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STATUTORY INSTRUMENTS

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**2007 No. 173**

**The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 and shall come into force on 30th April 2007.

(2) These Regulations extend to England and Wales only.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Gambling Act 2005;

“applicant” means a person who makes an application;

“application” means an application made under sections 159, 187, 188, 195, 197 or 204;

“relevant committee” means a licensing committee to which functions are delegated by virtue of section 154(1), or a licensing sub-committee empowered to discharge such functions by arrangement under section 10(1) of the Licensing Act 2003;

“notice of hearing” means a notice given to a party in accordance with regulation 5;

“party” means a person to whom a notice of hearing is given in accordance with regulation 5(1);

“representations” means representations made in accordance with regulations under section 161 in relation to an application, or section 197(6) or 200(5) in relation to a review;

“review” means a review under section 201; and

“working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(1).

(2) For the purposes of these Regulations, a reference to a review being determined is a reference to the licensing committee deciding what, if any, action it proposes to take under section 202 following a review.

(3) A reference in these regulations to a numbered section or subsection is a reference to that section or subsection of the Act so numbered, unless the contrary is indicated.

**Scope**

3.—(1) These Regulations apply to the proceedings of a relevant committee in relation to the exercise of its functions under the following provisions of the Act—

- (a) subsections (1) and (2) of section 162 (which make provision about the circumstances in which a hearing is required to be held in relation to an application); or
- (b) section 201(4) (which makes provisions about the circumstances in which a hearing is required to be held in relation to a review).

(2) Subject to the provisions of these Regulations, it is for the relevant committee to determine the procedure to be followed in relation to the functions specified in paragraph (1).

(3) The Licensing Act 2003 (Hearings) Regulations 2005(2) do not apply to the proceedings of a relevant committee specified in paragraph (1).

#### **Period of time within which a hearing is to be held**

4.—(1) Where a hearing is required to be held under section 162(1) or section 201(4) in relation to a procedure listed in column 1 of the table in the Schedule, the relevant committee must arrange for the hearing to be commenced as soon as is reasonably practicable after the expiry of any period for representations prescribed under sections 161(2), 197(6) or 200(5).

(2) In any case where the hearing is to be held on more than one day, the relevant committee must arrange for the hearing to take place on consecutive working days.

#### **Notice of hearing**

5.—(1) A relevant committee must give notice of any hearing which is required to be held in relation to a procedure listed in column 1 of the table in the Schedule, to each of the relevant persons listed in column 2 of that table.

(2) A relevant committee must ensure that the notice referred to in paragraph (1)—

- (a) specifies the date on which, the place at which and the time when the hearing is to take place;
- (b) states that the relevant committee will make available the documents listed in the relevant entry in column 3 of the table in the Schedule to the following persons if those persons request them—
  - (i) any person who has made representations (unless the relevant committee considers that the representations are vexatious, frivolous or will certainly not influence the determination of the application), and
  - (ii) in the case of an application under section 188 for the transfer of a premises licence, the licensee; and
- (c) is sent so that, in the ordinary course of events, it is received no later than 10 working days before the first day on which the hearing is to be held (as specified in the notice).

#### **Information and documents to accompany the notice of hearing**

6.—(1) The notice of hearing must be accompanied by information in writing explaining the following—

- (a) the consequences provided for under regulation 10(1) where a party informs the relevant committee that he does not wish to attend or be represented at the hearing, or fails to inform the relevant committee whether he wishes to attend or be represented at the hearing;
- (b) the requirements imposed on the relevant committee in conducting a hearing as set out in regulations 8 and 9;

- (c) the consequences provided for in regulation 10(2) where a party has indicated that he wishes to attend or be represented at the hearing, but fails to attend or be represented at the hearing;
- (d) the procedure to be followed at the hearing;
- (e) the time limit and method, if any, by which a party should inform the relevant committee that he wishes to attend or address the hearing;
- (f) the time limit and method, if any, by which a party should inform the relevant committee that he wishes to be assisted or represented by another person;
- (g) the time limit and method, if any, by which a party should inform the licensing authority that he will want to call a witness to give evidence at the hearing, and the matters in relation to which he wishes that witness to give evidence;
- (h) the time limit and method, if any, by which a party should inform the relevant committee that he wishes to withdraw any representations;
- (i) the time limit and method, if any, by which a party should inform the relevant committee that he is willing to consent to the application being determined without a hearing;
- (j) the matters, if any, on which the relevant committee considers at the time that it will want clarification at the hearing from a party.

(2) Where a hearing is required to be held in relation to a procedure listed in column 1 of the table in the Schedule, a relevant committee must send the documents listed in the relevant entry in column 3 of the table in the Schedule—

- (a) to the following persons—
  - (i) the applicant, and
  - (ii) in the case of a review, the licensee; and
- (b) if requested by him, to—
  - (i) a person who has made representations in relation to the application or review (unless the relevant committee considers that the representations are vexatious, frivolous or will certainly not influence the determination of the application), and
  - (ii) in the case of an application under section 188 for a premises licence, the licensee.

### **Power to postpone**

7.—(1) A relevant committee may at any time—

- (a) postpone a hearing to a specified date, or
- (b) arrange for a hearing to be held on a date specified by the committee.

(2) A relevant committee may take the actions specified in paragraph (1) if it considers it necessary—

- (a) to enable it to consider any information or documents provided by any party in response to a notice under regulation 6, or at the hearing, or
- (b) having regard to the ability of any party, person representing a party or witness to attend the hearing.

(3) Where a relevant committee has adjourned a hearing to a specified date it must, as soon as reasonably practicable, notify the parties of the new date, time and place for the hearing.

(4) Where a relevant committee has arranged for the hearing to be held on a specified additional date it must, as soon as reasonably practicable, notify the parties of the additional date, time and place for the hearing.

### **Hearings to be public**

8.—(1) Subject to paragraph (2), the hearing must take place in public.

(2) A relevant committee may direct that all or part of a hearing must be in private if it is satisfied that it is necessary in all the circumstances of the case, having regard to—

- (a) any unfairness to a party that is likely to result from a hearing in public; and
- (b) the need to protect as far as possible, the commercial or other legitimate interests of a party.

### **Proceedings of a relevant committee in conducting a hearing**

9.—(1) Subject to regulations 8 and 11, a relevant committee must permit a party to attend a hearing and be assisted or represented by any person whether or not that person is legally qualified.

(2) At the beginning of the hearing the relevant committee must explain the procedure that it proposes to follow in conducting the hearing.

(3) In conducting a hearing the relevant committee must ensure that each party is given the opportunity to—

- (a) address the relevant committee on any matter that is relevant to the application or review, or any representations made on the application or review;
- (b) call witnesses to give evidence on any matter that is relevant to the application or review, or any representations made on the application or review;
- (c) provide further information on, or explanation of, any matter on which the relevant committee has indicated that it will want further clarification under regulation 6(1)(j).

(4) In conducting a hearing the relevant committee must also—

- (a) permit any party to question any other party or person representing a party on any matter that is relevant to the application or review, or any representations made on the application or review, where the relevant committee considers that in all the circumstances it is appropriate to do so; and
- (b) take into consideration documentary or other information in support of the application or representations produced by a party—
  - (i) before the hearing; or
  - (ii) at the hearing, with the consent of all the other parties attending the hearing.

(5) Without prejudice to paragraphs (3) and (4), a hearing must be conducted so that it takes the form of a discussion led by the relevant committee, and the committee must not permit any cross-examination unless it considers that cross-examination is required for it properly to consider the application or representations made by any party.

### **Failure of parties to attend the hearing**

10.—(1) A relevant committee may proceed with a hearing in the absence of a party or a party's representative if the party has—

- (a) informed the committee that he does not intend to attend or be represented at the hearing (and has not subsequently advised the committee otherwise);
- (b) failed to inform the committee whether he intends to attend or be represented at the hearing; or
- (c) left the hearing in circumstances enabling the committee reasonably to conclude that he does not intend to participate further.

(2) If a party has indicated that he does intend to attend or be represented at the hearing, but fails to so attend or be so represented, the relevant committee may—

- (a) adjourn the hearing to a specified date if it considers it to be in the public interest, or
- (b) proceed with the hearing in the party's absence.

(3) Where the hearing proceeds in the absence of a party, the relevant committee must consider at the hearing the application or representations made by that party.

(4) Where, under this Regulation, the relevant committee adjourns the hearing to a specified date it must, as soon as reasonably practicable, notify the parties of the date, time and place to which the hearing has been adjourned.

### **Exclusion of disruptive persons**

**11.**—(1) The relevant committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner, or in breach of conditions specified under this paragraph, to leave the hearing and may—

- (a) refuse to permit him to return, or
- (b) permit him to return only on such conditions as the relevant committee may specify.

(2) The relevant committee may allow a person who is attending the hearing and in their opinion is behaving in a disruptive manner, or in breach of conditions specified under paragraph (1), to remain at the hearing only on such conditions as the committee may specify.

(3) Where a person is required to leave the hearing in accordance with paragraph (1), the relevant committee must—

- (a) permit him to submit in writing, before the end of the hearing, any information which he would have been entitled to give orally had he not been required to leave; and
- (b) take into account that information in reaching a determination of the application or review.

### **Procedure where a hearing is not to take place**

**12.** Where the parties have notified the relevant committee that they consent to the application or review being determined without a hearing under sections 162(2) or 201(4)(a), the relevant committee must, as soon as reasonably practicable—

- (a) notify all the parties that the hearing has been dispensed with, and
- (b) determine the application or review.

### **Determination of an application or a review**

**13.** Following a hearing under section 162(1) or 201(4), a relevant committee must determine the application or review before the end of the period of 5 working days starting with the day after the last day of the hearing.

### **Power to extend time**

**14.**—(1) A relevant committee may extend the time limit provided for in regulation 13 for a specified period where it considers an extension to be in the public interest.

(2) Where the relevant committee has extended the time limit in accordance with paragraph (1), it must, as soon as reasonably practicable, give a notice of the extension to the parties stating the period of the extension and the reasons for it.

### **Record of proceedings**

**15.**—(1) The relevant committee must ensure that a record of the hearing is taken in a permanent and intelligible form.

(2) The relevant committee must ensure that any such record is kept for a period of six years from the date that the application or review is finally determined (including, in either case, any appeal or judicial review).

### **Irregularities**

**16.**—(1) Subject to paragraph (2), a relevant committee may disregard any irregularity resulting from a failure to comply with a provision of these Regulations, or with a procedure otherwise determined by the relevant committee in accordance with regulation 3(2), where that irregularity comes to its attention prior to it making a determination of the application or review.

(2) If the relevant committee considers that any person may have been prejudiced by any such irregularity, it must take such steps that it considers necessary to remedy the consequences of the irregularity, before reaching its determination.

### **Clerical mistakes**

**17.** A relevant committee may correct clerical mistakes in any document recording a determination of the committee, or errors arising in such a document from an accidental slip or omission.

### **Notices etc.**

**18.** Except where otherwise provided, a requirement under these Regulations to give a notice (or to notify) is a requirement to give notice in writing; and for that purpose, a message sent by facsimile transmission or electronic mail must be treated as a notice given in writing.

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