

EXECUTIVE NOTE

Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Regulations 2007 (S.S.I. 2007/196)

The above instrument, which extends to Scotland only, was made in exercise of the powers conferred by sections 151(2) and (3), 159(6) to (8), 160, 161(2) and (3), 164, 165(2) and (3), 187(3) and (4), 188(2), 189(4), 195(3), 196(3), 204(2) and 355(1) of the Gambling Act 2005 (c.19). The instrument is subject to the negative resolution procedure.

Policy Objectives

The Executive shares the UK Government's view that it is essential for the achievement of the Gambling Act's licensing objectives that the gambling industry retains its reputation for both quality and integrity, and that this in turn is dependent on the maintenance and development of an effective licensing system. The regulations are intended to 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 licensing objectives of the Gambling Act are:

preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
ensuring that gambling is conducted in a fair and open way, and
protecting children and other vulnerable persons from being harmed or exploited by gambling.

The regulations set out the process which applicants must follow when applying for licences, including the information to be supplied and process for giving notice to the public and responsible authorities. The process requires licensing authorities to issue licences in a certain form, and provides a standard method for granting or refusing a licence. The regulations govern the form that a premises licence must take and what must be displayed. The proposals have been formulated with the objective of putting in place a user friendly system that imposes low compliance costs on the industry while ensuring that communities benefit from a sound system of licensing.

Consultation

The policy proposals underlying this instrument issued for consultation on 1 December 2006 to 200 interested parties including local authorities, Licensing Boards, the police, those involved in the provision of gambling, their trade associations, legal interests, club associations, faith groups and gambling help/charity groups. The consultation paper was also posted on the Scottish Executive's consultation website and copies were placed in SPICe. The Executive received 12 responses as at the closing date of 2 February 2007, which were fully considered before finalising this instrument. The individual responses, an analysis of their comments and the Executive's response will be posted on the Executive's consultation website.

Financial Effects

The instrument is part of a package of regulations affecting premises licences. The mandatory and default conditions regulations were laid before the Scottish Parliament on 8 February and premises fees regulations (setting the fees payable by the gambling industry) will be laid shortly after this instrument. A Regulatory Impact Assessment covering the package as a whole will accompany the fees regulations that will follow shortly.

Scottish Executive Finance and Central Services Department
March 2007

FINAL REGULATORY IMPACT ASSESSMENT

Title of proposal

1. The proposals are for the following Scottish Statutory Instruments (SSIs):
 - (a) The Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007
 - (b) The Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Regulations 2007
 - (c) The Gambling Act 2005 (Premises Licence Fees) (Scotland) Regulations 2007

Purpose and intended effect - (i) Objective

2. The purposes of the SSIs are:
 - (a) To prescribe mandatory and default conditions that will attach to Scottish gambling premises licences.
 - (b) To prescribe the form and manner of premises licence applications, grants and rejection of licences, and the form of the licence itself.
 - (c) To prescribe the fees for premises licence applications.

The SSIs will come into force on 21 May 2007.

(ii) Background

3. The Gambling Act 2005 introduces a new system for the regulation of gambling in Great Britain with effect from 1 September 2007. The 3 licensing 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.

Brief background to each of the regulations is set out below.

- (a) The Gambling Act gives Scottish Ministers powers to make regulations which provide for 2 types of conditions to be attached to premises licences. Mandatory conditions will attach to all specified types of premises licence and can only be amended or excluded by further regulations made by Scottish Ministers. Default conditions will also attach to all specified types of premises licence unless they are amended or excluded by the licensing authority responsible for issuing the premises licence (in Scotland, the local Licensing Board).
- (b) The premises licence regulations set out the procedure for applicants who are applying for a premises licence and provisional statement (required where a person expects premises to be constructed or altered, or expects a right to occupy premises). The procedure is also set out for licensing authorities who grant or reject the premises licence.

(c) The costs of determining and issuing premises licences and other associated functions (such as inspection and enforcement) will be met through a one-off application fee and annual fees – the levels of these are set out in the fees regulations.

(iii) Rationale for Government intervention

4. The aim of the regulations is to ensure that (a) existing and new licensed gambling premises are managed in a way that supports the Gambling Act's 3 licensing objectives; (b) there is a satisfactory process for handling premises licences, they are correctly licensed and clearly displayed, for the benefit of applicants, communities and the licensing authority; and (c) the fees are set at a level that enables full cost-recovery for licensing authorities while providing value for money for the gambling industry.

Consultation

5. Each of the regulations has been consulted on (separately) and in total some 39 responses were received from local authorities, Licensing Boards, the police, those involved in the provision of gambling, their trade associations, club associations and faith groups. There has also been close consultation with the lead English Department, the Department for Culture, Media and Sport (DCMS), as gambling is primarily a reserved matter. An analysis of the responses to the mandatory and default conditions consultation exercise can be accessed via the link below. In due course, similar information will appear on the Executive's website about the premises licence regulations and fees. In the meantime, the industry generally welcomed a consistency of approach with DCMS actions for the application process and the use of a single form, but felt the proposed fee levels were too high. There have been some significant reductions made to the final fees following the consultation exercise.

<http://www.scotland.gov.uk/Topics/Government/local-government/Gambling/Consultation>

Options

6. We consider the options are:

6.1 Option 1 – do nothing in respect of any of the regulations. This was disregarded for each of the regulations as (a) the existing legislation places a number of conditions on the way operators currently provide gambling facilities, which some in the industry want retained, and adequate safeguards were needed to protect children and vulnerable people; (b) the licensing regime needs to be underpinned with effective administrative processes; and (c) the Gambling Act requires that a fee must be paid in order to make a premises licence application.

6.2 Option 2 – (for category (a) regulations only) to replicate existing conditions only. This option had the attraction of retaining existing provisions with no extra costs involved for the industry. However, the Gambling Act introduces new categories of gambling premises, which would not be covered by existing conditions. Moreover, it was considered that new conditions were needed to meet the new licensing objectives, particularly with regard to social responsibility. This option was therefore also rejected.

6.3 Option 3 – (for category (a) regulations only) to replicate existing conditions along with a package of new conditions designed to meet the Act’s licensing objectives. A set of conditions has been developed which seeks to be fair, balanced and proportionate. Existing conditions have been maintained where they have worked well and would support the new objectives, new conditions have been developed and some greater freedoms have been given to the gambling industry. **This is the Executive’s preferred option for the category (a) regulations.**

6.4 Option 4 - (for category (b) regulations only) to prescribe a single application form and information and procedures for the premises licensing process. The forms have been designed to be user-friendly and have taken account of comments from the industry and licensing authorities. Measures are included to ensure that the public are sufficiently engaged in developments within their area – these include requiring notices of applications for premises licences to be published in local newspapers. **This is the Executive’s preferred option for the category (b) regulations.**

6.5 Option 5 - (for category (c) regulations only) to prescribe centrally a single, national fee for each type of premises licence. This would provide consistency for the Scottish gambling industry, which has been used to centrally set fees. It is in line with the policy determined by Scottish Ministers at the time of the Westminster Parliamentary passage of the then Gambling Bill. **This is the Executive’s preferred option for the category (c) regulations.**

Costs and Benefits - (i) Sectors Affected

7. There will be no direct impact on charities or the voluntary sector, though the regulations enable local communities to get more involved in premise licence applications in their area. The regulations will affect approximately 45 Licensing Boards and the following sectors of the gambling industry in Scotland:

- 12 casinos;
- 99 bingo halls;
- arcades (2,000 across Britain – Scottish split not known);
- betting shops, race tracks and other operators with betting permissions (9,000 across Britain – Scottish split not known);

(ii) Benefits

8. There are no benefits to option 1 other than that for the category (a) regulations this would be the least regulatory and therefore least costly to the industry. But it would not meet the wishes of parts of the industry, nor would it satisfy any of the policy aims.

9. Although option 2 would go some way to reducing gambling harm, it would not apply to all types of gambling premises and does not meet the subsidiary policy aims to provide consistent regulation, take account of local conditions and involve communities in the regulatory system.

10. Option 3 will ensure that all gambling premises are managed in a way which supports the new licensing objectives. The package of conditions includes safeguards to ensure the protection of children and other vulnerable people, and lead to a reduction in gambling harm.

Also, industry will benefit from the certainty of having the conditions set out in regulations, rather than leaving it to the discretion of each licensing authority to decide whether conditions are required. This ensures a consistent approach. Industry will also benefit from the increased flexibility in the opening hours which should help offset any costs associated with the premises licence conditions. Licensing authorities will also have the ability to adjust opening hours or add individual licence conditions if local circumstances justify this.

11. The benefits of option 4 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.

12. Option 5 should allow Licensing Boards to recover the whole cost of the administrative work involved in processing premises licences. It will also provide a consistent approach to fee-setting in Scotland and the industry will continue to pay a standard fee (irrespective of where in Scotland they are located), which represents a very small proportion of business costs.

(iii) Costs

13. Option 1 would not incur any costs as no regulations would be made but, for a mixture of policy reasons and requirements under the Gambling Act, this is not a credible option. Option 2 would be cost neutral to some parts of the industry as these conditions are already in place. It is likely to affect competition adversely as the new gambling sectors would not be bound by these conditions.

14. Option 3 may involve some additional costs to operators through the need to meet the licence conditions. Licensing authorities will charge an annual fee for a gambling premises licence. This will cover the cost of inspecting licensed gambling premises to ensure compliance with these conditions. The industry will have to pay that fee and will be obliged to make any adjustments necessary to ensure that a licensed premise complies with these conditions. Bearing in mind that many of the conditions are already in place, and that the conditions attached to the new casinos can be taken into account at the design stage, it is not considered that these conditions will impose a significant burden on industry.

15. Under option 4, the costs of the application process are provided for within the premises licence application fee the industry is obliged to pay the licensing authority. There is a cost to the industry in the requirement to publish their application in a local newspaper or newsletter, relevant to the area. (The industry estimates this to cost between £300 to £500 per advert.) However, this cost is outweighed by the social benefit of keeping the local community informed and engaged in plans for their area. 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 should be outweighed by the benefits. 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 plan has to be to scale but the scale has not been prescribed, thus enabling the industry to submit a plan which they may already have in their possession.

16. Option 5 covers all of the costs involved in the premises licensing process, some of which are referred to under options 3 and 4. The application and annual fees are set out in the Annex to this Regulatory Impact Assessment. The fee levels aim to meet the costs of administering and regulating the relevant sectors, and represent a very small proportion of business costs. For instance, in 2006 the average turnover for betting shops was £3.9 million. The proposed new annual licence fee therefore constitutes less than 0.01% of turnover or the equivalent of less than £8 per week. The new application fees would constitute only 0.06% of annual turnover. The fee levels will be reviewed about a year after implementation of the Gambling Act to test their robustness. This option and options 3 and 4 would also entail a small cost to the Executive associated with the preparation of the SSIs, laying them before the Scottish Parliament and notifying interested parties.

Small/Micro Firms Impact Test

17. Trade organisations that have both large and small operators as members were consulted by DCMS, as was the Small Business Service. Within the overall framework for effective regulation, the objective is to minimise any disproportionate impact on small businesses. The Executive has mirrored the DCMS' processes and procedures, and 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.

Test Run of Business Forms

18. There are some statutory business forms introduced by the premises licences regulations, which will only affect the relevant sectors of the gambling industry. The forms being used in Scotland mirror those designed by DCMS for England and Wales, on which the Small Business Service was consulted as were the appropriate sectors of the gambling industry.

Competition Assessment

19. The premises licence conditions will protect the interests of the community and the vulnerable without presenting barriers to competition for businesses wishing to operate in the gambling industry. The regulations will apply equally to all firms that enter the industry. Hence, they do not give advantages to existing firms in the industry and do not undermine the ability of all firms in the industry to compete and innovate. Equally, other than under the transitional arrangements for existing operators, the fee levels will have the same application to existing and new operators. The Executive does not consider therefore that there is any need to conduct a full competition assessment of these measures.

Enforcement, Sanctions and Monitoring

20. 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.

21. Failure to comply with the various procedures and conditions set out in the regulations may result in a licence not being issued or a licence being revoked. Applications for premises licences will not proceed unless the appropriate fee has been enclosed with the application.

Implementation and Delivery Plan

22. The mandatory and default conditions, premises licence forms and procedures and premises fees will be implemented by way of SSIs on 21 May 2007, which will be notified to licensing authorities and other parties. Licensing authorities will collect the fees as part of the premises licence process.

Post-implementation Review

23. The effect of these regulations will be kept under general review in liaison and consultation with stakeholders. In particular, an independent fee review will be undertaken in 2008 to establish how effective the new fee structure has been.

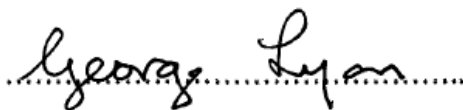
Summary and Recommendation

24. The Executive considers that the regulations a) strike the right balance between ensuring the necessary safeguards are in place to protect children and other vulnerable people, without putting an undue burden on gambling operators; b) will put in place a fair application process for all parties; and c) seek to cover the full costs of administering the premises licensing process with fee levels that still represent a very small proportion of business costs. It is also considered that the regulations are proportionate to the risks involved. It is recommended that the SSIs be implemented as described above.

Declaration

25. I have read the Regulatory Impact Assessment and am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed

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Date

7th March 2007

George Lyon, Deputy Minister for Finance, Public Service Reform and Parliamentary Business, Finance and Central Services Department

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| Premises Type | Transitional Fast-track Application Fee £ | Transitional Non-fast track Application Fee £ | New Application Fee £ | Annual Fee £ |
|--|--|--|--|-------------------------|
| Existing casinos | 250 (will become converted licence) a | 1,500 (will become converted licence) a | n/a | 2,550 |
| New small casino | n/a | n/a | 6,000 | 3,750 |
| New large casino | n/a | n/a | 7,500 | 7,500 |
| Regional casino | n/a | n/a | 11,250 | 11,250 |
| Bingo club | 250 | 1,200 | 2,450 | 700 |
| Betting premises (excluding tracks) | 250 | 1,050 | 2,100 | 400 |
| Race tracks | 250 | 870 | 1,750 | 1,000 |
| Family Entertainment Centres | 250 | 700 | 1,400 | 500 |
| Adult Gaming Centre | 250 | 700 | 1,400 | 700 |