

**EXPLANATORY MEMORANDUM TO**  
**THE GAMBLING ACT 2005 (PROCEEDINGS OF LICENSING**  
**COMMITTEES AND SUB-COMMITTEES) (PREMISES LICENCES AND**  
**PROVISIONAL STATEMENTS) (ENGLAND AND WALES) REGULATIONS**  
**2007**

**2007 No.173**

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 This memorandum covers one set of regulations concerning the conduct of licensing committees in relation to hearings under Part 8 of the Gambling Act 2005 (the Act).
  - 2.2 Such hearings may be held in relation to applications for a gambling premises licence, applications to vary, transfer or reinstate a gambling premises licence, for a provisional statement and for a review of a gambling premises licence.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 The Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005/44) (the 'Licensing Act Regulations') make provision for hearings that licensing authorities are required to hold under the Licensing Act 2003 (c17). By virtue of s154(5) of the Gambling Act 2005, the Licensing Act Regulations apply to proceedings of licensing committees and sub-committees in relation to the exercise of functions under Part 8 of the Gambling Act.
  - 3.2 The Gambling Act 2005 (Proceedings of Licensing Committees and sub-committees) (Premises Licences and Provisional Statements)(England and Wales) Regulations 2007 ('the Gambling Act Regulations') make provision in relation to hearings that licensing authorities are required to hold under Part 8 of the Gambling Act 2005.
  - 3.3 The Gambling Act Regulations contain three provisions that appear to duplicate the provisions in the Licensing Act Regulations: Regulations 21, 23 and 33 of the Licensing Act Regulations are reflected in Regulations 3(2), 9(5) and 17 of the Gambling Act Regulations respectively.
  - 3.4 We acknowledge the general principle that the duplication of provisions should be avoided, but we considered that in the present

case, given the structure of the regulations, the unusual vires and the small number of duplicate provisions, it would be preferable to incorporate these provisions in the Gambling Act Regulations. We considered that there was a clear advantage in having all the relevant provisions in relation to Part 8 hearings in a single instrument, and to avoid the need for licensing authorities and parties to have to refer to two separate sets of regulations for the conduct of a single hearing.

#### **4. Legislative Background**

- 4.1 These regulations have been made as part of the implementation of the Act. They are the first use of these powers.
- 4.2 The Act establishes a new system for the regulation of gambling in Great Britain. It introduced a new regulator, the Gambling Commission, and a new licensing regime. The licensing regime includes operating and personal licences, which are issued by the Gambling Commission, and premises licences, which are to be issued by licensing authorities. Part 8 of the Act sets out the new powers and duties of the licensing authority in relation to premises licensing. It provides that licensing authorities will issue premises licences for casinos, betting shops, bingo, Adult Gaming Centres, Family Entertainment Centres and tracks. Any gambling operator wishing to provide premises-based gambling must apply to their licensing authority for a premises licence. Licensing authorities will also determine other applications made in respect of premises licences, such as applications to vary a licence, transfer a licence etc, as well as provisional statements for gambling premises that the applicant expects to occupy, to be constructed or to be altered. In addition, the Act provides for responsible authorities, such as the police or Gambling Commission, and interested parties, who can be someone who lives close to the proposed gambling premises, to be notified when an application for a premises licence is made.
- 4.3 As part of the decision-making process of such applications, the licensing authority may be required to hold a hearing. These are necessary if a responsible authority or an interested party makes a representation in relation to the application, or if the licensing authority wishes to use its powers to attach a condition to, or exclude a condition from the licence. A hearing will always be required in conducting a review of a licence. In all cases, a licensing authority may decide the application without a hearing if the applicant and all those who have made representations agree, or if the authority considers that the representations made are vexatious, frivolous, or will not influence its decision.
- 4.4 Some of the functions of licensing authorities in relation to premises licences are delegated to licensing committees or sub-committees. These regulations concern the proceedings of licensing committees in

the conduct of hearings regarding applications for premises licences, provisional statements, or other applications made in relation to a premises licence. In particular they make provision for:

- The period of time in which a hearing should be held
- The notice of hearing and information and documents to accompany the notice
- Powers to postpone
- The presence of the public at hearings
- The proceedings of the licensing committee in conducting a hearing
- The failure of the parties to attend a hearing
- The exclusion of disruptive parties
- The procedure where a hearing is not to take place
- The determination of an application or a review
- The power to extend time
- Various administrative processes

4.5 Aside from the procedures to be followed by committees in relation to such hearings, these regulations do not apply to any other functions that committees might have under Part 8 of the Act.

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

5.1 This instrument applies to England and Wales.

## **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 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.

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

7.2 The premises licence application process plays an important role in fulfilling these objectives as it gives the local authority an opportunity to test the suitability of a proposed gambling premises against the licensing objectives. It also allows responsible authorities and interested parties the opportunity to make representations and bring to

the local authority's attention any issues or concerns pertaining to the licensing objectives that they may have about the premises. Given that a hearing is to be held in the event that representations are made, or the licensing authority wishes to attach or exclude a condition to a licence (in order to better ensure compliance with the licensing objectives), or in conducting a licence review, they can play an important role in the determination of an application. These regulations aim to ensure that hearings are conducted in a fair and open way by requiring the licensing committee to follow certain procedures in relation to a hearing. At the same time, the regulations are not over-prescriptive and permit licensing authorities a large degree of discretion.

These regulations will affect all licensing authorities in England and Wales. They will also affect the gambling industry, although not all applications will require a hearing. There are approximately 400 licensing authorities in England and Wales and approximately 13,000 gambling premises that will require a premises licence.

- 7.3 By virtue of section 154(5) of the Act, the Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005/44) (the 'Licensing Act Regulations') apply to proceedings of committees in relation to their functions under Part 8 of the Gambling Act. There were three potential ways in which the proceedings of committees in relation to premises licence applications hearings could be dealt with:
1. The Licensing Act Regulations could have been left to apply to hearings under Part 8 of the Gambling Act.
  2. The Licensing Act Regulations could have been modified in their application to hearings under Part 8 of the Gambling Act.
  3. The Secretary of State could have made regulations that apply only hearings under Part 8 of the Gambling Act.

- 7.4 Having considered the three options the Department chose the third, and decided to make separate regulations. The Department concluded that it would be difficult for the Licensing Act Regulations to apply directly to hearings under the Gambling Act without some modification. We were concerned that making the required modifications to cover hearings under the Gambling Act could lead to confusion. The Department has therefore concluded that separate regulations would be the best way to preserve the distinct objectives of the two acts and avoid confusion. Although the Department has taken the Licensing Act Regulations as its starting point to ensure a degree of continuity and familiarity, it has also departed from these for the purposes of the Gambling Act.

#### *Consultation on draft regulations*

- 7.6 The Department issued a public consultation on this set of regulations on 22 September 2006. It ran for the full recommended 12 weeks. There were 37 formal responses to the consultation from a variety of stakeholders including local authorities and their representative groups, gambling operators and gambling industry representatives, and faith

groups. A full list of those who responded is attached as an annex to this Memorandum.

- 7.7 The Department's proposals were broadly welcomed. This is because they took as their starting point the Licensing Act regulations, with which licensing authorities were already familiar, and took a flexible and pragmatic approach. However, the responses highlighted some concerns, including with the requirement to provide certain information with the notice of the hearing. The proposal that the notice should impose time limits for informing committees about certain matters (for example, whether a party intends to attend the hearing or withdraw representations etc) and should state the method by which they were to be informed, was not fully supported. In practice, licensing authorities commented that recipients do not always adhere to such requirements. Licensing authorities indicated that they would prefer to have a discretion as to whether to set such time limits and methods of communication. In response to the consultation, the regulations have been amended and licensing authorities have been given a discretion as to whether or not to set such time limits and specify the method for informing them. If they exercise that discretion, they will be obliged to inform parties of those time limits and methods.
- 7.8 Both industry and licensing authorities were concerned by the proposal that parties be given "equal time" to address the committee during the hearing. Respondents commented that there may be several parties at the hearing who oppose the application but who might put forward the same argument. Allowing equal time could result in hearings being unnecessarily prolonged. Some suggested "a reasonable amount of time" as an alternative approach. The government acknowledged the benefit of allowing parties a "reasonable amount of time" and have removed the reference to equal time. We have not replaced it with a specific stipulation that parties be permitted a reasonable amount of time because we consider this to be a basic principle of administrative and human rights law, which committees would in any event be required to follow.
- 7.9 Several of those who responded to the consultation also expressed concern that the draft regulations stipulated that cross-examination would not be permitted. The Department reviewed this issue and concluded that the provisions for cross-examination and questioning did not need to be amended. The regulations provide that parties may be questioned by other parties if the committee thinks it is appropriate, and that the cross-examination of witnesses (as opposed to parties) would not be permitted unless the licensing committee considers it is required. This means that there is no absolute prohibition on cross-examination; it may be permitted at the discretion of the committee. Therefore, the Department concluded that committees have sufficient discretion to allow parties to question one another and to allow cross-examination of witnesses.

- 7.10 Concerns were raised about applying a public interest test in deciding whether to exclude the public from the hearing. It was suggested that the Department should limit the grounds for excluding the public or clarify the grounds on which this decision could be made. The Department has addressed these concerns by introducing a clearer test requiring licensing committees to consider whether it is necessary in the circumstances of each case and by specifying those matters to which they should have regard in doing so.
- 7.11 Some of the issues raised in consultation were not appropriate to address through regulations. The Department proposes to address such issues through Gambling Commission guidance to local authorities.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment is attached to this memorandum

## **9. Contact**

Will Calladine at the Department for Culture, Media and Sport Tel: 0207 211 6528 or e-mail: [William.calladine@culture.gsi.gov.uk](mailto:William.calladine@culture.gsi.gov.uk) can answer any queries regarding the instrument.

**Annex A:**

**Premises Licence Hearings Consultation - List of  
Respondees**

St Albans  
Camden  
Newham  
Cardiff (x2)  
Sutton  
Sandwell  
Forest Heath  
Torbay  
Carlton Bingo  
Suffolk Coastal  
Institute of Licensing  
LACORS (Salford local group)  
Mid Suffolk  
Stedmundsbury  
BACTA  
Essex Local Authorities (representing 14 authorities in  
Essex)  
LACORS  
Wandsworth  
Directors of Public Protection Wales  
The Bingo Association  
Westminster  
East Herts  
Ceredigion  
Kerzner International  
BISL  
North Lanarkshire  
Gala Coral  
ABB  
Casino Operator's Association  
Evangelical Alliance  
Methodist Church and Salvation Army  
Quakers  
British Casino Association  
BHHPA  
Gambling Commission  
Waveney District Council

**Regulatory Impact Assessment:**

**THE GAMBLING ACT 2005 (PROCEEDINGS OF LICENSING  
COMMITTEES AND SUB-COMMITTEES) (PREMISES LICENCES AND  
PROVISIONAL STATEMENTS) (ENGLAND AND WALES) REGULATIONS  
2007**

## **1. Title of proposal**

The Gambling Act 2005 (Proceedings of licensing committees and sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007

## **2. Purpose and intended effect**

### *The objective*

- 2.1 The objective of the regulations is to ensure that the process under which premises licences are granted or withheld, is equitable, transparent and timely. They aim to give all parties sufficient time to prepare for a hearing while not damaging business in cases where an application is ultimately granted, or communities where a licence is ultimately refused, by undue length of process.

### *The background*

- 2.2 Under the Gambling Act 2005, the responsibility for issuing premises licences for gambling premises has been transferred from magistrates, who issued such permissions under the previous legislation, to licensing authorities. Premises licences form one part of the new licensing regime for gambling introduced by the Act. There are two other types of licences which make up the new regime - personal licences and operating licences, both of which are issued by the Gambling Commission.
- 2.3 Part 8 of the Act concerns premises licences and covers issues such as application, determination and grant or refusal of an application by the licensing authorities. It also covers a number of other applications that can be made in respect of a gambling premises licence, such as an application to transfer the licence. As part of the application process it may be necessary for the licensing authority to hold a hearing.
- 2.4 These regulations cover the proceedings of licensing committees relating to hearings to be held when an application for a premises licence (or other application made in relation to a licence) or provisional statement is opposed. Hearings will be held when interested parties, i.e. neighbours and local business, or responsible authorities e.g. police, HMRC, make representations about an application for a premises licence, or the licensing authority itself seeks to refuse or revoke a licence, or attach conditions. Hearings will also be held in a review of a premises licence. The regulations deal with the time within which a hearing must be held, the notice to be given and to whom, who may be excluded and on what grounds, general prescriptions about the



conduct of the licensing committee during the hearing, the time in which a decision must be given and sundry administrative matters.

### 3. Consultation

- 3.1 The Government has consulted formally and informally on these regulations. The formal consultation ran for the recommended 12 weeks from 22 September to 15 December. There were 37 responses to the formal consultation, including local authorities and their representative groups, gambling operators and industry representatives, faith groups and others.
- 3.2 The consultation document outlined the government's proposals and the rationale for them. The government's preferred option was to make separate regulations under the Gambling Act, rather than applying the regulations made under section 9 of the Licensing Act or adapting those regulations for the purpose of the Gambling Act. Although the government is making separate regulations, for the most part, the regulations follow the example provided in section 9 of the Licensing Act 2003 and its associated regulations. The government's proposals give a large amount of discretion to licensing authorities over many aspects of the conduct of licensing committees in relation to the hearings process.
- 3.3 The responses to the consultation were generally in favour of the government's proposals. However there were several issues raised over matters of detail which the government reviewed and amended the draft regulations to reflect the consultation. The most significant of these were:
- Concerns about the information to be sent with the notice of hearing
  - Concerns over the provisions for cross-examination
  - Regulations should not state equal time for parties to address the hearing; instead they should be permitted "a reasonable amount of time"
  - Concerns about the public interest test to be applied in deciding whether to exclude the public from the hearing.
- 3.4 The government reviewed the proposals and amended the regulations to reduce the amount of information that was required to be sent with the notice of hearing. Instead, several of the information requirements originally proposed were made discretionary. The reference to equal time has been removed from the regulations. This has not been replaced with a specific stipulation that parties be given "reasonable time" because this is a basic principle of administrative and human rights law, which committees are in any event required to follow. The public interest test was

replaced with a 'necessity' test and clearer grounds to take into consideration.

3.5 The government reviewed the regulations regarding cross-examination and concluded that there was no need to amend the regulations because they achieve the following desired effect:

- a) a committee must permit a party to ask questions of any other party, where it considers this to be appropriate.
- b) as a starting point, a party may not cross-examine a witness; but
- c) a committee may permit a party to cross-examine a witness if the committee considers it necessary to properly consider the application or representations of any party.

#### **4. Options**

4.1 There were three options the government considered:

Option 1: Do not make regulations, the provisions of section 9 of the Licensing Act and the regulations made under them will apply to hearings under the Gambling Act.

4.2 **The Government rejects this option.** The Department concluded that it would be difficult for the regulations under section 9 of the Licensing Act to apply directly to the Gambling Act without some modification.

Option 2: Modify the Licensing Act regulations in their application to the Gambling Act.

4.3 **The Government rejects this option.** The Government was concerned that introducing modified Licensing Act regulations to cover gambling procedure could lead to confusion.

Option 3: Make regulations that apply only to the Gambling Act.

4.4 **This is the governments preferred option.** The Department concluded that separate regulations would be the best way to preserve the distinct objectives of the two acts and avoid confusion.

#### **5. Costs and Benefits**

5.1 Those expected to be affected by these regulations are:

- approximately 400 licensing authorities in England and Wales
- approximately 13,000 gambling premises

*Benefits*

5.2 The benefits of the regulations are in the removal or reduction of the following risks, which could occur if these regulations are not made:

- a) the time and cost taken by all the parties to prepare for and attend a hearing (including legal costs) will be abortive if the hearing is not properly conducted;
- b) unfair decisions are reached if the parties have insufficient time and information to prepare and be heard;
- c) communities are at risk if representations from interested parties and responsible authorities are not heard and the hearing is not properly conducted;
- d) business is curtailed by undue time taken before a hearing is held (where a licence is ultimately granted).
- e) business is curtailed by undue time taken to reach and notify a decision (where the outcome is favourable).

Basically, they will allow responsible authorities and interested parties to be heard. They afford both communities and the gambling industry a fair and open process.

#### *Environmental*

5.3 The regulations do not impact directly on the environment.

#### *Social*

5.4 A fair process for hearings supports the Act's licensing objectives, enabling correct decisions to be reached in the interests of the wider community. Most importantly, it will assist in protecting young people and the vulnerable from being exploited or harmed by gambling. The Department also considers that an efficient licensing process, of which hearings are a significant element, will assist in reducing crime and thereby produce safer town and city centres. It will safeguard the interests of legitimate business. It is not considered that the proposed regulations will have any race equality impacts.

#### *Equity and Fairness*

5.5 The regulations will support equity and fairness in their balance of community interest with those of operators.

#### *Costs*

5.6 The costs to the gambling industry will be mainly in providing documentation which is additional to the licence application and in the time taken by the hearing. Hearings are not a new requirement as licence

holders were subject to hearings by magistrates under the former regime and continue to be a justified requirement in the Gambling Act. Accordingly, the hearings process should not present any significant additional compliance costs in comparison with the former regime. The cost of an average hearing to the industry has been estimated at between £1000 and £5000.

5.7 The costs to business of meeting any conditions required as a result of a hearing are taken account of in the Gambling Act and the Mandatory and Default Conditions Regulations' impact assessments.

5.8 The costs of these activities to licensing authorities will be met through fees for premises licences which are the subject of separate regulations. Enforcement is also the subject of separate regulation.

## **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 be 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 hearings 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 Maladministration by a licensing authority is subject to sanctions. An applicant may appeal to magistrates if he believes that a hearing has not been conducted fairly. It is an offence to knowingly or recklessly to makes a false statement in connection with a premises licence application.

## **9 Monitoring and Review**

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

## **10 Conclusion**

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