

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

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

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

CONTENTS

Part 1: Introduction Pages 3-4

Part 2: Background Page 5

Part 3: The Options Pages 6-8

Part 4: Proposed Approach Pages 9-11

Part 5: Conclusion Page 12

Annex A: Draft Gambling Act 2005 (Licensing Authority Policy Statement) (England
and Wales) Regulations

Annex B: Partial Regulatory Impact Assessment

1. Introduction

- 1.1 The Gambling Act 2005 (the Act) gives licensing authorities¹ a range of new powers to license gambling premises in their communities and requires licensing authorities to perform a number of different functions, including issuing premises licences, temporary use notices and a range of permits and other permissions. To assist authorities in this task, and to provide transparency for those wishing to apply to an authority for a permission under the Act, all authorities are required to prepare and publish a licensing policy statement.
- 1.2 Section 349 of the Act sets out the procedures licensing authorities must follow in preparing such a policy. Following widespread consultation, authorities will publish a licensing policy statement describing the principles they intend to apply in exercising their various functions. The policy will have effect for three years, but the authority may review and alter the policy during that period. The Secretary of State, or Scottish Ministers in Scotland, has the power to make regulations about the form of statements, the procedure to be followed in relation to them and their publication. An order of the Secretary of State will determine the first day of the initial three-year period.
- 1.3 This consultation document is concerned exclusively with the regulations that the Secretary of State will make under section 349 of the Act. These regulations may prescribe:
 - a) The form of statements;
 - b) The procedure to be followed in relation to the preparation, review or revision of statements; and
 - c) The publication of statements.
- 1.4 A draft of the Regulations, which the Government proposes should relate to the licensing policy statement, forms **Annex A** to this document. If made, these Regulations would be subject to the “negative resolution” procedure. This means that the secondary legislation can technically come into effect immediately, but is laid before Parliament after it has been made and would be annulled by Order in Council if either House passed a resolution against it within 40 days. There is also, however, a “21 day rule” which embodies an undertaking to lay an instrument subject to the negative resolution procedures at least 21 days before it is due to come into effect. Scrutiny of the instrument by the House of Lords Select Committee on the Merits of Statutory Instruments and the Joint Committee on Statutory Instruments is thus usually ensured before the provisions can come into force.
- 1.5 We are particularly keen to hear from licensing authorities, chief officers of police, existing operators and potential new operators in the gambling industry, members’ and commercial clubs, pubs and other premises licensed for the sale of alcohol that are entitled to make gaming machines available for use, residents’ associations, charity and voluntary groups, and individuals, all of whom may be interested in these Regulations.

¹ Section 2 sets out those considered to be licensing authorities under the Act. In particular, it should be noted that the definition of licensing authority includes licensing boards in Scotland. However, Scottish Ministers may make Regulations regarding policy statements for licensing boards.

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

- 1.6 We welcome any comments you may have on these proposals and on the draft Regulations. Any views or comments must be sent by **24th February 2006** to:

Jill McKenzie
Gambling and National Lottery Licensing Division
DCMS
3rd Floor
2-4 Cockspur Street
London
SW1Y 5DH

Or by email to Jill.McKenzie@culture.gsi.gov.uk

- 1.7 All information in responses, including personal information, may be subject to publication or disclosure under Freedom of Information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

2. Background

- 2.1 The Gambling Act 2005 received Royal Assent on 7 April 2005. The Act gives new responsibility to licensing authorities to undertake a number of licensing and regulatory functions in relation to gambling premises. In all of their activities, authorities will be guided by the three licensing objectives set out in section 1 of the Act:
- To prevent gambling from being a source of crime and disorder, being associated with crime or disorder or being used to support crime;
 - To ensure that gambling is conducted in a fair and open way; and
 - To protect children and vulnerable persons from being harmed or exploited by gambling.
- 2.2 In order to assist authorities in undertaking these new responsibilities, and to provide transparency for those wishing to apply to an authority for a permission under the Act, section 349 requires all authorities to prepare and publish a licensing policy statement.
- 2.3 The licensing policy statement will last for a maximum of three-years, but can be reviewed and revised by the authority at any time. It must set out the principles the authority proposes to apply in exercising its functions under the Act during the three-year period to which the policy applies. The statement must be produced following widespread consultation with those bodies and persons set out in subsection (3) of section 349. The Secretary of State, or Scottish Ministers in Scotland, has the power to make regulations about the form of statements, the procedure to be followed in relation to them and their publication. An order of the Secretary of State will determine the first day of the initial three-year period.
- 2.4 This consultation paper explores the Department's current thinking as regards the content of these Regulations and invites comments and feedback on the proposals. As previously mentioned in paragraph 1.3 above, the Secretary of State, or Scottish Ministers, can make regulations about:
- a) The form of the statement;
 - b) The procedure to be followed in relation to the preparation, review or revision of statements; and
 - c) The publication of statements
- 2.5 This paper will address the options available to the Department regarding making these Regulations (Part 3 of this document) and will then set out in detail the Department's preferred approach and justification (Part 4 of this document). A copy of the draft Regulations is attached at **Annex A** and the Regulatory Impact Assessment is attached at **Annex B**.

3. The Options

- 3.1 In assessing the most suitable approach to making the Regulations, the Department has taken account of the need to balance the needs of the gambling industry and other interested persons (i.e. consistency and transparency) against the needs of licensing authorities (i.e. to be able to take account of local circumstances). The Department is also keen to avoid imposing unnecessary financial or administrative burdens on authorities or the industry.
- 3.2 As such, the options available to the Department have been considered against the following objective: *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.*
- 3.3 The Department's preferred approach, considered to fully meet this objective, is set out in detail in Part 4 of this paper. However, the Department gave consideration to the following other options in regard to drafting the Regulations:
- 1) Prescribing the exact form of the Regulations, including the methods for preparing, reviewing, revising and publishing the licensing policy statements;
 - 2) Not making the Regulations. This would mean licensing authorities would have complete discretion over the form and publication of licensing policy statements;

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

- 3.4 Option 1 would involve prescribing the exact form of licensing policy statements, including the methods for preparing and publishing the statement and the circumstances in which an authority must review or revise statements. There would be little or no discretion for the licensing authority to give greater space or emphasis to those functions that were most relevant in its area, so the ability of the authority to tailor the statement to suit local circumstances would be constrained.
- 3.5 Taking this approach goes against the very reasons why the Government determined that licensing authorities should be given responsibility for the licensing of gambling premises. The Gambling Review Report, prepared by the Gambling Review Body chaired by Sir Alan Budd, referred to the Government's Liquor Licensing White Paper, which stated that *"there are...compelling reasons in favour of giving the local authority (at district level) the responsibilities... (1) accountability: we strongly believe that the licensing authority should be accountable to local residents whose lives are fundamentally affected by the decisions taken; (2) accessibility: many local residents may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors. We consider that the same arguments apply to gambling premises."*²
- 3.6 The Government supported the Review Body's recommendation that licensing authorities should be responsible for licensing all gambling premises³. This recommendation was accepted on the basis that authorities are also best placed to

² The Gambling Review Report, July 2001, page 99.

³ A safe bet for success-modernising Britain's gambling laws, March 2002, page 9.

integrate policy on premises licensing with wider community strategies such as crime prevention and planning. Adopting option 1 could therefore prevent authorities from effectively integrating premises licensing policy with other significant local initiatives.

- 3.7 If the Regulations were drafted to take a particularly prescriptive approach to the licensing policy statements, it is likely that this would impose a number of unnecessary financial or administrative burdens on authorities. If the Regulations included requirements as to the form of the entire statement, it is likely that this would result in unnecessary financial or administrative burdens on authorities. For example, licensing authorities might want to publish matters in the statement that go beyond the basic requirements, such as a statement of principles that it proposes to apply in relation to applications for certain permits as it could save the cost and administrative burden of producing separate documents. A fully prescribed form of the statement would not leave space for such matters.
- 3.8 Whilst this option fails to fully deliver the latter part of the objective of the Regulations (minimising the imposition of unnecessary financial and administrative burdens on licensing authorities), it does in part meet the former part of the objective (to provide transparency, and to some extent, consistency, for persons wishing to apply for a licence or permission under the Act). Businesses with branches across England and Wales would, for example, have far less information to digest regarding local differences between authorities, resulting in both cost and time savings with regard to applications for premises licences and other permissions. On the other hand, this benefit to industry and individuals in general might be negated if licensing authorities were unable to include additional information that they think could be helpful.
- 3.9 In conclusion, we do not consider that the potential benefit to the gambling industry in adopting option 1 outweighs the burdens imposed on licensing authorities. Additionally, we feel that taking forward option 1 would be contrary to the Government's rationale for transferring responsibility for licensing gambling premises to licensing authorities.

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

- 3.10 This option would involve the Government taking no action in making Regulations. The effect of this would be complete discretion for licensing authorities to determine the form and content and the preparation, review and publication of the licensing policy statement.
- 3.11 This approach does not fully meet the objective of providing transparency, and consistency, to persons wishing to apply to a licensing authority for a permission under the Act. Indeed, adopting this option would impose significant burdens on the gambling industry. This option is likely to result in businesses and individuals taking much longer to read and understand the various policy statements, as the information could be set out in very different ways, with varying prominence given to particular licensing authority functions. This may result in the need for further discussion with licensing authorities in order to clarify the authority's approach to various aspects of licensing or regulation, such as inspection.

- 3.12 In addition, the Government does not consider this option to be particularly beneficial to licensing authorities themselves. Some authorities have indicated that without Regulations prescribing, to some degree, the appropriate way to approach the licensing policy statement, they will have some difficulty in determining what to include and the prominence that should be given to particular functions. This is because the licensing and regulation of gambling premises, and indeed the content of the Gambling Act 2005, is still very new to authorities.
- 3.13 Of course, some authorities would prefer to draft their own licensing policy statements, free from any Government intervention. For those authorities, this option provides a number of benefits, however these benefits are realised at the expense of transparency and consistency for the gambling industry for the reasons set out in paragraph 3.11 above.
- 3.14 In considering this option, the Government concludes that any benefits to licensing authorities would fail to outweigh the significant burdens imposed on the gambling industry.

4. The Proposed Approach

- 4.1 The Department's preferred approach is to impose minimum statutory requirements on all licensing authorities (in England and Wales) in relation to the statements. It is considered that this approach will assist in meeting the objective as set out in paragraph 3.2 by providing transparency, and to some extent, consistency for those persons wishing to apply for a licence or permission under the Act. Additionally, it is considered that this option does not impose unnecessary financial or administrative burdens on licensing authorities or the gambling industry.
- 4.2 The Regulations attached at **Annex A** have been drafted to reflect this approach. However, the Department recognises that responses received as a result of this Consultation exercise may offer improvements to the Regulations that go further in meeting the objective. As such, the Regulatory Impact Assessment attached at **Annex B** sets out a fourth option to enable the Regulations to be introduced as currently drafted with any amendments emerging from the public consultation. Consultees should bear in mind that the Regulations are a working draft, and as such, the language and format of them is subject to change. The policy reflected in the substance of the Regulations will not change unless the response to this Consultation suggests that it should.
- 4.3 When considering the scope and content of the Regulations, the Department has taken steps to ensure that both the Regulations made by the Secretary of State under section 349 and the guidance issued by the Gambling Commission under section 25 of the Act complement each other. To this end, the Department has given due consideration to this interaction to aid consistency of approach and to ensure that sufficient information is available to authorities and other interested persons either through the Regulations or via the guidance.
- 4.4 Section 349 of the Gambling Act requires licensing authorities to set out the principles that they propose to apply in exercising their functions under the Act. The content of the policy statement is therefore determined by the Act itself. The Department has, however, determined that it will be appropriate for the regulations to prescribe a number of matters that must be dealt with separately in the licensing policy statement. This approach will ensure that the licensing authorities' approach to certain fundamental functions is readily identifiable to businesses and individuals who are concerned with premises licensing. In addition, it gives minimum requirements to authorities about how policy statements are to be approached and the level of detail that is required in relation to particular matters.
- 4.5 In summary, the Regulations as they are currently drafted require authorities to set out their approach and the principles they intend to apply with regard to the following in all licensing policy statements:
- The designation of a body competent to advise the licensing authority about the protection of children from harm as a responsible authority⁴;
 - Interested parties;
 - Information exchange; and
 - Inspection and prosecution.

⁴ Section 157(h) gives licensing authorities discretion to determine the most appropriate body in their area to perform this function and to designate that body in writing.

Licensing policy statements must also contain an introductory section setting out the area over which the licensing authority will exercise its functions and a list of those persons/organisations consulted in producing the statement. Where a licensing policy statement is revised, it too must set out the persons consulted and, to the extent that it deals with the matters listed above, contain a separate section dealing with the authority's approach to those matters.

It is envisaged that the Gambling Commission guidance will contain further details regarding the information to be contained in each section and will set out further requirements about the contents of the statements.⁵

- 4.6 The Department is keen to avoid imposing unnecessary administrative or financial burdens on authorities regarding the preparation, revision and publication of licensing policy statements. However, we are mindful that there are some benefits in ensuring that all licensing authorities deal with important issues in a similar manner. To this end, the Regulations are not unnecessarily prescriptive on authorities in terms of preparing the statement or in prescribing the circumstances in which a review or revision must be carried out. However, we do consider it appropriate for the regulations to stipulate the following:
- 4.7 Before publishing a licensing statement or subsequent revision, the Regulations require authorities to:
- a) publish a notice of the intention to publish a statement or revision (this must be done no less than two weeks before the statement or revision is to be published);
 - b) specify the date on which the statement or revision is to be published;
 - c) specify the date on which the statement or revision will come into effect;
 - d) specify the internet address where the statement or revision will be published and the address of the premises at which it may be inspected;
 - e) publish the notice on the authority's website and in/on one or more of the following places:
 - a local newspaper circulating in the area covered by the statement;
 - A local newsletter, circular, or similar document circulating in the area covered by the statement;
 - A public notice board on or near the principal office of the authority;
 - A public notice board on the premises of public libraries in the area covered by the statement.
- 4.8 With regard to publication, the Regulations stipulate that the licensing policy statement or any subsequent revision must be published on the authority's website and be made available for inspection by members of the public in the principal office of the authority or a public library in the area covered by the statement. The statement or revision must be published at least one month before it takes effect. The Gambling Commission guidance is likely to contain further information about the circumstances that may give rise to authorities considering whether it is appropriate or necessary to review or revise the licensing policy statement.
- 4.9 The Department does not consider there to be any significant burden on licensing authorities in requiring the matters listed to be included in the licensing policy statement; authorities will need to address their approach to the application of their

⁵ Licensing authorities must have regard to the guidance from the Gambling Commission.

functions under the Act, and the Regulations go no further than to ensure that certain aspects of their approach are given particular prominence. In addition, the Department does not consider there to be a significant burden imposed on authorities as regards the preparation, review, revision and publication of the policy. Indeed, the Regulations as they are currently drafted stipulate only a small number of minimum requirements that authorities must adhere to.

- 4.10 The Department does not consider there to be any significant costs to the gambling industry in proposing this option. Indeed, we think it is likely to reduce costs likely to be borne by the industry and other individuals if these regulations were not made. The industry will be assured that key matters relating to each authority's approach to the licensing of gambling premises in their area will be set out in a consistent manner in licensing policy statements. The Department recognises, however, that any degree of discretion afforded to licensing authorities in this regard will mean that the actual content of the policy statements is likely to differ considerably between authorities to accommodate local circumstances. Whilst we recognise that this may increase the time and work involved for the gambling industry, we believe this approach to be proportionate and justified.
- 4.11 The Department is satisfied that the objective set out in paragraph 3.2 of this paper, *to provide transparency, and to some extent, consistency, for persons wishing to apply to for a licence or permission under the Act, whilst minimising the imposition of unnecessary financial or administrative burdens on licensing authorities and enabling local circumstances to be reflected in licensing policy statements*" will be met through the introduction of this option. However, the Department recognises that responses received as a result of this Consultation exercise may offer improvements to the Regulations that go further in meeting the objective. As such, the Regulatory Impact Assessment attached at **Annex B** sets out a fourth option to enable the Regulations to be introduced as currently drafted with amendments emerging from the public consultation.

5. Conclusion

5.1 The Department is keen to hear your views on the proposed Regulations. We would be grateful if you could offer your comments on the proposal having regard to the following questions:

- **Is there anything else you think ought to be included in the licensing policy statement regulations and why?**
Remember that the regulations have to be precise- it is not possible to make vague statements. Give thought as to whether your suggested inclusion is more appropriate for the Gambling Commission guidance.

- **Is there anything that we intend to include in the licensing policy regulations that you disagree with and why?**

In particular, we are interested to hear views on the provisions relating to the advertisement and publication of statements and subsequent revisions and the use of the term 'principal office' of the authority.

We have tried to balance the need for consistency and transparency with the ability of licensing authorities to act in a way most appropriate for their area.

- **Any other comments or suggestions**