



department for
**culture, media
and sport**

Code of Practice

Determinations under Paragraphs 4 and 5 of Schedule 9 to the
Gambling Act 2005 relating to Large and Small Casinos

Issued by the Secretary of State for Culture, Media and Sport
on 26th February 2008

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Section 1: Introduction

- 1.1 This Code of Practice is issued by the Secretary of State for Culture, Media and Sport under paragraph 6 of Schedule 9 to the Gambling Act 2005. It should be read alongside Part 8 of and Schedule 9 to that Act.
- 1.2 This Code of Practice is about:
 - 1.2.1. the procedure to be followed by a licensing authority in making any determinations required by paragraphs 4 and 5 of Schedule 9 to the Gambling Act 2005; and
 - 1.2.2. matters to which a licensing authority should have regard in making those determinations.
- 1.3 Under paragraph 6(2) of Schedule 9 to the Gambling Act 2005, a licensing authority must comply with this Code of Practice.

Section 2: Definitions

2.1 In this Code of Practice:

the Act means the Gambling Act 2005,

application, unless the contrary intention appears, means:

- (a) an application under section 159 of the Act for a large or small casino premises licence, or
- (b) an application under section 204 of the Act for a provisional statement in respect of a large or small casino,

and a reference to an **applicant** shall be construed accordingly,

the invitation regulations means the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008¹ and a reference to an **application pack** or **invitation** means an application pack made available or invitation published under those regulations,

second stage applicants has the meaning given in paragraph 5.4.1 below,

the Schedule means Schedule 9 to the Act, and

the second stage means the second stage of the two-stage consideration procedure under the Schedule, by which a licensing authority makes the determination required by paragraph 5 of the Schedule.

¹ S.I. 2008/469

Section 3: General Principles to Govern Procedure

- 3.1 A licensing authority must ensure that the procedure they follow in making any determinations required by paragraphs 4 and 5 of the Schedule is fair, having regard to the provisions of the Act.
- 3.2 Subject to the provisions of the Act, the procedure must allow any person to make an application. It must also ensure that each application is determined by the licensing authority according to criteria which are:
 - 3.2.1. the same for all applications;
 - 3.2.2. made known to all applicants; and
 - 3.2.3. not pre-selected to favour a particular applicant or application.
- 3.3 A licensing authority must ensure that any pre-existing contract, arrangement or other relationship they have with any person does not affect the procedure so as to make it unfair (or appear unfair) to any applicant. In particular, a licensing authority must:
 - 3.3.1. in determining the principles that they propose to apply in making the determination under paragraph 5 of the Schedule, disregard any such contract, arrangement or other relationship;
 - 3.3.2. before publishing an invitation, put in place arrangements to ensure that any such contract, arrangement or other relationship does not, actually or apparently, prejudice their ability to conduct the procedure fairly; and

- 3.3.3. after the closing date (as defined in the invitation regulations) but before considering an application, prepare a register of interests disclosing their interest in any contract, arrangement or other relationship with an applicant or a person connected or associated with an applicant.
- 3.4 A copy of the information in the register of interests referred to in paragraph 3.3.3 above must be provided by the licensing authority free of charge to each applicant and to any other person who requests it.
- 3.5 For the purposes of paragraph 3.3.3 above:
 - 3.5.1. a person is “connected with” an applicant if, were the applicant a director of a company, the person would be connected with the applicant within the meaning of section 252 of the Companies Act 2006; and
 - 3.5.2. a person is “associated with” an applicant if the applicant is a body corporate and the person is an associated body corporate under section 256 of the Companies Act 2006.
- 3.6 Paragraph 3.3 above does not apply to an agreement between a licensing authority and an applicant entered into during the second stage under paragraph 5(3)(b) of the Schedule.
- 3.7 Licensing authorities should bear in mind section 210 of the Act, which provides that:
 - 3.7.1. in making a decision in respect of an application, a licensing authority shall not have regard to whether a not a proposal by the applicant is likely to be permitted in accordance with the law relating to planning or building; and
 - 3.7.2. a decision in respect of an application shall not constrain any later decision by the authority under the law relating to planning or building.

Section 4: The First Stage of the Consideration Procedure

- 4.1 In making any determination required by paragraph 4 of the Schedule, a licensing authority must apply the procedure for assessing applications for premises licences which they ordinarily apply to such applications, subject to the modifications of that procedure noted in paragraph 4.2 below. That procedure is governed by Part 8 of the Act, including statutory instruments made under that Part.² Section 153 of the Act sets out the principles to be applied by a licensing authority in exercising their functions under Part 8.
- 4.2 For the purposes of making any determination under paragraph 4 of the Schedule, Part 8 of the Act is modified by paragraph 4(2)(b) and (c) of the Schedule. Paragraph 4(2)(b) provides that each competing applicant is an interested party in relation to each of the other competing applications.
- 4.3 In making any determination required by paragraph 4 of the Schedule, a licensing authority must not take into account any matters which they would not ordinarily take into account in determining an application for a premises licence. In particular, a licensing authority must comply with paragraph 4(2)(a) of the Schedule, which provides that an authority must not have regard to whether any of the competing applications is more deserving of being granted.

² In particular, in relation to applications in England and Wales, the Gambling Act 2005 (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 (S.I. 2007/459); and in relation to applications in Scotland, the Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Regulations 2007 (S.S.I. 2007/196)

- 4.4 Regulation 6(1)(a) of the invitation regulations requires that an application pack include a statement that no information, other than information required by the regulations that govern the making of applications,³ be included in or submitted with an application. Where any such information (including information which is relevant to a determination under paragraph 5 of the Schedule but is not also relevant to the determination under paragraph 4) is nevertheless included in or submitted with an application, the licensing authority must:
- 4.4.1. disregard it in making the determination required by paragraph 4 of the Schedule; and
 - 4.4.2. if possible, return it to the applicant.
- 4.2 Regulation 6(1)(b) and (2) of the invitation regulations requires that an application pack include a statement of the procedure the licensing authority propose to follow in making any determination required by paragraph 4 of the Schedule (together with the procedure the authority propose to follow in making any determination required by paragraph 5). As noted in paragraph 4.1 above, the procedure to be followed under paragraph 4 of the Schedule is the procedure for assessing applications for premises licences which a licensing authority ordinarily apply to such applications, subject to the modifications of that procedure noted in paragraph 4.2 above.

³ That is, the regulations referred to in footnote 2.

Section 5: The Second Stage of the Consideration Procedure

- 5.1 Before publishing an invitation, a licensing authority must determine:
 - 5.1.1 the procedure they propose to follow, and
 - 5.1.2 the principles they propose to apply,

in making any determination required by paragraph 5 of the Schedule.
- 5.2 Regulation 6(1)(b), (d) and (2) of the invitation regulations requires that statements of:
 - 5.2.1 that procedure (together with the procedure the authority propose to follow in making the determination required by paragraph 4 of the Schedule), and
 - 5.2.2 those principles,

be included in an application pack.
- 5.3 In addition, section 349(7) of the Act requires that those principles be included in the licensing policy statement published by a licensing authority under that section.
- 5.4 The procedure a licensing authority propose to follow in making any determination required by paragraph 5 of the Schedule must provide for the following:
 - 5.4.1 Where a licensing authority determine under paragraph 4 of the Schedule that they would, if they were able, grant more than one application, the applicants who made those

applications (“the second stage applicants”) must be invited to participate in the second stage.

- 5.4.2. During the second stage, each of the second stage applicants must be given an equal opportunity to demonstrate to the licensing authority how their application would, if granted, result in the greatest benefit to the authority’s area.
 - 5.4.3. At the outset of the second stage, each of the second stage applicants must be invited to submit information to the authority about how their application would, if granted, benefit the authority’s area.
 - 5.4.4. A licensing authority may engage in discussions or negotiations during the second stage with each second stage applicant with a view to the particulars of an application being refined, supplemented or otherwise altered so as to maximise the benefits to the authority’s area that would result from it (were it granted).
 - 5.4.5. A licensing authority may not, during the second stage, discuss the details of a person’s application with the other competing applicants without the person’s permission.
 - 5.4.6. A licensing authority must put in place a protocol governing the storage of confidential information submitted to them during the second stage, so as to maintain the confidentiality of that information.
- 5.5 In determining the procedure, licensing authorities should bear in mind that, under paragraph 5(3)(b) of the Schedule, they may enter into a written agreement with an applicant during the second stage. Under paragraph 5(3)(d), a licensing authority may take any such agreement into account in determining, under paragraph 5(3)(a), which application would be likely if granted to result in the greatest benefit to the authority’s area.

- 5.6 The power under paragraph 5(3)(b) of the Schedule is a broad one: an agreement may be “as to the provision of services in respect of an authority’s area or otherwise”. An agreement may, for example, record the outcome of the discussions or negotiations referred to in paragraph 5.4.4 above and may be conditional on a licensing authority granting a casino licence to the applicant that is party to the agreement. Licensing authorities should consider the effect (if any) of other legislation (for example the Public Contracts Regulations 2006) on an agreement proposed or entered into under paragraph 5(3)(b) of the Schedule.
- 5.7 In determining the principles they propose to apply in making any determination required by paragraph 5 of the Schedule a licensing authority:
- 5.7.1. must consider what aspects of an application will be relevant to determining which of the applications would if granted be likely to result in the greatest benefit to the authority’s area;
 - 5.7.2. should consider local issues and priorities;
 - 5.7.3. must consult a person or people who appear to represent the interests of local people and businesses, although if they have already consulted about a related matter (for example, in relation to their licensing policy statement published under section 349 of the Act) they need not engage in further consultation, as long as the views expressed in the earlier consultation are taken into account; and
 - 5.7.4. may wish to pay particular regard to the following:
 - (a) the provision that is made in an application for protecting children and other vulnerable people from harm or exploitation arising from gambling, whether in the proposed casino or the wider community,
 - (b) the provision that is made in an application for preventing gambling from being a source of crime or

disorder, being associated with crime or disorder or being used to support crime,

- (c) the provision that is made in an application for ensuring that gambling is conducted in a fair and open way,
- (d) the likely effects of an application on employment and regeneration within the authority's area,
- (e) the design and location of the development proposed in the application,
- (f) the range and nature of non-gambling facilities to be offered as part of the development proposed in the application, and
- (g) the financial and other contributions a second stage applicant proposes to make to the authority's area, whether pursuant to an agreement under paragraph 5(3)(b) of the Schedule or otherwise.



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