2)(a) states:

**'(2)(a) a "large casino premises licence" if it relates to a large casino as defined in regulations made under clause 10(5)'**

**and sub-clause (2)(b) is consequentially amended**

- CI 124(5)** The principle of three yearly policies is accepted, as it fits in with other policies that local authorities are required to produce. Given the requirement to do so in the Licensing Act 2003, it is recommended that the timings for policies under the Gambling Bill should be co-terminus with that Act.
- CI 125** We agree with the comments of the Local Government Association that this clause restricts local democracy by placing local policies and decision-making subordinate to Codes of Practice issued by the Gambling Commission. Local authorities – who are elected to make decisions for their own areas and have a responsibility for economic well-being under the Local Government Act 2000 – should see their own policies take precedence providing that the policy itself is in furtherance of the licensing objectives.
- CI 128** Given that the licensing objectives do not include the same public safety considerations and amenity considerations as under the Licensing Act 2003, we see no need for local authority environmental health or local planning authorities to be statutory consultees within the terms of clause 128(1). Applicants wishing to operate premises where gambling takes place will in any case have to secure the necessary planning permission (negating the need for the local planning authority to be a statutory consultee) and also have to comply with environmental protection and health and safety legislation. Adding these to the list of responsible authorities adds to the cost and complexity of each application, not to say the operating costs of those responsible authorities themselves.
- CI 129** The Institute thinks the phrases 'sufficiently close' and 'likely to be affected' are insufficiently defined. Leaving it to the individual circumstances of each case is likely to result in inconsistencies in application and interpretation. We would suggest that the definition of 'interested party' is the same as in the Licensing Act 2003.
- CI 130(5)** This clause seems to suggest that it is a condition precedent for applicants to have a right to occupy premises before they may apply for a premises licence. An agreement to take a lease however is often conditional on first obtaining a licence, placing the applicant in a difficult position. Whether or not they have a right to occupy premises should not preclude a person from obtaining a licence, although the

Institute recommends that premises licences must be put into use no later than eighteen months from being granted.

- CI 133 It appears that the authorised officers of the licensing authority are unable to make representations or observations on the application. We believe this point should be clarified in light of our comments on clause 228 below.

We believe that it is too onerous for a licensing authority to hold a hearing under clause 133(b) if they are simply proposing to include simple conditions on a licence to further the licensing objective. If for instance, an authority is proposing to include a requirement that CCTV should be installed in a booking office, this should best be decided in the professional judgment of officers and the applicant without the need for a more expensive hearing.

- CI 133(3) We are confused by sub-clause (c) as we fail to see how a licensing authority can determine that non-frivolous and non-vexatious representations will “certainly not influence” its determination of an application unless it holds a hearing to decide whether it would be influenced or not.

- CI 150 We would suggest changing the word “time” in sub-clauses (3)(a) and (5)(a) and (b) to “date”, unless even more precision is needed as to when the transfer takes place in which case the words “date and time” should be used.

- CI 153 We see little difference in the concept of premises licences under the 2003 Act and this Bill, and so question why – given the power to impose conditions and to review premises licences – there is a need to limit the term of a licence.

- CI 159(2) We disagree that the applications for review should contain or be accompanied by prescribed information or documents as envisaged in sub-clause 159(2), although accept it should be presented in a prescribed manner. We are not aware of any other licensing regime where those calling for the grant of a licence to be reviewed are told what evidence they may present before the tribunal, and indeed think that this may not only amount to a fetter on the licensing authority’s discretion but also acts contrary to article 6 of the European Convention on Human Rights and Fundamental Freedoms.

We believe that applicants for a licence review should, only clause 159(3)(a) indicate the substantive grounds for the reason for applying for a review, rather than simply a notice of his application to the licensee.

On balance we believe provision should be made in clause 159(4) to prohibit the publication of the name and address of an interested party in making an application for a license review unless they agree to its publication. We feel that the burden of paying for an advertisement under this clause should fall on the party making the application and not the licensing authority and clause 159(4) should be amended accordingly.

- CI 163(4) Our comments in respect of clause 133(3) are repeated in respect of sub-clause (b)(iii).
- CI 164(3) We are unable to see the logic behind the power to revoke a licence on the basis either that it has not been used, or that it may be used more if a different person held it. We are not aware of any parallel provision in other local authority licensing legislation, which appears to reintroduce a 'need' test via a backdoor in a way which appears to affect a person's right to property contrary to Article 1 to Protocol 1 of the European Convention on Human Rights.

We would recommend deleting this sub-clause.

- CI 171 We are pleased to see that a further right of appeal to the High Court exists, which is absent from the Licensing Act.
- CI 181 We would suggest the words 'oral or written' are inserted before the word 'representations' in sub-clause (2).
- CI 185 CI 171 already grants a right of appeal in relation to premises licences and so we see sub-clause (7) as repetitive and superfluous.
- CI 186(2) We see no reason why the Secretary of State should specify in regulations how a copy of a temporary use notice should be endorsed under sub-clause (a). It appears to us to represent a costly, bureaucratic process within a draft Bill that is already heavily reliant on prescription and regulation. We would prefer details of this kind, which would not be difficult to word, to be presented on the face of the Bill.
- CI 187 We would recommend that a new sub-clause is added to make clear the consequences of a licensing authority failing to determine proceedings with the proposed statutory two month period:
- (2) If a licensing authority fails to complete proceedings in relation to a temporary use notice within two months in accordance with sub-clause (1) that temporary use notice:

(a) in cases where no notice of objection have been received under clause 180, shall be treated as having been given under clause 178 without any objection being received;

(b) in cases where notices of objection have been received under clause 180, shall be treated as if the licensing authority had given a counter-notice under clause 183 or a notice under clause 184.

CI 191(4) We repeat our comments in relation to clause 19.

CI 196 We would recommend that the definition of “prize” includes ...any money (or article for money’s worth)...’

CI 202 We again feel that the proposed penalty is out of proportion for the offence when compared to the penalty contained in section 136 of the Licensing Act 2003 for providing unlicensed activities (six months’ imprisonment and/or a maximum fine of £20,000).

CI 204 We suggest that the word ‘and’ is deleted from sub-clause (b)(i) and added to sub-clause (b)(ii) and an additional sub-clause (b)(iii) is added:

(iii) the time or manner in which the payment is made.

CI 206(3) We see the definition of ‘prize’ in sub-clause (3)(b) as being confusing and unnecessary. ‘Prizes’ are already expressed as being defined for the purposes of the Act in clause 196. If money, articles or services are said to be a prize for the purposes of Part 9, it is in our view then immaterial who provides them as envisaged by sub-clause (3)(b). We would recommend the latter clause is deleted from the Bill.

CI 208(1) Lottery tickets may become available on the internet, or via electronic means without the physical presence of a document or article, which would accord with the government’s policy of liberalizing gaming control. This clause should be amended to insert ‘(a)’ before “For the purposes of this Act...” and a new sub-clause inserted after:

(b) A reference to a document or article includes a ticket that may only be provided on or from a computer provided that the ticket can be produced in some physical form.’

CI 215(5) The words “including those published or displayed on a computer” should be inserted immediately after the word “document” as lotteries may be advertised on computers and via the internet.

**CI 218** Organisations that conduct small society lotteries are usually small, local volunteer bodies that contribute to the vitality and fabric of communities throughout the country. Promoting unregistered lotteries or in breach of a condition would risk damaging public confidence in the way in which such lotteries were conducted. However, we are not convinced the case is made for imposing the same penalty here as for misusing lottery profits, particularly as the proposed offences would be one of strict liability. It may be that a society lottery is conducted properly, and that the proceeds are wholly devoted to charitable purposes, save for the effect it was not registered with a local authority in accordance with Schedule 8.

We would argue that the penalty for offences under clause 218(1) should be of less consequence. We would also suggest that a sub-clause 218(3) is renumbered 218(4) and a new sub-clause (3) is added:

'(3) It shall be a defence to a charge under this section for the accused to show they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.'

**CI 222** Given that enforcement responsibilities under the Bill are also to be given to authorised officers of the local licensing authorities, it appears to us that the responsibilities of gambling inspectors could be carried out by such officers, either in large metropolitan areas or conversely rural areas where there may be less need for Commission staff. We would suggest include adding '(a)' to sub-clause (2) and a new sub-clause (b):

'(b) The Commission may, with the consent of the relevant licensing authority, appoint an authorised officer of that authority as a gambling inspector. An officer appointed under this clause may exercise all the powers and duties of a gambling inspector under this Act and shall act in accordance with the instructions of the Commission whilst performing those powers and duties'.

Sub-clause (4) should be renumbered as (5) and a new sub-clause (4) be added:

'(4) The Commission shall pay to a licensing authority or in respect of a gambling inspector appointed under sub-clause 2(b) such sums under sub-clause (3) as it appears to the Commission and the licensing authority appropriate for the functions undertaken on the Commission's behalf under this Act.'

CI 223(4) We repeat our arguments under clause 128 for excluding those inspectors under sub-clauses (a) and (b). If, for example, a fire inspector wishes to inspect premises, he has powers and rights to do so under the Fire Precautions Act 1971. In the Institute's view, such officers would not want to also enforce provisions of the Gambling Bill and we see no need for them to be granted. We do not see why fire inspectors, environmental health officers, surveyors of ships and 'others of a class prescribed' under sub-clause 223(4)(e) should want to enter premises under clause 225 for deciding whether any of the circumstances in sub-clause 225(3) exist. They each have their own statutory powers and spheres of responsibility, none of which advances the licensing objectives. If these powers are extended to these officers, then authorised local authority officers should in addition (as agents of the licensing authority itself) have all the same duties, powers and rights under the Bill as constables.

CI 224 Too often new legislation is given to local authorities to exercise without having corresponding powers to enforce it. Whilst some recent legislation is seeking to redress this, (eg the Anti-Social Behaviour Act 2003), we feel that this clause is another example of an insufficiently robust enforcement regime given to local authorities. We would most strongly urge the words

' , or authorised person'

be inserted after 'constable'.

Local authority enforcement and investigation officers are highly competent in bringing prosecutions and taking other enforcement action under a wide range of legislation and therefore (subject to our comments below) should be accorded the same privileges as constables and gambling inspectors in this statute. This would, for example, allow authorised officers to enforce the provisions under Part 3 of the Act which would otherwise be unenforceable by them, despite an expectation from the residents in the relevant area that the local authority (which grants the premises licence) should be an enforcing authority.

CI 226 As local authorities are not the licensing authorities in respect of operating licences, the Institute does not in this case believe that authorised officers need the same powers as constables and gambling inspectors as expressed in clause 226(1).

CI 228(1) This clause appears to us to be superfluous. It provides no penalty should an applicant for a premises licence refuse to admit a constable, gambling inspector or authorised person to their premises. Clearly it is

in the applicant's interest to do so and a failure to do so may lead to representations being made by the relevant authority. We feel that this clause should be retained if there is to be an express power for the licensing authority to take account of the representations and observations of its own authorised officers under clause 133.

CI 229(2) In our experience it is not uncommon for the registered address of a local society lottery to be a private residence. In the context of our comments about cl 224, we would recommend that the following words are inserted at the end of sub-clause (2)(b):

'except in accordance with the terms of a warrant signed by a magistrate'.

CI 223 We would suggest that the words

'; or a constable not in uniform'

be inserted after 'A gambling inspector'

CI 236 We think that a statute of this length and complexity would be greatly assisted by having only one interpretation clause, rather than different terms being interpreted at different points throughout its whole length. The definitions of private and non-commercial gaming and betting at clause 27 should be defined within this section

CI 240 The Bill contains no details of the transitional provisions that will operate, and presupposes that existing holders of permits under section 34 of the Gaming Act 1968 or local society lotteries registered under the Lotteries and Amusements Act 1976 will be required to re-apply under the Gaming Bill at a date in the future, as well as the workload involved in premises licensing.

The Institute is concerned about the additional burden this may place on local authorities coming hard on the heels of the likely implementation of the Licensing Act 2003 and urges the government to consider phasing the new legislation over a sensible period.

Sched 1

Para 2 It appears to us that the wording of sub-para (2)(a) excludes private and non-commercial gaming if it occurs in nursing homes, residential care homes and other similar establishments that may be administered in the course of a trade or business where more than half of the participants are residents.

**Sched 4**

**Part 1** We would suggest that sub-paragraphs (e) and (f) of paragraph 2 are deleted as they do not appear to us to represent any real connection with the licensing objectives.

We would suggest renumbering paragraph 11 as paragraph 12 and inserting a new paragraph 11:

'11 Being disqualified under section 129 of the Licensing Act 2003 from holding a personal licence under section 111 of the Licensing Act 2003.'

If an individual is not an appropriate person to hold a personal licence to sell alcohol under the Licensing Act we would submit that they should also not be eligible to hold a personal licence under the Gaming Bill.

We would also suggest the Bill contains similar provisions to those in sections 113(3) and 120(5)(b) of the Licensing Act 2003 so that offences committed abroad can also be taken into account if they are, in the opinion of the police, broadly comparable to offences committed within this jurisdiction.

**Sched 6**

**Para 5(a)** Given the apparent intention to promote consistency throughout licensing legislation with prescribed documents, notices and forms of endorsements, we are perplexed to see that applications for permits for a Category D machine may be made in a form and manner specified by the licensing authority. We would like this, too, to be a prescribed process.

**Sched 6**

**Para 9(b)** We would recommend adding the words 'oral or written' before 'representations'.

**Sched 6**

**Para 10** Sub-para (2) contains provisions for permits to be amended to show a change of name. We would also recommend that, given para 2(1) requires an individual who occupies premises must apply for a permit, there is no reason why such permit cannot be transferred to a new occupier along the same lines of clause 150 (Transfer of premises licence).

**Sched 6**

**Para 11** Existing provisions for local authorities under section 34 of the Gaming Act 1968 allows permits to be granted for a period of up to three years.

It is our experience that many permit holders move, fail to notify licensing authorities of a change of circumstances, lose or forget to renew their permits even within those thirty-six months. We therefore consider the ten-year proposed duration to be manifestly excessive and urge that they should be issued for either one or three years, in line with other permits and licences issued by local authorities.

**Sched 6**

**Para 16** We would recommend that a new sub-para (b) is added

'that within the preceding 24 months the holder of the permit has been convicted of an offence under this Act arising from the use of that permit and the permit has not been forfeited'

And the existing sub-para (b) is consequentially renumbered.

**Sched 16**

**Para 18** Insert a new sub-para (b):

'(b) a gambling inspector, or'

and renumber sub-para (b) as sub-para (c)

**Sched 7**

**Para 2** We would recommend that a new sub-para (c) is added:

'(c) when a payment is made'.

**Sched 8**

**Para 9** We think that the definition of 'works lotteries' is potentially unfair and may lead to confusion by limiting participants to those who all work on the same work premises. This excludes the possibility of employees working on more than one site for one employer (perhaps separated by only a very short distance) being unable to participate in their employers' lottery. Not only would they face this bar, but any other person conducting a business from the premises or sub-contractors would be eligible to participate. We would suggest that para 9(1)(b) is amended to read:

'(a) the promoters work on a single set of premises; and

(b) each person to whom a ticket is sold or supplied works on premises occupied by the same employers as the promoters'

**Sched 8**

**Para 12** We would understand the purpose of this provision is to bring details of the availability of the various lotteries to those allowed to take part in them, but not to members of the public. However, it appears to us that it would be possible for an advertisement in a works lottery (such as a shop or hospital) to be seen by members of the public who are unable to participate. We would therefore recommend the following amendments:

**'(2) No advertisement for a work lottery may be displayed except on the premises occupied by the employers.**

**Insert a new para (4)**

**'(4) No advertisement for a lottery under this paragraph may be displayed (unless reasonably impracticable not to) so that it is plainly visible to people other than to those whom may be entitled to take part in the lottery.'**

**Para 22** We are unsure whether it is intended for services or other facilities to be available in a customer's lottery if the value is more than £50. We would recommend that this paragraph is given further clarification.

**Sched 8**

**Para 32** Insert new sub-para:

**'(e) the name of the licensing authority with whom the society is registered.'**

**Sched 8**

**Para 44** Insert new sub-para (c):

**'(c) that the application is not consistent with the licensing objectives or'**

**and renumber the existing paragraph (c) accordingly.**

**Sched 8**

**Para 46** Insert new sub-paragraph (d):

**'(d) make an order as to costs'.**

Just because a registered society is small does not mean that it should necessarily have to escape paying costs in the event of an unsuccessful appeal, particularly as the Bill will allow them to raise up

to £20,000. It is unfair for council taxpayers to shoulder this burden, and the court is able to make a fair and equitable order in each case.