



department for
**culture, media
and sport**

Gambling Act 2005

Consultation

Gambling (Inviting Competing Applications for Casino Premises Licences) Regulations

Gambling Act 2005 - Code of practice for determining applications for casino premises licences

February 2007

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 Section 175 of the Gambling Act 2005 provides for the licensing of three new categories of casino, and imposes limits on the number of premises licences of each category that may have effect at any time. Only one regional, eight large and eight small casino premises licences will be permitted, and the government has made it clear that it will not consider allowing any further casinos until a proper assessment has been undertaken of their social and economic impact.
- 1.2 Section 175(4) of the Act requires the Secretary of State to make an Order specifying which licensing authorities are permitted to issue the 17 new casino premises licences. The Secretary of State appointed an independent panel – the Casino Advisory Panel – to advise her on this, and the Panel published its report on 30 January 2007. The intention is that a draft Order will be laid in Parliament at the earliest opportunity. This will be subject to the affirmative resolution procedure, requiring a debate and potentially a vote in both Houses.
- 1.3 Schedule 9 to the Gambling Act 2005 provides for the process that licensing authorities specified in the Order under section 175(4) must follow when inviting and considering applications for the new casino premises licences and applications for provisional statements in respect of new casinos.¹ As there are only a limited number of casino premises licences available, Schedule 9 requires licensing authorities to run competitions for these licences.
- 1.4 The process for the competition is outlined in Schedule 9:
- the licensing authority must first invite competing applications for the premises licence;
 - it must then submit those competing applications to a two-stage consideration process:
 - Stage 1 – Regulatory test – the licensing authority must determine whether, if it was entitled to issue an unlimited number of casino premises licences, it would

¹ In the remainder of this document we refer to applications for new casino premises licences. This should be read as including applications for provisional statements in respect of new casinos.

grant each application. In making this determination, the licensing authority will apply the same tests and process as it would apply in respect of any other application for a premises licence.

- Stage 2 – Greatest benefit test – if more than one application passes the Stage 1 regulatory test, the licensing authority must determine which of the competing applications would, in its opinion, be likely to result in the greatest benefit to the authority's area.

1.5 Schedule 9 contains two powers for the Secretary of State in relation to the conduct of these competitions:

- Paragraph 2 requires the Secretary of State to make regulations that licensing authorities must comply with when inviting competing applications. In particular, these regulations must make provision:
 - about the publication of invitations, including provision as to the manner and timing of publication and the matters to be published; and,
 - about the timing of responses.
- Paragraph 6 enables the Secretary of State to issue a code of practice about the procedure to be followed by licensing authorities when making both the Stage 1 and 2 determinations outlined above, and what matters licensing authorities should have regard to in making those determinations.

1.6 This consultation paper sets out the Department for Culture, Media and Sport's (the Department's) proposals for the:

- Gambling (Inviting Competing Applications for Casino Premises Licences) Regulations 2007;
- Gambling Act - Code of Practice for determining applications for casino premises licences;

1.7 Paragraph 10(4) of Schedule 9 enables the Secretary of State to make regulations prescribing the process that licensing authorities must follow when considering an application by the holder of a provisional statement in respect of a casino to extend the duration of the provisional statement. We will consult separately on these regulations later this year.

- 1.8 The Gambling (Inviting Competing Applications for Casino Premises Licences) Regulations will be subject to the negative resolution procedure in Parliament, meaning that they will be laid in Parliament after being made and may be annulled by resolution of either House. A draft Regulatory Impact Assessment is attached at Appendix 2. Copies of the draft regulations will be available shortly. The Code of Practice is not subject to formal Parliamentary scrutiny, but the intention is that it will be published by the Department alongside the regulations.

Consultation

- 1.9 The Department welcomes comments on these proposals and the attached draft RIA. The paper will be of particular interest to: licensing authorities authorised to issue the new casino licences, faith groups, community groups, casino operators, developers and the gambling industry as a whole.
- 1.10 The closing date for responses is 2nd May 2007. Please send your comments in writing or by email to:

Jennifer Smith
Premises Licensing Team
Gambling Division
Department for Culture, Media and Sport,
2-4 Cockspur Street,
London SW1 5DH;
Jennifer.smith@culture.gsi.gov.uk

- 1.11 A summary of responses will be published within three months of the closing date for consultation. All information in responses, including personal information, may be subject to publication or disclosure under Freedom of Information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.
- 1.12 If you have any questions or complaints about the process of consultation on this paper, please contact Liz Sweet, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH, liz.sweet@culture.gsi.gov.uk

Section 2: Proposals for consultation

Principles underpinning these proposals

- 2.1 The government's policy on casinos was set out in its Statement of National Policy published on 16 December 2004 (it can be found on the DCMS website at: http://www.culture.gov.uk/Reference_library/Press_notices/archive_2004/dcms168_04.htm). The Statement explained the rationale for limiting the number of new casino premises licences that would be made available under the Gambling Act. The terms of reference for the Casino Advisory Panel, and the criteria by which the areas for the new casinos would be selected, were also drawn from this Statement.
- 2.2 Paragraphs 19 and 20 of the Statement also outlined how the competitions for the new casino premises licences would be conducted, and those paragraphs are reproduced here for ease of reference:
19. A local licensing authority will only be able to award a casino premises licence if one has been identified for its area. The process for awarding a premises licence will be open to all operators. It will have two stages. The first stage will be a regulatory test to ensure that all proposals satisfy the regulatory premises licensing requirements already in the Bill. The second stage will be triggered where there are more applications for casino premises licences than the local licensing authority is permitted to grant.
20. The second stage of the process will be a competition held by the local authority on the wider casino proposal. We will consult with the Local Government Association and others on how the competition should be conducted. The competition could be judged on a wide range of issues, reflecting the issues that are important in the local area, local concerns and priorities. These may include, for example, employment and regeneration potential, the design of the proposed development, financial commitments by the developer to local projects, location, range of facilities and other matters. The local authority may wish to provide an opportunity for consultation with local people. The local authority would set out its priorities and concerns in a set of objective key considerations and it will then invite operators to submit entries to the competition. The eventual winner of the competition will be eligible for a full premises licence once he has obtained planning permission and the casino has been built.
- 2.3 The government considers that it is in the interests of fairness to all licensing authorities that made proposals to the Casino Advisory Panel, and to anyone interested in securing one of the new casino premises licences, that its previously published policy should continue to form the basis of its approach moving forward. The government continues to believe that licensing authorities will be better placed than central government to determine local needs and local priorities, and that authorities should have the widest possible discretion to maximise the benefits accruing to their local area from the licensing of a new casino.

2.4 The government has, therefore, taken the view that it is preferable to keep what is said in the Schedule 9 regulations and Code of Practice to the minimum that is consistent with ensuring that:

- full account is taken of the need to protect children and other vulnerable people who may be at risk from problem gambling, and to prevent any new casino from becoming a source of crime or disorder;
- licensing authorities run fair and open competitions for the new licences;
- the process for the competitions is transparent, and clearly understood by all interested parties;
- there is consistency with previously published policy, and with the criteria that the Casino Advisory Panel used to make its recommendations;
- the views of local people are taken into account when determining the outcome of these competitions;
- licensing authorities have the widest possible discretion to maximise the benefits accruing to their local area from the licensing of the new casino.

Q1: Do you agree with the approach set out in paragraphs 2.1-2.4? Do you agree with the broad principles underpinning the government's approach set out in Paragraph 2.4?

Proposals for Gambling (Inviting Competing Applications for Casino Premises Licences) Regulations

Summary of proposals

2.5 Paragraph 2 of Schedule 9 requires the Secretary of State to make regulations that licensing authorities must comply with when inviting competing applications. In particular, these regulations must make provision:

- about the publication of invitations, including provision as to the manner and timing of publication and the matters to be published; and
- about the timing of responses.

2.6 In line with the broad principles outlined above, the government considers that the regulations under this Paragraph are necessary to help ensure that:

- licensing authorities run fair and open competitions for the premises licences;
- the process for the competitions is transparent, and clearly understood by interested parties;
- licensing authorities are able to maximise the benefits accruing to their local area from the licensing of a new casino.

2.7 The government is therefore proposing that the regulations should require that:

- an invitation to apply for a casino premises licence must be publicised by a licensing authority in a manner that ensures that it is likely to come to the attention of as many potentially interested bidders nationally and internationally as possible. This will include, as a minimum, publication of the invitation in: a casino trade publication with national and international circulation; and the Official Journal of the European Union;
- the invitation must be so publicised at least three months before the final date on which applications for the casino premises licence may be submitted;
- the invitation must include the following information:
 - a summary of the competition process describing, in particular, the two determination stages and the differences between them;
 - an indicative timetable for the competition process setting out, in particular, the date by which applications must be submitted and the dates by which the licensing authority anticipates it will undertake the two determination stages;
 - a statement that an application for a casino premises licence must be made in the same way as any other application for a premises licence under Part 8 of the Gambling Act 2005, using the application form prescribed under that Part for all premises licence applications. No information, other than that which would ordinarily be submitted with an application for a premises licence, should be submitted with the application;
 - details of what criteria the licensing authority will take into account when determining the outcome of the second stage of the competition (under Paragraph 5 of Schedule 9);
 - a statement that the licensing authority will not, in undertaking the first stage of the determination process, take into account information which is only relevant to the second stage. Information which is relevant to both stages should, of course, be taken into account at the first stage.

Commentary

Publicising the invitation to apply

2.8 The government is keen to strike a balance between ensuring that invitations to apply for a casino premises licence are drawn to the attention of as many organisations, both nationally and internationally, as might be interested in applying for a casino premises licence, and not imposing an unnecessary cost burden.

2.9 The government is conscious that there has been considerable interest in the development of its casino policy both nationally and internationally in both the

mainstream and the trade press. It is, therefore, reasonable to assume that anyone who is potentially interested in developing and operating one of the new casinos permitted by the Act will know which licensing authorities will have the right to issue the premises licences before applications for such licences are invited, and will be able to make himself or herself aware of the invitation to apply.

- 2.10 That said, the government considers that, in the interests of ensuring a fair and open competition, licensing authorities should be required to meet certain minimum criteria in publicising the invitation to apply. We have proposed that licensing authorities be required to advertise in the international casino trade press, as we consider it likely that experienced operators of casinos in both Great Britain and in overseas jurisdictions are likely to be prominent among those interested in applying for the new casino premises licences.
- 2.11 In many cases, it is likely that the casino will form just part of a much wider development. While the competition for the casino premises licence is not a public sector procurement exercise, the competition is analogous in some respects, and may well be of interest to some of the contractors who regularly monitor the Official Journal of the European Union.

Q2: Do you agree that the invitation to apply should be published as a minimum in a casino trade publication and the Official Journal of the European Union?

Timing of invitation to apply

- 2.12 As noted above, the government is mindful of the fact that the development of its casino policy has been followed keenly both nationally and internationally. It is aware that many casino operators and other companies based both in the United Kingdom and overseas will already be considering their options, and making plans to enter some or all of the competitions for the new casino premises licences. However, we are also conscious that, as part of the invitation to apply, licensing authorities will need to include certain information (discussed below) which might not be available currently, and it is important that all potentially interested parties have time to consider that information before deciding whether to make an application. It is also important to allow potentially interested parties who might not have been following policy developments so closely to develop their applications.
- 2.13 The government is keen to strike a balance between ensuring that all potentially interested parties have adequate time to prepare the strongest possible application, and enabling licensing authorities to progress competitions within a reasonable timeframe. It has, therefore, proposed that the closing date for applications should be set so as to give applicants at least three months from the date on which the invitation to apply is last publicised to prepare their applications. This is broadly comparable to the advance application period for converted casino premises licences.

Q3: Do you agree that the invitation must be publicised at least three months before the final date on which applications for the casino premises licence may be submitted?

Information that must be included in the invitation to apply

- 2.14 The outline process for the competition that is laid down in the Act is summarised in Paragraph 1.4 above. Local authorities will build on this outline in developing the detail of their own processes, in accordance with the Code of Practice (see below). The government considers that it is central to the transparency of the process that a summary of the process and an indicative timetable be included as part of the invitation to apply.
- 2.15 As with all applications for premises licences, licensing authorities will need to determine, at the first stage of the consideration process, whether the applications are consistent with the licensing objectives of the Act, and in particular those relating to the protection of children and other vulnerable people, and the prevention of gambling becoming a source of crime and disorder.
- 2.16 In the case of applications for the new categories of casino, licensing authorities will particularly want to satisfy themselves that the proposed premises would meet the relevant mandatory and default premises licence conditions, including those designed to ensure that:
- there are no entrances to the casino from other premises licensed under the Gambling Act 2005, or other premises used wholly or mainly by children;
 - the operator has proposed systems to ensure that it will comply with the Gambling Commission's code of practice to prevent access by children, which will be a condition attached to the premises licence;
 - in the regional casino, the gambling area is not capable of being seen from any part of the premises to which children have access;
 - adequate non-gambling areas are provided, to ensure that people can take a break in areas where they are not exposed to gambling facilities;
 - ATMs are located in areas that require customers to stop gambling to use them.
- 2.17 The government believes that all potential operators of a new casino under the Act should be able to demonstrate that these minimum requirements will be met if they are granted a licence. Given the overriding importance it attaches to these protections, the government considers that it is important that any local benefits that a prospective operator may seek to demonstrate for the purposes of the second stage of the consideration process should not be allowed the influence the licensing authority's objective assessment at the first stage of whether these minimum requirements have been met. The government is, therefore, proposing that no information which is only relevant to the second stage of the consideration process should be submitted with the initial application.
- 2.18 At the same time, it is clearly desirable, and in the interests of a transparent process, that all potentially interested applicants be clear from the outset what criteria the licensing authority will apply at the second stage of the consideration process. It would be unfair to expect an applicant to go to the expense of completing an

application, only for it to discover subsequently that the licensing authority was proposing Stage 2 criteria that it could not meet.

- 2.19 Licensing authorities would be required to make clear in their invitation to apply what criteria they will consider at Stage 2. However, they would also be required to make it clear in their invitation that no information which only relates to the second stage should be submitted with the initial application. Only those applicants that pass the Stage 1 “regulatory test” would subsequently be invited to submit information relating to the Stage 2 consideration.

Q4: Do you agree that it is important to separate the Stage 1 and Stage 2 considerations in the way proposed?

Q5: Do you agree with the information that the government proposes to require licensing authorities to include in their invitation to apply?

Code of practice

Summary of proposals

- 2.20 Paragraph 6 of Schedule 9 to the Act enables the Secretary of State to issue a code of practice about the procedure to be followed when making both the Stage 1 and 2 determinations, and what matters licensing authorities should have regard to in making those determinations.
- 2.21 As noted above, the government intends to give licensing authorities the widest possible discretion in determining the outcome of the competitions for the casino premises licences so that they can maximise the benefits accruing to their local area from the licensing of a casino. The government is, therefore, minded to say in the Code of Practice the minimum that is consistent with ensuring fair and open competitions, and that the views of local people are taken into account.
- 2.22 The government is, therefore proposing that the Code of Practice should:
- emphasise that licensing authorities must ensure that any competition for a casino premises licence is fair and open. In particular, licensing authorities must ensure that any existing relationship or arrangement they may have with any applicant does not affect the competition in such a way as to make it substantively unfair when judged against the provisions of the Act;
 - emphasise that licensing authorities must, for the purposes of the first stage of the competition, consider all applications in line with the normal premises licence procedures set down in, or prescribed under, Part 8 of the Act, and must not take into account any matters relating to the second stage of the consideration process which they would not ordinarily take into account when considering an application for a premises licence;
 - require licensing authorities:

- to invite all applicants that pass the first stage of the consideration procedure to participate in the second stage and, for that purpose, to submit information which will enable the licensing authority to assess what benefit the application will have for the authority's local area;
 - to put in place, before invitations for competing applications are published, procedures to enable the licensing authority to enter into discussions at the second stage of the consideration process with individual applicants with a view to proposals being refined and potential benefits to the local area from those proposals being maximised;
 - to put in place, before invitations for competing applications are published, arrangements to ensure that any prior agreements or arrangements that local authorities may have entered into do not, actually or apparently, prejudice either their ability to run a fair and open competition, or to ensure that all applicants have an equal opportunity to demonstrate, at the second stage, how their application will result in the greatest benefit to the local area;
 - to have in place a clear protocol for the receipt and storage of information submitted during the second phase to ensure that confidentiality is maintained.
- remind licensing authorities that paragraph 5(3)(b) of Schedule 9 to the Act gives them the power to enter into agreements with prospective operators at the second stage, and that they may want to use this power to help maximise the potential benefits to their local area;
 - require licensing authorities to ensure that the criteria that they will consider when determining the outcome of the second stage of the competition reflect local issues, concerns and priorities. These may include:
 - the protection of children and other vulnerable people from potential harm from gambling;
 - the employment and regeneration potentials of different proposals;
 - the design of the proposed developments;
 - the financial commitments by the developer to local projects;
 - the location of the proposed developments;
 - the range of other (non-casino) facilities offered as part of, or alongside, the development; and
 - any other matters.
 - encourage licensing authorities to engage in active consultation with local people when developing these criteria, if they have not already done so;

- remind licensing authorities that Part 8 of the Act will apply to both the first and second stages of their consideration (with modifications, in the case of the first stage, provided in paragraph 4(2)(c) of Schedule 9).

Commentary

Fair and open competition

- 2.23 It has been clear since the national Policy Statement published in December 2004 that licensing authorities would be required to run fair and open competitions for casino premises licences. This requirement should come as no surprise to anyone.
- 2.24 Ministers have re-emphasised this point on the record in Parliament in response to a number of questions. The Gambling Commission's guidance to licensing authorities published in April 2006 advised licensing authorities to think carefully before entering into any agreements or arrangements with potential casino operators which might be perceived as affecting their ability to exercise their determination functions objectively and without having prejudged any of the issues.
- 2.25 The government understands that a number of licensing authorities may have entered into agreements or arrangements with individual operators in the past. The government is not party to any such agreements. The agreements are a matter for the licensing authority concerned, but any prior agreement does not override the duties placed on licensing authorities by the Gambling Act 2005, including by regulations and codes of practice made under that Act, to run fair and open competitions for the casino premises licences.
- 2.26 The government is also aware that a number of licensing authorities may have made applications to the Casino Advisory Panel having earmarked a single location as being suitable for a new casino. This again does not override the responsibility of licensing authorities to give all applications for the casino premises licence equal consideration on their own merits, even if they relate to other potential locations in their licensing area.
- 2.27 However, it is also important to note that licensing authorities may, when developing the criteria for the Stage 2 consideration quite legitimately come to the view that the development of a casino in a broad location in their licensing area would be of the greatest benefit to that area.

Q6: Do you have any comments relating to the requirement for licensing authorities to ensure that the competitions for the casino premises licences are fair and open?

Parallels with tender exercises

- 2.28 While the competitions for the premises licences are not tender exercises, they will share some of the characteristics of a tender exercise. Both involve a competitive bidding process. Licensing authorities will be under an obligation to secure the best deal possible for their local area, and to ensure that they run the competition in a fair and transparent way. Given that authorities will have extensive experience in running tender exercises, the government considers this a useful parallel.

2.29 The government does not propose to prescribe in great detail the way in which authorities should conduct Stage 2 of the consideration process. Local authorities will have their own ways of working and existing systems which it will be cost effective to adapt for the purposes of the casino premises licence competition. What is key is that:

- the process that the licensing authority proposes to follow is clearly set out from the start of the competition for all interested applicants;
- all interested applicants are treated fairly and, in particular, those that make it to the second stage of consideration must be given the same opportunity to demonstrate that they can best deliver against the authority's published Stage 2 criteria; and
- authorities have systems in place to maintain confidentiality throughout the Stage 2 consideration.

2.30 The government is, therefore, proposing to include in its Code of Practice minimum requirements that licensing authorities have in place systems to ensure that these objectives are delivered.

Q7: Do you agree that tender exercises provide a useful model for the Stage 2 consideration? Do you agree with the requirements that the government proposes to place on licensing authorities through the Code of Practice?

Developing the Stage 2 criteria

2.31 Paragraph 20 of the government's statement of national policy on casinos (reproduced above) suggested a number of criteria against which a licensing authority might want to make its Stage 2 consideration of competing applications. These broad criteria – particularly those relating to regeneration and employment - were also reflected in the Casino Advisory Panel's terms of reference. The government considers that it is only fair to all authorities that submitted proposals to the Panel, whether successful or unsuccessful, that these should continue to be the criteria against which licensing authorities judge the outcome of competitions for premises licences.

2.32 These criteria were intentionally broad, reflecting the government's view that local people are best placed to determine local needs and priorities. In many cases, local authorities consulted local people on their views on casinos, and what benefits they would like to see accruing to their local area from such a development, in developing their proposals to the Casino Advisory Panel. The government considers that this sort of active local consultation constitutes best practice, and all licensing authorities that have not already done so should undertake a similar exercise in fine-tuning the Stage 2 criteria prior to the publication of their invitation to apply.

2.33 It is important to note that all licensing authorities are required by section 349(7) of the Act to ensure that their statement of licensing policy includes the principles that they propose to apply in making determinations under paragraph 5 of Schedule 9. This means licensing authorities may need to consider revising their licensing policy statement in accordance with section 349(2) to reflect the Stage 2 criteria that they develop, prior to publishing their invitation to apply. This will involve a period of formal

consultation. The consultation that we are proposing to encourage licensing authorities to undertake in developing their Stage 2 criteria would be prior to, and in addition to, this formal requirement. It is important to note, however, that licensing authorities will not be required to undertake further consultation, over and above the formal requirements, if they have already undertaken active consultation locally during the course of developing their proposal to the Casino Advisory Panel.

Q8: Do you agree with the matters that licensing authorities should be required to consider when determining their Stage 2 criteria?

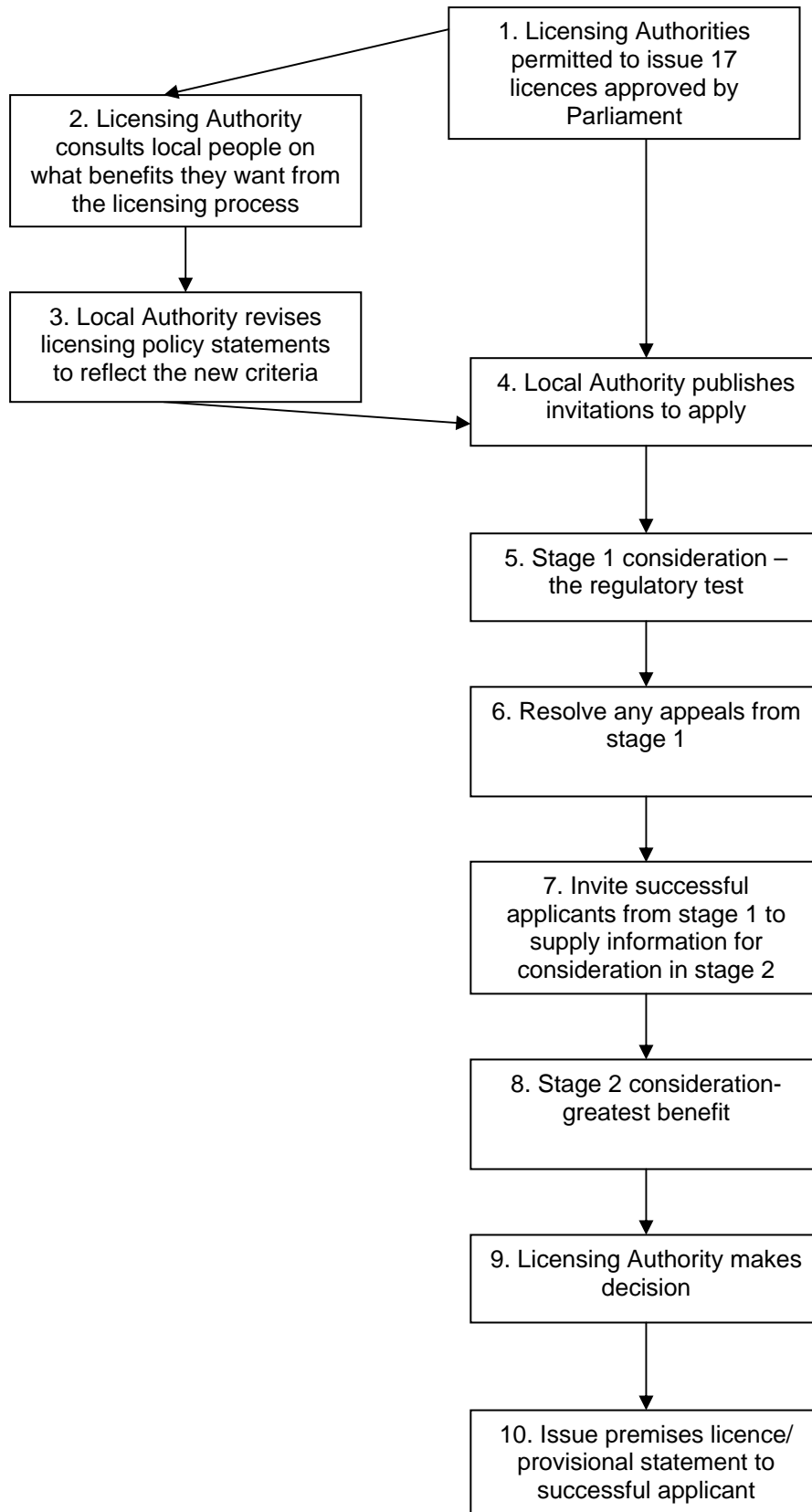
Q9: Do you agree that licensing authorities should be encouraged to engage in active consultation with local people when developing their Stage 2 criteria?

Part 8 of the Gambling Act 2005

2.34 Part 8 of the Gambling Act sets out the normal procedures that licensing authorities must follow when considering applications for premises licences under the Act. These procedures will apply at both stages of consideration of applications for casino premises licences (with modifications: see paragraphs 4(2)(c), 5(5) and 8 of Schedule 9 to the Act). This will mean, for example, that a licensing authority must give reasons for rejecting an application for a casino premises licence (whether at stage 1 or 2 of the consideration process), in the same way as when it rejects an application for a non-casino related premises licence. This will also mean that any statutory appeals by an applicant against rejection at Stage 1 will need to be resolved before licensing authorities can proceed to Stage 2. No appeal may be brought after the decision at Stage 2.

Q10: Do you agree that licensing authorities should be reminded in the Code of Practice that Part 8 of the Gambling Act will apply at both stages of consideration of applications for the new casino premises licences?

Application for Casino Premises Licence/Casino Provisional Statement – summary of process



Section 3: Consultation questions

Q1: Do you agree with the approach set out in paragraphs 2.1-2.4? Do you agree with the broad principles underpinning the government's approach set out in Paragraph 2.4?

Q2: Do you agree that the invitation to apply should be published as a minimum in a casino trade publication and the Official Journal of the European Union?

Q3: Do you agree that the invitation must be publicised at least three months before the final date on which applications for the casino premises licence may be submitted?

Q4: Do you agree that it is important to separate the Stage 1 and Stage 2 considerations in the way proposed?

Q5: Do you agree with the information that the government proposes to require licensing authorities to include in their invitation to apply?

Q6: Do you have any comments relating to the requirement for licensing authorities to ensure that the competitions for the casino premises licences are fair and open?

Q7: Do you agree that tender exercises provide a useful model for the Stage 2 consideration? Do you agree with the requirements that the government proposes to place on licensing authorities through the Code of Practice?

Q8: Do you agree with the matters that licensing authorities should be required to consider when determining their Stage 2 criteria?

Q9: Do you agree that licensing authorities should be encouraged to engage in active consultation with local people when developing their Stage 2 criteria?

Q10: Do you agree that licensing authorities should be reminded in the Code of Practice that Part 8 of the Gambling Act will apply at both stages of consideration of applications for the new casino premises licences?