

EXECUTIVE NOTE TO
THE GAMBLING ACT 2005 (REVIEW OF PREMISES LICENCES) (SCOTLAND)
REGULATIONS 2007
S.S.I. 2007 No.394

The above instrument was made in exercise of the powers conferred by sections 197(3) to (7), 200(4) to (6) and 355(1) of the Gambling Act 2005 (c.19). The instrument is subject to the negative resolution procedure.

Policy Objectives

The Gambling Act 2005 gives Scottish Ministers powers to make regulations to prescribe the form and content of premises licences; the form and manner of premises licence applications; and other matters relating to applications under Part 8 of the Act. The premises review procedures are intended as a measure that will give licensing authorities (Licensing Boards in Scotland) a key role in managing the Act at a local level, and which will lead to a more accountable and effective process. The review procedures available can be exercised either in response to an application to the licensing authority by a responsible authority or interested party (section 197 of the Act) or at a licensing authority's own instigation (section 200 of the Act).

The original policy intention was that Scottish Ministers should have powers to make regulations prescribing all aspects of the review procedures in Scotland. But some minor drafting deficiencies in the Gambling Act have resulted in Scottish Ministers not being able to prescribe the form and manner of an application for a review, and some related matters. Those aspects will have to apply on a Great Britain basis and are set out in regulations prepared by the Department for Culture, Media and Sport (DCMS). The Scottish regulations set out the procedure for applications for a review of a premises licence in Scotland, the form of notices of applications/intentions for the review, and the timescales for giving notice to relevant parties. The regulations also make provision for those cases where procedural aspects have not been complied with.

Consultation

Draft regulations on the above matters issued for consultation on 7 May 2007 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 draft regulations and consultation paper were also posted on the Scottish Executive's consultation website and copies were placed in SPICe. The Executive received 9 responses as at the closing date of 27 July 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 has potential costs for Licensing Boards of advertising applications for a review, although less expensive alternatives are available such as using their website. Boards will also incur some costs involved in publishing notices of their intention to hold a review.

Annual premises licence fees payable by the gambling industry to Licensing Boards are intended to cover the whole cost of the administrative work associated with premises licences, and the fees represent a very small proportion of business costs. There may also be some costs for applicants giving notice of their application to responsible authorities and the premises licence-holder, but this is a key measure to promote openness and transparency. A Regulatory Impact Assessment covering the financial effects of the instrument is attached.

Criminal Justice Directorate
August 2007

FINAL REGULATORY IMPACT ASSESSMENT

Title of proposal

1. The proposal is for the following Scottish Statutory Instrument (SSI): the Gambling Act 2005 (Review of Premises Licences) (Scotland) Regulations 2007.

Purpose and intended effect - (i) Objective

2. The purposes of the SSI are to prescribe: the procedure for applications for a review of a premises licence in Scotland; the form of notices of applications/intentions for the review; and the timescales for giving notice to relevant parties. The regulations also make provision for those cases where procedural aspects have not been complied with. The SSI will come into force on 24 September 2007.

(ii) Background

3. The Gambling Act 2005 (the Act) 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.

4. Under the Act, licensing authorities (Licensing Boards in Scotland) are responsible for licensing gambling premises in their area. Those wishing to operate Scottish gambling premises must apply to their Licensing Board and pay a relevant fee. The Act provides for such premises licences to be reviewed. The premises review procedures are intended as a measure that will give Licensing Boards a key role in managing the Act at a local level and which will lead to a more accountable and effective process.

5. The original policy intention was that Scottish Ministers should have powers to make regulations prescribing all aspects of the review procedures in Scotland. But some minor drafting deficiencies in the Act have resulted in Scottish Ministers not being able to prescribe the form and manner of an application for a review, and some related matters. Those aspects will have to apply on a Great Britain basis and are set out in regulations prepared by the lead English Department, the Department for Culture, Media and Sport (DCMS).

6. The premises review procedures allow for a premises licence to be reviewed by Licensing Boards at their own hand, or can be exercised in response to an application to them by a 'responsible authority' or 'interested party'. Responsible authorities are public bodies that must be notified about premises licences, a list of which is set out in the Act and includes the police and planning authorities. Interested parties are widely defined in the Act to cover the local community.

(iii) Rationale for Government intervention

7. The aim of the regulations is to give local Licensing Boards and local communities a greater say in the licensing of gambling premises in their areas.

Consultation

8. Draft regulations on the above matters issued for consultation on 7 May 2007 to over 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 Executive received 9 responses as at the closing date of 27 July 2007. There has also been close consultation with DCMS, as gambling is primarily a reserved matter. Some minor modifications were made to the regulations following the consultation exercise. Due to time constraints a partial Regulatory Impact Assessment was not carried out. An analysis of the consultation responses can be accessed via the link below.

<http://www.scotland.gov.uk/publications/2007/08/23162319/9>

Options

9. We consider the options are:

9.1 Option 1 – do nothing. The Act already sets out the review process in broad terms. It is open to Scottish Ministers to leave the forms of notices of applications/intentions for review, manner of publication and timescales for giving notice to the discretion of individual Licensing Boards. However, to do so would lead to an inconsistency of approach across Scotland for Licensing Boards, local communities and the gambling industry.

9.2 Option 2 - implement these regulations. The Act enables Scottish Ministers to make regulations about the manner and form in which the notice is to be given or published and the period of time within which notice is to be given or published. Making such regulations ensures consistency across Scotland, and it will also reduce the otherwise administrative burden of Licensing Boards producing notices individually. **This is the Executive's preferred option.**

Costs and Benefits - (i) Sectors Affected

10. There will be no direct impact on charities or the voluntary sector, though the regulations enable local communities to get more involved in the review of a premise licence in their area if they so wish. The regulations will potentially 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

11. There are no benefits to option 1 other than it would be less regulatory. But it would not meet the wishes of most parts of the industry, nor satisfy the subsidiary policy aim of providing consistent regulation.

12. Option 2 will ensure a consistent approach across Britain, in line with the broadly equivalent premises review regulations made by DCMS. This option fits well with the licensing objectives of the Act, and is designed to ensure that the local community, including other local businesses, are advised of appropriate and relevant matters associated with gambling. The forms to give notice have been prescribed to ensure consistency across Licensing Boards, while reducing the administrative burden of producing notices individually. There is also consistency with the notification procedures set out in the Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Regulations 2007, which came into force on 21 May 2007.

(iii) Costs

13. Option 1 could lead to significant cost variations across Scotland as Licensing Boards would be left to their own devices in producing and publishing forms of notice.

14. For option 2, there is cost involved in the giving of and publication of notices, which have to be published locally and outside the premises. In line with DCMS, the Executive has amended the final version of the regulations to permit Licensing Boards to publish such notices on their websites or in local papers. This measure provides greater flexibility and should ease the costs involved.

15. The Executive 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 of a premises licence are informed about it and have sufficient opportunity to make representations. Further, annual premises licence fees payable by the gambling industry to Licensing Boards are intended to cover the whole cost of the administrative work associated with premises licences, and the fees represent a very small proportion of business costs.

Small/Micro Firms Impact Test

16. Trade organisations that have both large and small operators as members were consulted by DCMS. Within the overall framework for effective regulation, the objective is to minimise any disproportionate impact on small businesses. As stated in paragraph 8 above, we consulted widely over these regulations. The British Casino Association and the Bingo Association responded and were generally content with the draft regulations. Within the limited scope of the Scottish regulations, 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

17. As stated earlier, the actual application forms have to be prescribed in DCMS regulations on a GB-wide basis and those regulations are the subject of a separate Regulatory Impact Assessment.

Competition Assessment

18. The premises licence review conditions will protect the interests of the community without presenting a barrier for businesses wishing to operate in the gambling industry. The regulations will apply equally to all firms that enter the industry and existing operators. The licensee is given notification of the application for a review and given the chance to respond. They may choose to take any action to rectify the problem and notify all parties involved.

Enforcement, Sanctions and Monitoring

19. The regulations contain no enforcement and sanction elements. The Executive is committed to monitoring and reviewing the operation of these regulations, through regular consultation with Licensing Boards, industry representatives, and community groups.

Implementation and Delivery Plan

20. The premises review procedures will be implemented by way of an SSI on 24 September 2007, which will be notified to Licensing Boards and other parties.

Post-implementation Review

21. The effect of these regulations will be kept under general review in liaison and consultation with stakeholders, and the legislation will be reviewed within 10 years of it coming into force as laid out in Executive guidance to ensure that is still fit for purpose.

Summary and Recommendation

22. The premises review process is one of the essential ways in which the Act can deliver its 3 licensing objectives. The Executive considers that Option 2 is the more suitable option as the regulations will add to the effectiveness and fairness of the review procedure for all parties involved. It is also considered that the regulation is proportionate to the risks involved. It is recommended that the SSI be implemented as described above.

Declaration

23. 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 KENNY MACASKILL.....

Date 30th August 2007

Kenny MacAskill, Cabinet Secretary for Justice

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