



department for
**culture, media
and sport**

Gambling Act 2005

Temporary Use Notices

May 2007

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Section 1: Introduction

Temporary Use Notices- Consultation Document

This consultation document sets out the Department for Culture, Media and Sport's proposals for temporary use notices under Part 9 of the Gambling Act 2005. Part 9 makes provision for the use of premises for gambling where there is no premises licence in respect of those premises, but an operating licence holder wishes to use the premises, temporarily, for providing facilities for gambling.

Temporary use notices, endorsed by licensing authorities, will authorise the provision of gambling activities temporarily on specific premises. The nature of the gambling activities that can be provided under such notices will be controlled by the Secretary of State in regulations. A particular set of premises can only be the subject of a Notice for a maximum of 21 days in any 12 month period.

The procedure for validating a temporary use notices is largely set out in the Act itself. However, there are some issues which the Secretary of State has power to prescribe in regulations. This consultation sets out the Secretary of State's proposals for temporary use notices in respect of the following matters:

- the gambling activities which may be permitted under a temporary use notice.
- the form of the temporary use notice;
- the form of the and counter-notice;
- the maximum fee which may be charged by a licensing authority for a temporary use notice;
- the maximum fee which may be charged by a licensing authority for providing an endorsed copy of a lost or stolen temporary use notice;
- the endorsement of the copy of the temporary use notice

Draft regulations setting out the proposals contained in this consultation document will follow in due course.

Consultation

1. The Department welcomes comments on these proposals. Draft Regulations and draft Regulatory Impact Assessment will follow shortly. The paper will be of particular interest to:

- licensing authorities;
- existing and potential new operators in the gambling industry;
- community and faith groups;

The closing date for responses is 23rd August 2007. Please send your comments in writing or by email to:

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Gambling and National Lottery Licensing Division
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2-4 Cockspur Street,
London SW1 5DH;
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A summary of responses will be published within three months of the closing date for consultation. 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.

If you have any questions or complaints about the process of consultation on this paper, please contact Liz Sweet, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH, liz.sweet@culture.gsi.gov.uk

Section 2: Background

The Gambling Act 2005 (the Act) contains three objectives which underpins the entire legislation. These are:

- Preventing gambling from being a source of crime and disorder, being associated with crime or disorder, or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way ;
- Protecting children and other vulnerable people from being harmed or exploited by gambling.

In order to achieve these criteria, the Act created a unified regulator, the Gambling Commission, to regulate all gambling in Great Britain. It also created a new licensing regime for all commercial gambling which allows greater scrutiny of the industry at several different levels. There are three types of licences under the new regime:

- i. **operating** licences (issued to gambling businesses)
- ii. **personal** licences (issued to those who are either in a senior managerial position e.g. directors or those who have an ability to affect the outcome of the gambling e.g. croupiers)
- iii. **premises** licences (issued for gambling establishments)

Operating and Personal Licences are granted by the Gambling Commission. The Act also creates scrutiny of the provision of gambling at a local level. Premises Licences are granted by the Licensing Authority relevant to the area in which the premises are situated.

The Act also gives licensing authorities the power to allow temporary gambling in an unlicensed premises, by means of a temporary use notice. Temporary use notices are a new concept under this Act, an equivalent notice does not exist under current legislation.

In brief, the Act allows unlicensed premises to be used for the purposes of gambling for not more than 21 days in a period of 12 months . Temporary Use Notices must be given 3 months prior to the event and can only be given by a person who holds an operating licence issued by the Gambling Commission. Licensing Authorities will be able to accept requests for a Temporary Use Notice when the regulation is brought into force.

Section 3: Temporary Use Notices- proposals

The Permitted Activities

A Temporary Use Notice can only be given by a person who holds an operating licence issued by the Gambling Commission. The activities which the operator wishes to provide under the notice can only be those permitted by the Secretary of State in regulations. This could include certain combinations of gambling. In addition, those gambling activities must fall within the activities which the operator is authorised to provide under his operating licence.

The purpose of a Temporary Use Notice (“Notice”) is to enable certain types of gambling to take place for a limited period, on premises, without the need for a premises licence. The Department has taken the view that a Notice should be used to provide premises such as hotels to provide equal chance gaming tournaments. It is not the intention to allow a Notice to cover the range of activities provided by casino premises, in particular it is not the intention to allow gaming machines to be provided in reliance on a temporary use notice.

The Secretary of State therefore proposes the following as permitted activities under a Temporary Use Notice-

- Equal chance gaming in respect of a tournament

The authorisation to provide betting facilities at sporting venues or at point to point races can be obtained by means of an occasional use notice under section 39 of the Act. This replicates the current law under section 6(1) of the Betting, Gaming and Lotteries Act 1963.

Q1 .Do you agree with the activities that the Department has specified as the types of gambling that may be permitted under a temporary use notice?

Q2. If the answer to Question 1 is no, please explain why and identify which types of gambling you consider should be permitted under a temporary use notice?

The Form of Temporary Use Notice

A person must give notice in writing (a “temporary use notice”) to the Licensing Authority with responsibility for the area in which the premises is located. Where the premises is situated partly in one licensing authority and partly in another, the person may give the notice to either authority, but must give a copy of the notice to other authority.

A Temporary Use Notice must be given to the local authority at least 3 months prior to the date when the notice is to have effect. A copy of the notice must also be given to the following responsible authorities:

- The Gambling Commission
- The Police for the area where the premises is situated
- Her Majesty's Revenue and Customs

The Act states that a notice must be in the prescribed form and specify the following matters:

- the activity to be carried out,
- the premises on which the activity is to be carried out,
- the period of time during which the notice is to have effect,
- the times of day at which the activity is to be carried out,
- any periods during the previous 12 months during which a temporary use notices has had effect in respect of the premises or part of the premises,
- the date on which the notice is given, and
- any other prescribed information.

A form of the Notice is contained in the draft regulations.

Q3. Do you have any comments on the form of draft temporary use notice (Annex A) ?

Form of Counter-Notice

Licensing authorities have the power to serve a counter-notice in respect of a temporary use notice. Authorities must give a counter-notice in circumstances where the period of the Notice exceeds the 21 day limit. Where an objection to the Notice has been made then authorities have the discretion to decide whether or not to serve a counter-notice. Section 224 (4) of the Act requires the Secretary of State to prescribe the form of the counter notice.

Maximum permitted period

The Act allows unlicensed premises to be used upon reliance of a Temporary Use Notice for a period of up to, and no more than, 21 days within a 12 month period. A set of premises may be subject to more than one Notice over a period of time , as long as the Notices, collectively, do not exceed 21 days in a 12 month period.

If a Notice is given and the total period which the Notice is to take effect exceeds 21 days, the Licensing Authority must issue a counter notice stating that the temporary use notice will not have any effect.

If a Notice is given, and only part of the period of the Notice would exceed the 21 day limit, then the licensing authority must give a counter notice specifying the period to be excluded from the temporary use notice. Where there is a choice as to which period to exclude, the licensing authority shall consult the person who gave the temporary use notice before issuing a counter notice containing the excluded period.

Objections

Responsible authorities which are given a copy of the Notice have 14 days from the date that the notice was given to the Licensing Authority to raise any objections. The objection must be sent to the person who has submitted the Notice and a copy sent to the Licensing Authority. The objection must state the person's reasons. If an objection is received, the Licensing Authority shall hold a hearing, unless all the parties involved agree in writing that a hearing is unnecessary.

The licensing authority may determine that the temporary use notice should not have effect, or should only have effect with modifications. The principles it must apply in reaching a view are those it applies when determining premises licence applications. If the authority concludes that the Notice should not have effect, or should only have effect with modifications, it must serve a counter-notice upon the person who served the Notice. The counter-notice may provide that the temporary use notice will:

- not have effect
- have effect only in respect of specific activities
- only have effect in relation to an activity at specified times of the day
- be subject to a specified condition

A counter-notice must be in the prescribed form and state the authority's reasons for giving it. A draft counter notice is contained at Annex B.

Q4. Do you have any comments on the form of the draft counter notice?

3 Endorsements

Section 227 of the Act sets out the provisions relating to the endorsement of temporary use notices. If there are no objections to a Notice by the end of the 14 day period, the Notice must be endorsed by the Licensing Authority and returned to the person giving the Notice as soon as reasonably practicable. If an objection is pending, then the authority must endorse and return the Notice as soon as reasonably practicable after the proceedings have been completed (provided a counter-notice has not been issued). The endorsement of the Notice must be in such a manner as may be prescribed by the Secretary of State. The Department proposes to include a section on the form of the Notice itself which can be completed by Licensing Authorities as the formal endorsement of the notice.

Q5. Do you have any comments on the arrangements for the endorsement of temporary use notices?

Fees

There are two circumstances where a licensing authority may charge a fee in connection with a temporary use notice:

- a person who gives a temporary use notice under section 219 of the Act must pay a fee; and
- a person who applies for a new endorsed copy of a temporary use notice where the original has been lost or stolen may be required to pay a fee.

Both of these fees must be prescribed by the Secretary of State in regulations. The fees payable to the licensing authority must be calculated on the basis of cost recovery.. The Department proposes to take the same approach for prescribing fees for a temporary use notice as for all other premise licence fees. This means that each licensing authority will set the fee payable for a Notice, subject to a maximum fee prescribed by the Secretary of State in regulations.. The Department considers the process of dealing with a temporary use notice is not as involved as issuing a premises licence. A Notice may attract representations, but only from a limited number of responsible authorities and not from interested parties. Although there may be a requirement for a hearing and an appeal, there are a limited number of aspects that a Licensing Authority should check. These are:

- that the person giving a temporary use notice holds an operating licence which allows the operator to carry out the type of gambling in the Notice
- that the gambling offered is a permitted activity
- that the number of days notified does not exceed the number of days permitted.

The Department is also mindful that a temporary use notice is for a limited period and can only be submitted by licensed operators who will understand the licensing objectives and the new compliance and enforcement procedures. The Department therefore anticipates that dealing with temporary use notices should be relatively straightforward. The Department therefore proposes to prescribe the following fees:

- the maximum fee for a temporary use notice given under section 219 shall be £500;
- the maximum fee for a new endorsed copy of a lost or stolen notice shall be no more than £25

Q6. Do you agree that the proposed maximum fee payable for a temporary use notice should be £500?

Q7 Do you agree that the proposed maximum fee payable for an endorsed copy of a lost or stolen notice temporary use notice should be no more than £25?

Registers

Section 234 of the Act states that a Licensing Authority must keep a register of all temporary use notices given, and allow public access of that register. The Act allows the Secretary of State to make regulations regarding the form and manner of the register, however, the Department does not propose to do so, following the consultation held for Premises Licences. Respondents explained that Licensing Authorities differed in their capabilities and working practices, and thus a blanket approach to registers would not be appropriate.

Q8. Do you agree that the Department should not regulate the form and manner of registers for Temporary Use Notices?

Q9. Do you agree that the Department should not prescribe the type of information which licensing authorities should give to the Commission in respect of temporary use notices?

Section 4: Summary of Questions

Q1 .Do you agree that with the activities that the Department has specified as the types of gambling to be granted by a temporary use notice?

Q2. If the answer to Question 1 is no, please explain why and identify which types of gambling you consider should be permitted on a TUN?

Q3. Do you have any comments on the form of the draft temporary use notice ?

Q4. Do you have any comments on the form of the draft counter notice?

Q5. Do you have any comments on the arrangements for the endorsement of temporary use notices?

Q6. Do you agree that the maximum fee payable for a temporary use notice should be £500?

Q7 Do you agree that the proposed maximum fee payable for an endorsed copy of a lost or stolen notice temporary use notice should be £25?

Q8. Do you agree that the Department should not regulate the form and manner of registers for Temporary Use Notices?

Q9. Do you agree that the Department should not prescribe the type of information which licensing authorities should give to the Commission in respect of temporary use notices?