

EXPLANATORY MEMORANDUM TO

THE GAMBLING ACT 2005 (TEMPORARY USE NOTICES) REGULATIONS 2007

2007 No. 3157

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 These Regulations concern temporary use notices issued under Part 9 of the Gambling Act 2005 (“the Act”). The Regulations indicate the activities which may be specified in a temporary use notice, and prescribe the form and content of a temporary use notice and of a counter-notice issued by a licensing authority in response to a temporary use notice. The Regulations also make provision about the endorsement of a temporary use notice by the relevant licensing authority and about the fee which is to be paid on the giving of a temporary use notice.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Act establishes a new system of regulation for all gambling in Great Britain, other than the National Lottery and spread betting. The Act establishes a new regulator for gambling, the Gambling Commission, and a new licensing regime for commercial gambling. As part of the licensing regime, the Act provides for three main types of permission: operating and personal licences which are issued by the Gambling Commission, and premises licences which are issued by licensing authorities. In England and Wales, licensing authorities are the local authorities and, in Scotland, licensing boards.

4.2 Although generally a premises licence is required to authorise the use of premises for providing facilities for gambling, Part 9 of the Act enables premises to be used for short periods without a premises licence. Part 9 enables the holder of an operating licence to give a temporary use notice about premises to the licensing authority in which the premises are situated. The effect of the notice is to enable the premises to be used for providing facilities for gambling for a limited period of time as specified in the notice. Section 218 of the Act restricts to 21 days the amount of time that premises may be used under a temporary use notice in any period of 12 months. A notice must be given at least 3 months before it is to take effect.

4.3 Section 215 makes provision about the activities which may be authorised by a temporary use notice. That section provides for the activities to be prescribed in regulations made by the Secretary of State. Reference was made to the exercise of these powers in the memorandum on the Gambling Bill given by the Department to the House of Lords’ Select Committee on Delegated Powers and Regulatory Reform on 27 January 2005 (annexed to the Committee’s 11th Report of Session 2004-05). At paragraph 186 of that memorandum it was stated:

“In the first instance, the Government intends to use this power to make possible the temporary offering of some forms of gaming: in particular poker tournaments or competitions, which would generally take place in venues such as hotels. The requirement that the organiser holds an operating licence provides a necessary safeguard. Thereafter, further types of gambling may be added, if there is a demand and there is no regulatory risk attached to the addition”.

The Regulations are consistent with that statement in providing for a temporary use notice to be

capable of authorising the provision of facilities for equal chance gaming where the participants are taking part in a competition intended to produce a single, overall winner.

4.4 Sections 219 to 228 of the Act set out the procedure relating to the giving of temporary use notices. Where a person gives a temporary use notice it must be accompanied by the prescribed fee. The person giving the notice to the licensing authority is also required also to give a copy to the Gambling Commission, the chief of police for the area and HM Revenue and Customs. The licensing authority or any of these bodies may give a notice of objection in response to the temporary use notice. Where notice of objection is given the licensing authority must, unless all parties agree otherwise, hold a hearing into the temporary use notice. Following the hearing, the licensing authority may give a counter-notice providing for the temporary use notice not to have effect or to have effect subject to modification. A counter-notice must include the licensing authority's reasons for giving it. Where no counter-notice is given, the licensing authority must endorse the temporary use notice.

4.5 The Act provides for certain matters relating to the procedure for temporary use notices to be set out in subordinate legislation. These include prescribing the form and content of a temporary use notice and a counter-notice, specifying the manner in which a temporary use notice is to be endorsed, the fee to accompany a temporary use notice and the fee for obtaining a replacement copy where a notice is lost or damaged etc. The Regulations make provision for each of these things.

5. Territorial Extent and Application

5.1 For the most part these Regulations apply to the whole of Great Britain. Regulation 7(1) (which makes provision about the fee to accompany a temporary use notice when it is given) applies only to England and Wales. In relation to Scotland, the power to make this provision is exercisable by the Scottish Ministers.

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 Act is summed up by its licensing objectives, which 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.

The Act establishes a new licensing regime for premises offering facilities for gambling in Great Britain, in which licences are granted by local licensing authorities (local authorities in England and Wales and licensing boards in Scotland) and each premises must meet any conditions attached to its licence. Though temporary use notices differ from a premises licence, they still relate to premises and so dealing with the process is the responsibility of licensing authorities or boards. Some similar principles apply such as maintaining a register, dealing with representations from specified authorities and determining a fee.

7.2 Part 9 of the Act essentially represents a new permission for gambling in Great Britain; an equivalent permission did not exist in earlier gambling legislation. Whilst the Act does not specify the types of gambling for which premises can be used under a temporary use notice, section 215 allows the Secretary of State to prescribe the activities permitted by such a notice. The consultation paper issued by the Department proposed to restrict the activities permitted under a temporary use notice to equal chance gaming taking place in the context of a tournament, and the Regulations have been drafted on this basis. The Department considered that it was reasonable in the case of such one-off events for the operator exceptionally to be relieved from the requirement to obtain a premises licence. However, the Department considered such an exemption was only appropriate for equal chance gaming. Other forms of gambling, such as gaming machines or casino games, which are liable to present greater risks to the licensing objectives, or in terms of problem gambling have been excluded. Although the operator giving the notice and conducting the activity would be subject to the regulatory conditions attached to their operating licence, the Department considered that it was important in these other cases to retain the protections afforded by the premises licensing system under Part 8 of the Act. These include conditions automatically attached to the premises licence through regulations made by the Secretary of State which control the way in which the premises are used for gambling. Over time, the Department will monitor the situation and will consider making further regulations under section 215 of the Act to extend the scope of activities which can be permitted by a temporary use notice, if there is a perceived need or benefit in doing so and the associated risks are deemed acceptable.

7.3 These Regulations prescribe the form and content of a temporary use notice and counter notice. The notices follow the format of the forms prescribed for premises licence applications under the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007 (S.I. 2007/459). They aim to gather the information required by the Act in a clear and concise manner, with minimum burden to both the person giving the notice and the licensing authority.

7.4 A separate form of temporary use notice has been prescribed for vessels as a licensing authority will require slightly different information for a vessel, including information about their mooring within the licensing authority's area and about any journeys they intend to undertake whilst the notice is in force.

7.5 Section 234 of the Act obliges a licensing authority to keep a register of temporary use notices given to them and make that register available to the public. The Act allows the Department to make regulations about the form of the register and the manner in which it is maintained. However, the Department has chosen not to do so following consultation responses received on this issue when consulting on the Gambling Act 2005 (Premises Licences and

Provisional Statements) Regulations 2007. Respondents explained that licensing authorities already maintain a register under other licensing regimes and differ in their capabilities and working practices. A blanket approach would therefore be inappropriate and could result in an unfair burden, which could impact on the industry in terms of re-couping the related cost.

7.6 The Department has followed the same approach taken for premises licence fees and set the maximum fee for a temporary use notice in these regulations for England and Wales. Subject to this maximum, each individual authority will determine the fee payable to them on a cost recovery basis.

7.7 The fee maximum has been set at £500 for England and Wales. The fee covers the following procedural checks:

- The person giving the notice holds a valid operating licence;
- The gambling offered is a permitted activity;
- The number of days proposed will not exceed the 21 day limit within a 12 month period for that premises;
- The relevant contact details have been supplied for the activity.

It also needs to cover any assessment and compliance visits to the premises that may need to take place, updating the local register and dealing with any objections the relevant authorities may have. In cases where objections have been received, the licensing authority will need to hold a hearing (unless all parties confirm it is not necessary and come to a satisfactory agreement).

Consultation

7.8 The Department consulted on these regulations for the recommended 12 week period, from 31st May to 23rd August 2007. A total of 9 responses were received from representatives of the gambling industry, licensing authorities and other groups including the police. A draft temporary use notice and counter-notice were included with the consultation. All comments on the form of the notices were given due consideration and amendments were made where appropriate. Respondents to the consultation were in agreement with the Departments proposals and did not raise any controversial points.

7.9 The Department will make the forms of the notice and counter notice available to licensing authorities in Word template and they in turn will make the appropriate forms available to applicants.

Guidance

7.10 Since these regulations include minimal extra provisions and the procedure is largely defined on the face of the Act, the Department has taken the view that the most practical solution is to incorporate guidance into the forms of the notice and counter notice. The regulations will be publicised, as all regulations are, in the Gambling Commission regular bulletin, which has a wide circulation list.

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

9. Contact

Jennifer Smith at the Department for Culture, Media and Sport (Tel: 0207 211 6420 or e-mail: Jennifer.smith@culture.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

| | | |
|--|---|------------------------------|
| Department /Agency: Department for Culture, Media and Sport | Title: Impact Assessment of The Gambling Act 2005 (Temporary Use Notices) Regulations 2007 | |
| Stage: final | Version: 1 | Date: 1 November 2007 |
| Related Publications: | | |

Available to view or download at:

<http://www>.

Contact for enquiries: Jennifer Smith, DCMS

Telephone: 0207 211 6420

What is the problem under consideration? Why is government intervention necessary?

The Department intends to lay regulations under the Gambling Act 2005, to bring Part 9 of the Act into force. Part 9 concerns Temporary use notices (TUN) which permit a premises not usually licensed for the provision of gambling to be used for a short period of time. The Department needs to implement TUN in a way that benefits the industry but does not jeopardise society. The Act itself largely defines the procedures requires the Secretary of State to prescribe the types of gambling permitted by such a notice and the forms of notices involved.

What are the policy objectives and the intended effects?

Part 9 of the Act represents a new permission for gambling in the UK, an equivalent permission does not exist in earlier gambling legislation. The Act gives the Department a choice in considering the types of gambling to be permitted by a TUN, and this must be considered against the perceived risk of problem gambling. The forms of the notice and counter notice included must be user friendly and gather the information required by the Act in a clear and concise manner, with minimum burden to both the person giving the notice and the licensing authority.

What policy options have been considered? Please justify any preferred option.

The Department could have chosen to prescribe a wide range of gambling as being permitted by a TUN. However this would have presented risks to the licensing objectives, in particular that related to protecting children and young persons and the vulnerable from being exploited or harmed by gambling. The Department chose to limit the types of gambling permitted by a TUN to equal chance gaming in respect of tournaments, balancing the risks to society against the opportunity for industry.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The Department consulted on this policy option and gained industry support. The costs are in line with premises licensing and give the industry another opportunity to expand their business potential

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

| | |
|-----------------------|---------------------|
| Policy Option: | Description: |
|-----------------------|---------------------|

| | | | | | |
|--|---|--|--|------------------------|---|
| COSTS | ANNUAL COSTS | Description and scale of key monetised costs by 'main affected groups' The operator must pay a maximum of £500 per notice. A notice can be used for up to 21 days in a 12 month period for each premises. It is difficult to estimate how many licensing authorities will opt for the maximum fee and how many notices a licensed operator will give as we do not have any comparable data. | | | |
| | One-off (Transition) Yrs | | | | |
| | £ 500 | | | | |
| | Average Annual Cost (excluding one-off) | | | | |
| | £ 10,500 | | | Total Cost (PV) | £ |
| Other key non-monetised costs by 'main affected groups' | | | | | |

| | | | | | |
|---|--|---|--|---------------------------|---|
| BENEFITS | ANNUAL BENEFITS | Description and scale of key monetised benefits by 'main affected groups' The premises will gain from being used as a venue and the licensed operator will gain from another option to conduct business. | | | |
| | One-off Yrs | | | | |
| | £ | | | | |
| | Average Annual Benefit (excluding one-off) | | | | |
| | £ | | | Total Benefit (PV) | £ |
| Other key non-monetised benefits by 'main affected groups' | | | | | |

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|-------------------------------------|
| Key Assumptions/Sensitivities/Risks |
|-------------------------------------|

| | | | |
|--------------------|----------------------|-------------------------------------|---|
| Price Base Year | Time Period Years | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ |
|--------------------|----------------------|-------------------------------------|---|

| | | | | |
|---|-------------------|---------------|----------------|---------------|
| What is the geographic coverage of the policy/option? | Great Britain | | | |
| On what date will the policy be implemented? | 1/12/07 | | | |
| Which organisation(s) will enforce the policy? | Local authorities | | | |
| What is the total annual cost of enforcement for these organisations? | £ | | | |
| Does enforcement comply with Hampton principles? | Yes | | | |
| Will implementation go beyond minimum EU requirements? | No | | | |
| What is the value of the proposed offsetting measure per year? | £ n/a | | | |
| What is the value of changes in greenhouse gas emissions? | £ n/a | | | |
| Will the proposal have a significant impact on competition? | No | | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro none | Small none | Medium none | Large none |
| Are any of these organisations exempt? | No | No | N/A | N/A |

| | | | |
|---|---------------|-----------------------|---|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) | |
| Increase of £ | Decrease of £ | Net Impact | £ |

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The Department had already given a commitment to Parliament during the passage of the Act, to approach temporary use notices with some caution and not to extend them to all forms of gambling, such as casino games and gaming machines. This provision, does however, present the industry with an opportunity to provide some types of gambling without the need to obtain a premises licence. The commitment given to Parliament was to the effect that initially TUNs would be only be allowed for tournaments. These are by their nature temporary events and therefore most suited to a temporary form of permission where it might otherwise be disproportionate to require a premises licence to be obtained. The Department consulted on this basis. Responses to the consultation did not disagree with the low level of gambling permitted by temporary use notices.

There are measures embedded in the Act which minimise the risk of these permissions being used in a way that is inconsistent with the licensing objectives in the Act. The Objectives are:

- Preventing gambling being a source of crime or disorder
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and the vulnerable from being harmed or exploited by gambling

The operator giving the notice must have a valid operating licence from the Gambling Commission. This licence will have conditions attached and the operator will also be subject to the objectives of the Act. This also affords some protection to the wider industry in that operators must be licensed in order to conduct an activity, ensuring that only professional companies can apply. This measure is pro-competition; it de-regulates the use of premises, albeit for temporary periods.

However, though the operator will be governed by the conditions attached to their licence, the premises itself is not. Premises permanently offering gambling must meet a series of conditions which support the objectives of the Act, in order to qualify for a licence. Therefore, limiting the types of gambling permitted to a low level reduces the risk, whilst still providing the industry with the choice to use a temporary use notice.

The maximum fee for a temporary use notice is £500. The Department proposed this fee in its consultation paper and did not meet any objection from authorities or the industry alike, Authorities must determine their own fee, which does not exceed this maximum figure and meets the cost of dealing with this procedure.

Temporary use notices can be used for up to 21 days in a 12 month period for particular premises. The fee would need to be paid by the operator, to the licensing authority each time a notice is given. The fee covers processing the notices, dealing with any representations made by designated authorities and any possible hearings as a result, maintaining records of the notices given to and authority and any assessment and compliance visits to the premises. Authorities must ensure that the fee they determine a fee which covers their cost but affordable to the industry.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment | Yes/No | Yes/No |
| Small Firms Impact Test | Yes/No | Yes/No |
| Legal Aid | Yes/No | Yes/No |
| Sustainable Development | Yes/No | Yes/No |
| Carbon Assessment | Yes/No | Yes/No |
| Other Environment | Yes/No | Yes/No |
| Health Impact Assessment | Yes/No | Yes/No |
| Race Equality | Yes/No | Yes/No |
| Disability Equality | Yes/No | Yes/No |
| Gender Equality | Yes/No | Yes/No |
| Human Rights | Yes/No | Yes/No |
| Rural Proofing | Yes/No | Yes/No |

