

SUPPLEMENTARY SUBMISSION FROM THE GAMBLING COMMISSION

I am contacting you in relation to the Committee's inquiry into the above in order to supply further information about some of the evidence which the Committee has obtained during its evidence taking sessions, specifically in relation to comments which were made during the Committee's meeting on 11th November 2015.

The suggestion appears to have been made that licensing authorities in terms of the Gambling Act 2005 (Licensing Boards in Scotland) "are not entitled to regulate" betting licensed premises because of a "drafting error" within the 2005 Act ([Official Report – 11th November 2015 - Columns 23-24](#)). Hopefully it will be helpful to the Committee for the Commission to provide clarification regarding our understanding of the current legal position and elaborate on operational advice which the Commission has recently updated and re-issued to licensing authorities.

"Authorised persons"

You will be aware that the Commission made a [submission in response to the Committee's call for evidence](#) as part of its inquiry. In our response we acknowledged deficiencies in the wording of Section 304(2) of the Gambling Act 2005, "the 2005 Act", in respect of the powers of Licensing Boards to designate "authorised persons" to undertake gambling compliance and enforcement. These relate to the status of Licensing Standards Officers (LSOs) which are the primary resource used by Boards to enforce the provisions of the Licensing (Scotland) Act 2005 which deals with the licensing of premises for the sale of alcohol. Our note suggested a remedy for this problem by amendment to the Scotland Bill.

However in 2012, in an earlier attempt to address this issue, the Commission established a working group with representatives from the Convention of Scottish Local Authorities (CoSLA), the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) Licensing Working Group, LSOs, and the Scottish Government. The group produced an advice note on the "Role of authorised persons in Scotland". This note highlighted the Commission's view that there were certain circumstances under which LSOs in Scotland could be "authorised persons" in terms of the 2005 Act; the advice note set these out and highlighted our opinion that other local authority staff involved in the prevention of harm to human health, like Environmental Health Officers (EHOs), were already "authorised persons". We know that in England and Wales a number of licensing authorities do already utilise EHO staff to undertake gambling and other licensing related compliance and enforcement activity as part of cross-functional teams.

Following further discussions with CoSLA, SOLAR and the Scottish Government in mid-2015, the Commission updated and reissued on 2nd November 2015 [the advice note](#) to Licensing Boards, councils and other stakeholders (including the Law Society of Scotland). In the note we stated explicitly:

"2.6 It is the Commission's view that any officers of authorities with the statutory functions described who have been authorised by the authority in connection with those functions will already, as a matter of law, be authorised persons in terms of the Act. Specifically, for example, environmental health

officers authorised by local authorities will already be authorised persons. It is a matter for local authorities and Licensing Boards to consider how those officers are currently discharging their statutory functions under the Act.”

Therefore, the Commission is clear, despite inadequacies in the 2005 Act, that Licensing Boards in Scotland do have powers to regulate betting shops in Scotland, and indeed other types of gambling licensed premises by either, using appropriately authorised LSOs, or by utilising other local authority staff who are authorised persons in their own right.

Gambling fees

The Commission considers that it is a matter for Licensing Boards and councils to develop processes which deliver effective compliance of gambling premises within their own areas. Part of this is by better utilising the significant levels of annual fee income which are available to Boards from gambling operators. Last year, the Commission estimated that Licensing Boards in Scotland obtained annual fee income of over £630,000 from gambling operators¹. As the recently issued advice note states:

“4.1 The costs of licensing and regulating gambling premises are met by gambling operators through fees for premises licences and permits. The policy in Scotland is that all fees for gambling licences and permits are set [centrally by Scottish Ministers](#) with a flat rate for each premises/permit category, aimed at cost recovery and ensuring fairness and value for money for the gambling industry.

“4.2 The fees include the cost of administration (including hearings and appeals), inspection and enforcement.

“4.3 The effective management of local non-compliance and illegality in gambling has an important role to play within the wider local authority community safety agenda in protecting children, young people and the vulnerable from potential harm.”

Compliance

For the Committee’s information, the Commission receives statutory returns every year in which licensing authorities are required to indicate how many gambling inspections they undertook within their areas. The [latest set of returns for 2014/15](#) indicated that six of the thirty two licensing authorities in Scotland undertook inspection activity. It is possible that other authorities in Scotland also undertook activity which was not reflected in their annual returns. Whilst the Commission would wish this to be higher we believe the fact that some Boards have undertaken this activity illustrates that they do have ways open to them which allow them to regulate gambling licensed premises within their areas.

¹ It should be noted that our estimate of annual gambling fee income paid to Licensing Boards does not include the additional fee income generated by licence variations, transfers and by application fees for new premises licences. Our estimate is that this is c. £180,000 p.a.

Most recently, on 25th November 2015, the Commission was involved in a multi-agency operation targeted on licensed betting shops within North Ayrshire in collaboration with Police Scotland and the local Licensing Board. Again, we believe this demonstrated the scope that Licensing Boards in Scotland have to undertake more effective regulation of licensed premises within their areas.

Licensing authority powers

In conclusion, the Commission would wish to stress that licensing boards in Scotland have a broad discretion to regulate local provision of gambling and the Act gives wide-ranging powers to do so. Those include the power:

- to issue a statement of licensing policy, setting expectations about how gambling will be regulated in a particular area
- to grant, refuse and attach conditions to premises licences
- to review premises licences and attach conditions or revoke them as a result.

The “aim to permit” framework in the 2005 Act provides wide scope for Licensing Boards to impose conditions on a premises licence, reject, review or revoke premises licences where there is an inherent conflict with the relevant codes of practice, relevant guidance issued by the Commission, the licensing objectives or the licensing authorities’ own policy statements.

Licensing authorities may also wish to have proactive engagement with local operators to mitigate risks to the licensing objectives. Such engagement can facilitate an open and constructive partnership which, in turn, can improve compliance and reduce regulatory costs. Engagement with operators should be prompted by justifiable concerns or in pursuit of the principles set out under Section 153 of the 2005 Act.

The Licensing Board’s statement of licensing policy is a very important part of the architecture of local gambling regulation and we expect that each licensing authority will use it to set out the local issues, priorities and risks that inform and underpin its approach to local regulation.

The statement provides the opportunity for licensing authorities to agree and set out how gambling is to be managed in different parts of the local authority area to deal with local concerns and issues. The statement is reviewed and consulted upon by licensing authorities every three years with new statements due to be operational by the end of January 2016. The statement provides clarity of expectation for both existing and prospective licensees about how their businesses are likely to be treated in different localities. The existence of a clear and agreed policy statement will provide greater scope for licensing authorities to work in partnership with local businesses, communities and responsible authorities to identify and mitigate local risks to the licensing objectives.

The Commission hopes that the Committee finds this additional information helpful to it in its deliberations.

Needless to say, the Commission remains fully committed to giving licensing boards and officers of local authorities as much practical support in delivering the shared regulation of gambling in Scotland as we can.