

**EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (INSPECTION) (PROVISION OF INFORMATION)
REGULATIONS 2007**

2007 No. 319

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This memorandum covers one set of regulations concerning the information to be provided by inspectors to persons both during and following an inspection of premises under Part 15 of the Gambling Act 2005 (the Act).

2.2 Constables, enforcement officers (designated by the Gambling Commission) and authorised persons may inspect premises to assess compliance with gambling legislation, or where an offence under the Act has been reported or is suspected. Section 304 of the Act defines authorised persons; these are officers of licensing authorities and a range of other officers who are concerned with the risk of pollution to the environment, health and safety, fire safety, human health safety and inspection or surveying of ships. For the purposes of this memorandum, constables, enforcement officers and authorised persons will be known as 'Inspectors'.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations are made under section 322 of the Act, which will currently come into force on 21st May 2007, under The Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 (SI 2006/3272).

3.2 The Regulations come into force on 27th May 2007, and are made in reliance on section 13 of the Interpretation Act 1978 (c. 30), which concerns the anticipatory exercise of powers.

3.3 The Department will be amending the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 and replace the current commencement date of section 322 for a new commencement date of 27th May 2007.

4. Legislative Background

4.1 These regulations have been made as part of the implementation of the Act. They are the first use of these powers.

4.2 The Act establishes a new system for the regulation of gambling in Great Britain. It introduced a new regulator, the Gambling Commission, and a new licensing regime. The

licensing regime includes operating and personal licences, which are issued by the Gambling Commission, and premises licences and permits, which are to be issued by licensing authorities. Part 15 of the Act empowers Inspectors to enter premises under specified circumstances, and to carry out certain activities whilst on the premises. All Inspectors are already obliged to produce evidence of their identity and authority when inspecting. These regulations also place an obligation on Inspectors to ensure that the identity of anyone accompanying them is also produced.

4.3 Inspectors have powers under Part 15 to enter premises that with gambling licences, permits and other authorisations under the Act, as well as premises without any gambling authorisations. The circumstances in which an inspector may enter different premises will vary according to the type of gambling authorisation, if any, and for each of these, the Act specifies the permitted purpose of entry. Some of the gambling premises that Inspectors may enter are casinos, betting shops, bingo halls, adult gaming centres, family entertainment centres, clubs and premises with an alcohol licence.

4.4 When exercising a power to enter premises under Part 15 of the Act, Inspectors also have powers under section 317 (1) to inspect the premises, question anyone on the premises, gain access to and obtain copies of any written or electronic records and remove or retain any materials, but only where they reasonably believe that the material contains or constitutes evidence of an offence under the Act, or a breach of licence conditions.

4.5 Part 15 contains safeguards to ensure that any invasion of privacy or interference with human rights is minimised and is proportionate to the purpose for which entry is made; for example, it will not be possible to enter a dwelling for any reason without a judicial warrant. These Regulations provide a further safeguard by requiring inspectors to provide specified information in relation to the exercise of their powers to persons who are most likely to be subject to such interference.

4.6 The Act obliges the Secretary of State to make regulations requiring Inspectors to provide information when they exercise their powers under Part 15. These regulations set out the information to be given to persons during the inspection and the information to be included in a written record after the inspection, if it is requested.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Scotland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The purpose of the Gambling Act 2005 is best summed up by its licensing objectives. They are:

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

Inspections of gambling premises are one of the means by which the Gambling Commission and licensing authorities will be able to deliver the objectives, These regulations given the way in which Inspectors can enter premises to assess compliance or investigate complaints once a premise is and has been in operation.

7.2 The Department initially proposed for a written statement to be provided upon entry to a premises and as second one to be supplied after the inspection had taken place. In the light of the consultation, the Department decided to make the regulations less onerous. Inspectors record notes of inspections in their notebooks and are now obliged under the Regulations to provide a record of:

- The postal address of the premises
- The name of the inspector and anyone accompanying them
- The date and time of the inspection
- Any parts of the premises inspected
- Any equipment or other thing inspected
- Names of persons questioned
- End electronic or written records accessed or supplied
- Any materials removed
- Any force used, damage caused and steps taken to secure the property after the inspection.

These records are available to a list of specified persons including the premises licence or permit holder. \Inspectors also have the option to make an oral statement about where to gain a written record of the inspection, or leave a written statement to this effect.

Consultation on draft regulations

7.6 The Department issued a public consultation on this set of regulations on 22 September 2006. It ran for the full recommended 12 weeks. There were 28 formal responses to the consultation from a variety of stakeholders including local authorities and their representative groups, gambling operators and gambling industry representatives, and the Gambling Commission . A full list of those who responded is attached as an annex to this Memorandum.

7.7 In addition to the written consultation, the Department held a series of meetings with licensing authorities, the Gambling Commission and some representatives from the gambling industry, to better understand the current practice with premises inspection. The Department noted that Licensing Authorities currently abide by the Cabinet Officer's Enforcement Concordat which sets out the principles for proportionate and fair inspections. The Department's intention has been to enable licensing authorities to fulfil their new obligations under the Act by taking into account existing compliance work.

Licensing authorities were concerned that the provisions to require an Inspector to make a written statement prior to Inspection, followed by a written report once the Inspection had been conducted would be too burdensome

7.3 Responses to the consultation led the Department to limit the provision of information by Inspectors to a verbal or written statement during inspections, and a written notice to be left on the premises if relevant persons were not present during inspections, and one written report after inspections, available upon written request to a specified list of persons. The report itself has been simplified to include the names of persons inspecting, that date and time of the inspections, any persons questioned, details of materials copied or taken and details of any offences. Where force was used to gain access to the premises, details must be given of the extent of force used, the reasons why force was used and the measures taken to secure the property.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex B

9. Contact

Jennifer Smith at the Department for Culture, Media and Sport Tel: 0207 211 6420 or e-mail: Jennifer.smith@culture.gsi.gov.uk can answer any queries regarding the instrument.

Annex A:

Premises Licence Inspections Consultation - List of Respondees

LACORS
BACTA
Institute of Licensing
British Casino Association
Manchester City Council
Gala Coral
The Racecourse Association
Camden
Ceredigion County Council
Carlton Bingo
Casino Operator's Association
Association of British Bookers
Popleston Allen
London Borough of Sutton
Rank
Leeds City Council
Torbay Licensing
Wychavan District Council
Gambling Commission
Association of Chief Police Officers
Methodist Church and Salvation Army
Strathclyde Police
Kerzner International
Jim Orford
City Of Westminster
The Bingo Association
St Edmunds Borough Council
BISL

Regulatory Impact Assessment:

THE GAMBLING ACT 2005 (Inspection) (Provision of Information) REGULATIONS 2007

1. Title of proposal

The Gambling Act 2005 (Inspections) (Provision of Information) (England and Wales) Regulations 2007

2. Purpose and intended effect

The objective

2.1 The objective of the regulations is to ensure that there is a fair and open process under which premises inspections can be held to assess compliance with the Act or with the premises or operating licence; or to investigate any suspected or reported offences under the Act.

The background

2.2 Under the Gambling Act 2005, it is the responsibility of licensing authorities, and Gambling Commission enforcement officers to visit premises where gambling is conducted to ensure that they are compliant with the Act or with any conditions attached to the licence. They may also enter premises without any authorised gambling for inspection.

2.3 Part 15 of the Act empowers constables, enforcement officers and authorised persons ("inspectors") to enter different kinds of premises under specified circumstances. An inspector exercising a power under Part 15 to enter premises, also has powers under section 317(1) of the Act to inspect the premises, question persons on the premises, require access to and copies of written or electronic records on the premises, and remove or retain material from the premises.

3. Consultation

3.1 The Government has consulted formally and informally on these regulations. The formal consultation ran for 12 weeks from 22 September to 22 December. There were 28 responses to the formal consultation, including from local authorities and their representative groups, the Gambling Commission and industry representatives. In addition, the Department also held a number of consultative meetings with the Gambling Commission and Licensing Authorities. To further engage and better understand their views.

3.2 The consultation document outlined the government's proposals and the rationale for them. The government's preferred option was to make separate regulations under the Gambling Act, rather than applying the regulations made under section 15 of the Licensing Act or adapting those regulations for the purpose of the Gambling Act.

3.3 The responses to the consultation indicated that the government's proposals were more onerous than they need be. Responses clearly demonstrated that Licensing Authorities are already familiar with conducting premises inspections to check on compliance through a number of other regimes and are already comply with the Cabinet Office Enforcement Concordat which sets out principles for proportionate and fair inspections.

3.4 The government reviewed the proposals it had made and amended the regulations in light of the responses to the consultation. Changes are as follows:

- The requirement to provide written information ahead of an inspection has been removed
- The amount of information to be recorded after a visit is conducted has been condensed to provide Licensing Authorities a degree of flexibility to add the new procedure to their existing compliance work
- A report on the inspection is to be given to the premises licence holder upon written request only.

4. Options

4.1 There were three options the government considered:

Option 1: To prescribe a further class of persons who may be authorised to make inspections

4.2 **The Government rejects this option.** The consultation revealed that Police Civilian Licensing Officers should be included as they currently engage in inspection work on behalf of Police Constables. This will be provided for in further regulations

Option 2: To regulate for the treatment of material and things removed from premises

4.3 **The Government rejects this option.** There are sufficient regulations under PACE code B which Licensing Authorities already abide by.

Option 3: Provision of information:

a) To oblige any person entering the premises with an inspector to have evidence of their identity

b) To oblige the Inspector to provide a written statement of powers of entry to a premises with a minimum of information set out in regulations.

c) To oblige Inspectors to provide a written record following a visit with a minimum standard of information to be set out in regulations

4.4 **The Government reject this option.** The Department concluded that less stringent regulations are required as Licensing Authorities already follow the Cabinet Office Enforcement Concordat and constables are bound by PACE code B. To introduce further legislation would be burdensome.

5. Costs and Benefits

5.1 Those expected to be affected by these regulations are:

- approximately 400 licensing authorities in England and Wales
- approximately 13,000 gambling premises

Benefits

5.2 The benefits of the regulations are in the assurance that gambling will be regulated and compliance will be checked:

- a) Any offences reported by the local community or suspected by a responsible authority can be investigated. This included both premises licensed for gambling or premises where illegal gambling is suspected to have taken place.
- b) Any materials or machines being used in a non-compliant way can be removed
- c) Business will not be unduly interrupted as inspections should be held at a convenient time

- d) Minimising the amount of information to be provided and the circumstances under which it is to be provided
- e) Ensuring that there is sufficient flexibility in the system to enable Licensing Authorities to adopt a risk based approach.

Environmental

5.3 The regulations do not impact directly on the environment.

Social

5.4 A fair process for inspections supports the Act's licensing objectives, enabling Licensing Authorities and the Gambling Commission to ensure that Gambling is offered in compliance with the Act. Most importantly, it will assist in protecting young people and the vulnerable from being exploited or harmed by gambling.

Equity and Fairness

5.5 The regulations will support equity and fairness in their balance of community interest with those of operator; although it should be noted that the adoption of a risk-based approach to inspections will inevitably lead to a disparity of intervention between various sectors. Nevertheless the Government believes this to be the best possible approach and entirely consistent with the principles of better regulation.

Costs

5.6 The costs of the inspection regimes is provided for within the initial premises licence application fee the industry is obliged to pay the Licensing Authority.

6 Small Firms Impact Test

6.1 Trade organisations that have both large and small operators as members have been consulted. The Small Business Service (SBS) have also been consulted. The Department's objective, within the overall framework for effective regulation, is to minimise any disproportionate impact on small businesses.

6.2 The Department is satisfied that any requirement of small businesses created by the regulations is proportionate and fair, and will not place an undue burden on them.

7 Competition assessment

7.1 The government believes the inspections process protects the interests of the community without presenting a barrier for businesses wishing to operate in the gambling industry. All inspections are to be conducted with a convenient time for the premises licence holder or occupier.

8 Enforcement and Sanctions

8.1 Enforcement of the regulation falls to a number of parties, principally Licensing Authorities but also the Police, the Gambling Commission and a range of other officers including those concerned with fire safety, the environment and health and safety. Failure to comply with the provisions in the legislation may result in complaints directly to the Licensing Authority or Gambling Commission, accusations of maladministration or an appeal to magistrates.

9 Monitoring and Review

9.1 The Department will keep the working of the inspections regulations under review. It will liaise and consult with stakeholders.

10 Conclusion

10.1 The Department believes that the regulations will achieve a fair inspection process for all parties in accordance with the Gambling Act objectives and that the regulation is proportionate to the risks.

11. Declaration

11.1 I have read the Regulatory Impact Assessment and I am satisfied the benefits justify the costs

Signed:

Date: