department for
culture, media
and sport

A consultation on proposals to extend the availability of entitlements to gaming machines to premises selling alcohol at airports

Amending the Gambling Act 2005 to:

Extend the automatic gaming machine entitlements to premises selling alcohol at airports;

Extend the entitlement to such premises to apply for a licensed premises gaming machine permit.

23 January 2012

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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.

Contents

Chapter 1: Summary of Proposals

What is being consulted on?	The proposals relate to the amendment of the Gambling Act 2005 so as to extend the gaming machine entitlements (both automatic entitlements and via gaming machine permits) to pubs and bars at airports, with a view to bringing their operation into line with the gambling entitlements currently available to pubs and bars in all other parts of Great Britain.	Relevant paragraphs: Chapter 3 Chapter 4
How will these proposals be taken forward, and when will they be implemented?	We intend that the proposed changes to legislation be made through a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006. Subject to the outcome of this consultation, we propose that the changes are implemented from October 2012.	2.10 to 2.14 4.12 to 4.14
Consultation	This consultation is being made in accordance with the requirements of the Legislative and Regulatory Reform Act 2006 and the terms of the Government's Code of Practice on Written Consultations. All responses should be received by 9 April 2012.	Appendix D

Chapter 2: Introduction

2.1 The Gambling Act 2005 ("the Gambling Act") came fully into force on 1st September 2007. It makes provision for three gambling entitlements specifically for premises with an on-premises alcohol licence under the Licensing Act 2003 ("the Licensing Act") or a relevant Scottish licence under the Licensing (Scotland) Act 2005:

- The provision of facilities for equal chance gaming under section 279 of the Gambling Act ("exempt gaming");
- Making up to two Category C or D[1] gaming machines available for use under section 282 of the Gambling Act ("automatic entitlement"); and
- Making Category C or D gaming machines available for use pursuant to a licensed premises gaming machine permit under section 283 of the Gambling Act ("a pub permit").

2.2 These gambling entitlements only apply to premises with an on-premises alcohol licence at times when alcohol may be supplied in reliance on that licence. An on-premises alcohol licence is a premises licence under the Licensing Act. Under section 173 of that Act, activities which would normally require an alcohol licence are not 'licensable activities' if they are carried on at certain specified places. These places include 'an examination station at a designated airport' i.e. the "airside" area beyond an airport's security checks. Therefore, an airside pub or bar in an examination station at a designated airport cannot hold an on-premises alcohol licence by virtue of section 173 of the Licensing Act and so cannot make use of any of the above gambling entitlements.

2.3 However, under the previous licensing legislation, an airside pub or bar at a designated airport could obtain an alcohol licence and thereby satisfy the requirement under the previous gambling legislation that it should have an alcohol licence in order to make use of the above gambling entitlements (which also applied under previous gambling legislation).

2.4 Neither the Licensing Act nor Gambling Act made provision (including under transitional provisions made in relation to either Act) to enable airside bars at designated airports to retain the gambling entitlements described above. Presently therefore, the provision of gaming machines in airside bars at designated airports is unlawful under the Gambling Act and leaves those who operate such premises potentially open to criminal sanction. This was unintentional, and the key proposal contained in this document is to clarify and rectify the interaction between the Licensing Act and the Licensing (Scotland) Act 2005 with the Gambling Act so that the gambling entitlements under the Gambling Act will apply to airside bars (and possibly also approved wharves at designated ports and hoverports), and that the existing risk of criminal sanction is removed.

2.5 The Government intends to introduce the proposals by means of a Legislative Reform Order ("LRO") under sections 1(3)(c) and (d) of the Legislative and Regulatory Reform Act 2006 ("LRRA"). This consultation is being conducted in accordance with the provisions of section 13 of the LRRA. Views are invited on all aspects of the consultation paper, and a number of specific questions are set

[1] Categories of gaming machines are defined in the Categories of Gaming Machines Regulations 2007 (SI 2007/2158).

out at the end of the document. The Government intends to use the LRO as a vehicle to amend a number of provisions in the Gambling Act in relation to airside bars at designated airports.

2.6 Below is an outline of the legislative background, an explanation of the technical problem the Government is seeking to remedy, and why the Government believes an LRO would be the appropriate vehicle for resolving this issue. The Government does not expect the proposed LRO to be controversial as it is merely intended to remedy a technical problem caused by a legislative oversight. It will enable airside bars to provide low-level gambling facilities in respect of category C and D gaming machines in the same way that pubs and bars elsewhere provide such facilities.

2.7 Given the transitory nature of airport departure areas it proposed that any LRO should not include the provision of facilities for equal chance gaming under section 279 of the Gambling Act, that is exempt gaming such as bingo or poker. The Government is seeking views on this matter before a final decision is made.

2.8 It is proposed that the LRO will also benefit six airports in Scotland, which are subject to an identical problem as presently exists in England and Wales as a result of the Licensing (Scotland) Act 2005, which came into force on 1 September 2009. However, the Government is also seeking views through this consultation as to whether approved wharves at designated ports or hoverports should also be included. Approved wharves do not, to the Government's knowledge, make gambling facilities available at the present time but it is possible they may wish to do so in the future. Should this be the case, they are currently caught in the same position as airside bars. Therefore, views are being sought as to whether approved wharves should also be included in these provisions as a future-proofing measure in order to avoid the need for further legislative reform.

2.9 The Government has considered alternative solutions but is not satisfied that these can adequately resolve the situation. The LRO will be subject to the appropriate level of Parliamentary scrutiny and an initial Impact Assessment is attached at Appendix E.

LEGISLATIVE REFORM ORDER-MAKING POWERS

What can be delivered by Legislative Reform Order?

Section 1

2.10 Under section 1 of the LRRA a Minister can make an LRO for the purpose of 'removing or reducing any burden, or overall burdens, resulting directly or indirectly for any person from any legislation'. Section 1(3) of the LRRA defines a 'burden' as:

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

Section 2

2.11 Under section 2 of the LRRA a Minister can make an LRO for the purpose of securing that regulatory activities are exercised in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed. 'Regulatory functions' is defined in section 32 as:

- a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or

- a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.

Preconditions

2.12 Each proposal for an LRO must satisfy the preconditions set out in section 3 of the LRRA. The questions in the rest of this document are designed to elicit the information that the Minister will need in order to satisfy the Parliamentary Scrutiny Committees that, among other things, the proposal satisfies these preconditions.

2.13 For this reason, we would particularly welcome your views on whether and how each aspect of the proposed changes in this consultation document meets the following preconditions:

- **Non-Legislative Solutions** – An LRO may not be made if there are non-legislative solutions which will satisfactorily remedy the difficulty which the LRO is intended to address. An example of a non-legislative solution might be issuing guidance about a particular legislative regime.
- **Proportionality** – The effect of a provision made by an LRO must be proportionate to its policy objective. A policy objective might be achieved in a number of different ways, one of which may be more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. Before making an LRO the Minister must consider that this is not the case and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.
- **Fair Balance** – Before making an LRO, the Minister must be of the opinion that a fair balance is being struck between the public interest and the interests of any person adversely affected by the LRO. It is possible to make an LRO which will have an adverse effect on the interests of one or more persons only if the Minister is satisfied that there will be beneficial effects which are in the public interest.
- **Necessary protection** - A Minister may not make an LRO if he considers that the proposals would remove any necessary protection. The notion of necessary protection can extend to economic protection, health and safety protection, and the protection of civil liberties, the environment and national heritage.
- **Rights and freedoms** - An LRO cannot be made unless the Minister is satisfied that it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. This condition recognises that there are certain rights that it would not be fair to take away from people using an LRO.
- **Constitutional Significance** – A Minister may not make an LRO if he considers that the provision made by the LRO is of constitutional significance.

2.14 It should be noted that, even where the preconditions of section 3 of the LRRA are met, an LRO cannot:

- Deliver highly controversial proposals;
- Remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;

- Confer or transfer any function of legislating on anyone other than a Minister; persons or bodies that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
- Impose, abolish or vary taxation;
- Create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- Provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- Amend or repeal any provision of Part 1 of the LRRA;
- Amend or repeal any provision of the Human Rights Act 1998;
- Remove burdens arising solely from common law.

CONSULTATION

2.15 The LRRA requires Government to consult widely on all LRO proposals. The list of consultees, including the devolved administrations to which this document has been sent, is at Annex A. It is also available on the Internet at: http://www.dcms.gov.uk/consultations/8034.aspx

2.16 Comments are invited from all interested parties, and not just from those to whom the document has been sent: **a response form is at Annex B**

2.17 A note explaining the Parliamentary process for LROs to be made under the LRRA can be found at Annex C. This will help consultees understand when and to whom they are able to put their views should they wish to do so.

2.18 This consultation document follows the format recommended by the BRE for such proposals. The criteria applicable to all UK public consultations under the BRE Code of Practice on Consultation are set out in Annex D.

DISCLOSURE

2.19 Normal practice will be for details of representations received in response to this consultation document to be disclosed, and for respondents to be identified. While the LRRA provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LRO. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances.

2.20 You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.
- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

2.21 Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form of Annex B.

CONFIDENTIALITY AND FREEDOM OF INFORMATION

2.22 It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Government.

RESPONDING TO THE CONSULTATION DOCUMENT

2.23 Any comments on the proposals in this consultation document should be sent by 16 April 2012 at the latest to gambling.consultations@culture.gsi.gov.uk or in hardcopy to

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2-4 Cockspur Street

London

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(Tel: 020 7211 6000)

Further copies of this document may also be obtained from this address.

Chapter 3: Background

3.1 Sections 278 to 284 of the Gambling Act apply to premises with a licence to supply alcohol for consumption on the premises, and contain provisions authorising specified gambling activities on such premises. Under these provisions, pubs and similar establishments may make available for use a limited number of the lower two categories (C and D) of gaming machines and may provide certain gaming facilities subject to various restrictions.

3.2 Section 278 of the Gambling Act provides that sections 279 to 284 apply to premises that satisfy three conditions:

- An on-premises alcohol licence or relevant Scottish licence must have effect in respect of the premises;
- The premises must contain a bar at which alcohol is served for consumption on the premises (without a requirement that alcohol is served only with food); and
- The provisions are to apply only at times when alcohol may be supplied in reliance on the alcohol licence or sold for consumption on the premises in reliance on the relevant Scottish licence.

3.3 An 'on-premises alcohol licence' is a premises licence under Part 3 of the Licensing Act, which authorises the supply of alcohol for consumption on the licensed premises[2]. A relevant Scottish licence is a premises licence issued under the Licensing (Scotland) Act 2005 other than one which only authorises the sale of alcohol for consumption off the premises.[3]

3.4 The provisions authorising gambling activities in pubs are sections 279, 282 and 283 of the Gambling Act. Each of these provides a separate gambling entitlement:

Exempt Gaming Provisions

3.5 Section 279 permits alcohol licensed premises to offer equal chance gaming (such as bingo, poker or other card games in which all the players have an equal chance of winning), subject to the conditions and restrictions set out in sections 279, 280 and 281.

Automatic entitlement to gaming machines

3.6 Under section 282, a maximum of two gaming machines, which may be any mix of Category C or D, may be made available for use on alcohol licensed premises so long as the holder of the alcohol licence notifies the licensing authority of his intention to do so, pays the prescribed fee (currently £50) and complies with the relevant code of practice issued by the Gambling Commission. This provision operates by disapplying the offences under sections 37 and 242 of the Gambling Act, and is referred to as an 'automatic entitlement'.

Licensed premises gaming machine permit

[2] See definition in section 277 of the Licensing Act 2003.

[3] See definition in section 277 of the Licensing Act 2003, as amended by the Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 (SSI 2009/248).

3.7 Under section 283, gaming machines, which may be any mix of Category C or D, may be made available (in addition to the two machines authorised under section 282) for use in alcohol licensed premises in accordance with a licensed premises gaming machine permit (a "pub permit"). A pub permit must be sought by alcohol licensed premises wishing to exceed their automatic entitlement to two machines; the permit is issued by the relevant licensing authority, which has discretion to specify the category (this must be category C or D or both) and the number of gaming machines that an alcohol licensed premises may operate. An application fee of £100 is payable by an existing operator and £150 in all other cases. An annual fee of £50 is payable thereafter. Procedures and rules for administering pub permits are contained in Schedule 13 to the Gambling Act (in respect of England and Wales) and in the Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007(SSI 2007/505)(in respect of Scotland). It should be noted that the position in Scotland parallels that in England Wales: identical problems have arisen from the relationship between the Licensing (Scotland) Act 2005 and the Gambling Act.

3.8 In this document, the entitlements under sections 282 and 283 as described above are referred to as the 'gaming machine entitlements'.

Removal of entitlements

3.9 Under section 284 of the Gambling Act, a licensing authority may make an order disapplying the exempt gaming provisions or the automatic entitlement in relation to specified premises.

Current position in airports

3.10 The Government has established that there is a total of 66 airside bars operating across 29 airports, with some larger airports having more than one airside bar and other smaller airports having no airside bars.

3.11 Under the provisions of the Gambling Act, the Government is not aware of any licensing authority taking any enforcement action in respect of those airside bars and pubs with gaming machines. However, if they were to apply the strict letter of the law, licensing authorities would have to require airside bars and pubs to turn off or remove their gaming machines from the premises. The persons responsible could be prosecuted for offences and subject to penalties. Given the background to this situation, the contents of this consultation paper and also the absence of any knowledge about gambling related problems in such premises, any active enforcement response by local authorities would appear to be disproportionate and unnecessary.

Chapter 4: The Proposals

4.1 The Government proposes to use the power in section 1 of the LRRA to amend the relevant sections of the Gambling Act by means of an LRO, which is a statutory instrument made under the powers conferred by the LRRA to amend primary legislation. One of the aims of an LRO is to provide a legislative mechanism for turning the aims of better regulation into reality for end-users. To this end, some of the key features under the LRRA for making an LRO are:

- Removing or reducing a burden resulting from legislation. A 'burden' is defined as a financial cost; an administrative inconvenience; an obstacle to efficiency, productivity or profitability; or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity;
- Focusing on the removal and reduction of burdens and so ensuring the LRO is outcome focused; and
- Comparing the position before and after the LRO has been made, ensuring that there is a person or business for whom the burden or the overall burdens will have been removed or reduced.

4.2 In all these respects, the Government believes that the proposal set out in this consultation document is suitable for an LRO under section 1 of the LRRA.

4.3 Gaming machines can be a significant source of income for pubs and bars. In the case of airside bars however, compliance with the current legislation (which would involve removing/switching off machines) would represent the loss of a financial benefit. Although there are no actual costs imposed on airside bars whilst they are prohibited from making gaming machines available (other than the potential sanction of a fine for committing the offence), they would suffer a loss of profit should the ban be invoked. Moreover, the existing illegality serves as a potential disincentive to airside bars to introduce gambling facilities where they have not already done so.

4.4 More significantly, the proposal will remove a criminal sanction in respect of those airside bars which do currently offer gambling facilities. The ongoing potential for the imposition of criminal sanctions on those operating such airside bars is a substantial burden, and – in accordance with the policy intention behind the Gambling Act - their removal will bring such premises into line with premises located elsewhere in Great Britain.

4.5 The Government is satisfied that the policy objective of the proposed LRO cannot be satisfactorily achieved through non-legislative means. The current legal position is unambiguous and does not leave any scope for an alternative interpretation. It is brought about by the interaction of the Licensing Act and the Licensing (Scotland) Act 2005 with the Gambling Act, which can only be modified by legislation. To this end, the LRO is outcome focused by removing a regulatory burden and would not prevent any person or business from continuing to exercise any right or freedom that that person or business might reasonably expect to continue to exercise. It would also remove the criminal sanctions in sections 37 and 242[4] of the Gambling Act for airside bars.

[4] Sections 37 and 242 contain offences relating to making gaming machines available for use and using premises for that purpose.

4.6 The Government therefore has it in mind to amend, where appropriate, sections 278 to 284, 310 and Schedule 13 of the Gambling Act with the aim of applying the gaming machine entitlements under sections 282 and 283 to the types of location (described above) prescribed by sections 173(1)(c) and (d) of the Licensing Act and section 124(1)(a) and (b) of the Licensing (Scotland) Act 2005, that is airside bars and possibly also bars at designated ports and hoverports.

4.7 As already explained above, the Government is currently of the view that any amendment to the relevant provisions of the Act should only affect the gaming machine entitlements in sections 282 and 283. There does not appear to be any need to enable airside bars to make use of the exempt gaming provisions under section 279 due to the transitory nature of airport departure areas. The Government is not aware of any airside bar or pub currently providing games of equal chance but wishes to ascertain if this definitely the case before proceeding with an LRO. Views are therefore sought on whether airside bars should be enabled to make use of exempt gaming provisions alongside gaming machine entitlements.

4.8 Approved wharves at ports and hoverports do not, to the Government's knowledge, make gambling facilities available at the present time, but it is possible they may wish to do so in the future. Should they wish to do so, they are currently caught in the same position as airside bars. Therefore, views are also sought on whether approved wharves ought to be included in these provisions as a future-proofing measure in order to avoid the need for further legislative reform.

4.9 The Department for Culture, Media and Sport has discussed its approach with the Department for Business, Innovation and Skills (who have Government responsibility for the provisions of the LRRA) and they have confirmed that they believe the proposal is suitable for an LRO. The Government will also make necessary consequential amendments to other provisions in the Gambling Act (notably to the provisions in Schedule 13 governing licensed premises gaming machine permits in England and Wales[5]).

4.10 These proposals will extend to England and Wales, and to Scotland. The Welsh Assembly Government has been informed – and will be a consultee - but the consent of Welsh Ministers is not required. The devolved administration in Scotland has been proactively involved on the basis that the LRO will introduce parallel changes in Scotland in response to an identical problem arising as a result of the interaction between the Gambling Act and the Licensing (Scotland) Act 2005.

Binding the Crown

4.11 Although the Gambling Act 2005 does bind the Crown, these proposed amendments will not apply to any Crown establishments.

Parliamentary Scrutiny

4.12 The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the complexity, scope and impact of the LRO and the potential level of opposition to it. The negative resolution procedure is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The super-affirmative procedure is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

- Negative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither

[5] In Scotland the regulations about licensed premises gaming machine permits are contained in the Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007 (SSI 2007/505).

House of Parliament has resolved during that period that the LRO should not be made.

- Affirmative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.
- Super-Affirmative Resolution Procedure – This is a two-stage procedure during which there is opportunity for the draft LRO to be revised by the Minister. This allows Parliament 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.

  If, after the expiry of the 60 day period, the Minister wishes to make the LRO with no changes, the Minister must lay a statement. After 15 days, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament.

  If the Minister wishes to make material changes to the draft LRO, the Minister must lay the revised draft LRO and a statement giving details of any representations made during the scrutiny period and of the revised proposal before Parliament. After 25 days, the Minister may only make the LRO if it is approved by a resolution of each House of Parliament.

4.13 Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.

4.14 The Department for Culture, Media and Sport believes that the negative resolution procedure should apply to this LRO on the basis that this proposal is primarily removing a technical oversight to remove an illegality which was never intended.

Chapter 5: Legal Analysis

5.1 As a result of section 278 of the Gambling Act, the provisions in sections 279, 282 and 283 only apply to premises that hold an alcohol licence under Part 3 of the Licensing Act or the Scottish equivalent. Section 173 of the Licensing Act (for England and Wales) and section 124 of the Licensing (Scotland) Act 2005 (for Scotland) prevent activities which would normally require a licence (that is, the sale and supply of alcohol) from being licensable if they are carried on at specified premises. One of these types of premises is 'an examination station at a designated airport'[6]

5.2 In England and Wales the following airports are designated for the purposes of section 173(1)(d) and 173(4)[7]: Birmingham, Bournemouth, Bristol, Cardiff, Coventry, Exeter, Humberside, Leeds Bradford, Liverpool John Lennon, London City, London-Gatwick, London-Heathrow, London-Stansted, London-Luton, Manchester, Manston, Newcastle, Norwich, Nottingham East Midlands, Sheffield City, Southampton, Southend and Teesside (see the Airports Licensing (Liquor) Order 2005, SI 2005/1733).

5.3 In Scotland the following airports are designated under the Licensing (Designated Airports)(Scotland) Order 2007 (SSI 2007/97): Aberdeen, Edinburgh, Glasgow, Glasgow Prestwick, Inverness and Sumburgh.

5.4 An 'examination station' has the meaning given in section 22A of the Customs and Excise Management Act 1979. Broadly speaking, the examination station of a designated airport is known colloquially as the 'airside' area of an airport – i.e. that part of the airport beyond the security checks (which also includes the departure lounge and 'duty free').

5.5 The Government has investigated in respect of England and Wales, and Scotland, how many airports are currently affected; i.e. have pubs and bars on the airside and so cannot obtain an alcohol licence as a result of section 173 of the Licensing Act and section 124 of the Licensing (Scotland) Act 2005. Details are set in the Impact Assessment attached at Appendix E. Consequently, they cannot satisfy the conditions under section 278(1)(a) to (c) of the Gambling Act that require such premises to hold an alcohol licence and so cannot make use of the gambling entitlements under the Gambling Act, should they wish to do so.

5.6 The Gambling Act came fully into force on 1st September 2007. Before that date, the Gaming Act 1968 provided a similar scheme for authorising gambling in pubs and bars, with the same requirement that the premises should have an alcohol licence. Before the relevant provisions in section 173 of the Licensing Act came into force, there was a similar exemption under the Licensing Act 1964 for examination stations at designated airports. However, instead of making the whole activity 'non-licensable' (thereby preventing airside bars from obtaining an alcohol licence) the provision in the 1964 Act operated by disapplying the general ban on the sale and supply of alcohol, and thus not requiring airside bars to hold a licence.

[6] See section 173(1)(d) of the Licensing Act 2003 and section 124(1)(a) of the Licensing (Scotland) Act 2005.

[7] These provisions essentially preserve the previous designations made under the Licensing Act 1964.

5.7 However, under the old licensing legislation, an airside pub or bar could obtain an alcohol licence and thereby satisfy the relevant requirement under gambling legislation. Neither the Licensing Act or Gambling Act (nor transitional provisions made under either Act) enable pubs or bars in examination stations at designated airports to continue to make use of these entitlements. This was unintentional, and the issue appears not to have been identified during the drafting and passage of the Licensing and Gambling Bills. It has never been the Government's policy to prevent airside bars from continuing to make gaming machines available for use, nor does it appear to have been the intention of Parliament particularly as it was previously lawful to make similar types of gaming machines available for use and there was no regulatory purpose for a change to this position.

5.8 The Government understands that this impacts on twenty three airports in England and Wales and six airports in Scotland under section 173(1)(d) of the Licensing Act and section 124 of the Licensing (Scotland) Act 2005.

5.9 The burden stems from the risk of criminal sanctions (see 3.11 above), which also represents an obstacle to profitability. It is proposed to amend the Gambling Act to allow premises located at examination stations at designated airports (and possibly approved wharves at designated ports[8] and hoverports[9]) to have similar entitlements to gaming machines as other premises which are licensed to supply alcohol for consumption on the premises.

5.10 The proposal will introduce additional burdens, but the Government believes that the net effect will be to reduce the overall burden. The person responsible for the relevant premises will be required to send notice and a fee to the licensing authority and comply with any applicable code of practice (under section 282(3) of the Gambling Act) in the same way that an existing holder of an on-premises alcohol licence does so at present. Similarly, the person responsible for the relevant premises (if applying for a licensed premises gaming machine permit) will be required to send an application and a fee to the licensing authority and comply with any applicable code of practice (under section 283 of the Gambling Act). However, we believe that the imposition of this burden serves to remove the more significant and onerous burden arising from the existence of criminal sanctions in respect of the activities which this proposal intends to remove; in this case, through remedying a technical problem with the interaction between the Licensing Act, the Licensing (Scotland) Act 2005 and Gambling Act. It will also clarify the regulatory role of licensing authorities under the Gambling Act.

5.11 By reference to the criteria set out in section 3 of LRRA, the Government believes that these are met. In particular:

Non-Legislative Solutions

5.12 The proposal will remove the provision of gaming machines by airside bars (and possibly approved wharves) from the scope of the offences and criminal sanctions imposed under sections 37 and 242 of the Gambling Act[10]. As such, the proposal can only be achieved by amending primary legislation.

[8] Ports which have been designated are Folkestone (under the Port of Folkestone Licensing (Liquor) Order 1995 (SI 1995/495)) and Ramsgate (under the Port of Ramsgate Licensing (Liquor) Order 1995 (SI 1995/496)).

[9] Hoverports which have been designated are Dover (under the Dover Hoverport Licensing (Liquor) Order 1978 (SI 1978/225)) and Pegwell Bay (under the Pegwell Bay Hoverport Licensing (Liquor) Order 1972 (SI 1972/1335)).

[10] Section 37 relates, among other things, to the offence of using premises, or of causing or permitting them to be used, to make a gaming machine available for use without a licence. Section 242 relates to the offence of making a gaming machine available for use without a licence.

Proportionality

5.13 The proposal extends only to airside bars (and possibly wharves) and would confer the narrow entitlements under sections 282 (automatic entitlement to gaming machines) and 283 (pub permits) of the Gambling Act, which would have been conferred but for a legislative oversight.

Fair Balance

5.14 Subject to careful consideration of consultation responses, resistance to the proposal is not expected, and clarification will be welcomed by the gambling industry and licensing authorities. As set out in paragraph 5.10 above new burdens e.g. giving notice, paying a fee etc. are imposed but are offset by the release of those operating the gaming machines and providing exempt gaming facilities from criminal sanction. Moreover, there is no change insofar as airside bars not operating gaming machines are concerned and it will be open to such premises to avail themselves of the gambling entitlements in future.

Necessary protection

5.15 The proposal does not pose a risk to the licensing objectives i.e. preventing gambling from being a source of crime and disorder, ensuring it is conducted fairly and openly, and protecting children and vulnerable people. The concerns addressed by the objectives are no greater in airside areas of airports than elsewhere and are arguably lessened by the heightened security in these areas, the limited time available to members of the public to use the gaming machines and the likelihood that young and other vulnerable people will be accompanied.

Rights and Freedoms

5.16 As the changes proposed by the Government are purely beneficial, we do not believe that they would prevent anyone from exercising an existing right or freedom. We would welcome your views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

Constitutional Significance

5.17 The Government believes that this does not apply to this proposal.

Appendix A: List of Consultees

Association of British Bookmakers
BII (British Institute of Innkeeping)
Bingo Association
British Amusement Catering Trade Association
British Association of Leisure Piers, Parks and Attractions
British Beer and Pub Association
British Holiday & Home Parks Association
Business in Sport & Leisure
CARE
Casino Machines Manufacturers Group
Casino Operators Association
Church of England
Church of Scotland
Evangelical Alliance
Financial Services Authority (FSA)
GalaCoral Group
Gamblers Anonymous
Gambling Commission
GamCare
Gordon House Association
GREaT Foundation
Hospice Lotteries Association
Ladbrokes
Local Government Association
Local Government Regulation
Lotteries Council
Methodist Church
National Casino Industry Forum
National Lottery Commission
Northern Ireland Assembly
QAAD (Quakers Against Alcohol and Drugs)

Remote Gambling Association
Responsible Gambling Fund
Responsible Gambling Strategy Board
Scottish Parliament
The Rank Group
The Salvation Army
Welsh Assembly
Working Men's Club and Institute Union Ltd

Appendix B: Response Form

RESPONSE FORM FOR THE CONSULTATION PAPER ON:

Changes to provisions governing the availability of exempt gaming and automatic entitlement to gaming machines at premises selling alcohol at airports 23 January 2012

Respondent Details	Please return by 16 April 2012 to:
Name:	Alistair Boon
Organisation:	Gambling Sector Team
	Department for Culture, Media and Sport
Address:	2-4 Cockspur Street
	London
	SW1Y 5DH
Town/City:	020 7211 6000
County/Postcode:	Gambling.consultations@culture.gsi.gov.uk
Telephone:	
E-mail:	

Tick this box if you are requesting non-disclosure of your response. ☐

a) i) Overall, do you think the proposals will remove or reduce burdens as explained in Chapter 4 above? **ii) Do you think the potential costs to airside bars as addressed in the Impact Assessment attached at Appendix E are realistic? If not, please provide details.**
Comments:

b) Do you have views regarding the expected benefits of the proposals as identified in Chapter 4 of this consultation document and addressed in the Impact Assessment attached an Appendix E?
Comments:

c) If there is any empirical evidence that you are aware of that supports the need for these reforms, please provide details here:
Comments:

d) Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?
Comments:

e) Are the proposals put forward in this consultation document proportionate to the policy objective?
Comments:

f) As discussed in Chapter 4 above, is there a need for these proposals to also cover: • **Exempt gaming; and/or** • **Approved wharves?** **If yes, please explain briefly why and outline any supporting evidence.**
Comments:

g) Do the proposals put forward in this consultation document taken as a whole strike a fair balance between the public interest and any person adversely affected by it?
Comments:

h) Do the proposals put forward in this consultation document remove any necessary protection?
Comments:

i) Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in paragraph 5.15 above? If so, please provide details.
Comments:

j) Do you consider the provisions of the proposal to be constitutionally significant?
Comments:

k) Do you agree that the proposed Parliamentary resolution procedure (as outlined in paragraphs 4.12 to 4.14 above) should apply to the scrutiny of this proposal?
Comments:

Appendix C: Legislative Reform Orders - Parliamentary Consideration

Introduction

1. These reform proposals in relation to changes to provisions governing the availability of gaming machine entitlements at premises selling alcohol at airports will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on these reform proposals in relation to airside bars as measures that might be carried forward by a LRO.

Legislative Reform Proposals

2. This consultation document has been produced because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

i) Explain under which power or powers in the LRRA the provisions contained in the order are being made;

ii) Introduce and give reasons for the provisions in the Order;

iii) Explain why the Minister considers that:

- There is no non-legislative solution which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
- The effect of the provisions are proportionate to the policy objective;
- The provisions made in the order strike a fair balance between the public interest and the interests of any person adversely affected by it;
- The provisions do not remove any necessary protection;
- The provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- The provisions in the proposal are not constitutionally significant; and
- Where the proposals will restate an enactment, they make the law more accessible or more easily understood.

iv) Include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;

v) Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and

vi) Give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under superaffirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by contacting the BRE: http://www.BIS.gov.uk/lros

Parliamentary Scrutiny

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

(a) appear to make an inappropriate use of delegated legislation;

(b) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);

(c) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);

(d) secure a policy objective which could not be satisfactorily secured by non-legislative means;

(e) have an effect which is proportionate to the policy objective;

(f) strike a fair balance between the public interest and the interests of any person adversely affected by it;

(g) do not remove any necessary protection;

(h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;

(i) are not of constitutional significance;

(j) make the law more accessible or more easily understood (in the case of provisions restating enactments);

(k) have been the subject of, and takes appropriate account of, adequate consultation;

(l) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151(Statutory Instruments (Joint Committee)) as are relevant, such as defective drafting or failure of the Government to provide information where it was required for elucidation;

(m) appear to be incompatible with any obligation resulting from membership of the European Union;

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at

· Regulatory Reform Committee in the Commons; and

· Delegated Powers and Regulatory Reform Committee in the Lords.

10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise a LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise a LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

How to Make Your Views Known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and Regulatory Reform Committee

House of Lords

London

SW1A 0PW

Tel: 0207 219 3103

Fax: 0207 219 2571

mailto: DPRR@parliament.uk

Regulatory Reform Committee House of Commons

7 Millbank

London

SW1P 3JA

Tel: 020 7219 2830/4404/2837

Fax: 020 7219 2509

mailto: regrefcom@parliament.uk

Non-disclosure of responses

17. Section 14(3) of the LRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclose. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

Better Regulation Executive

Department for Business, Innovation and Skills

Appendix D: Code of Practice on Written Consultations

1. The criteria in the "Code of Practice on Consultation" published by the BRE apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

2. Though they have no legal force, and cannot prevail over statutory or other mandatory or external requirements (e.g. under European Community law) they should otherwise generally be regarded as binding on UK Departments and their agencies unless Ministers conclude that exceptional circumstances require a departure.

3. The criteria should be reproduced in consultation documents with an explanation of any departure, and confirmation that they have otherwise been followed.

4. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.

5. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.

6. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.

7. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.

8. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.

9. Responses should be carefully and open-mindedly analysed, and reasons for decisions finally taken.

10. Designating a consultation co-ordinator who will ensure the lessons are disseminated.

Appendix E: Impact Assessment

See IA No: DCMS037

department for
culture, media
and sport

2-4 Cockspur Street
London SW1Y 5DH
www.culture.gov.uk