

Natasha Barnes

Subject: FW: Gambling Act Consultation

From: Richard Reeves [mailto:RichardR@bacta.org.uk]

Sent: 26 November 2009 14:47

To: Licensing

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Dear Ms Barnes

Statement of Policy and Principles under the Gambling Act 2005

Thank you for the opportunity to comment on your Statement of Policy and Principles under the Gambling Act 2005.

The British Amusement Catering Trades Association (BACTA) represents Britain's amusement industry with its 650+ members covering the entire supply chain from manufacturing, through distribution and including retail premises. We are responding to your consultation on behalf of our members.

We note that your consultation follows the model format circulated by LACORS and commend this as we believe that premises licence decisions should be administered consistently between local authorities. We ask that you consider the following when making decisions under the Gambling Act:

The exercise of discretion

The exercise of local authority's discretion is an essential part of regulation under the Act and the principles that are to be applied are to be viewed against the duty of the licensing authority under Section 153 which is to "aim to permit the use of premises for gambling"

Interested parties

It is noted that Gambling Commission Guidance states that 'interested parties' includes trade associations and although BACTA is not of itself an interested person under the terms of the Gambling Act 2005 it does represent, through its members, parties who live sufficiently close to premises to be affected by activities being applied for.

Conditions

Conditions must not duplicate protection which is already imposed by regulation from the Commission. Therefore before any condition is imposed there must be:

- identification of which of the Licensing Objectives is threatened;
- actual evidence of such threat;
- reasons why the proposed condition would be effective to address such threat, and
- reasons why such threat is not already addressed by existing regulation in the form of operating licence conditions, premises licence mandatory conditions and Gambling Commission codes of practice.

Reviews of licensed premises

Licensing authorities are given the power to initiate a review a premises licence. Such reviews should only result from a breach of the licence or a threat to the licensing objectives. Therefore if licence has been granted and the premises operated in accordance with the licence there would be no grounds to review a licence if additional guidance or regulations are issued. A licence should not be subject to retrospective application of guidance.

Protection of children and other vulnerable people / Category D machines

BACTA fully supports the protection of children and the vulnerable. The Act contains specific offences under Parts 3 and 4 which include heavy fines and imprisonment should children and young people be exposed to adult only environments. Parliament considered that such penalties would be effective to deter breaches of the Act. In particular the DCMS conducted a detailed review of evidence regarding the way in which Category D machines are offered to children and concluded that there was no evidence of harm. The Minister stated to Parliament that any change in the way in which Category D machines were offered would be based on evidence and discussed before Parliament. It would therefore be inappropriate for a licensing authority to impose restrictions that were contrary to Parliamentary intention or Parliamentary process.

Definition of premises and primary purpose.

We note that the Gambling Commission has revised its guidance on the primary activity and the definition of premises. In deciding whether to grant a premises licence, the local authority should be concerned that the application meets the requirements of the regulations. The Gambling Commission will ask an operator how he/she will be providing the gambling before granting the operating licence, e.g. they will ask how the bets will be taken and settled before granting a betting licence. Therefore a licensing authority can be satisfied that a gambling operator is able to provide the main gambling type.

Premises is defined by the Act as 'any place'. Historically the concept of a premises within a premises has operated without evidence of any difficulty, examples of a premises within a premises include piers, motorway service stations, etc. DCMS lawyers confirmed during the passage of the Bill that this concept of a premises within a premises would continue under the 2005 Act, subject, of course, to any conditions applicable to individual licences. It should be noted that Parliament provided that certain premises would permit direct access from areas licensed for family admission to those which are restricted to adults only. Of course the adult only areas are subject to conditions regarding protection of the three licensing objectives and there are severe penalties set out in Parts 3 and 4 of the Act for breach. The gaming machine industry has operated designated adult areas within family entertainment areas for over 10 years and on the basis of evidence Parliament has accepted that this model of direct access should be adopted specifically in relation to licensing FECs and regional casinos. Should there be evidence in the future that the licensing objectives are not upheld, the Secretary of State has the power to react through due Parliamentary process. While licensing authorities should take particular care in considering applications for multiple licenses under one premises, their concern should be to ensure that there are clear barriers and that the license conditions are properly observed. It is clearly Parliamentary intention to permit adjacent adult and family areas referred to above, however, the direct internal access to such areas must be sufficiently clear to prevent "drift". It should be recalled that the demand test does not apply under the Act and therefore licensing authorities should not refuse an application based upon their view of the numbers of machines which will be permitted in a particular geographical area. The focus for attention should be to ensure that each licensed premises complies with licence conditions and codes of practice.

BACTA would be pleased to discuss any of the matters contained in this response, please contact me or Sue Rossiter on 020 7726 9822.

Yours sincerely

Leslie MacLeod-Miller
Chief Executive