

EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (DEFINITION OF SMALL-SCALE OPERATOR)
REGULATIONS 2006

2006 No. 3266

AND

THE GAMBLING (PERSONAL LICENCES) (MODIFICATION OF PART 5 OF THE
GAMBLING ACT 2005) REGULATIONS 2006

2006 No. 3267

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

- 2. Description**
 - 2.1 For convenience, this memorandum covers two sets of regulations concerning the introduction of a personal licensing regime for personnel working in the gambling industry, under the Gambling Act 2005 (“the Act”).
 - 2.2 The Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006 (“the Small-scale Operator Regulations”) define what is meant by the term “small-scale operator”. A small-scale operator is exempt from the general requirement that personnel within his operation must hold a personal licence.
 - 2.3 The Gambling (Personal Licences) (Modification of Part 5 of the Gambling Act 2005) Regulations 2006 (“the Modification Regulations”) set out how the rules in Part 5 of the Act, about the grant and maintenance of operating licences, are to be changed so that they apply appropriately to the grant and maintenance of personal licences.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

- 4. Legislative Background**
 - 4.1. These Regulations have been made as part of the implementation of the Gambling Act 2005. They are the first use of these powers.
 - 4.2. The Act establishes a new system for the regulation of all gambling in Great Britain, other than the National Lottery and spread betting. It repeals the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and

Amusements Act 1976. It introduces a unified national regulator for gambling – the Gambling Commission, which was established on 1 October 2005 – and a new licensing regime for commercial gambling.

- 4.3. From September 2007 the Commission will license and regulate virtually all commercial gambling in Great Britain, including casinos, bingo, betting, arcades, larger lotteries and the manufacture, supply and use of gaming machines and gambling software. It will do so by issuing operating licences under Part 5 of the Act. It will also license and regulate people in important managerial, compliance and operational posts in the gambling industry, by issuing personal licences under Part 6 of the Act. Advance applications for both types of licence will be permitted from 1 January 2007.
- 4.4. Section 129 of the Act creates an exemption from the personal licensing regime for operators who are “small-scale operators”, which the Secretary of State is required to define in regulations. The Small-scale Operator Regulations provide a definition based on the size and nature of the management structure of the operator.
- 4.5. In order to issue personal licences and regulate licensees the Commission needs a “tool kit” of powers. The Act provides that this “tool kit” should be the same as for operating licences, unless specific changes are needed. One of the ways in which change can be introduced is through regulations made by the Secretary of State. The Modification Regulations are intended to fulfil this need by expressly excluding or modifying sections of Part 5 of the Act (operating licences) so that they apply appropriately to personal licences.

5. Territorial Extent and Application

- 5.1 These instruments apply to Great Britain.

6. European Convention on Human Rights

- 6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

Policy – Small-scale Operator Regulations

- 7.1 The definition of a small-scale operator was debated during the Commons Committee Stage of the Gambling Bill on 2nd December 2004 (Hansard Col 331). There was agreement to withdraw an opposition amendment seeking to define the exemption by reference to the number of employees on each premises operated by an operator. Instead it was agreed that the exemption would be defined wholly through secondary legislation. This was to allow time for the setting of a definition which would benefit all classes of operator and secure the necessary policy objectives.
- 7.2 DCMS believes the policy objectives of the Small-scale Operator Regulations are:

- in light of the principles of Better Regulation, delivery of a robust licensing regime that covers individuals working in the gambling industry;
- minimisation of the administrative and regulatory burden placed on small operators by providing alternative means for delivering effective regulation;
- minimisation of duplication of Gambling Commission effort in licensing both operators and personnel, while preserving the integrity of the two licensing regimes; and
- to enable operators to remain subject to sensible and tailored regulation if they expand or contract in size.

7.3 In setting the exemption so that anyone defined as a small organisation would not need to hold a personal licence, the Department and the Gambling Commission needed to establish at which point an increase in a firm's management structure or operational complexity should require an operator to hold at least one personal licence. A number of possible approaches were considered, including whether or not to set a definition; what criteria to use (i.e. size and type of workforce; size and nature of managerial and compliance arrangements; number of premises operated; financial size of the operation or established company law measures, including as stand alone criteria and in combination with each other); and what period of time to apply to the definition. To meet all the stated objectives and to ensure that the exemption's impact captures all those operators for which it was originally intended, it was concluded that the most effective approach was:

- to exempt all classes of operator who have no more than three positions with managerial or compliance responsibilities, provided that each post is held by a qualified person (meaning in effect, someone the Commission has already been able to check via the operating licence);
- to operate the exemption on a continuous basis so that operators could benefit from it as soon as possible; and
- to prevent temporary organisational changes leading to the loss of the exemption by allowing an operator who qualified as small-scale but then changes his operation and exceeds the three positions to have 28 days grace before he loses the exemption.

Policy – Modification Regulations

7.4 The policy objective of the Modification Regulations is to ensure that the procedures for applying for, granting and maintaining personal licences are:

- clear and avoid any misunderstanding as to how Part 5 of the Act should be applied to personal licences;
- appropriate for the individuals who will wish to hold this type of licence (this type of licence cannot be held by a company or partnership);
- straightforward for the Gambling Commission and individuals to understand and use; and
- robust in regulatory terms to ensure fulfilment of the licensing objectives set out at section 1 of the Act.

7.5 The Department has analysed the rules set out for operating licences in the Act and concluded that some of these rules are inappropriate and/or inapplicable for personal licences and should be disapplied. These are:

- Provisions removing the demand test when considering an application, and removing membership requirements for certain types of gambling operation (e.g. bingo) - these have never been relevant to personal licences, and therefore are not needed;
- Provisions explaining how conditions about personal licences are attached to operating licences, and the duration of licences - the structure of the Act is such that these are only relevant to operating licences;
- Provisions on credit, equipment, gaming machines, and change of corporate control - these only have merit for operating licences;
- Rules on particular classes of operating licence; and
- Provisions giving power for a statutory levy for problem gambling to be charged to operators - it has never been the Department's policy for this levy to be introduced for individuals working in the gambling industry, and therefore the power is disapplied in relation to personal licences.

7.6 In addition, the Department concluded that other rules needed to be modified in order for them to apply sensibly to personal licences. In summary, the main changes are:

- Modifications to the procedural rules and grounds for considering applications to make them relevant to individuals, not businesses;
- Modifications to the licence conditions attached to personal licences to remove requirements that are only appropriate for businesses; and
- Modifications to the rules for reviewing licences, and the procedure where an individual is in breach, to make them appropriate to a personal licence.

Consultation on both sets of regulations

7.7 The Department issued a joint public consultation document on these two sets of Regulations on 13th September 2006 and the period for responses ended on 8th November 2005. The Department regrets that it was not possible on this occasion to allow the recommended 12 week period of consultation. This was because the detail of the proposals (and how they fitted more widely with the new regulatory regime) took longer than expected to finalise (especially the small-scale operator definition), the proposals were not expected to prove controversial and the Regulations needed to be laid in time to become effective from 1st January 2007. 20 responses in total were received from stakeholders (including trade associations, faith groups and individual businesses) on the three sets of regulations contained in the consultation document (14 raised specific comments on the small-scale operator exemption). A list of consultees who responded is contained at the end of the Department's paper summarising the responses and its policy review, attached as an Annex to this Memorandum.

Modification Regulations

7.8 On the Modification Regulations, the Department's approach was broadly welcomed by respondents. A number of consultees raised the question of whether

conditions under sections 82 (compliance with code of practice) and 83 (return of stakes to children) should be attached to personal licences. These responses highlighted concerns that the personal licence holder would risk being made criminally liable for the actions of people outside his control (i.e. those he manages) or in circumstances where he did not hold ultimate decision-making responsibility.

- 7.9 The Department has reviewed these concerns and concluded that they are largely theoretical, since the Gambling Commission will treat any compliance and enforcement matters in the light of the facts of each case and also proportionately, in accordance with the principles of Better Regulation. For instance, it intends to discuss any potentially contentious compliance and enforcement decisions before a formal determination is made, as well as allowing personal licence holders access to a Panel of its Commissioners, if necessary. It would not undertake potentially costly court proceedings against an individual unless it felt sure of its grounds and considered the breach significant enough to merit such action – in many cases it would implement other remedies, such as increasing the level of compliance tests or levying a financial penalty. All these protections lead to the conclusion that it should only be on rare occasions that a personal licence holder would be deemed to have committed what could become a criminal offence before the courts.
- 7.10 Furthermore, the Government has considered if the operating licence holder would in all cases exercise sufficient control, thus rendering it unnecessary to apply these two sections to personal licence holders at all. The Government can envisage instances when the operating licence holder should not necessarily bear the responsibility, but the personal licence holder should, including where the breach related to the actions of his own staff - for instance, if a reputable operator could be shown to have complied with its own training and management protocols and, despite that, a personal licence holder allowed some prohibited activity to take place (such as allowing a self-excluded individual to enter premises and gamble or allowing money laundering activities). In such circumstances it could be appropriate to apply a sanction to the individual and not to the operator. Consequently, the Government has decided that sections 82 and 83 should apply to personal licence holders. However, one amendment is being made to section 83 so that any personal licence holder who does not have authority under the terms or conditions of his appointment to act in the way required in respect of returning stakes or refusing to pay out prizes will instead be obliged to take all reasonable steps to inform a person who does have the appropriate authority of the relevant matters relating to the child or young person. This will avoid operators being forced to make changes to the way they run their businesses or the level of delegation that they choose to entrust their staff with.

Small-scale Operator Regulations

- 7.11 On the Small-scale Operator regulations, DCMS acknowledges that its preferred approach of three qualifying positions for setting the criteria to define a small-scale operator was subject to some criticism. Certain respondents would have preferred a series of definitions tailored to different parts of the industry. However, in the Department's view no other alternative approach has emerged

which commands wide support in the industry. The Department has reviewed again all the criteria as stated in the consultation document for defining the exemption. Taking all the issues into account and seeking to identify the most practical, workable solution which is fair and valid across all sectors of the gambling industry, DCMS still believes that the best way to measure the exemption is to count how many people a licensed operator has fulfilling the key managerial and compliance functions in the organisation. The Department has therefore decided to maintain its approach in the regulations and define a small-scale operator as an operator who has no more than three post holders with key management or compliance responsibilities provided that each post is occupied by a qualified person (i.e. a person named on the operating licence).

7.12 However, in light of the consultation responses, the Department has reviewed the types of managerial and compliance functions that should make up the key posts, and has amended the definition of “qualifying position” to list, expressly, the types of activity that qualify. Therefore, an operator will be a small-scale operator where he has fewer than 4 “qualifying positions” in his organisation. A qualifying position is one which is held by a person who, by the terms of his appointment, has primary responsibility for—

- (a) the management of the business;
- (b) the management of its financial affairs;
- (c) ensuring the business complies with the Act;
- (d) the marketing of the business;
- (e) the management of the IT facilities;
- (f) the management of the licensed activity for a particular locality or area in Great Britain in which there are at least 5 sets of licensed (gambling) premises; or
- (g) the management of a single set of premises in respect of which a casino or bingo premises licence has effect.

7.13 The Department believes this list is clearer for operators than the consultation draft, and will allow them to assess, more easily, whether they fall within the definition. This revised definition also takes account of the Gambling Commission’s proposed requirements for personal licensing. While the two approaches are not identical, since the Commission needs greater flexibility than can be provided for in regulations (when it comes to determining who should hold personal management licences in each individual organisation), the Department believes that the revised regulations will assist the industry and the Commission.

7.14 The Department has also simplified the definition of “qualified person” in the regulations, to link this to whether or not an individual is named on the relevant operating licence. If he is, then he will be a “qualified person”. There are transitional arrangements to deal with the need to change the names on the licence. This will ensure that the Gambling Commission maintains sufficient oversight of the key managerial and compliance personnel in a small-scale operator, without leading to over-regulation in the form of additional personal licences. The Department believes that this answers concerns raised in the

consultation responses about the proper regulation of individuals in small-scale operators, but allows the exemption to continue to serve a needed regulatory purpose.

- 7.15 Other minor amendments have been made, post-consultation, to the Small-scale Operator Regulations to ensure fairness to operators who undergo temporary changes to their senior staff levels (e.g. due to sickness or resignation), and these are explained in the attached Departmental response to the consultation exercise.

8. Impact

- 8.1 A Regulatory Impact Assessment for the Small-scale Operator Regulations is attached to this Memorandum.
- 8.2 It is not considered that the Modification Regulations require any Regulatory Impact Assessment to be prepared, as they contain technical changes to the licensing arrangements for personal licences. These have no impact on business, charities or voluntary bodies.

9. Contact

Donald Sproson at the Department for Culture, Media and Sport, Tel: 020 7211 6535; or e-mail: Donald.Sproson@culture.gsi.gov.uk can answer any queries regarding these instruments.

ANNEX TO EXPLANATORY MEMORANDUM

The Gambling Act 2005 (Definition of Small Scale Operator) Regulations and The Gambling (Personal Licences) (Modification Of Part 5 of the Gambling Act 2005) Regulations

DCMS SUMMARY OF RESPONSES TO THE GAMBLING ACT 2005 CONSULTATION ON PERSONAL LICENSING

The Gambling Act 2005 (Definition of Small Scale Operator) Regulations

Question 1: Do you agree that a definition for a small-scale operator exemption should be set for all classes of operating licence, remote and non-remote?

Summary of consultee responses

There is a variety of responses to this question and no consensus emerged. This includes:

- i) agreement (the majority view of respondents) with the Government's intention to set a standard definition for all classes of licensed operator;
- ii) to set definitions which are specific or tailored to different sectors or even excluding some sectors of the gambling industry altogether – i.e. a one size fits all is not appropriate;
- iii) exemption should be restricted to non-remote sectors and not include remote sectors;
- iv) abolish or not set a small-scale operator exemption because this would undermine the integrity of new regulatory system and licensing objectives; and
- v) some firms might take advantage to alter organisational structure to take advantage of exemption.

Government response

The Government has considered the responses carefully and can confirm that it intends to set a definition for all classes of licensed operator as set out in the consultation document. The document explained that it was the stated intention of the Government and Parliament during the passage of the 2005 Act that where a licensed operator was a small organisation, to be defined through consultation at a later date, there would be no regulatory need to require the operator to hold any personal licences in addition to an operating licence. The operating licence provides sufficient means to regulate an operator and its staff. The Government still holds this view and believes that once the suitability of a small-scale licensed operator and his staff has been established (through assessment by the Commission on applications for operating licences), any risks to the licensing objectives are very small. In addition, in issuing licences to organisations and individuals, the Commission has legal powers to monitor licence holders and can levy financial penalties or revoke licences; and impose new or revised licence conditions. It can also investigate and prosecute illegal gambling under the Gambling Act.

It is accepted that while a standard exemption definition may affect each sector in different ways, it is the Government's view that a more complex exemption is likely to lead to unnecessary confusion and misunderstanding in how the exemption should be applied. There was no consensus in consultation responses about how definitions, sector by sector, should be defined, and the Government does not believe that there is (yet) a model that would accommodate all parts of the industry. Therefore, in its views, an alternative more complex, exemption is likely to add more to the costs of small businesses than it saves, particularly in the early years of the new licensing regime.

It has been suggested that the existence of a small-scale exemption could encourage gambling firms to alter their business structures to take advantage of it. The Government considers this to be unlikely. The cost savings available to a large company are unlikely to outweigh the extra risk or other supervisory costs that would be incurred in making the change. It is also possible that the exemption may set up a threshold effect which will make it difficult for a small firm to grow organically. Again, it is considered that there is a low risk of this materialising from the proposed policy. Nevertheless, it is possible for such an effect to emerge, and the impact of the exemption will be kept under review in the light

ANNEX TO EXPLANATORY MEMORANDUM

of new information.

In its consultation document the Government indicated that it might bring forward further proposals about how the small-scale operator definition could be modified in relation to betting operators on tracks (on-course), and consultees have raised questions about whether employees acting on-course should be required to hold personal functional licences (and therefore not benefit from the small-scale exemption). The Government and the Commission have examined the options around amending the definition of small-scale operator for this sector, but have concluded that, at the present time, there is no need for special treatment for this sector under these regulations. Instead, the Gambling Commission will require all employees of small-scale betting operators acting on-course to be named on the relevant operating licence and this will provide a suitable mechanism for regulation of these individuals. This approach will be kept under review.

The Government has therefore concluded that its preferred approach of setting a definition for all classes of operator secures all the policy objectives as debated in Parliament during the passage of the Act.

As noted in paragraph 80 of the consultation document, it is expected that few, if any, casino or bingo operators would qualify for the small-scale operator exemption as their operations are generally too large to qualify.

Definition of small-scale operator exemption

Question 2: The Department propose that licensed operators should be exempt from the requirement to hold a PML if there are no more than three qualifying positions in a management role or with compliance responsibilities and each qualifying position is occupied by a qualified person. Do you agree with this approach, and do you agree with the threshold levels proposed for the level of qualifying positions? If not, please explain why.

Summary of consultee responses

Again, there is a variety of responses to this question and no consensus emerged on the most appropriate criteria to use for defining the small-scale operator exemption. It is acknowledged that the various measures outlined in the consultation document (i.e. size and type of workforce, size and nature of managerial and compliance arrangements, number of premises operated, financial size of the operation and established company law criteria) all have their advantages and disadvantages and seeking to apply a definition which is consistent and fair across all sectors of the gambling industry is not easy to achieve. As such, no favoured alternative has emerged amongst the respondents.

Government response

A variety of responses were received in response to the Government's preferred approach of three qualifying positions for setting the criteria to define a small-scale operator, but at the same time it should be noted that no alternative approach emerged which commands wide support in the industry. In response, the Government has reviewed again all the criteria as stated in the consultation document (including a combination of elements) for defining the exemption. Taking all the issues into account and seeking to identify the most practical, workable solution which is fair and valid across all sectors of the gambling industry, the Government still believes that the best way to measure the exemption is to count how many people a licensed operator has fulfilling the key managerial and compliance functions in the organisation. The Government has therefore decided to maintain its approach in the regulations and define a small-scale operator as an operator who has no more than three post holders with key management or compliance responsibilities provided that each post is occupied by a qualified person.

However, the Government has also reviewed the types of managerial and compliance functions that should make up the key posts, and, in light of the consultation responses, has amended the definition of "qualifying position" to list, expressly, the types of activity that count. Therefore an operator will be a small-scale operator where he has fewer than 4 "qualifying positions". A qualifying position is one which is held by a person who, by the terms of his appointment, has primary responsibility for –

ANNEX TO EXPLANATORY MEMORANDUM

- (a) the management of the licensed activity;
- (b) the management of the financial affairs of the licensee;
- (c) ensuring the licensee complies with the requirements of the Act;
- (d) the marketing of the licensed activity;
- (e) the management of the information technology facilities used in the provision of the licensed activity;
- (f) the management of the licensed activity for a particular locality or area in Great Britain in which the licensee has at least 5 licensed premises; or
- (g) the management of a single set of premises in respect of which a casino or bingo premises licence has effect.

The Government believes this is clearer for operators, and will allow them to assess, more easily, whether they fall within the definition. This revised definition also takes account of the Gambling Commission's proposed requirements for personal licensing. While the two approaches are not identical, since the Commission needs greater flexibility than can be provided for in the regulations (when it comes to determining who should hold personal management licences), the Government believes that the revised regulations will assist the industry and the Commission.

The Government has also simplified the definition of "qualified person" in the regulations, to link this to whether or not an individual is named on the relevant operating licence. If he is, then he will be a "qualified person". There are transitional arrangements to deal with the need to change the names on the licence. This will ensure that the Gambling Commission maintains sufficient oversight of the key managerial and compliance personnel in a small-scale operator, without leading to over-regulations in the form of additional personal licences. The Government believes this answers concerns raised in consultation responses about the proper regulation of individuals in small-scale operators, but allows the exemption to continue to serve a needed regulatory purpose.

Question 3: Do you agree that the continuous test approach is appropriate for gaining the small-scale operator exemption and the 28 day threshold test should apply to loss of the exemption?

Summary of consultee responses

There is a range of views, but the clear majority of respondents believe that the combination of a continuous test with a 28 day threshold is a sensible and flexible approach, and on balance is the best way of meeting the interests of the Gambling Commission and the industry. One respondent thought the exemption should be tested on an annual basis and another thought it would be appropriate to apply a different test to each sector of the industry, which reflected the particular circumstances of that part of the industry. There was concern about the complexity of the test which could lead to confusion and a more straightforward approach should be considered. It was also suggested that the 28 day limit should be extended to three months.

Government response

The Government is pleased that the majority of respondents believe that the continuous test with a 28 day threshold is the most appropriate approach which allows the exemption to be tested continuously and to take account of occasional and temporary changes in status. Notwithstanding the concern about complexity and when the exemption should apply, the Government believes that on balance the best way to meet the interests of the industry and the Commission is to apply the exemption by allowing operators to gain the exemption as soon as they meet the criteria for a small-scale operator, while preventing operators from losing the exemption until they have failed to meet the criteria for a period of more than 28 days. The Government believes that the use of different tests for each sector of the industry would only make the exemption more complex and add unnecessary confusion into how the exemption will operate.

Having looked further at the practicalities of how the exemption will operate, with a particular eye on fairness, the Government believes that the proposal in the consultation document which stated an operator can have 27 continuous days before losing the exemption, but could not have two non-continuous days if 24 hours separated them was disproportionate. The Government has therefore decided to amend the draft regulation so that it states that the small-scale operator will only lose the exemption if he fails to meet

ANNEX TO EXPLANATORY MEMORANDUM

the necessary condition for a period of more than 28 days, or for two periods of more than 14 days each, which occur within 28 days of one another. This means that an operator will be able to have a period of less than 14 days at any time, and not lose the exemption. If he has a period of more than 14 days, he cannot have a further period of more than 14 days, unless 28 days has elapsed. The Government is of the view that this approach is a fairer way of applying the threshold test.

The Government has considered consultation responses which sought a longer period before the exemption is lost i.e. 3 months. The Government believes that this is too long, and that 28 days strikes the right balance between freeing small operators from unnecessary regulation and securing delivery of the licensing objectives.

The Government therefore intends to use a combination of the continuous test and the 28 day threshold test in the small-scale operator definition regulations.

Definition of small-scale operator exemption

Question 4: Is there anything else you think ought to be included in the small-scale exemption regulations and, if so, why?

Summary of consultee responses

Respondents have raised three issues which are all concerned with the potential risk that small-scale operators (who benefit from the exemption) will pose to the aims and integrity of the new licensing system.

Government response

The Government understands these concerns, but it should be remembered that, in handling operating licence applications, the Gambling Commission will be assessing not only the suitability of the applicant to provide gambling facilities but also the key personnel concerned in the management of the operation (who will need to be named on the licence if the operator is a small-scale operator). This will include an assessment of the integrity, competence, and financial and other circumstances relevant to the application before an operating or personal licence is issued. Therefore the Government and the Gambling Commission do not believe that the provision of a small-scale operator exemption will undermine the integrity of the new licensing regime. It is a means for ensuring that the principles of better regulation are followed, without compromising the licensing objectives.

ANNEX TO EXPLANATORY MEMORANDUM

Definition of small-scale operator exemption

Question 5: Is there anything else that we intend to include in the Regulations that you disagree with and, if so, why?

Summary of consultee responses

Two responses asked about why the exemption cannot be applied more widely for people working in the bingo and casino sectors and sought clarification in the draft explanatory material which refer to an operator not holding any premises licences before the exemption is applied.

Government response

The Government does not intend to make any further changes to the regulations (other than those outlined in response to question 2 above), but can confirm that the reference in the draft explanatory material to an operator not holding a premises licence is a drafting error and should not have been included.

The definition for the exemption is that someone providing facilities for gambling (who holds or is applying for an operating licence) will be a small-scale operator and thereby not required to hold any personal licence, if that operator has:

- i) no more than three positions in the organisation with responsibility for specified compliance and management matters; and
- ii) each qualifying position is occupied by a qualified person.

ANNEX TO EXPLANATORY MEMORANDUM

The Gambling (Personal Licences) (Modification Of Part 5 of the Gambling Act 2005) Regulations

Question 1: To avoid confusion and to bring clarity between the operating and personal licensing regimes, it is proposed to expressly exclude or modify sections of Part 5 in relation to personal licences in Part 6 where it is concluded that Part 5 is inappropriate or inapplicable. Do you agree with this approach? If not, please explain why

Summary of consultee responses

In terms of consistency and transparency, all respondents agree that the Government's proposal to make regulations expressly excluding or modifying specified provisions of Part 5 of the 2005 Act in their application to personal licences is a sensible approach. Clarification was sought around sections 82 (social responsibility) and 83 (return of stakes to children) over whether modifications to these sections will render personal licence holders criminally liable for matters not within their direct control. Clarification was also sought about the likely use by the Commission of modified section 88 (Information).

Government response

The Government is pleased that all respondents support its approach. The Government will now make regulations (as set out in the consultation document and to come into effect from 1st January 2007) under Section 128 expressly excluding or modifying sections of Part 5 in relation to personal licences where it has been concluded that sections in Part 5 are inappropriate or inapplicable.

The Government has noted the concern expressed by several respondent bodies that the proposals to modify sections 82 and 83 will make personal licence holders criminally liable for matters not within their direct control or for acts and defaults of their subordinates. In practice, however, these concerns will be largely theoretical, since the Gambling Commission will treat any compliance and enforcement matters in the light of the facts of each case and also proportionately, in accordance with the principles of Better Regulation. For instance, it intends to discuss any potentially contentious compliance and enforcement decisions before a formal determination is made, as well as allowing personal licence holders access to a Panel of its Commissioners, if necessary. It would not undertake potentially costly court proceedings against an individual unless it felt sure of its grounds and considered the breach significant enough to merit such action – in many cases it would implement other remedies, such as increasing the level of compliance tests or levying a financial penalty. All these protections lead to the conclusion that it should only be on rare occasions that a personal licence holder would be deemed to have committed what could become a criminal offence before the courts. Furthermore, the Government has considered if the operating licence holder would in all cases exercise sufficient control, thus rendering it unnecessary to apply these two sections to personal licence holders at all. The Government can envisage instances when the operating licence holder should not necessarily bear the responsibility but the personal licence holder should, including where the breach related to the actions of his own staff - for instance, if a reputable operator could be shown to have complied with its own training and management protocols and, despite that, a personal licence holder allowed some prohibited activity to take place (such as allowing a self-excluded individual to enter premises and gamble or allowing money laundering activities), then it could be appropriate to apply a sanction to the individual and not to the operator. Consequently, the Government has decided that sections 82 and 83 should apply to personal licence holders. However, one amendment is being made to section 83 in that any personal licence holder who does not have authority under the terms or conditions of his appointment to act in the way required in respect of returning stakes or refusing to pay out prizes will instead be obliged to take all reasonable steps to inform a person who does have the appropriate authority of the relevant matters relating to the child or young person. This will avoid operators being forced to make changes to the way they run their businesses or the level of delegation that they choose to entrust their staff with.

In relation to the application of Section 88, the purpose of this modification is to promote information exchange between the Commission, licensed operators and personal licence holders to ensure that gambling is undertaken in a fair and open way. The type of information which could be covered might include information concerning cheating or breach of sporting rules. The facility to share information is considered essential for the Commission in fulfilling its licensing objectives and the modification of section 88 in relation to personal licence holders will help the Commission achieve a uniform approach across all sectors of the gambling sectors.

ANNEX TO EXPLANATORY MEMORANDUM

Modification of Part 5 regulations

Question 2: Is there anything else you think ought to be included in the regulations to expressly exclude or modify Part 5 of the Gambling Act as applied to personal licences, and why?

Summary of consultee responses

It has been requested that Section 79 (scope of powers to attach conditions) should be expressly excluded from regulations applying to personal licences as there is concern that licence holders could be held responsible for matters not within their direct control or for acts and defaults of their subordinates. In addition the issue has been raised about the possible impact of Personal Functional Licences being applied to parts of the betting industry.

Government response

The Government does not accept that Section 79 of the Act should be excluded completely. The draft regulations in the consultation paper already modify section 79 to omit, or amend those aspects of the scope of conditions that are considered inappropriate for personal licences. The fact that the remainder of section 79 applies to personal licence holders does not mean that conditions on these matters will automatically attach to any licence. The Gambling Commission or the Secretary of State would need to determine that a particular condition in one of these areas was needed and then apply it suitably. In these circumstances, the Government does not see any need to further modify section 79 beyond that already contained in the regulations.

As indicated in the answers to the small-scale operator consultation, there is no intention at this stage to require personal functional licences for those working on-course as betting operators. However, the Government and the Gambling Commission have worked together on these proposals to ensure that employees of betting operators will be named on operating licences, where the operators are small-scale, thereby delivering appropriate regulation.

Modification of Part 5 regulations

Question 3: Is there anything that we intend to include in the regulations that you disagree with and why?

Summary of consultee responses

One response and no change required.

Government response

The Government does not intend to make any further changes to the regulations.

ANNEX TO EXPLANATORY MEMORANDUM

LIST OF RESPONDENTS TO PERSONAL LICENCES CONSULTATION DOCUMENT

1. A&S Leisure Group Ltd
2. Association of British Bookmakers
3. BACTA
4. Bingo Association
5. Betfair
6. Business In Sport and Leisure Ltd
7. British Casino Association
8. British Holiday and Home Parks Association
9. Carlton Bingo
10. Gala Coral Group
11. Kerzner International
12. Lawyers' Christian Fellowship
13. Methodist Church
14. Racecourse Association Ltd
15. Racecourse Promoters Association
16. Rank Group
17. Remote Gambling Association
18. Responsible Gambling Solutions Ltd
19. Transport & General Workers Union
20. Welsh Language Board

Regulatory Impact Assessment for regulations under s.129 of the Gambling Act 2005

1. Title of proposal

The Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006.

2. Purpose and intended effect

The Objective

2.1 Section 129 of the Gambling Act 2005 ("the Act") gives the Secretary of State the power to make Regulations exempting small-scale operators from the requirement to hold a personal licence. The Regulations must prescribe the meaning of the term "small-scale operator".

2.2 The objectives of the Regulations are to:-

- a) clarify the Department's approach to Section 129 in respect of personal licences;
- b) minimise the administrative and regulatory burden placed on small operators by considering alternative means for delivering effective regulation;
- c) enable operators to expand and contract in size and remain subject to sensible and tailored regulation;
- d) provide certain and simple definitions when removing operators from the field of personal licensing;
- e) delegate to the Gambling Commission (the Commission) day to day decisions about the suitability of individuals to run gambling operations and work in the industry;
- f) minimise duplication of the Commission's effort in licensing both operators and personnel, while preserving the integrity of two licensing regimes; and
- g) recognise that technological developments increasing enable gambling facilities to be delivered with decreasing levels of human involvement.

The Background

2.3 Part 5 of the Act obliges the Commission to use its condition-setting powers to ensure that, for each operating licence, at least one person occupies a specified management office and holds a Personal Management Licence (PML) authorising them to perform the functions of the office. There is one key exception to this requirement, Section 129 of the Act gives the Secretary of State the power to prescribe by regulations the exemption of small-scale organisations from this requirement. This is because for small-scale operations it is recognised that the operating licence will achieve the same purpose as a PML and that to require small-scale organisations to hold both operational and personal licences is unduly burdensome.

3. Consultation

3.1 The Government published a consultation document on 13th September 2006 which explained the rationale for the

Department's preferred approach for defining the small-scale operator exemption. The consultation period ended on 8th November 2006 and a total of 14 responses were received from interested stakeholders (including trade associations, representative groups, and business organisations).

3.2 Each of the issues considered in the consultation document was addressed by specific questions. In general, there was broad agreement with the Government's preferred approach that if any organisation that holds (or is applying for) an operating licence for providing facilities for gambling, it should be entitled to the small-scale operator exemption and therefore not be required to have anyone within the organisation holding a Personal Management Licence, if there were no more than three positions within the operation with managerial and compliance responsibilities (a "qualifying position") and if each one of those positions was occupied by someone who had been notified to the Commission as part of the application process or licence updating process. There was also broad agreement that the exemption should operate on a continuous test approach for gaining the exemption and that a 28 day threshold test should be applied before any organisation would lose the exemption.

3.3 However, a variety of questions were raised around whether:

- to set definitions which are specific or tailored to different sectors or even to exclude some sectors of the gambling industry altogether - i.e. a one size fits all approach is not appropriate;
- the exemption should be restricted to non-remote sectors and not include remote sectors;
- to abolish or not set a small-scale operator exemption because this would undermine the integrity of new regulatory system and licensing objectives; and
- some firms might take advantage to alter organisational structure in order to take advantage of the exemption.

3.4 The Government accepts that while a standard exemption definition may affect each sector in different ways, it is the Government's view that a more complex exemption is likely to lead to unnecessary confusion and misunderstanding as to how the exemption is applied. It is considered unlikely (because cost savings available to a large company are unlikely to outweigh the extra risk or other supervisory costs) that the existence of a small-scale exemption would encourage gambling firms to alter their business structures to take advantage of it. The Government has therefore concluded that its preferred approach of setting a definition for all classes of operator secures all the policy objectives as debated in Parliament during the passage of the Act.

4. Options

4.1 The principles referred to above have been considered against each option below in deciding the Government's preferred option.

Option 1: Do not make the Regulations. No one holding an operating licence would be exempt from the requirement that at least one person in a management office holds a PML.

- 4.2 **The Government rejects this option.** The Government does not consider that the option of not making any regulations is feasible. The effect would be that there would be no small-scale operator exemption from the requirement that operators should have at least one management office filled by a PML holder. Such an approach will impose costs on small-scale operators, but is unlikely to enhance achievement of the licensing objectives. That was neither Parliament's nor the Government's intention during the passage of the Gambling Act 2005. Nor would it comply with the principles of Better Regulation, since both the Government and the Gambling Commission agree that the issuing of an operating licence to small-scale operators would involve some duplication with the work necessary to issue certain of the people in such organisations with PMLs.

Option 2: To define the exemption by which i) a licensed operator will be exempt from the requirement to hold a PML if there are no more than three qualifying positions in an organisation with responsibility for operational functions or ensuring compliance and each qualifying position is occupied by a qualified person; and ii) a continuous test approach is adopted for gaining the small-scale operators exemption and a 28 day threshold test is applied to loss of the exemption.

- 4.3 **This is the Government's preferred option.** This option will meet the Government's principal objective set out in paragraph 2.2. This option avoids the drawbacks of complexity and uncertainty, and is considered straightforward to understand by all interested parties. It therefore minimises the burden of regulation for small-scale businesses without significantly prejudicing the achievement of the licensing objectives.
- 4.4 The Government believes that the most effective approach is to exempt operators who have no more than three qualifying positions with responsibility for operational functions or ensuring compliance provided and that each post is occupied by a qualified person (meaning, in effect, someone the Commission has already been able to check via the operating licence). To prevent abuse, but at the same time allowing small-scale operators to accommodate temporary increases in demand, a regulation will be included which states that an operator who qualifies for the exemption, and then changes his operation and exceeds the three posts, will only lose the exemption if he fails to meet the necessary condition for a period of more than 28 days, or for two period of more than than14 days each, which occur within 28 days of one another. This means that an operator can have a period of less than 14 days at any time and not loose the exemption. If the operator has a period of more than 14 days, he cannot have a further period of more than 14 days unless 28 days have elapsed. Operators will be required to notify the Commission of changes in their organisation that affect their small-scale status.

5. Costs and Benefits

5.1 Those expected to be affected directly or indirectly by the definition of the small-scale operator exemption (for "remote provision" and "non-remote provision") are as follows:

- 2,000 gaming machine arcades (this is approximately equivalent to 1,000 licensed Family Entertainment Centres and 1,000 Adult Gaming Centres);
- 146 commercial bingo operators;
- 19 casino operators;
- 3,600 bookmakers;
- 661 society lotteries;
- 3 registered football pools promoters;
- 20 pool betting competitions;
- 680 machine suppliers and repairers;
- 15 external lottery managers; and
- 31 dog track pool betting operators.

Benefits

5.2 The benefits of using regulations to define a small-scale exemption are broadly those that result from the implementation of the Act, and were published in the RIA that accompanied it in 2005. There is little or no benefit associated with Option 1 in terms of the objectives set above, but it is considered that Option 2 offers maximum benefits in respect of making regulations for defining the small-scale operator exemption.

5.3 In economic terms the regulations involve taking a pragmatic approach to section 129 of the Act and provide the protection for small organisations as proposed during the passage of the Act. That approach therefore provides flexibility for the gambling industry; minimises the regulatory burden for small-scale businesses and allows them to take advantage of changing circumstances, including developments in technology. It may also reduce impediments to new entrants into the gambling industry. All these can lead to economic benefits in the form of improved service to customers.

5.4 In social terms, it provides benefits for the Government, the Commission and all stakeholders reducing the regulatory burden for small-scale businesses and by ensuring that the necessary suitability checks are carried out on people relevant to all applications before an operating licence is approved. It thereby involves an active pursuit of meeting the Act's licensing objectives to keep crime out of gambling, ensure that it is conducted fairly and openly, and the protection of children and vulnerable people. The preferred option does not directly impact on the environment, but the Department believes that the preferred option offers a flexible and pragmatic approach, which will support the Commission in its compliance and enforcement responsibilities, and therefore assist in producing safer environments to gamble and in the wider community.

5.5 It is not considered that any of the options outlined above will have any race equality impacts.

Costs

- 5.6 There will be no increased administrative costs falling to the public purse as a result of changes outlined in any of the options. The regulations for the exemption will benefit small-scale organisations by them not having to bear the costs of applying for a personal licence or bearing the increased administrative burden. These benefits will be lost if this flexibility in the new regulatory regime is not delivered.
- 5.7 The costs of determining and issuing operating and personal licences and the other associated functions (i.e. enforcement and prosecution) will be met through initial application and annual or maintenance fees. These fees must be set at a level that enables full cost recovery for the Commission that ensures fairness and value for money for the gambling industry. The fees structure to determine how the cost of Commission operations will be attributed to specific sectors or classes of operator etc., including the administrative processes for determining and issuing operating and personal licences, has been agreed between the Department, the Commission and HM Treasury. Any identified costs arising from any of the options will therefore be included in this fee structure. The fees structure was subject to separate public consultation and Regulatory Impact Assessment.
- 5.8 In addition, it is possible that regulated firms will face compliance costs in the form of statutory returns in support of the exemption. In practice, this exemption will be based on compliance already undertaken in connection with other regulatory activities. Hence, any marginal costs of compliance of this regulation are expected to be negligible.

6. Small Firms Impact Test

- 6.1 Trade organisations that have both large and small operators as members have been consulted on the proposals. The Small Business Service (SBS) was also consulted. The Government's objectives, within the overall framework for effective regulation, are to minimise any disproportionate impact on small businesses, and, to this end, the Government's preferred option above will assist in achieving this objective by ensuring that defined small-scale organisations are exempt from the requirement that at least one person in a management office holds a personal licence.
- 6.2 Another possibility is that the standard exemption, as proposed, will impact unequally on different parts of the gambling industry, in which different sectors face different risks and incur different costs. For this reason, some respondents advocated exemptions tailored to different sectors or even excluding some sectors altogether. While such a theoretical alternative exists, a more complex approach to the exemption would be likely to add more to the overall costs of small businesses to understand and operate than it saves.

7. Competition assessment

- 7.1 A simple competition assessment has been undertaken in accordance with Better Regulation Executive/Office of Fair Trade guidance and has concluded that a full competition assessment is unnecessary. The proposals will neither directly nor indirectly limit the number of suppliers. Indeed, by reducing compliance costs for small-scale businesses they may facilitate new entry to the industry. The proposals are designed to reduce the regulatory costs for small-businesses and facilitate flexibility for the gambling industry, which will enhance the ability of small-scale operators to compete. Finally, they will not hinder innovation in new technology and allow small-scale operators to take advantage of developments in technology, which can bring enhanced competition through the introduction of new styles of operation requiring fewer staff needing personal licences.
- 7.2 It has been suggested that the existence of a small-scale operators' exemption could encourage gambling firms to alter their business structures to take advantage of it. This is considered unlikely. The cost savings available to a large company from not having to hold PMLs are unlikely to outweigh the extra risk or other supervisory costs that would be incurred in making the change. In addition, the Commission will consider an operator's proposed structure during its evaluation of the licence application, and assess whether it is sufficient to operate the business compliantly.
- 7.3 It is also possible that the exemption would create a threshold effect which will make it difficult for a small firm to grow organically. Again, it is considered that this effect will be of little importance due to the relative cost of PMLs compared with the likely investment necessary for or profits available from growth. Nevertheless, it is conceivably possible for such an effect to emerge. Hence, the effects of the exemption will be kept under review.

8. Enforcement, sanctions and monitoring

- 8.1 From 2007 the Commission will issue new operating licences to organisations and individuals who are providing facilities for gambling, and personal licences to certain individuals working in the gambling industry. The Commission specifies some of the conditions under which these licenses are granted and also issues codes of practice for the provision and management of gambling facilities. The Commission has legal powers to monitor licence holders and can levy fines or revoke licences; and impose new or revised licence conditions. It can also investigate and prosecute illegal gambling under the Gambling Act.

9. Summary of Costs and Benefits and Recommendation

Option	Benefits	Costs
1.	No benefits for small-scale organisations have been identified with the option.	Costs are not predicted at this stage, but may have adverse affect on certain businesses if unable to take advantage of the exemption. Costs would have to be absorbed by the gambling industry through the setting of initial application and annual fees to enable full cost recovery to the Commission of its operations. The fees structure to determine the cost of Commission operations has been between the Department, H.M. Treasury and the Commission, and is subject to separate consultation. Compliance costs will mean that small-scale operators will find it increasingly difficult to compete with larger firms.
2.	This option clarifies the Department's approach under Section 129 of the Act and provides benefits to scale-sale operators by minimising the administrative, regulatory and financial burdens on them. It also meets the stated objective of a defined exemption and maximises the potential benefits for all interested stakeholders and the Gambling Commission.	If the exemption is made as proposed in this option, small-scale organisations will benefit by not having to bear the costs of applying for a personal licence or bearing the increased administrative burden. The level of costs that might be saved by operators by this option has not been predicted at this stage.

The Department has decided that Option 2 represents the best option and will continue to monitor and review the impact of the regulations and if necessary, will amend them in the light of actual experience.

10. Declaration

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

Signed..... .

Date..... .

Contact point:

Donald Sproson

Gambling and National Lottery and Licensing Branch
Gambling Division
0207 211 6535
donald.sproson@culture.gsi.gov.uk