

GAMBLING COMMISSION

Guidance to licensing authorities (5th edition)

**Consultation
March 2015**

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1 Introduction

- 1.1** This consultation paper sets out the Gambling Commission's (the Commission) proposals for publishing the 5th edition of our Guidance to Licensing Authorities (the Guidance or GLA5). The Guidance is published under s.25 of the Gambling Act 2005 (the Act), which requires the Commission to issue guidance on the manner in which licensing authorities exercise their functions under the Act.
- 1.2** The GLA5 is intended to be the principal reference document to assist licensing authorities in exercising their functions under the Act. The current edition of the GLA (4th edition) was updated in September 2012 and required revision to bring it up to date.
- 1.3** Since that time there has been considerable development in the partnership between the Commission and licensing authorities and we have sought to incorporate and reflect what has been achieved in the shared regulation approach, as well as developed thinking in areas.
- 1.4** This consultation provides an opportunity for stakeholders to comment on the proposed changes and to make any other suggestions. The proposed revisions do not represent a change of policy or approach by the Commission, but seek to clarify and reinforce the tools that enable licensing authorities to regulate gambling at a local level. In order to make the Guidance more accessible, we have re-ordered some sections and incorporated relevant material from publications, such as advice documents.
- 1.5** There are a number of other drivers for this consultation including the need to:
- provide greater clarity about the wide range of powers afforded to licensing authorities under s.153 of the Act, balanced by the statutory aim to permit gambling subject to reasonable consistency with the licensing objectives
 - reinforce the importance of the Statement of Licensing Policy to set out how a licensing authority intends to use its powers to manage risks to the licensing objectives locally
 - promote local partnership working between licensing authorities and businesses so as to facilitate a coordinated response to local issues
 - reflect changes to the Commission's social responsibility provisions within the Licence Conditions and Codes Practice (LCCP)
 - ensure the Guidance can accommodate innovation and changes to the regulatory environment
 - set out the range of statutory powers provided by other legislation, which licensing authorities could use to resolve gambling related issues eg the Proceeds of Crime Act 2002 (PoCA) and planning legislation
 - further clarify the relationship between the Commission, licensing authorities and other responsible authorities, with a strong focus on the sharing of information between these groups.
- 1.6** The GLA is a statutory document and does not, therefore, promote particular case studies as examples of 'good practice' although we have, for illustrative purposes, referred to the successful application of statutory powers where this adds context to the Guidance. A separate compendium of case studies is being developed to illustrate the effectiveness with which licensing authorities have exercised their powers under the Act.
- 1.7** There have been a number of regulatory, political and legislative changes since the 4th edition of the GLA was published in September 2012. We have updated the Guidance to ensure that it is consistent and corrected references to documents and agencies that have been superseded or no longer exist. These minor amendments are not specifically mentioned in this consultation document.
- 1.8** Other than a new general guidance section at the beginning of the document, setting out the breadth of powers available to licensing authorities, promoting partnership working and

reflecting LCCP changes, the substantive work on the document has been in re-ordering information and improving accuracy and consistency without significant change to the core material. Given this, a marked up version of the GLA5 is not attached. Instead, a 'clean' version is attached showing the proposed GLA5 with the changes incorporated into the text, to better illustrate how the final published version might appear.

- 1.9** This will be a 12 week consultation and we would welcome comments by 22 June 2015. A responses document and the new 5th edition of the Guidance will be published later in the year.

2 Issues for discussion

- 2.1** In this section, we set out the key changes that we propose to make to the specific parts in the 5th edition of the Guidance with the aim of generating discussion around these points. Stakeholders are free to make general points about the proposed changes or to refer to other specific matters if they wish.

General revisions to the Guidance

- 2.2** The majority of the revisions proposed are intended to ensure the Guidance remains current and that it is ordered for ease of reference. We would first like to draw attention to a number of changes that do not require explicit consultation, but are mentioned here for reference. These are applicable throughout the Guidance wherever they occur:
- future-proofing of the Guidance by amending specific references to the Commission's publications and instead signposting to the latest versions
 - factual changes and updates, including changes to the roles, powers and remit of regulatory and other bodies. These include the abolition of the Financial Service Authority (superseded by the Financial Conduct Authority) and the National Lottery Commission's merger with the Gambling Commission on 1st October 2013
 - internal hyperlinks have been added for ease of reference. Clicking on a topic listed within the contents page will direct the reader to the relevant part of the document
 - the Guidance has been amended to reflect changed references and updates to gaming machines stakes and prizes and gaming machine allocations
 - the material has been reordered in parts to improve ease of reading or to make specific information easier to locate. A glossary has been added at Appendix J.

Specific minor changes to the Guidance

- 2.3** Some specific matters have been amended, to reference additional or newly available material, to provide updates on legislative change or to update terminology. They are as follows:
- references to the LCCP are amended to reflect the updated LCCP, as published in February 2015
 - Bet Receipt Terminals are now referred to as Self-Service Betting Terminals
 - the new Regulators' Code (previously Regulators' Compliance Code) came into effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006
 - the Commission's [website](#) now hosts all the statutory notices and application forms for licensing authorities as they are no longer available on the Department of Culture Media and Sport (DCMS) website
 - the Guidance references additional advice notes such as the Commission's *What Constitutes Bingo* and *Role of Authorised Persons in Scotland*
 - references to the Horserace Betting Levy Board approving racecourses have been removed, as it no longer carries out this function
 - reference to the "five times rule" for betting areas on tracks has been removed as it was replaced in 2012 with alternative commercial arrangements
 - s.180 of the Act has now lapsed and has been removed

- the legacy machine entitlement for bingo premises that had been granted on or after 13 July 2011 expired on April 2014, and references to this have been removed.

Consultation question

Q1. Do you have any comments on the changes highlighted in paragraph 2.3?

Consultations

- 2.4** Some sections of the GLA5 may be subject to further change following the outcome of both Government and Commission consultations. In particular:
- the *Air Weapons and Licensing (Scotland) Bill* in relation to the status / scope of Licensing Standards Officers in Scotland
 - the *Consultation on Incidental Non-Commercial, Private Society, Work and Residents' Lotteries* in relation to small society lotteries
 - the *Smith Commission's* work on the devolution of powers to Scottish Government, which contains proposals in relation to B2 machines in betting premises
 - the Commission will commence its own consultation on *Licence Condition 16* in 2015 in relation to appropriate licensing environments.

Specific substantive changes to the Guidance

- 2.5** The Guidance gives a strong narrative on the importance of local decision making and accountability in gambling regulation, and the value of shared regulation through partnership working between the Commission and licensing authorities based on close cooperation and communication. It incorporates changes to the LCCP as well as other changes to bring it up to date and make it more accessible. The parts which have been subject to the most significant revisions in the proposed new edition are listed below and have specific questions associated with them.

Part 1: General guidance on the role and responsibilities of licensing authorities in gambling regulation

- 2.6** The revisions to Part 1 reinforce licensing authority powers under s.153 of the Act, for the effective local regulation of gambling. GLA5 is more explicit in setting out the discretion that licensing authorities have, within the overall context of the statutory 'aim to permit' framework, and emphasises the significant scope to control the risks associated with local gambling provision. In particular, licensing authorities have a duty to ensure applications for premises licences adhere to the relevant codes of practice and Guidance issued by the Commission, the licensing objectives and the licensing authority's own statement of licensing policy.
- 2.7** It is within this context, that we have provided further clarity on the role of licensing authorities as defined under the Act, and the powers that facilitate the fulfilment of these responsibilities.

Consultation question

- Q2.** Do you consider that the revisions to Part 1 better reflect the role of licensing authorities in the local regulation of gambling? Are there any other observations you wish to make?

Part 3: The Gambling Commission

- 2.8** Part 3 has been amended to better reflect the collaborative approach to gambling regulation based on partnership working between the Commission and licensing authorities. The revisions offer some insight as to how this is being achieved through targeted collaboration and proactive engagement with our regulatory partners.

Consultation question

- Q3.** Do the revisions to Part 3 clearly set out the relationship between the Commission and licensing authorities? Are further amendments necessary to improve understanding?

Part 5: Principles to be applied by licensing authorities

- 2.9** The revisions in Part 5 reinforce the principles set out in s.153 of the Act in relation to licensing authority decision making and provide further detail on aspects of s.153 such as the licensing objectives and the Commission's codes of practice. The responsibility to permit gambling, so far as it is in accordance with the principles of s.153, offers significant scope for licensing authorities to consider concerns and risks and to address those, where necessary, through conditions on the premises licence. For illustrative purposes, a non-exhaustive list of conditions is provided at Appendix F of GLA5.
- 2.10** The amendments also seek to encourage greater collaborative working between licensing authorities and local gambling operators, and our expectation that they work together to mitigate risks. The changes highlight the value of a more coordinated and constructive approach to local regulation, in which licensing authorities are able to pool their own resources with the knowledge and expertise of local businesses.

Consultation question

- Q4.** Do the revisions to Part 5 offer greater clarity on the role and responsibilities of licensing authorities in their decision making relating to local gambling regulation? Do you have any other comments or observations on the amendments?

Part 6: Licensing Authority Policy Statement

- 2.11** The statement of licensing policy (policy statement) informs a licensing authority's overall approach to applications, compliance and enforcement. Reference to the policy statement is therefore key when consideration is being given to the determination or review of premises licence applications.
- 2.12** The revised Guidance makes it clear that an effective policy statement should be shaped by local circumstances and local risks, and should clearly express the licensing authority's approach to regulation against this backdrop. The policy statement should also remain responsive to emerging risks and can be reviewed at any time, but must be reviewed at least every three years.
- 2.13** The existence of a clear and robust policy statement gives greater scope for partnership working with local businesses, communities, and responsible authorities, to identify and

mitigate local risks to the licensing objectives. It is also an opportunity to set out expectations for applications and can include the level and type of information and documentation that the licensing authority may require of applicants.

- 2.14** The Guidance reinforces that a policy statement which clearly sets out a licensing authority's approach to regulation with reference to local risks will facilitate operators being better able to understand their local environment and therefore proactively mitigate risks to the licensing objectives.

Risk assessments by operators

- 2.15** The requirement for operators to assess local risk is included in the new social responsibility code provision within LCCP that requires operators to understand the local environment and reflect that awareness in their procedures and policies, so that they mitigate any local risks to the licensing objectives. The full text of the social responsibility code and the accompanying ordinary code provision are set out below:

Social responsibility code provision 10.1.1

Assessing local risk

All non-remote casino, adult gaming centre, bingo, family entertainment centre, betting and remote betting intermediary (trading room only) licences, except non-remote general betting (limited) and betting intermediary licences.

This provision comes into force on 6 April 2016

- 1** Licensees must assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In making risk assessments, licensees must take into account relevant matters identified in the licensing authority's statement of licensing policy.
- 2** Licensees must review (and update as necessary) their local risk assessments:
 - a** to take account of significant changes in local circumstances, including those identified in a licensing authority's statement of licensing policy;
 - b** when there are significant changes at a licensee's premises that may affect their mitigation of local risks;
 - c** when applying for a variation of a premises licence; and
 - d** in any case, undertake a local risk assessment when applying for a new premises licence.

Ordinary code provision 10.1.2

Sharing local risk assessments

All non-remote casino, adult gaming centre, bingo, family entertainment centre, betting and remote betting intermediary (trading room only) licences, except non-remote general betting (limited) and betting intermediary licences

This provision comes into force on 6 April 2016

- 1** Licensees should share their risk assessment with licensing authorities when applying for a premises licence or applying for a variation to existing licensed premises, or otherwise on request.

- 2.16** The new code provisions will come into force in April 2016, which provides operators with sufficient time to align their own risk assessment with the priorities set out in the licensing authority's revised policy statement, due to be published in January 2016.

Risk assessments by licensing authorities (local area profiles)

- 2.17** Licensing authorities are already familiar with a risk-based approach to compliance, and targeting resources and effort where risk is greatest. To provide greater clarity, and make more explicit what an assessment of gambling related risks might look like there is a new section on 'local area profiles' in this version of the Guidance.
- 2.18** The local area profile is simply a way of describing a process of gathering and presenting information about a locality and any particular areas of concern within that, to explain and underpin the approach that the licensing authority will apply, as set out in its policy statement. It gives clarity to operators as to the licensing authority's view of risk and the relevant factors in its decision making.
- 2.19** The amendments to Part 6 also place greater emphasis on the need for ongoing engagement with other prescribed statutory bodies, defined as Responsible Authorities under the Act. Licensing authorities should seek to draw upon the expertise and knowledge of responsible authorities and others to ensure its approach is informed by all relevant sources of local knowledge and expertise, when developing local area profiles.

Consultation questions

- Q5.** Do the revisions to Part 6 give a clear overview of the expectations of licensing authorities' policy statements?
- Q6.** Are there any further revisions to Part 6 which would improve the effectiveness of policy statements?
- Q7.** Are there other areas which the Guidance should detail for inclusion in licensing authority policy statements?
- Q8.** Does Part 6 sufficiently explain the impact of the new code provisions relating to operators' risk assessments, when considering licensing authorities' policy statements?
- Q9.** Does Part 6 offer sufficient clarity on the purpose of assessing the risk profile of specific areas within a locality? Are there any additional benefits, or any drawbacks, in licensing authorities undertaking a local area profile?

Part 7: Premises licences

- 2.20** The main revisions to Part 7 are to give greater clarity on the meaning of 'premises' and related issues such as access to premises and multiple activity premises. The Guidance sets out considerations and factors, and information and documents, that licensing authorities may want to consider, in determining premises licence applications.

Consultation question

- Q10.** Do the revisions to Part 7 provide sufficient clarity on the meaning of 'premises' and other issues such as access, to facilitate decision making relating to premises licences?

Part 9: Premises licence conditions

- 2.21** This section has been developed to reinforce the circumstances in which licensing authorities may attach conditions to a premises licence.

- 2.22** Licence conditions have, in a number of cases, proved to be an effective means of regulating local gambling provision and could reduce the need for more costly forms of enforcement. The revisions also seek to promote more constructive dialogue between the licensing authority and operator, particularly with reference to the licensing authority's policy statement and view of local risks, prior to formally discharging its powers under s.153.
- 2.23** A non-exhaustive list of premises licence conditions have been appended to GLA5 (Appendix F). These conditions are provided for illustrative purposes and demonstrate some of the measures that licensing authorities have adopted to manage local gambling provision.

Consultation questions

- Q11.** Do the amendments to Part 9 clearly set out the circumstances in which licensing authorities may attach conditions to premises licences?
- Q12.** Do you have any comments on the premises licence conditions provided at Appendix F? Do you have any further examples of appropriate premises licence conditions that either have been, or may be adopted?

Part 16: Gaming Machines and Part 26: Premises licensed to sell alcohol

- 2.24** The Commission has been made aware of circumstances in which premises have applied for an alcohol licence in order to benefit from the automatic gaming and machine entitlements provided under the Gambling Act 2005. S.284 of the Act enables licensing authorities to revoke the automatic entitlement if they are concerned that gambling is not ancillary to the main activity of the premises. This issue is addressed through amendments to Parts 16 and 26 of the GLA5.
- 2.25** The revisions clarify gaming machine entitlements and the position in relation to multiple activity premises, as well as the need for appropriate licensed environments.

Consultation question

- Q13.** Do you have any comments or views on the proposed revisions to Parts 16 and 26?

Part 36: Compliance and enforcement

- 2.26** A number of the revisions to this section clarify the enforcement powers that are available to licensing authorities and provide further guidance on the manner in which these can be deployed. Greater emphasis is given to partnership working between the Commission and licensing authorities, and also reflects developments in relation to the Primary Authority scheme which currently extends to proactive regulatory activity in relation to underage gambling (in England and Wales).
- 2.27** A table setting out powers of entry and other inspection powers has also been included in Appendix G.

Consultation question

- Q14.** Do you have any comments or views on the proposed revisions to Part 36?

Other issues and comments

- 2.28** The intent behind the Guidance is to advise and assist licensing authorities and so the aim of this new 5th edition is to make the Guidance a more up to date and usable document for licensing authorities to refer to.
- 2.29** We would welcome all of your comments and views on any further improvements we could make to this new edition of the Guidance.

Consultation questions

- Q15.** Do you have any further opinions, comments or views on the changes we have made to this new edition of the Guidance?
- Q16.** Are there any further changes or amendments to GLA5 you would like us to consider?

Future editions of the Guidance

- 2.30** These proposed amendments to the Guidance begin a process of change and improvement, and the consultation is an opportunity to look forward at future editions of the Guidance which can further reflect the fundamental improvements in the quality of partnership working between the Commission, licensing authorities and operators, and the more mature understanding of the legislation after many years of collective experience of pursuing the licensing objectives within that framework.
- 2.31** The Guidance could be reviewed after licensing authorities have published their next policy statements in January 2016 and when some current issues have been resolved, such as the use of premises for different purposes and the Government's discussions with licensing authorities on machine powers.
- 2.32** We could reduce the amount of statutory guidance we provide but would not expect the amount of explanatory material we produce for licensing authorities to diminish. However, looking forward it may be more appropriate for less explanation to be contained in statutory guidance - where it can be misunderstood or over relied on as prescription - and for more of it to be in the flexible and adaptable form of advice. We would welcome any views about changing the nature of the Guidance in that way.

Consultation question

- Q17.** What are your views on future improvements to the Guidance, in particular, would you support an approach of more succinct statutory guidance supported by separate advice notes?

3 Conclusion

- 3.1** In Annex A, we have attached the proposed 5th edition of the Guidance. It is suggested that respondents answer the questions relating to the substantive changes, set out in Section 2 above, first before reading the remainder of the proposed 5th edition and making any additional comments on other changes.

4 Responding to this consultation

- 4.1** The Commission is inviting comments on the proposed 5th edition of the Guidance and would prefer respondents to complete the responses template provided and send it by email to: consultation@gamblingcommission.gov.uk. Further information and assistance is

available from the Commission's consultation co-ordinator at the same email address. If you are not able to use the template provided, please indicate clearly the questions or issues to which your comments refer.

- 4.2** Alternatively, responses can be sent by post to:
Rob Burkitt
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP
- 4.3** The closing date for receipt of responses by the Commission is 22 June 2015.
- 4.4** When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make clear who or what that organisation represents. If responding as an individual, please mention your own interest.
- 4.5** Please note that responses may be made public or published in a summary of responses to the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
- 4.6** Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000 (FOIA). The Commission's policy on release of information is available on request or by reference to our website at www.gamblingcommission.gov.uk.
- 4.7** All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments/agencies, local authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to do so.
- 4.8** All non-confidential responses will be published on our website. We will take full account of the responses when coming to a final view on a recommendation for future data collection. We will publish our response to submissions received as part of our explanation of the final view we have reached.

Gambling Commission March 2015

Keeping gambling fair and safe for all

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.

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