Written submission from the Gambling Commission

Introduction

The Gambling Commission (the Commission) offers this briefing note to the Local Government and Regeneration Committee (the Committee) on the Air Weapons and Licensing (Scotland) Bill to assist further in their consideration of the powers of Licensing Standards Officers (LSOs).

The subject of the powers of LSOs is raised in COSLA’s submission to the Committee at section 8. (Submission number 133).

The Commission’s submission is written in order to provide background and context to COSLA’s note in order that the Committee is provided with the opportunity to give the proposal informed consideration.

The Commission considers that COSLA’s proposal in regard to the powers of LSOs is helpful and provides the most efficient means currently available to correct a drafting error in the Gambling Act 2005 (the Gambling Act).

The Commission is able to provide further explanatory detail should the Committee consider that helpful.

Background

The Gambling Act has three licensing objectives:

- preventing gambling being a source of crime and disorder
- ensuring gambling is conducted in an open and fair way
- protecting children and vulnerable people from being harmed or exploited by gambling

The Gambling Act created a co-regulatory structure for the licensing and regulation of gambling\(^1\). The responsibility is shared between the Commission and licensing authorities. In Scotland licensing authorities are licensing boards constituted under section 1 of the Licensing (Scotland) Act 1976. (Now replaced by the Licensing (Scotland) Act 2005.)

The system is financed, in general terms, by means of fees paid by operators. The Commission receives fees in relation to operator licences and licensing authorities receive fees for premises licences and other local gambling permissions.

In Scotland the fee structure for premises licences is set by Scottish Government. (In England and Wales an upper limit is set by the Department of Culture Media and Sport.)

The fees received by licensing authorities are set in order to meet the cost of licensing, inspection and enforcement.

\(^1\) Further details of the different responsibilities is included at Appendix1
Broadly speaking the division of responsibilities for regulation is that the Commission takes responsibility for issues which have a greater impact or risk at a regional, national or GB-wide level. Licensing authorities are best positioned to manage matters which are more localised in impact. (For example ensuring gambling premises comply with the codes of practice, including matters related to social responsibility.)

The understanding of how best to make this shared regulatory structure work effectively, ensuring for example that there is a clear appreciation as to who is best positioned to act in any given situation involving non compliance or illegality, has evolved a great deal since the Gambling Act was introduced. (Although for reasons set out below the current situation in Scotland has unfortunately not developed in the same way.)

**Scotland, the Licensing (Scotland) Act 2005 and LSOs**

There are three classes of persons who have powers of entry (and a range of other authorisations) under the Act. They are, in general terms, Commission enforcement officers, constables and ‘authorised persons’. This latter category is the one from which licensing authorities obtain the relevant permissions for staff to undertake inspection, compliance and enforcement activities.

LSOs are appointed in Scotland under the Licensing (Scotland) Act 2005 (the Licensing Act) and have a range of functions under the legislation. For example supervising compliance with the requirements of the Act and inspecting and reviewing premises.

However at section 304 (2) of the Gambling Act, (a section which empowers licensing officers in England and Wales), it refers to ‘officers’ of licensing authorities. Scottish Licensing Boards do not have employees or officers as such. Consequently our understanding, and this is a view shared by COSLA and LSOs, is that the enforcement powers under the Gambling Act cannot be exercised ‘as of right’ by a LSO.

The Commission developed an Advice Note\(^2\) (July 2013) on this matter, as COSLA’s submission to your Committee notes. This sets out our understanding of how, using other legislation, LSOs or others, might be able to act as ‘authorised persons’ under the Gambling Act. Due to the original drafting error Licensing Boards and LSOs remain unsure as to the extent of their powers and have therefore felt unable to engage in gambling regulation to any extent across Scotland.

Our ‘Licensing authority statistics 1 April 2009 – 31 March 2014’\(^3\), an annual compilation of licensing authority gambling related activity, demonstrates that activity in Scotland remains low in comparison to that in England and Wales.

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\(^3\)[http://www.gamblingcommission.gov.uk/Licensing-authorities/Information-for-licensing-authorities/Licensing-authority-returns.aspx](http://www.gamblingcommission.gov.uk/Licensing-authorities/Information-for-licensing-authorities/Licensing-authority-returns.aspx)
AS COSLA’s submission indicates, the Bill currently under consideration may provide an opportunity to clarify the power of LSOs in relation to gambling regulation. This would enable them to take on the important public protection role in gambling that they currently fulfil in relation to alcohol.

Appendix 1

The Gambling Commission

The Commission was set up under the Gambling Act to regulate commercial gambling in Great Britain. The Act came fully into force on 1 September 2007. The Commission is an independent non-departmental public body (NDPB) sponsored by the Department for Culture, Media and Sport (DCMS).

The Commission regulates commercial gambling in Great Britain, including:

- arcades (excluding unlicensed Family Entertainment Centres)
- betting
- bingo
- casinos
- gaming machine manufacturers and suppliers
- gambling software providers
- lottery operators and external lottery managers (excluding small society lotteries)
- British based remote gambling operators
- The National Lottery

The Commission does not regulate spread betting, this is the responsibility of the Financial Conduct Authority.

Licensing Authorities

Licensing authorities have a range of specific responsibilities, including the following:

- licensing and regulating premises for gambling activities
- considering and granting notices given for the temporary use of premises for gambling
- granting permits for gaming and gaming machines in clubs and miners’ welfare institutes
- regulating gaming and gaming machines in alcohol licensed premises
- granting permits to family entertainment centres for the use of certain lower stake (category D) gaming machines
- granting permits for prize gaming
- considering and granting occasional use notice for betting at tracks
- registering small society lotteries