

**EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (PREMISES LICENCES AND PROVISIONAL
STATEMENTS) REGULATIONS 2007**

2007 No. 459

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 The Regulations make provision about premises licences and provisional statements issued under Part 8 of the Gambling Act 2005 (“the Act”). A premises licence is required where facilities for gambling are provided in casinos, bingo halls, adult entertainment centres, family entertainment centres, betting shops and tracks used for betting. The Regulations provide for the form, content and manner of making applications. They also provide for the form and manner of notices of application, the form of notices of grant or rejection of applications, the form of the summary of the terms and conditions of the licence sent to a successful applicant, and the form and content of a premises licence or a provisional statement.

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

3.1 None.

4. Legislative Background

4.1 The Regulations form part of the implementation of the Act. The Act establishes a new system of regulation of all gambling in Great Britain, other than the National Lottery and spread betting. The Act introduces 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 under the Act and in Scotland it is licensing boards.

4.2 Section 37 of the 2005 Act makes it an offence to use premises for providing facilities for gambling without the appropriate permission. The main form of permission for using premises for gambling is the premises licence.

4.3 Part 8 of the Act sets out the provisions relating to premises licences. It describes the functions of licensing authorities with respect to premises licences. Conditions may be attached to premises licences by licensing authorities. Premises licences are also subject to conditions attached through regulations made by the Secretary of State or Scottish Ministers. There are provisions on the duration, transfer, variation, reinstatement and review of licences and mechanisms by which appeals may be made.

Part 8 also provides for responsible authorities (listed in section 157) and interested parties to have the right to make representations on applications made under that Part.

4.4 Part 8 also allows a person to apply for a provisional statement in respect of premises. This may be done instead of applying for a premises licence where the person making the application is concerned with premises that he expects to be constructed, expects to be altered or expects to acquire a right to occupy (section 204). Where a provisional statement is granted in respect of premises, that imposes restrictions on the licensing authority's ability to refuse a subsequent application for a premises licence in respect of the same premises (section 205).

4.5 Part 8 leave matters relating to the form and content of applications, the form and manner of notices of application, the form of notices of grant or rejection of applications, and the form and content of a premises licence or provisional statements to be specified in subordinate legislation. These Regulations make provision with respect to those matters.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 Generally the provisions of the Regulations only apply where the relevant application is made to a licensing authority in England or Wales. This is because in the majority of cases, the powers under which the instrument is 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 exception is the powers under section 204(3) of the 2005 Act to require an application for a provisional statement to include such plans and other information in relation to the construction, alteration etc. of the premises which are the subject to the application. In that case, the power to make regulations is exercisable by the Secretary of State in relation to Great Britain. For this reason, regulation 10(2) to (4), which makes provision about the plan to accompany an application for a provisional statement, applies to applications for provisional statements made to licensing authorities in Scotland as well.

6. European Convention on Human Rights

As the instrument is subject to the 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.

7.2 The application process is a key way for local communities, as interested parties, and responsible authorities to be involved in the consideration of a new gambling premises in their area. The Department's policy objective was to develop practical, user-friendly processes which reflected the needs of licensing authorities and industry, as well as provide interested parties with the information they need to be involved if they wished.

7.3 The Act requires the Secretary of State to prescribe all the forms relating to applications and the form of the premises licence to ensure consistency of approach. Equally, the Department was committed to ensuring that, in doing so, the regulations were flexible and proportionate. The Department therefore made a number of detailed proposals for:

- the format of gambling premises licence applications, including consulting on the draft application form;
- the information to be provided with a premises licence application, including a plan of the premises;
- the process for giving notice of an application and how representations may be made to a licensing authority about a licence application;
- the form of the notice indicating that an application had been granted or rejected;
- the form of the premises licence itself;

The Department designed a suite forms which reflected the requirements of the Act.

7.4 The Department considered the plan to be a key part of an application. The plan allows the applicant to demonstrate to the licensing authority the exact layout of the premises and how they propose to manage the provision of gambling facilities within the premises. In particular, it will be the document which demonstrates how a premises will comply with the mandatory conditions, which are required by regulations to be attached to licences. These include conditions on matters such as the extent of the table gaming area and of the non gambling area in casinos.

7.5 The Department has included a requirement on the applicant to give notice of an application. This will make effective the right of local communities and responsible authorities to engage in the application process. There are three requirements:

- (i) an advert has to be placed in a local paper within 10 days of the application being made. If this is not possible, the applicant is obliged to find other ways to alert local residents to an application such a leaflets.
- (ii) a public notice must be placed in an accessible place on or close to the premises;
- (iii) the applicant must give notice to responsible authorities (such as fire and rescue, the Police authority, Environmental Health) of their applications. In line with BRE recommendations, applicants will not have to send the whole application form to each authority, we have drafted a simple notification form which the Act allows to be sent electronically.

7.6 The notice period will run for 28 consecutive days from the date on which the application is made. We believe this will give adequate time for effective representations to be made without unduly slowing down the application process. There are provisions to ensure that, where the applicant fails to give proper notice within the required timescales, the period for making representations is lengthened to prevent any prejudice

to responsible authorities and interested parties, but without requiring the whole application process to begin again.

Consultation on draft regulations

7.7 The Department issued a public consultation on this set of regulations on 22 September 2006 which ran for 12 weeks. There were 41 formal responses to the consultation from a variety of stakeholders including local authorities and their representative groups, gambling operators and gambling industry representatives, faith groups and the Gambling Commission . A full list of those who responded is attached as an annex to this Memorandum (Annex A).

7.8 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. The Department used these meeting to pilot the various proposals to establish whether they would work in practice. These meetings highlighted a number of practical considerations which we have taken into account when finalising the prescribed forms. For example, the Department had proposed a single application form for all types of premises but these meeting showed that it was more appropriate to prescribe a separate form for vessels.

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 and Provisional Statements Consultation - List of Respondees

LACORS
Newham
Carlton Bingo
Torbay Licensing
Leeds City Council
Gambling Commission
British Casino Association
City Of Westminster
Association of British Bookers
The Bingo Association
Kerzner International
Casino Operator's Association
BISL
Rank
Cardiff Council
Gala Coral
Ceredigion County Council
Sandwell Council
Basildon Council
Cintra
Jim Orford
Forest Heath Council
Responsible Gambling Solutions
Waveney District Council
North Lanarkshire
East Herts Council
London Borough of Wandsworth
Directors of Public Protection- Wales Environmental Health Group
Popleston Allen
Camden
Bingo Association
The Racecourse Association
Leeds city Council
National Joint Pitch Council
Quaker Action on Alcohol and Drugs
The Salvation Army
British Holiday and Home Park Association
Ministry of Defence

Regulatory Impact Assessment:

THE GAMBLING ACT 2005 (PREMISES LICENCES AND PROVISIONAL STATEMENTS) REGULATIONS 2007

1. Title of proposal

The Gambling Act 2005 (Premises Licence and Provisional Statements Regulations) (England and Wales) Regulations 2007

2. Purpose and intended effect

The objective

2.1 The Gambling Act 2005 Regulations prescribe the form and manner of premises licence applications, grants and rejection of licences and the form of the licence itself. These regulations ensure that there is a satisfactory process for handling premises licences, that premises are correctly licensed and that licences are clearly displayed, for the benefit of applicants, communities and the licensing authority.

The background

2.2 The Gambling Act 2005 introduces a new licensing regime for gambling procedure.

2.3 The main objectives of the Act are :

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

2.4 These regulations set out the procedure for applicants who are applying for a premises licence and Provisional Statement for licensing authorities who grant the premises licence.

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 41 responses to the formal consultation, including from licensing 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 regulations ensure that sufficient information is received by the Licensing Authority to make a fair decision and that the process is user- friendly. It allows Licensing Authorities to

meet the objective of the Act to regulate premises and reduce the risks to the local community.

3.3 The responses to the consultation indicated that the government's proposals were satisfactory and welcomed a prescribed format of the forms to ensure consistency to both the industry and Licensing Authorities.

3.4 The forms to publish notice to the public and responsible authorities have been prescribed to again ensure consistency throughout the process for both the industry and Licensing Authorities. The forms to grant or reject applications are prescribed for the same reasons. This provides a streamlined system with familiar documentation which is instantly recognisable.

4. Options

4.1 There were three options the government considered:

Option 1: To do nothing

4.2 This was not a credible option. The licensing regime needs to be underpinned with effective administrative processes. No regulation would have left each licensing authority to develop their own system and led to more confusion and inconsistency.

Option 2: To prescribe a single application form and the information to be included on the form of notices of application to the public and responsible authorities and provide the time in which representations can be made.

4.3. The consultation meetings concluded that a generic form was not suitable, and a separate form has been prescribed for vessels as they are subject to different information. The forms have been designed to be user friendly and have taken account of comments from the industry and Licensing Authorities.

To ensure that the public are sufficiently engaged in developments within their area and given sufficient time to raise concerns. There are safety mechanisms involved to dismiss vexatious or frivolous complaints. The forms have been prescribed to provide notice, to ensure consistency and confirmation of the level of detail required to be provided. The time limits for members of the public or responsible authorities to make representations has been set at 28 consecutive days, in line with the Licensing Act 2003.

The Government has prescribed a requirement for applicants to publish notice of their applications for a premises licence in a newspaper with local relevance. This will inevitably incur cost for the industry, however it was deemed necessary to keep the public informed of developments within their area and received considerable support from community and faith groups.

Option 3: To prescribe the information to be included on the register

4.4 . The Department concluded that Licensing Authorities already keep these registers as required under the Licensing Act 2003. This was based on an assurance from Licensing Authorities that they already do so as a matter of good practice.

5. Costs and Benefits

5.1 Those expected to be affected by these regulations are approximately 400 licensing authorities in England and Wales and approximately 13,000 gambling premises. The main existing businesses to be affected will be:

- around 170 casinos
- 700 bingo halls
- 2,000 arcades
- 9,000 betting shops, race tracks and other operators with betting permission

Benefits

5.5 The benefits of the regulations lie in the standard forms that will enable operators to apply for licences correctly. These have been designed to be as straight forward and user friendly as possible, thereby reducing the administrative burden and cost to the industry. Standard forms will relieve licensing authorities of the cost of preparing their own and ensure that legible notices and licences are available to the public and enforcement officers. It will also be simple for applicants to ensure that they have enjoyed fair and equal treatment from the licensing authorities.

Environmental

5.6 The regulations do not impact directly on the environment.

Social

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

Equity and Fairness

5.8 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 application process is provided for within the premises licence application fee the industry is obliged to pay the Licensing Authority.

5.7 There is a cost to the industry in the requirement to publish their application in a local newspaper or newsletter, relevant to the area. However, this cost is outweighed by the social benefit of keeping the local community informed and engaged in plans for their area. Community and Faith groups were strongly in favour of this. Research has shown us that a leaflet drop does not have the same impact as advertising. Furthermore, casino and bookmakers currently have to advertise in relevant trade press. The local community can then make representations about the application to their licensing authority.

5.8 Any representations made are considered by the Licensing Authority. If they are deemed to be vexatious or frivolous then they are disregarded. Substantive comments or complaints are subject to hearing and we have laid separate regulations for this procedure. The Government has prescribed the form of the notice to ensure consistency and avoid confusion over the content of a notice.

5.9 There may also be cost involved in the requirement to attach a plan of the premises to the Premises Licence application form. Again, the costs are outweighed by the benefits. An applicant is able to demonstrate the exact location of the premises and how they have met the mandatory conditions attached to the licence prevent access to certain gaming machines for children. The inclusion of a plan will minimise the necessity of inspection of a premises prior to granting a licence. To minimise the cost of this requirement, the Government has stated that a plan has to be to scale but has not prescribed the scale, thus enabling the industry to submit a plan which they may already have in their possession.

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 application process protects the interests of the community without presenting a barrier for businesses wishing to operate in the gambling industry.

8 Enforcement and Sanctions

8.1 Licensing authorities will have a duty to ensure that the premises licence conditions are being implemented fully at every licensed gambling premise. They will adopt a risk based approach to compliance and enforcement. This means they will make periodic visits to inspect licensed premises, based on the degree of risk they attach to an individual premise. The Gambling Commission will provide licensing authorities with guidance on compliance and enforcement. The Gambling Commission may also visit a licensed premise to ensure compliance with the operating licence conditions. The Gambling Commission and licensing authorities will work closely together on compliance and enforcement issues. We have minimised the need to visit by requiring a plan of the premises to accompany the application form, which gives the authority the layout of the premises.

8.2 Failure to comply with the procedures for premises licences and provisional statements as set out in these regulations may result in a licence not being issued or a licence being revoked.

9 Monitoring and Review

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

10 Conclusion

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