

Part 6: Licensing authority Statement of Policy

- 6.1** Section 349 of the Act requires all licensing authorities to prepare and publish a statement of the principles that they propose to apply in exercising their functions under the Act during the three-year period to which the policy applies.
- 6.2** The Licensing Authority Statement of Policy will last for a maximum of three years, but can be reviewed and revised by the authority at any time. The statement must be produced following consultation with those bodies and persons set out in subsection (3) of section 349 of the Act. Regulations made by the Secretary of State, or Scottish Ministers in Scotland, prescribe the form of statements, and the procedure to be followed in relation to them and their publication⁷. The detail of the regulations is further explained below. An order of the Secretary of State means that licensing authorities have to publish their second statement by 14 January 2010.

Fundamental principles

- 6.3** All Licensing Authority Statements of Policy should begin by stating the three licensing objectives, which the policy will promote. The statement should also state that the licensing authority shall aim to permit the use of premises for gambling as set out in section 153 of the Act.
- 6.4** Licensing Authority Statements of Policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, a range of general duties are imposed on the self-employed, employers and operators of gambling premises, both in respect of employees and of the general public, by legislation governing health and safety at work and fire safety. Therefore such requirements need not be included in the Licensing Authority Statement of Policy.
- 6.5** In determining its policy, the licensing authority must have regard to this Guidance, and give appropriate weight to the views of those it has consulted. In determining what weight to give particular representations, the factors to be taken into account will include:
- who is making the representations (what is their expertise or interest)
 - relevance of the factors to the licensing objectives
 - how many other people have expressed the same or similar views
 - how far the representations relate to matters that the licensing authority should be including in its policy statement.
- 6.6** In relation to premises licensing, licensing authorities can only consider matters within the scope of the Guidance, Act and Codes of Practice. Even if there is a large response regarding a certain issue, an authority may be unable to deal with the issue under the Gambling Act. However the issue may be a matter for other legislation, for example planning.
- 6.7** It will be up to the licensing authority to ensure that it looks at the views of consultees and considers carefully whether they should be taken into account and to what extent (having regard to the above factors). A licensing authority should always be able to give reasons for the decisions it has made following consultation. Having regard to this Guidance will be important for consistency, especially where licensing authority boundaries meet.
- 6.8** As with the Commission, it is expected that local licensing authorities will regulate gambling in the public interest.
- 6.9** While statements of policy may set out a general approach to the exercise of functions under the Act, no statement of policy should override the right of any person to make an

⁷ SI No. 636: The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006
SI No. 154: The Gambling Act 2005 (Licensing Authority Policy Statement) (Scotland) Regulations 2006

application under the Act and to have that application considered on its merits. Additionally, a statement of policy must not undermine the right of any person to make representations on an application or to seek a review of a licence where provision has been made for them to do so. However if a 'no-casino' resolution has been passed by an authority it does not have to consider applications for new casino premises licences in its area.

'Demand' for gaming premises

- 6.10** Previous legislation required that the grant of certain gambling permissions should take account of whether there is unfulfilled demand for the facilities. Absence of unmet demand is not a criterion for a licensing authority in considering an application for a premises licence under the Gambling Act. Each application must be considered on its merits without regard to demand.
- 6.11** The Licensing Authority Statement of Policy should reflect this situation and not comment on the need for gambling premises.
- 6.12** However, the licensing authority may comment on the location of premises in so far as the location relates to the licensing objectives. So, for example, a Licensing Authority Statement of Policy could, and should, set out the general principles that the licensing authority will apply when determining whether the location of proposed gambling premises is acceptable (with or without conditions) in light of the licensing objectives. For example, a Licensing Authority Statement of Policy might set out that the authority will consider very carefully whether applications for premises licences in respect of certain gambling premises located very close to a school or a centre for gambling addicts should be granted in light of the third licensing objective. Any such policy must, however, come with the qualification that each case will be decided on its merits, and will depend to a large extent on the type of gambling that it is proposed will be offered on the premises. If an applicant for a premises licence can show how licensing objective concerns can be overcome, that will have to be taken into account.

Consultation

- 6.13** Section 349 (3) requires the licensing authority to consult the following on the Licensing Authority Statement of Policy or any subsequent revision:
- in England and Wales, the chief officer of police for the authority's area
 - in Scotland, the Chief Constable of the police force maintained for the police area comprising that area
 - one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area
 - one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under this Act.
- 6.14** The list of persons to be consulted when preparing the Licensing Authority Statement of Policy is deliberately wide. This enables licensing authorities to undertake a comprehensive consultation exercise with anyone who may be affected by or otherwise have an interest in the Licensing Authority Statement of Policy.
- 6.15** Licensing authorities will develop their own consultation practices but they may like to consider the following:
- consultation with a range of organisations including faith groups, voluntary and community organisations working with children and young people, organisations working with people who are problem gamblers, medical practices or primary care trusts, and advocacy organisations (such as the Citizen's Advice Bureau and trade unions)
 - consultation with other tiers of local government (where they exist)

- consultation with businesses that are, or will be, holders of a premises licence
- consultation with the organisations named as responsible authorities in the Act
- using a variety of consultation methods including meetings with gambling businesses in the local authority area and open forums for the public.

6.16 Any written consultation should follow best practice as set out by the Department for Business, Enterprise and Regulatory Reform including allowing 12 weeks for responses to the consultation⁸. Consultation documents could be provided on the licensing authority's website.

Form and content of the Licensing Authority Statement of Policy

6.17 Regulations made by the Secretary of State or Scottish Ministers set out requirements as to the form and publication of Licensing Authority Statements of Policy and subsequent revisions of statements. In addition to the requirements set out by the regulations (below), this Guidance sets out certain information that the Commission considers should be included in all Licensing Authority Statements of Policy.

6.18 The regulations provide for the form of the statement to be determined by the licensing authority subject to the following requirements:

- Licensing Authority Statement of Policy must contain an introductory section summarising the matters contained within the statement, describing the geographical area to which the statement applies, and listing the persons consulted in preparing the statement.

6.19 As required by the regulations, the statement should make clear the geographical area that it covers. This may be achieved by including a plan of the area covered by the statement.

6.20 The statement should also set out the licensable activities that are covered.

6.21 Statements of principles to be applied by the licensing authority in exercising its functions must be contained in four separate sections within the Licensing Authority Statement of Policy as set out below:

- 1) Licensing Authority Statements of Policy must contain a section that sets out the principles to be applied by the authority in designating, in writing, a body which is competent to advise the authority about the protection of children from harm.

6.22 Section 157 of the Act sets out the responsible authorities. Within this section, the licensing authority has discretion to determine the most appropriate body competent to advise the authority about the protection of children from harm. Such a body may, but not necessarily, be the Local Safeguarding Children Board in England and Wales, or the Child Protection Committee in Scotland. The licensing authority must consider which body best fulfils this function and the Licensing Authority Statement of Policy should set out this consideration, or the criteria the authority intends to use, in order to designate that body in writing.

- 2) Licensing Authority Statements of Policy must contain a section that sets out the principles to be applied by the authority to determine whether a person is an interested party in relation to a premises licence, or in relation to an application for or in respect of a premises licence.

6.23 Section 158 of the Act defines interested parties as persons who:

- (a) live sufficiently close to the premises to be likely to be affected by the authorised activities
- (b) have business interests that might be affected by the authorised activities or
- (c) represent persons who satisfy paragraph a) or b).

⁸ Further information is available at www.berr.gov.uk

- 6.24** Licensing authorities must consider whether a person is an interested party with regard to particular premises on a case by case basis, judging each on its merits. However, an authority may have regard to a number of factors when making its decision. These factors should be set out in this part of the Licensing Authority Statement of Policy. An authority may take into account, for example, the size of the premises and the nature of the activities taking place. Larger premises may be considered to affect people over a broader geographical area compared with smaller premises offering similar facilities.
- 6.25** Licensing authorities should include guidance in their Licensing Authority Statements of Policy whom they consider comes within the category of those who represent persons living close to premises, or have business interests that may be affected by it. For example, this category could include trade associations and trade unions and residents' and tenants' associations. It is expected that the types of organisations that may be considered to have business interests will be given a wide interpretation to include, for example, partnerships, charities, faith groups and medical practices etc.
- 3) Licensing Authority Statements of Policy must contain a section that sets out the principles to be applied by the authority in exercising the functions under Sections 29 and 30 of the Act with respect to the exchange of information between it and the Commission, and the functions under section 350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 of the Act.
- 6.26** The Act empowers the Commission to seek information from licensing authorities, and places an obligation on authorities to comply with information requests. Specifically, section 29 of the Act entitles the Commission to request information from licensing authorities and to set out the manner in which the information is compiled, collated and provided, providing it:
- forms part of a register maintained under the Act
 - is in the possession of the authority in connection with a provision of the Act.
- 6.27** Section 350 of the Act allows licensing authorities to exchange information with other persons or bodies listed in Schedule 6 (1) for use in the exercise of functions under the Act as follows:
- a constable or police force
 - an enforcement officer
 - a licensing authority
 - HMRC
 - the Gambling Appeal Tribunal
 - the Secretary of State
 - Scottish Ministers.
- 6.28** The licensing authority must set out how it will approach information exchange with other regulatory bodies under the Act, and whether it intends to establish any protocols in this regard. The statement should also include the authority's approach to data protection and freedom of information. In particular, how information will be protected, whether the confidentiality of those making representations will be maintained, what information will be shared with other agencies or persons and how information can be accessed by data subjects.
- 6.29** Further information regarding the exchange of information can be found in part 13 of this Guidance.
- 6.30** For the purposes of their Licensing Authority Statement of Policy, licensing authorities should confirm that they will act in accordance with the relevant legislation and Guidance from the Commission and will adopt the principles of better regulation.
- 4) Licensing Authority Statements of Policy must contain a section that sets out the principles to be applied by the authority in exercising the functions under Part 15 of

the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified in that section.

- 6.31** Licensing authorities are referred to what has been said at paragraphs 5.23 to 5.25 above concerning the Regulators' Compliance Code.
- 6.32** Further guidance on licensing authorities' compliance and enforcement responsibilities is available in part 36 of this Guidance. This has been developed following discussions between the Commission, the police, licensing authorities and other law-enforcement and regulatory agencies to agree respective roles in relation to particular types of gambling and licensed premises.
- 6.33** It is recommended that licensing authorities adopt a risk-based inspection programme. This would include targeting high-risk premises which require greater attention, whilst operating a lighter touch in respect of low-risk premises, so that resources are more effectively concentrated on problem premises. The policy statement should set out the principles to be applied by the authority in respect of such a programme and the criteria the authority is likely to use to determine the level of risk in respect of premises.
- 6.34** Many licensing authorities in England and Wales will have general enforcement policies which are in accordance with the codes of practice developed with the Crown Prosecution Service. Licensing authorities in England and Wales may wish to include in their Licensing Authority Statements of Policy that they will apply these codes in the management of criminal cases.
- 6.35** Part 36 of this Guidance covers more detailed issues such as the agreement of protocols with the local police and the Commission on enforcement issues.

Other matters to be covered in policy statements

- 6.36** In addition to these requirements as set out in regulations, a number of other matters should be included in Licensing Authority Statements of Policy.

Consideration of applications

- 6.37** The authority should set out in its statement what factors it may take into account when considering applications for premises licences, permits and other permissions and matters that it will consider relevant when determining whether to review a licence. This is where considerations such as the proximity of gambling premises to schools and vulnerable adult centres, or to residential areas where there may be a high concentration of families with children, should be detailed. Any such policy must, however, come with the qualification that each case will be decided on its merits, so if an applicant can show how they might overcome licensing objective concerns, that will have to be taken into account.

Statement regarding casino resolution

- 6.38** Under section 166(5) of the Gambling Act, any resolution not to issue casino licences must be published in the Licensing Authority Statement of Policy. In addition, the Licensing Authority Statement of Policy should include details about how the authority has taken or will take a decision to pass (or not to pass) a casino resolution.

Statement of principles

- 6.39** If an authority intends to apply a statement of principles when considering applicant suitability for applications for FEC permits under paragraph 7 of Schedule 10, or prize gaming permits under paragraph 8 of Schedule 14 of the Act, it is not obliged to include

those statements as part of the Licensing Authority Statement of Policy, but may want to consider doing so to make them available in one place.

Declaration by licensing authority

- 6.40** Each Licensing Authority Statement of Policy should include a declaration which sets out that in producing the final Licensing Authority Statement of Policy, the authority has had regard to the licensing objectives of the Gambling Act 2005, the Guidance issued by the Commission, and any responses from those consulted on the policy statement. To avoid later challenge, it would be sensible if the licensing authority demonstrated how the licensing objectives and Commission Guidance have been taken into account when drawing up the statement.
- 6.41** Authorities should note that the regulations and this Guidance do not prevent authorities from including any additional information that the authority considers necessary or helpful.

Advertisement of the Licensing Authority Statement of Policy or Revisions

- 6.42** Before publishing a statement or revision, the regulations made by the Secretary of State or Scottish Ministers require authorities to publish a notice of their intention to publish a statement or revision (this must be done no later than the date on which the statement or revision is to be published). The notice must:
- (a) specify the date on which the statement or revision is to be published
 - (b) specify the date on which the statement or revision will come into effect
 - (c) specify the internet address where the statement or revision will be published and the address of the premises at which it may be inspected
 - (d) be published on the authority's website and in/on one or more of the following places:
 - a local newspaper circulating in the area covered by the statement
 - a local newsletter, circular, or similar document circulating in the area covered by the statement
 - a public notice board in or near the principal office of the authority
 - a public notice board on the premises of public libraries in the area covered by the statement.

Publication of the Licensing Authority Statement of Policy or revisions

- 6.43** The regulations stipulate that the Licensing Authority Statement of Policy or any subsequent revision of the statement must be published on the authority's website and be made available at reasonable times for inspection by members of the public either in the principal office of the authority, at one or more public libraries in the area covered by the statement or in other premises situated in that area. The statement or revision must be published at least four weeks before it takes effect.

Review of the Licensing Authority Statement of Policy

- 6.44** The Licensing Authority Statement of Policy will have effect for three years but the licensing authority may review and alter the policy in that period.
- 6.45** Licensing authorities will need to consider, in the event of a change of policy, whether a review of the statement is necessary. For example, a change in planning policy could lead to a review and subsequent revision of a statement (if, for example, a change in planning policy led to family entertainment centres (FECs) where previously there were none, the statement may then be required to make reference to FECs where it was previously silent). Where the statement is reviewed and changes made, authorities must consult on any revision.

- 6.46** Authorities should note that where a statement is revised, it is only the revision that needs to be published and consulted on. So, for example, an authority may consult separately on whether to pass a casino resolution and then subsequently publish the resolution as part of the statement. This can be done without any need to review and reopen consultation on the main body of the statement. Any revisions must be published and advertised in the same way as a new statement.
- 6.47** Regulations provide for the form and content of revisions to the Licensing Authority Statement of Policy to be determined by the licensing authority, subject to the following requirements:
- revisions to Licensing Authority Statements of Policy must include an introductory section at or near the beginning, summarising the matters dealt with in the statement and listing the persons consulted in preparing the revision.
- 6.48** Where the revision deals with any of the matters below, these must be presented in separate sections:
- 1) the principles to be applied by the authority in exercising the powers under section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm
 - 2) the principles to be applied by the authority in exercising the powers under section 158 of the Act, to determine whether a person is an interested party in relation to a premises licence, or an application for or in respect of a premises licence
 - 3) the principles to be applied by the authority in exercising its functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act or
 - 4) the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified in that section.

Additional information to be made available

- 6.49** In order to ensure that applicants and persons who wish to make representations have the necessary information to be able to do so, the information set out below should be made available by licensing authorities as part of their communications strategy.
- 6.50** It should be noted that, unlike the Licensing Act, the Gambling Act does not include as a specific licensing objective the prevention of public nuisance. There is however other relevant legislation which deals with public nuisance. It would be helpful if licensing authorities could explain that objections to new premises or requests for a review should be based on the licensing objectives of the Gambling Act.
- 6.51** It is open to licensing authorities to include any of this information in their Licensing Authority Statement of Policy. However, authorities might think it more appropriate to make it available in another form, such as on the authority website.

Registers

- 6.52** Section 156 of the Act requires licensing authorities to maintain a register of the premises licences that it has issued. The register must be made available, at any reasonable time, to the public who may request copies of the entries. Authorities should ensure that

information regarding the location of the registers (ie on the website, in the council offices etc), when they can be viewed, and the cost of obtaining copies is made available to the public.

Fees

- 6.53** Authorities should ensure that information regarding the fees to be charged, including the level of fees, for applications for premises licences and other permissions under the Act is available to the public.
- 6.54** Separate guidance relating to the calculation of fees and accounting procedures has been produced by the Secretary of State available from the Department for Culture, Media and Sport website (www.culture.gov.uk). In Scotland, all of the equivalent fees will be set centrally by Scottish Ministers⁹.

Applications

- 6.55** Authorities should ensure that information is available on how to make applications for licences and other permissions under the Act. In particular, it would be helpful if authorities ensure that a full list of responsible authorities and their appropriate contact details, is readily available. Application forms, where appropriate, should also be made available. Authorities should note that there will be no prescribed application forms for family entertainment centre, prize gaming or licensed premises gaming machine permits. As such, the authority will need to make clear how applications for these permits should be made and in what form. Additionally, authorities will need to ensure that information regarding making representations, and applying for a review of a premises licence, is also made available.

Delegation

- 6.56** Information should be provided as to how functions are delegated under the Act (ie whether decisions are to be taken by a licensing officer, licensing sub-committee or full committee etc). A table setting out the scheme of delegation required by the Act may be the most appropriate method for this and is located in part 4 of this Guidance.

⁹ Gambling Act 2005 (Premises Licence Fees) (Scotland) Regulations 2007; Gambling Act 2005 (Fees) (Scotland) Regulations 2007; Gambling Act 2005 (Fees No.2) (Scotland) Regulations 2007; Gambling Act 2005 (Fees No.3) (Scotland) Regulations 2007 and Gambling Act 2005 (Fees No.4) (Scotland) Regulations 2007.