

**EXPLANATORY MEMORANDUM TO**  
**THE GAMBLING ACT 2005 (PREMISES LICENCES) (REVIEW) REGULATIONS**  
**2007**

**2007 No. 2258**

**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 These Regulations specify matters relating to the procedure for a review of a premises licence granted under Part 8 of the Gambling Act 2005 (“the Act”).

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

3.1 None.

**4. Legislative Background**

4.1 The Act establishes a new system of regulation for all gambling in Great Britain, other than the National Lottery and spread betting. The Act establishes a new regulator for gambling, the Gambling Commission, and a new licensing regime for commercial gambling. As part of the licensing regime, the Act provides for three main types of permission: operating and personal licences which are issued by the Gambling Commission, and premises licences which are issued by licensing authorities. In England and Wales, local authorities are the licensing authorities and, in Scotland, it is licensing boards.

4.2 Part 8 of the Act sets out the provisions relating to premises licences. It provides for different types of premises licence depending on the nature of the gambling to be provided. Premises licences once issued are of indefinite duration. A premises licence only ceases to have effect if it is surrendered by the holder, or if it lapses because the licensee dies, becomes incapable of carrying on the licensed activities, or becomes bankrupt etc. Where none of these matters take place the only way in which the licence can be brought to an end is if it is revoked following a review by the licensing authority.

4.3 Sections 197 to 203 of the Act set out the provisions relating to a review of a premises licence. A review can be initiated in one of two ways: either following an application being made by a responsible authority or an interested party (as defined respectively in sections 157 and 158 of the Act); or the licensing authority can itself initiate a review.

4.4 Where a review takes place, the licensing authority must hold a hearing unless the licence holder and any interested parties or responsible authorities making representations agree to the review being disposed of without a hearing. Following a review the licensing authority has the power to revoke the premises licence, suspend it

for up to 3 months, or to modify the conditions of the licence. The licensing authority must give notice of its decision to the licence holder, the applicant for the review (if any), the Gambling Commission, other specified authorities and any person who made representations on the review. An appeal against the licensing authority's decision may be made by the licence holder, the applicant for the review, any person who made representations and the Gambling Commission.

4.5 The Act provides for certain matters relating to reviews to be set out in subordinate legislation. These include in particular the form of the application for a review, and of the notices to be given and published in respect of a review, and the manner in which each of these things are to be done. The Act also provides for regulations to make provision about the period for making representations by the licence holder, responsible authorities and interested parties. The purpose of these Regulations is to make such provision.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

5.2 Most of the regulations apply only to England or Wales; in particular, the provisions which prescribe the form and manner for giving and publishing notices on an application for a review, and those which prescribe the form and manner for the giving and publishing of notices under section 200(3) of the Act. This is because the powers under which the relevant provisions are made are only exercisable by the Secretary of State in relation to England and Wales. In relation to Scotland the powers are exercisable by the Scottish Ministers. The provisions which apply to Scotland, as well as England and Wales, are the ones which prescribe the form and contents of an application for a review, and which prescribe the form of a notice setting out a licensing authority's decision on a review.

## **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 Act is best summed up by its licensing objectives which 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.

In addition, the Act also updates and consolidates previous gambling legislation.

7.2 These objectives are specifically built in to the premises licensing system under Part 8 of the Act. Section 153 sets out the principles which a licensing authority are to apply in exercising their functions under Part 8. In particular, it requires a licensing authority, amongst other things, to permit the use of premises for gambling in so far as that they think it is reasonably consistent with the licensing objectives. Reviews, as a

function of licensing authorities under Part 8, are also subject to the principles set out in section 153 of the Act.

7.3 An aspect of Part 8 of the Act is that it ensures that the local community and those public authorities with an appropriate local interest (such as the police, the local planning authority, the fire and rescue authority for the area, an environmental protection authority for the area, a child protection authority and the HMRC) are able to participate in decisions relating to premises licences. Where an application is made for a premises licence or to vary a premises licence, the Act sets up a procedure for representations to be made by responsible authorities and interested parties. Responsible authorities are the public authorities referred to above; and interested parties are residents and businesses likely to be affected by the activities at the premises, or organisations representing such persons. Where representations are made, then the licensing authority must hold a hearing unless all parties agree otherwise.

7.4 Similar procedural requirements apply in the case of a review of a premises licence. Where an application is made for a review, the Act allows representations to be made by responsible authorities and interested parties on the application. The same applies where the licensing authority propose a review of its own initiative.

7.5 These Regulations make provision in 3 areas:

- They prescribe the form of an application for a review;
- They prescribe matters relating to the form of notices and the manner in which notices are to be given; and
- They prescribe the form in which the licensing authority's decision on a review is to be given.

7.6 In prescribing the form of an application the Department has adopted a format which is consistent with that used for other types of application under Part 8. It is also intended to be flexible in not prescribing specific information or documents which have to be submitted in support of the application.

7.7 The Department has used the Regulations to require notice to be given to the licence holder and the responsible authorities where either an application is made for a review or the licensing authority decide to hold a review. Also, the Regulations provide for the licensing authority to publish notice of an application, or of their intention to hold a review. This is to ensure potential interested parties are made aware of what is being proposed. The provisions on giving and publishing notices contribute to the overall policy of Part 8 of the Act in ensuring that adequate notice is given to licence holders, responsible authorities and interested parties to enable them to participate fully in the review process. In developing the form of the notices, and the provisions which govern the manner in which they are to be given or published, the Department has tried to be consistent with the provisions which apply in other contexts under Part 8 of the Act. We have also sought to include additional flexibility, allowing notices to be published by a licensing authority either on its website or in a local newspaper. This is a departure from the position in relation to other matters under Part 8 of the Act where the only option is to publish the notice is a local newspaper.

7.8 In prescribing the form for recording the licensing authority's decision on a review, the Department has ensured that not only reasons are given for the decision, but also that information is provided about rights of appeal.

#### *Consultation on draft regulations*

7.9 The consultation for this regulation ran from 26<sup>th</sup> April 2007 to 17<sup>th</sup> July 2007, for the recommended 12 week period. A total of 15 responses were received and the Department discussed the proposed regulations in a number of regular meetings held with the industry, licensing authorities or their representative groups. The draft application form, the forms of the notices, and the form for setting out the licensing authority's decision following a review were published as part of the consultation. Amendments were made to the forms, following comments made by respondents. A full list of those who responded is included in the Regulatory Impact Assessment.

7.10 The Department will make the application forms and forms of notice available to licensing authorities in word template and they in turn will make the appropriate forms available to applicants.

7.11 The Department also intends to draft a guidance document to accompany these regulations, to provide greater explanation of the procedure prescribed. The forms will be drafted in collaboration with licensing authorities so that it meets their requirements. It will be available to members of the public also, to assist them in making appropriate applications.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

## **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](mailto:Jennifer.smith@culture.gsi.gov.uk) can answer any queries regarding the instrument.

## Regulatory Impact Assessment:

### THE GAMBLING ACT 2005 (PREMISES LICENCES) (REVIEW) REGULATIONS 2007

#### 1. Title of proposal

The Gambling Act 2005 (Premises Licences) (Review) Regulations 2007

#### 2. Purpose and intended effect

*The objective*

2.1. These Regulations relate to the procedures on a review of a gambling premises licence. The Gambling Act 2005 ("the Act") enables responsible authorities and interested parties to apply to the licensing authority for a review. It also allows the licensing authority itself to initiate a review. These regulations specify the form of the applications and notices to be used in applying for or initiating a review. They also specify the manner in which applications are to be made and notices are to be given or published, and set out the time limits for making representations.

*The background*

2.2 The Act gives licensing authorities the responsibility for licensing premises to be used for gambling within their locality. This includes casinos, betting shops, bingo premises, betting on tracks, adult gaming centres and family entertainment centres. Those wishing to operate gambling premises must apply to their licensing authority and pay a relevant fee. The person applying for a premises licence must also hold an operating licence issued by the Gambling Commission.

2.3 Premises licences are indefinite and not subject to renewal. Instead, the Act includes provisions enabling a premises licence to be reviewed. Following a review, the licensing authority has the power to revoke, suspend or modify the licence.

2.4 The Act allows a responsible authority or a[n] interested party to apply for a review of a gambling premises licence. Interested parties are defined as a person who lives sufficiently close to the premises and is likely to be affected by authorised activities, has business interests which might be affected; or a representative of either group. Responsible authorities as defined by the Act include:

- the local police
- the local planning authority
- an authority concerned with minimising the risk of pollution to the environment or the protection of public health

- a body designated to advise the authority on the protection of children
- Her Majesty's Customs and Excise
- The Gambling Commission.

The Act also allows the licensing authority itself to initiate a review.

2.5 The overall arrangements for a review of a premises licence are set out in the Act. However, the Act provides for the Secretary of State to make provision for a number of detailed aspects of the arrangements through secondary legislation, including:

- The form and manner of the application
- The form and manner of the notices which are required to be published by the licensing authority after receiving an application for review
- The form and manner of the notice of application which the applicant is required to send to responsible authorities and the licence holder
- The form and manner of the notices to be given and published by a licensing authority where it initiates a review
- The period of time in which representations can be made The form of the notice provided by the licensing authority setting out their decision on a review.

### **Consultation**

2. 6 The consultation for this regulation ran from 26/4/07 to 17/7/07 for 12 weeks. A total of 15 responses were received and the Department discussed the proposed regulations during regular meetings with industry, licensing authorities or their representative bodies. The draft application form, the forms of the notices and the form for describing the decision following a review was published as part of the consultation. Amendments were made to the forms, following comments made by respondents. In cases where an applicant is unhappy with the outcome of a review, they may further appeal. Responses to the consultation requested information about the availability of appeals was included on the application forms and forms of notice. The forms were also re-drafted to allow the applicant to expand on the reasons behind their application for review and the actions they would like the licensing authority to take, after requests from licensing authorities in particular. A full list of the consultation respondents is attached at Annex A.

### **3. Policy choices**

3.1 The three most important policy choices embodied in these regulations are as follows:

- Whether or not to prescribe the documentation that should accompany and application for a review

- Whether or not to further specify the grounds upon which a review may be sought
- The mechanism for publishing notice of an application for a review.

The options considered by the Government in each case are considered below:

Policy choice 1: Documentation that should accompany an application for a review

The options considered by the Government were straightforward:

Option 1a: To prescribe the documentation which should accompany an application for review any forms involved in an application for the review of a premises licence process

Option 1b: Not to prescribe such documentation

3.2 Following consultation, the Government confirms that it does not intend to take a prescriptive approach and the regulation therefore adopts option 1b. The applicant for a review of a premises licence should have the freedom to submit whatever documents he or she believes supports that application. This could include a range of material. The Department concluded that it was restrictive to prescribe the exact nature of supporting documents as this could vary depending on the circumstances of each case. To prescribe documentation would make the regulation unnecessarily rigid and prescriptive for applicants, licensing authorities and licensees. The majority of respondents to the consultation supported the approach of making this regulation less bureaucratic and flexible where possible. It was also suggested that any prescribed list of relevant documents that attempted to cover all circumstances would be lengthy, potentially difficult to navigate, and subject conflicting interpretation.

Respondents to the consultation indicated that a potential disadvantage to not prescribing a list of supporting documents is that there may be inconsistency between licensing authorities over what relevant documentation they choose to accept. The view of the Government is that whether particular evidence should be admitted should be based on whether its relevance to the application. However, in response to the arguments made, the Department now intends to issue non statutory guidance which will provide further information for both applicants and licensing authorities about the regulations and the process involved.

Policy choice 2: The grounds on which a review can be sought

Option 2a: To further specify the grounds upon which a review can be sought

Option 2b: To rely upon the grounds already specified in the Act

**3.3 Government rejects this option.** The Act states that licensing authority should have regard to the following when aiming to permit the use of premises for the purposes of gambling:

- The Gambling Commission guidance or codes of practice,
- The statutory licensing objectives, and
- The licensing authority's gambling policy statement.

The Department does not consider it necessary to add an extra layer of regulations and consider these to be sufficient. The Act does not limit the grounds on which a person can make an application and therefore it would be incompatible with the legislation for the application form to do so. The Licensing authority can reject any application for review under Section 153 of the Act, if it considers the application to be either:

- Frivolous or vexatious
- Will not lead to any action by the licensing authority
- Substantially the same to concerns raised in an earlier review
- Substantially the same as representations made when the premises licence was applied for.

It has been argued that prescribing further detail on the grounds for review in regulation would assist in limiting irrelevant or invalid applications being made and provide greater clarity. However, responses to the consultation again welcomed a less prescriptive approach and took the view that the provisions under the Act were sufficient. There were mixed requests for the grounds on which a review could be refused to be included either on the application form or in separate guidance. The Department has taken the view that any further additions to the form would have lengthened it considerably and decided to retain this information in the separate guidance document.

Policy choice 3: Publication of notice of an application for review

Option 3: To require licensing authorities to publish notice of the application for review, and publish them in three formats. These include outside the premises, on a local authority website and in a local paper.

3.4 The Government put forward the option to require licensing authorities to publish notice of an application in all three formats outlined above. The majority of licensing authorities did not agree with a requirement to publish in a local paper on the grounds of unreasonable cost. There is no charge for an application for review and therefore the costs would have to be met through the premises licence annual fees. The potential benefits of such an approach was not considered great enough justify a potential increase in fees, especially where electronic notices on local authority websites could be more effective and cost efficient. Furthermore, many industry respondents were concerned that widespread publication of a licence review would have an adverse impact on the reputation of a business, whilst the review was being considered.



3.5 In considering these responses, the Department has decided to reconsider its proposals and decided to amend the draft regulation to require licensing authorities to publish details of a review:

- In a local paper or on the local authority website, at least once, within 10 days of the application being made
- A notice placed outside the premises, as close as possible, which can be conveniently read

The above regulation provides Licensing authorities with the flexibility to use their own website or a local paper to fulfil their statutory obligation under this regulation to publish notice of the application. It also takes account of authorities concerns on cost and the industry's concerns about impact negative publicity may have on a premises during the period for making representations.

The obligation to publish a notice outside the premise fulfils the requirement to keep the local community engaged and allow representations to be made. It is worth remembering that representations can also be made to dismiss the review application or provide counter arguments in support of the licence holder.

The forms to give notice have been prescribed to ensure consistency across licensing authorities and reduce the administrative burden of producing notices individually. The Department considers that this is consistent with the procedures of giving notice already laid in the Premises Licence and Provisional Statement regulations. This is designed to ensure that the local community, including other local businesses, are kept informed of relevant gambling matters within their area and are given the opportunity to participate in that process. The notice outside the premises in particular gives those who work or live nearby the chance to see that an application has been made.

#### 4. Costs and Benefits

4.1 Those expected to be affected by these regulations are:

- approximately 400 licensing authorities in England and Wales
- approximately 12,000 gambling premises, when subject to a review application

*Benefits*

4.2 The review procedure is one of the essential ways in which the Act can achieve the three statutory objectives of the protection of children and the vulnerable, ensuring that gambling is conducted in a fair and open way and preventing gambling from becoming a source of crime and disorder. It provides an important safeguard given that premises licences are of unlimited duration.

4.3 These Regulations add to the effectiveness and fairness of the review procedure. They ensure that, where an application is made for a review, that the licence holder and responsible authorities are specifically given notice of that application, and have sufficient opportunity to make representation on the application to the licensing authority. Similarly the requirement on licensing authorities to publish notice of an application for a review ensures that interested parties have a means of finding out that the application has been made. The licence holder themselves are given due notice of the application and the grounds upon which it has been sought. They are given the opportunity to respond to any allegations made and indeed are given the opportunity to rectify. The notice period allows the licensee to consider the application for review themselves and if necessary, take action.

4.4 There is cost involved in the giving of and publication of notices, [which have to be placed in a local paper and outside the premises.] The Government believes that the cost of this process is outweighed by the benefit of allowing the local community to be aware of developments in their area, and of ensuring that those with a definite interest in any proposed review (such as the licence holder or a responsible authority) are informed about it and have a sufficient opportunity to make representations

#### *Environmental*

5.3 The Government has found no evidence to suggest this regulation has an impact on the environment.

#### *Social*

5.4 The Regulations ensure that those in the local community who might be affected by a review of a premises licence are given adequate notice of the proposed review and sufficient opportunity to express the point of view.

#### *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 There are associated costs associated with these regulations for licensing authorities:

- the potential cost of advertising applications for a review, although the Department has given authorities the choice of using a local paper or their website which is less expensive.
- the cost of publishing notice of their intention to hold a review>This is considered an essential function of the regime so that all parties are aware that the application has been upheld and the licence is to be reviewed.

• However, as the new gambling regime allows local authorities the power to set fees at a level that provides for full cost recovery, the Department considers these measures to be cost neutral for local government.

There may also be costs for the applicant giving notice of their application to responsible authorities and the licence holder;. However, the Department takes the view that such measures promote openness and transparency. The Department believes that the benefits of such measures far outweigh the costs.

## 6 Small Firms Impact Test

6.1 Trade organisations that have both large and small operators as members have 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 conditions that the review of a premises licence process protects the interests of the community without presenting a barrier for businesses wishing to operate in the gambling industry. The licensee is given notification of the application for a review, given the chance to respond. They may choose to take any action to rectify the problem and inform all parties involved. If parties come to an agreement on necessary action the review can come to a conclusion and need not progress to a hearing.

## 8 Enforcement and Sanctions

8.1 There are no enforcement and sanctions elements to this regulation.

## 9 Monitoring and Review

9.1 The Department is committed to monitoring and reviewing the success of these regulations, thorough regular consultation with local government, industry representatives,

and community groups. This reflects the ongoing and existing arrangements the Department has with all stakeholders.

**10 Conclusion**

10.1 The Department believes that the regulations will achieve a fair review 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:

**Annex A - consultation respondents.**

1. Jim Orford- Professor of Clinical and Community Psychology  
University of Birmingham
2. Wychavon District Council
3. North Lanarkshire Council
4. National Association of Licensing and Enforcement Officers
5. Racecourse Association
6. East Cambridgeshire District Council
7. LACORS- Local Authorities Coordinators of Regulatory  
Services
8. Greater Manchester Police
9. Leeds City Council
10. British Casino Association
11. BACTA - British Amusement Catering Trade Association
12. Bingo Association
13. Association of British Bookmakers
14. Methodist Church and Salvation Army
15. Quaker Action on Alcohol and Drugs

