

GAMBLING COMMISSION

Gambling Commission Advice Note

The Role of Authorised Persons – Scotland only

1 Introduction

- 1.1 The Gambling Act 2005 (the Act) introduced a new licensing regime with shared responsibilities between the national regulator, the Gambling Commission (the Commission), and other authorities¹ including licensing authorities (Licensing Boards in Scotland). The system has aspects in common with other areas requiring public protection such as health and safety.
- 1.2 The purpose of this advice note is to set out the Commission's understanding of the powers of authorised persons in Scotland and to provide guidance to licensing authorities and others about how they might contribute to effective co-regulation of the gambling industry in Scotland. The interpretation of the Act and powers of authorised persons is ultimately a matter for the courts but is hoped that this note will be helpful to authorities involved in the regulation of gambling activity in Scotland.
- 1.3 Authorised persons in Scotland have an important role to play in securing compliance with the Act and in promoting the licensing objectives set out in the Act. That role complements the work of the Commission and its officers in Scotland in permitting and regulating fair and open gambling, preventing criminal activity in connection with gambling and protecting children and the vulnerable.
- 1.4 A Licensing Standards Officer (LSO) of a Scottish local authority may be an 'authorised person' in terms of the Act, as for example may be an environmental

¹ The reference to other authorities is an acknowledgement of section 304(4) which includes within the definition of authorised persons a number of other specific persons including health and safety inspectors and inspectors and surveyors of ships.

health officer. Where an LSO is an authorised person, the LSO can carry out formal enforcement activity using a range of powers set out in the Act. Those powers are quite separate from the powers conferred on LSOs in relation to alcohol licensing by the Licensing (Scotland) Act 2005. In addition to these formal powers, LSOs can help secure compliance with the Act and can educate, encourage and promote best practice through less formal engagement with licensed operators and others.

2 Licensing Standards Officers

Licensing (Scotland) Act 2005

- 2.1 LSOs are appointed in Scotland under the Licensing (Scotland) Act 2005 (the Licensing Act) and have a range of functions under the Licensing Act.
- 2.2 For example, LSOs have a general duty to supervise compliance with the requirements of the Licensing Act and may enter and inspect licensed premises for that purpose. LSOs also have a range of general functions including providing information and guidance on the operation of the Licensing Act, supervising compliance with premises and occasional licences and seeking review of a premises licence where appropriate. Such a review may be sought where an LSO considers that illegal activity may be taking place on licensed premises, including illegal gambling activity, if that activity amounts to a breach of a licence condition or is relevant to one or more of the licensing objectives under the Licensing Act².
- 2.3 Illegal gambling activity may, for example, be relevant to the licensing objectives of preventing crime and disorder or preventing harm to children³.

Gambling Act 2005

- 2.4 The Commission's understanding is that the enforcement powers contained in the Act cannot be exercised 'as of right' by an LSO.

² Licensing (Scotland) Act 2005, section 36.

³ The Commission is aware of the concerns which have been raised by the decision of the Court of Session in *Brightcrew v City of Glasgow Licensing Board* 2012 SC 67 and it is a matter for licensing authorities to take legal advice on how this decision impacts on the power to seek a review of a premises licence.

- 2.5 The enforcement powers conferred by the Act may be exercised (depending on the particular power) by police constables and/or by enforcement officers designated by the Commission and/or by ‘authorised persons’. The Act provides that ‘an officer of an authority other than a licensing authority’ is an ‘authorised person’ where the authority has statutory functions relating to minimising or preventing the risk of pollution of the environment or harm to human health, and the officer is authorised by the authority for the purpose of exercising any of those statutory functions (under section 304(3)). This provision does not require any positive action by authorities (including local authorities) to designate officers of the authority as authorised persons for the purposes of the Act.
- 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.

3 LSOs as ‘Authorised Persons’

- 3.1 An LSO in Scotland is not, by virtue simply of being an LSO, an ‘authorised person’ in the Act⁴, but LSOs may be authorised persons because they are as a matter of fact exercising other statutory powers on behalf of their local authority.
- 3.2 An LSO will be an authorised person for the purposes of particular premises if:
- 3.2.1 The authority he or she works for has statutory functions in relation to minimising or preventing the risk of pollution of the environment or of harm to human health;
 - 3.2.2 That authority has those functions for the area in which the premises are wholly or partly situated; and

⁴ Because the definition in section 304(2) refers to ‘officers’ of licensing authorities. Scottish Licensing Boards do not have employees or officers as such.

- 3.2.3 The LSO is authorised by that authority for the purpose of exercising any of those statutory functions⁵.
- 3.3 By way of example, an LSO may be authorised by their local authority by section 7 of the Smoking, Health and Social Care (Scotland) Act 2005 to enter premises and require identification in order to ascertain whether an offence (of permitting smoking, smoking or failing to display appropriate warning notices in no-smoking premises) has been or may have been committed. The Commission's view is that, by virtue of that authorisation, the LSO is also an authorised person under the Act.
- 3.4 No formal steps require to be taken to designate the LSO as authorised for the purposes of the Act. The authorisation arises as soon as the officer in question fulfils the requirements set out at paragraph 3.2. For convenience, authorities may wish to keep a central record of officers it considers are so authorised.
- 3.5 Provided the LSO is authorised as described above, the LSO is then entitled to:
- 3.5.1 Undertake activities for the purpose of assessing compliance with the Act and related legislation and for the purpose of assessing whether an offence is being committed under the Act (section 305).
 - 3.5.2 Enter premises for the purposes of discovering whether facilities for gambling have been, are being or may be provided, whether the premises are licensed for gambling and whether the terms and conditions of any licence are being complied with where the LSO has a reasonable suspicion that these activities are taking place, have taken place or are about to take place (section 307).
 - 3.5.3 Enter premises in respect of which an application for a premises licence has been made to assess, having regard to the licensing objectives, the likely effects of activity carried on in reliance on the premises licence and for a purpose connected with a review under

⁵ For completeness, the Act also specifically categorises as an 'authorised person': Enforcement officers appointed under section 61(3) of the Fire (Scotland) Act 2005; Inspectors appointed under section 19 of the Health and Safety at Work etc Act 1974; and Inspectors or surveyors of ships appointed under section 256 of the Merchant Shipping Act 1995.

section 201 of the Act in the case of premises where such a premises licence has been granted (section 313).

- 3.5.4 Enter premises in respect of which a temporary use notice has been given to assess, having regard to the licensing objectives, the likely effects of activity carried on in reliance on the temporary use notice and to determine whether there is activity which does not accord with the temporary use notice (section 315).
- 3.6 These various powers of entry also carry with them powers to inspect any part of the premises and any machine or other thing on the premises; to question any person on the premises; to require access to and copies of written or electronic records kept on the premises; to remove and retain items which may constitute or contain evidence of the commission of an offence under the Act or the breach of a term or condition of a licence issued under the Act; and to remove and retain items which may be or have been used in the commission of an offence under the Act (section 317).
- 3.7 It should be noted that this does not mean that LSOs would be exercising statutory functions in relation to health or the environment as a means of enforcing the provisions of the Act. No question arises, for example, of LSOs obtaining entry to premises under false pretences. Nor would LSOs require to be accompanied to premises by environmental health officers. Once authorised for health or prevention of pollution purposes, LSOs are also authorised under the Act and can (and should) rely on the enforcement powers in the Act to regulate gambling in their area.
- 3.8 The Commission encourages local authorities to deploy suitably trained authorised persons under the Act to ensure that gambling is regulated effectively and that citizens are afforded the protections set out in the three licensing objectives.

4. Fees

- 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 industry⁶.

- 4.2 The fees include the cost of administration (including hearings and appeals), inspection and enforcement⁷.
- 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.

5. Additional Support from LSOs

- 5.1 Where an LOS is not an authorised person for the purposes of the Act (because he or she is not exercising functions of the sort described in section 304(3)) that LSO can nevertheless make a positive contribution to ensuring compliance with the Act and the requirements of an effective system of shared regulation.
- 5.2 As mentioned above LSOs have a general duty to supervise compliance with the requirements of the Licensing Act and may enter and inspect alcohol licensed premises for that purpose. Where an LSO suspects that illegal activity may be taking place on premises licensed under the Licensing Act – including illegal gambling activity – an LSO may seek a review of the relevant licence if the activity amounts to a breach of a licence condition or is relevant to the licensing objectives⁸. An LSO may also inform the police of the suspected illegal activity – as of course can any member of the public.
- 5.3 As mentioned above, where an LSO becomes aware, in the course of exercising functions under the Licensing Act, that relatively minor and easily remedied breaches of the Gambling Act may be taking place the LSO can provide guidance to the operator or licence holder. The Commission encourages LSOs to engage with operators on this informal basis to help secure compliance with the Gambling Act.

⁶ The Gambling (Premises Licence Fees) (Scotland) Regulations 2007.

⁷ See <http://www.scotland.gov.uk/Topics/Justice/law/Licensing/Gambling/Premises-Licensing>

⁸ Licensing (Scotland) Act 2005, section 36.

For further information or to register your interest in the Commission please visit our website at: **www.gamblingcommission.gov.uk**

Copies of this document are available in alternative formats on request.

Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

T 0121 230 6666 **F** 0121 230 6720 **E** info@gamblingcommission.gov.uk