

HOUSE OF LORDS

Merits of Statutory Instruments Committee

19th Report of Session 2007-08

Drawing special attention to:
**Draft Sexual Offences (Northern Ireland)
Order 2008**
**Draft Sexual Offences (Northern Ireland
Consequential Amendments) Order 2008**

Bathing Water Regulations 2008

Correspondence:
**Draft Gambling (Geographical
Distribution of Large and Small Casino
Premises Licences) Order 2008**

Ordered to be printed 13 May and published 14 May 2008

London : The Stationery Office Limited
£price

HL Paper 109

The Select Committee on the Merits of Statutory Instruments

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
 - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).
- (2) The exceptions are—
 - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
 - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

The members of the Committee are:

Rt Hon. the Baroness Butler-Sloss GBE	The Baroness Kingsmill CBE
The Lord Crisp KCB	The Lord Lucas
The Baroness Deech DBE	The Baroness Maddock
The Viscount Eccles CBE	The Lord Rosser
The Lord Filkin CBE (<i>Chairman</i>)	The Baroness Thomas of Winchester
The Lord James of Blackheath CBE	

Registered interests

Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the House of Lords Record Office and is available for purchase from the Stationery Office.

Publications

The Committee's Reports are published by the Stationery Office by Order of the House. All of the Committee's publications are also at: www.parliament.uk/parliamentary_committees/merits.cfm

Contacts

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; facsimile 020-7219 2571; email merits@parliament.uk. The Committee's website, www.parliament.uk, has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

Nineteenth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the grounds specified.

A. Draft Sexual Offences (Northern Ireland) Order 2008

Draft Sexual Offences (Northern Ireland Consequential Amendments) Order 2008

Summary: These Orders consolidate for Northern Ireland legislation on sexual offences following similar legislation for England and Wales in the Sexual Offences Act 2003. Until police and criminal justice matters are devolved to the Northern Ireland Assembly, such legislation is made by Order in Council following consideration by the Assembly under section 85 of the Northern Ireland Act 1998. The Assembly and other consultees were broadly in favour of the legislation but opposed to the lowering of the age of sexual consent from 17 to 16. The Secretary of State has none the less decided to lower the age of consent for the sake of consistency across the United Kingdom.

These draft Orders are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

1. The Northern Ireland Office (NIO) have laid these draft Orders under section 85 of the Northern Ireland Act 1998 together with an Explanatory Memorandum (EM). Under that section, the Northern Ireland Assembly has the right to consider and report¹ on the Secretary of State's proposal for a draft order. A summary of the representations made to the consultation exercise, which includes a list of the recommendations made by the Northern Ireland Assembly, has been published on the Northern Ireland Office website.² Of approximately 370 replies to the consultation exercise, 340 related to the age of consent. We too have received written evidence on this subject from the Christian Institute, printed at Appendix 1.
2. These Orders replicate for Northern Ireland legislative provision which already exists in England and Wales, chiefly in the Sexual Offences Act 2003, in setting out the interpretation of, and appropriate penalties for, sexual offences. The Orders draw together other legislation on the subject to consolidate it into one statute. The Orders gender-neutralise all offences and lower the age of sexual consent for both sexes from 17 to 16.
3. Until police and criminal justice matters are devolved to the Northern Ireland Assembly, such legislation is made by Order in Council following consideration by the Assembly under section 85 of the Northern Ireland Act

¹ http://www.niassembly.gov.uk/adhocs/2007mandate/sexual_offences/sexual_offences_report.htm

² [http://www.nio.gov.uk/sexual_offences_\(ni\)_order_2008_-_statement_containing_a_summary_of_representations.pdf](http://www.nio.gov.uk/sexual_offences_(ni)_order_2008_-_statement_containing_a_summary_of_representations.pdf)

1998. An Assembly Select Committee considered the proposals for these instruments: the Committee generally welcomed the adoption of the same rules as for England and Wales, with the exception of certain specific issues. In particular, the Committee wished to retain 17 as the age of consent and have sports coaches included in the definition of “position of trust”. The Assembly endorsed the Committee’s conclusions and so reported to the Secretary of State.

4. In the draft Orders before the House, the Secretary of State has retained the proposal to lower the age of consent to 16, overruling the Assembly’s views on the ground of making sexual offences legislation consistent throughout the United Kingdom.
5. On whether sports coaches should be included in the definition of position of trust, the department report that this issue was raised in the consultation which preceded the English legislation. The Department for Culture, Media and Sport and the Home Office took evidence on the issue, but decided that there was insufficient evidence of abuse to warrant a change to the legislation.

B. Bathing Water Regulations 2008 (SI 2008/1097)

Summary: These Regulations implement the revised Bathing Water Directive. In consultation, the Government sought views on alternative approaches: either to meet the minimum requirements of the Directive, or to go beyond the minimum. While a majority of respondents supported the more ambitious alternative, the Environment Agency and the water and farming industries argued for meeting the minimum requirements. The Government have been persuaded by the arguments of the latter group, not least because of the priority which they place on keeping water and sewerage charges affordable and on the viability of agriculture. It will be important that the Government set out clearly what their chosen approach means for the quality of bathing waters in this country.

These Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

6. The Department for Environment, Food and Rural Affairs (DEFRA) have laid the Bathing Water Regulations 2008 under section 2(2) of the European Communities Act 1972. An Explanatory Memorandum (EM), Transposition Note and Impact Assessment (IA) have been provided.
7. The EM states that the Regulations transpose the requirements of the revised Bathing Water Directive (agreed in 2006),³ and that they revoke the legislation transposing the current Bathing Water Directive (agreed in 1976).⁴ The Regulations primarily place a duty on the Environment Agency (“the Agency”) to use its powers to achieve compliance with the revised Directive, in particular, to meet the new bathing water quality standards by the end of the 2015 bathing season. Obligations are placed on beach operators to display bathing water quality information on beach signage during the bathing season and to work with the Agency, local authorities and

³ EC Directive 2006/7/EC of the European Council and of the Council concerning the management of bathing water quality and repealing Directive 76/160/EEC (OJ L64, 4.3.2006, p.37).

⁴ EC Directive 76/160/EEC concerning the quality of bathing water (OJ L31, 5.2.1976, p.1).

sewerage undertakers during pollution incidents, and for each party to take adequate measures to protect bathers' health.

Current Bathing Water Directive (76/160/EEC) – “cBWD”

8. The EM explains that the cBWD, which came into force 30 years ago, requires Member States to identify popular bathing areas and to monitor water quality at these bathing waters throughout the bathing season, which runs from mid-May to September in England and Wales. The cBWD sets a number of microbiological and physico-chemical standards that bathing waters must either comply with (the “mandatory” standards) or endeavour to meet (the “guideline” standards).
9. The EM notes that it was only in the early 1990s that the UK undertook formal transposition of the cBWD. As a result, water companies in England and Wales have invested over £2 billion to improve sewerage infrastructure and, in turn, to secure significant improvements in bathing water quality. The EM states that in 2007, 97.8% of bathing waters in England and 97.5% in Wales complied with the mandatory standards, compared with 79.0% and 78.0% in 1992, respectively; and that in 2007, 72.5% of all bathing waters in England and 86.3% in Wales met the guideline standards compared with 28.7% and 26.0% in 1992, respectively.

Revised Bathing Water Directive (2006/7/EC) – “rBWD”

10. The EM states that, whilst the overall objective of the rBWD remains the protection of public health, it has provided an opportunity to improve management practices at bathing waters and to standardise information provided to bathers across Europe. The rBWD takes a new approach to assessing water quality, using fewer but more stringent standards than at present.⁵ It establishes four new standards of water quality (“excellent”, “good”, “sufficient” and “poor”) and all bathing waters are to achieve at least the “sufficient” standard by the end of 2015 (with limited exceptions).
11. DEFRA have provided the following correlation between the new, and the existing, bathing water standards:
 - excellent: approximately twice as stringent as the current guideline standard;
 - good: similar to the current guideline standard;
 - sufficient: tighter than the current mandatory standard;
 - poor: normally non-compliant water.

Consultation

12. The Government consulted on proposals for the implementation of the rBWD in England and Wales from November 2007 to February 2008. The consultation paper⁶ sought comments on three possible scenarios:

⁵ The EM states that the Regulations require the Agency to monitor two types of bacteria (intestinal enterococci and *Escherichia coli*) as indicators of the risk of mild gastrointestinal illness in bathers, and adds that under the cBWD regime the Agency is required to test for ten parameters.

⁶ “Consultation on the implementation of the revised Bathing Water Directive”, November 2007:

<http://www.defra.gov.uk/corporate/consult/bathingwaters/consultation.pdf>

1A: meeting the minimum rBWD requirements, with all bathing waters achieving at least the “sufficient” classification by 2015;

1B: meeting the minimum rBWD requirements as in 1A, but with the use of a prediction and discounting system at some bathing waters to alert and advise bathers when bathing water quality might be “poor”;

2: exploring the costs and benefits of going beyond the minimum rBWD requirements by, for example, increasing the number of “excellent” bathing waters in England and Wales to increase/maintain the potential for Blue Flag beaches (assuming compatibility with future Blue Flag criteria).

13. The consultation paper set out the way in which a system of prediction and discounting might work. The Agency would need to establish procedures to predict water quality at bathing waters subject to short-term pollution (i.e., periods of “poor” water quality not expected to last more than 72 hours) and to advise the public against bathing during such events. Where such advice had been provided, the Agency would be able to discount samples taken during this period, since the public would not be bathing, and this would allow the possibility that the bathing water could achieve a higher classification than would otherwise be the case. Use of prediction would be limited initially to a small number of bathing waters, but as the Agency’s experience increased, it might be used more widely.
14. Forty-two responses were received to the consultation paper. They came from: the water industry (10), academic/research organisations (6), private individuals (6), environmental/social NGOs (5), local government (5), recreational sports associations (3), commercial businesses (2), Government Agencies (2), the National Farmers’ Union and another Government Department.
15. DEFRA say that, while on the whole the Government’s proposals were supported by stakeholders, “comments were made in relation to the Government’s level of ambition and in [the] light of these, it was concluded that England and Wales should only aim to do the minimum that the rBWD requires (with the use of a prediction system where appropriate) prior to the first bathing water classifications being made at the end of the 2015 bathing season”. The EM also says that, in response to consultation comments, costs and benefits associated with the implementation options have been revised: the costs have roughly doubled and the benefits associated with providing better information on beach signage are now approximately one-third of their original value. “In spite of these adjustments the benefits still significantly outweigh the costs and support the decision to aim to do the minimum (with the use of prediction) prior to 2015.”
16. DEFRA have advised the Committee that the majority of respondents (25 out of 40) who offered views on the alternative approaches to implementation of the rBWD were in favour of going beyond the minimum prior to 2015. “However, those recommending a less ambitious implementation approach tended to be the organisations/businesses with the best understanding of the potential cost associated with achieving water quality standards beyond the Directive’s minimum requirements (e.g. the Environment Agency, water and farming industries) ... Ministers place a high priority on keeping water and sewerage charges affordable, particularly for

those on low incomes. They also place a high priority on the viability of agriculture. For those reasons and in view of the comments described in the preceding paragraphs, DEFRA and the Welsh Assembly Government have decided to focus initially on scenario 1B.” For this scenario, DEFRA now project annual costs of between £11.6m and £14.8m, and annual benefits of between £52.7m and £118m.

17. It is noteworthy that the Environment Agency, in confirming its support for Scenario 1B, has stressed the importance of providing clear explanations to the public of the way in which the rBWD is to be implemented, in order to dispel any impression of falling standards. The Agency has commented that this impression might result from the more stringent standards required by the rBWD, and from the requirement for beach operators to advise against bathing at waters that did not meet the “sufficient” classification, and might be strengthened by the resulting media coverage.

Conclusion

18. The Regulations implement the revised Bathing Water Directive. In consulting on implementation, the Government sought views on either meeting the minimum requirements of the Directive, or going beyond that minimum. While a majority of consultation respondents favoured a more ambitious approach, those responding for the Environment Agency, and for the water and farming industries, supported meeting the minimum requirements. The Government accept the arguments put forward by the latter group of respondents, not least because of the high priority which they place on keeping water and sewerage charges affordable, and on the viability of agriculture. As the Agency have commented, it will be important for the Government to set out clearly what their chosen approach means for the quality of bathing waters in this country.

OTHER INSTRUMENTS OF INTEREST

Local Government Pension Scheme (Amendment) Regulations 2008 (SI 2008/1083)

19. The Department for Communities and Local Government have laid the Local Government Pension Scheme (Amendment) Regulations 2008 (SI 2008/1083), which amend the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166) by providing a reviewable “third tier” of ill health retirement benefit for a Scheme member who leaves employment because they are assessed by an independent occupational health practitioner as being permanently incapable of their current job, but medical evidence indicates they are capable of obtaining alternative employment within three years of their leaving. The Committee received additional information from the Department about views on these proposals expressed by interested parties. We also received comments from UNISON, and further information from the Department responding to UNISON’s concerns. That material is printed at Appendix 2. We feel obliged to record our disappointment at the inadequacy of the information about the consultation process which the Department included in the Explanatory Memorandum; we are concerned that this is not the first

time that the Department for Communities and Local Government have fallen short in the content of such Memoranda.

Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008 (SI 2008/1159)

20. These Regulations specify the information that a borrowing institution must publish about an object lent from abroad for a temporary public exhibition at an approved museum or gallery in order for that object to be protected from seizure or forfeiture in accordance with Part 6 of the Tribunals, Courts and Enforcement Act 2007. That Act was passed to assure foreign lenders that a cultural object lent for an exhibition in the United Kingdom would be returned at the end of the exhibition. The Regulations provide that information concerning the identification and provenance of the object must be published free of charge for at least four weeks before the day on which the object is brought into the country, and thereafter made available to the public for a further period of twelve weeks or until the closure of the exhibition whichever is the longer period. Regulation 7 requires the museum to make available to a potential claimant of the object a summary of the material they hold about the object's provenance.

Electricity and Gas (Billing) Regulations 2008 (SI 2008/1163)

21. The Department for Business, Enterprise and Regulatory Reform (DBERR) have laid the Electricity and Gas (Billing) Regulations 2008 (SI 2008/1163), to implement the relevant provisions of the Energy End-Use Efficiency and Energy Services Directive (Directive 2006/32/EC). The Regulations amend Standard Licence Conditions, so as to require electricity and gas suppliers to provide domestic customers with historical consumption information on their bills: namely a comparison of a customer's energy or gas consumption covered by the period of the bill with that for the corresponding period in the previous year. The requirement does not cover business customers. DBERR have advised the Committee of the Government's view that business customers have different needs from domestic customers in terms of billing information, and that suppliers should be left to innovate and compete in this area. DBERR have referred to the Government's decision to proceed with the introduction of advanced metering for around 200,000 medium-sized business, which will mean these customers will benefit from far more data on their energy consumption than at present, with readings generated on a daily, or possibly more frequent, basis. They have stated their view that the Regulations represent sufficient implementation of the relevant provisions of the Energy Services Directive.

Disabled Facilities Grants (Maximum Amounts and Additional Purposes) (England) Order 2008 (SI 2008/1189)

22. The Department for Communities and Local Government have laid the Disabled Facilities Grants (Maximum Amounts and Additional Purposes) (England) Order 2008 (SI 2008/1189). The Order sets at £30,000 the maximum amount of disabled facilities grant (DFG) that a local housing authority may be required to pay towards the cost of works required for the provision of facilities in dwellings or buildings in England for disabled persons: the previous maximum limit was £25,000. The Order also specifies additional purposes for which an application for a grant must be approved: it

will now be possible for grant to be made available for enabling access to a garden. In their consultation on these proposals in the early part of 2007, the Department raised the possibility of increasing the maximum grant limit to £30,000, and then to £50,000 in stages, if the evidence showed that local authorities were realising sufficient offsetting savings through using powers to reclaim DFG. The Department have confirmed that they will keep the maximum limit under review.

Transmissible Spongiform Encephalopathies (No. 2) (Amendment) Regulations 2008 (SI 2008/1180)

23. These Regulations amend meat-processing procedures, following a change to EC Regulation 999/2001 that relates to the control of BSE. From 26 April 2008, the age at which bovine vertebral column is classified as Specified Risk Material is increased from 24 months to 30 months. The Regulations also revoke the residual parts of the Beef on the Bone Regulations 1997 which have been replaced by directly-applicable EU-wide legislation. A note on the scientific justification for permitting the relaxation of these rules is printed at Appendix 3.

CORRESPONDENCE

Draft Gambling (Geographical Distribution of Large and Small Casino Premises Licences) Order 2008

24. We drew the draft Gambling (Geographical Distribution of Large and Small Casino Premises Licences) Order 2008 to the special attention of the House in our 14th Report [HL Paper 74] and the draft Order is to be debated in the House on Thursday 15 May. We have now received letters from a number of the local authorities proposed to be allowed to issue casino premises licences under the Order: Great Yarmouth, Newham, Scarborough, Southampton, Swansea and Torbay. They reiterate their intention to maximise the regeneration benefits of the process and to measure and manage any negative impact. In addition, Southampton City Council state that the exclusive arrangement that they had with a potential casino operator, to which we referred in our 14th Report, has been terminated and that any licence can be awarded on the basis of a free and open competition as required by Schedule 9 of the Gambling Act 2005. The letters are printed at Appendix 4.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

Draft Instruments requiring affirmative approval

Compensation (Claims Management Services) (Amendment) Regulations 2008

Extradition Act 2003 (Amendment to Designations) Order 2008

Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008

Instruments subject to annulment

SI 2008/1035 Scotland Act 1998 (Agency Arrangements) (Specification) Order 2008

SI 2008/1083 Local Government Pension Scheme (Amendment) Regulations 2008

SI 2008/1088 Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008

SI 2008/1089 Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008

SI 2008/1098 Export Control (Burma) Order 2008

SI 2008/1139 Common Agricultural Policy Single Payment and Support Schemes (Amendment) Regulations 2008

SI 2008/1140 Friendly Societies Act 1992 (Accounts, Audit and European Economic Area State Amendments) Order 2008

SI 2008/1142 National Savings Bank (Amendment) (No. 2) Regulations 2008

SI 2008/1144 Friendly Societies (Accounts and Related Provisions) (Amendment) Regulations 2008

SI 2008/1148 National Health Service Delegation of Functions to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Counter Fraud and Security Management) Regulations 2008

SI 2008/1149 Membership of the Tribunal Procedure Committee Transitional Order 2008

SI 2008/1159 Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008

SI 2008/1161 Medicines for Human Use (Prescribing) (Miscellaneous Amendments) Order 2008

SI 2008/1162 Medicines (Sale or Supply) (Miscellaneous Amendments) Regulations 2008

SI 2008/1163 Electricity and Gas (Billing) Regulations 2008

SI 2008/1164 National Savings Bank (Amendment) (No. 3) Regulations 2008

SI 2008/1165 Football Spectators (2008 European Championship Control Period) Order 2008

SI 2008/1166 Lyon Court and Office Fees (Variation) Order 2008

SI 2008/1167 Discretionary Housing Payments (Grants) Amendment Order 2008

- SI 2008/1180 Transmissible Spongiform Encephalopathies (No. 2) (Amendment) Regulations 2008
- SI 2008/1181 Commission for Healthcare Audit and Inspection (Defence Medical Services) Regulations 2008
- SI 2008/1188 Food Labelling (Declaration of Allergens) (England) Regulations 2008
- SI 2008/1189 Disabled Facilities Grants (Maximum Amounts and Additional Purposes) (England) Order 2008
- SI 2008/1190 Housing Renewal Grants (Amendment) (England) Regulations 2008
- SI 2008/1211 Civil Enforcement of Parking Contraventions (County of Rutland) Designation Order 2008
- SI 2008/1212 Civil Enforcement of Parking Contraventions (County of Gloucestershire) (Forest of Dean District) Designation Order 2008
- SI 2008/1240 British Overseas Territories Citizenship (Designated Service) (Amendment) Order 2008

APPENDIX 1: DRAFT SEXUAL OFFENCES (NORTHERN IRELAND) ORDER 2008

Memorandum by the Christian Institute

Introduction

1. The Christian Institute welcomes the opportunity afforded by the Merits Committee to comment on this draft legislation. We believe this is appropriate given our involvement in every other stage of scrutiny and consultation to date, namely:

- Making a submission to the Northern Ireland Office's original consultative document in October 2006
- Submitting, by request, oral and written evidence to the Northern Ireland Assembly Ad Hoc Committee which scrutinised the draft Order and subsequently compiled a report in January 2008
- Submitting an extensive response to the public consultation on the draft Order which ended in February 2008.

2. As far as The Christian Institute is concerned the draft Order contains many proposals which can be strongly welcomed. However, one key area of contention remains, namely the proposal to lower the age of consent for sexual activity in Northern Ireland from 17 to 16.

Widespread Opposition

3. The age of consent in Northern Ireland has remained at 17 ever since the Stormont Parliament raised it from 16 with the Children and Young Persons Act 1950. In all that time there has been no concerted public lobby to see it reduced. Indeed the degree of support within the Province for the status quo is very clear. The Ad Hoc Committee of the Northern Ireland Assembly set up to scrutinise the Order concluded its report by "strongly recommend[ing] that there be no change to the current age of consent of 17".⁷ When this report came to be debated by the Assembly it was adopted unanimously; no division was required.⁸ A no day named motion was subsequently tabled in the Assembly, calling on the Secretary of State to retain the age of consent at 17. This motion has since been signed by 56 MLAs from across the community divide.⁹ This makes it the best-supported no day named motion of the present Assembly, and the only one to achieve an overall majority. This speaks volumes for the degree of cross-community opposition to any reduction in the age of consent. Clearly, were the draft Sexual Offences Order the responsibility of Northern Ireland's own locally-elected politicians, the age of consent proposal would have been comprehensively rejected.

4. If anything, opposition in Stormont to a lower age of consent is actually exceeded within the public at large. By the NIO's own admission, of 369 responses received from the public consultation, only seven specifically supported the proposed change. 346 responses (i.e. 94 per cent, including 100 per cent of submissions from private

⁷ Northern Ireland Assembly Ad Hoc Committee on Draft Sexual Offences (NI) Order 2007, First Report, 21 January 2008, para. 50, see http://www.niassembly.gov.uk/adhocs/2007mandate/sexual_offences/reports/report15_07_08R.htm

⁸ Northern Ireland Assembly Official Report (Hansard), 4 February 2008, see <http://www.niassembly.gov.uk/record/reports2008/080204.htm#8>

⁹ Age of Sexual Consent, Northern Ireland Assembly List of Motions and Proposed Amendments: No Day Named, 19 February 2008, see <http://www.niassembly.gov.uk/io/noday.htm>

individuals) opposed any reduction of the age of consent.¹⁰ Confirmation of the depth of public feeling surrounding this issue was provided by a recent ComRes poll. As reported in the media, 73 per cent of respondents, including 80 per cent of Protestants and 72 per cent of Roman Catholics, expressed their opposition to the lowering of the age of consent. Almost half, some 47 per cent, specifically selected the answer “Strongly Oppose” when asked about the age of consent proposal.¹¹

5. Opposition to the proposal is not limited to private individuals. Bodies which have expressed their opposition publicly include both Roman Catholic and Protestant churches,¹² the Northern Ireland Rape Crisis and Sexual Abuse Centre,¹³ the Boys’ and Girls’ Brigades (Northern Ireland’s two largest youth organisations), Love For Life relationships and sexuality education organisation, and various experienced teachers and educators. Together these groups and individuals represent thousands of members (including teenagers) and a tremendous body of expertise in the field of young people’s welfare.

6. Opposition within Northern Ireland to the proposed lowering of the age of consent is not so much ‘strong’ as ‘overwhelming’. The Christian Institute finds it extraordinary that the NIO can acknowledge this in its Explanatory Memorandum (albeit tacitly¹⁴) and yet choose to ignore it. We suggest that such a course of action is highly undemocratic and undermines the purpose of the entire consultation procedure. Summarising the consultation, the NIO states: “As a result of this consultation, there were a range of opinions on various matters, but a general welcome and support for the overall statutory framework being proposed.”¹⁵ Such a statement is a remarkable dismissal of the contrary view held by a majority of the Legislative Assembly and the public of Northern Ireland on a major element of the proposals.

Addressing proposals to lower the age of consent from 17 to 16

7. The following is a summary of The Christian Institute’s original response to the public consultation on the draft Sexual Offences Order 2007 which ended in February 2008. We highlight the dangers of lowering the age of consent by detailing three areas of protection provided by the current law which will be undermined by the change:

- Protection from abuse
- Protection of child health and wellbeing
- Protection of the family.

8. We conclude with a brief consideration of a landmark study recently published in the Republic of Ireland and an analysis of the main arguments put forward for lowering the age of consent.

¹⁰ Statement containing a summary of representations on the draft Sexual Offences (Northern Ireland) Order 2007, Northern Ireland Office, April 2008, para. 3.1

¹¹ ComRes poll *Northern Ireland age consent*, March 2008, see <http://www.comres.co.uk/page16525316.aspx>

¹² The Observer, 25 November 2007

¹³ The Observer, 25 November 2007

¹⁴ Explanatory Memorandum to The Draft Sexual Offences (Northern Ireland) Order 2008, Northern Ireland Office, April 2008, paras 7.4 – 7.5

¹⁵ Statement containing a summary of representations on the draft Sexual Offences (Northern Ireland) Order 2007, Northern Ireland Office, April 2008, para. 3.8

Protection from abuse

9. The age of consent is a legal protection for some of society's most vulnerable members. The Sexual Offences (Northern Ireland) Order 2008 seeks to increase legal protection of children in other areas of potential exploitation such as prostitution and pornography.¹⁶ However, lowering the age of consent would expose 26,000 teenagers¹⁷ to potentially predatory, yet legal, sexual advances and the health and welfare risks outlined below.

10. Minister of State Paul Goggins and the Northern Ireland Human Rights Commission have expressed concern at a perceived rise in sex trafficking in Northern Ireland.¹⁸ Lowering the age of consent would only encourage development of the sex trade and facilitate "sex tourism" to Northern Ireland from the Republic of Ireland.

Protection of child health and wellbeing

11. The age of consent is intended to protect children from activities and consequences for which they lack the necessary physical, emotional and psychological maturity. Specific examples include the possibility of teenage pregnancy and contracting sexually transmitted diseases.

12. In other areas of health the Government is seeking to raise the legal age at which children can be exposed to potentially dangerous and unhealthy practices. In England and Wales the legal age for buying cigarettes has been raised to 18. Whilst smoking cigarettes is unhealthy and prolonged use results in many serious and often fatal illnesses, no one would ever argue that such consequences could follow from a single act of smoking. However, a single act of sexual intercourse can result in a young person becoming pregnant or contracting a serious, even fatal, disease.

13. It must be noted that the protection provided by a higher age of consent seems to be working in Northern Ireland: the rate of young people having sex before the age of 16 is much lower than in Great Britain.

	Percentage of 16-24 year olds engaging in sex before 16
Great Britain ¹⁹	27.9
Northern Ireland ²⁰	15

14. Given that the Northern Ireland Department of Health, Social Services and Public Safety has spent the last five years trying to significantly reduce the health consequences of teenage promiscuity²¹, it seems extraordinary that the Northern Ireland Office should now propose a measure which can only encourage teenagers to experiment with sex at younger ages.

¹⁶ Draft Sexual Offences (Northern Ireland) Order 2008, Articles 37-42

¹⁷ See [http://www.nisra.gov.uk/archive/demography/population/midyear/NI_Home_Pop_sya\(1961-2006\).xls](http://www.nisra.gov.uk/archive/demography/population/midyear/NI_Home_Pop_sya(1961-2006).xls)

¹⁸ The Belfast Telegraph, 23 June 2006; The Belfast Telegraph (online) 30 May 2007

¹⁹ Erens B, McManus S, Prescott A et al, National Survey of Sexual Attitudes and Lifestyles II: Reference tables and summary report, page 27, table 1.1 and page 30, table 2.1

²⁰ Northern Ireland Health and Social Wellbeing Survey 2001, Sexual Health Results - First experience of sexual intercourse tables, page 1, see http://www.nisra.gov.uk/whatsnew/wellbeing/sexual_health/First%20experience%20of%20sexual%20intercourse.PDF

²¹ Teenage Pregnancy and Parenthood: Strategy and Action Plan 2002-2007, DHSSPS, November 2002, page 7

Protection of the family

15. Northern Ireland has distinct advantages over the rest of the UK in terms of the stability of the family unit. The divorce rate and the percentage of maternities outside marriage are much lower in Northern Ireland than in the rest of the UK.

	Divorce rate per 1000 married couples	Percentage of maternities outside marriage
England and Wales ^{22,23}	12.2	44
Northern Ireland ^{24,25}	7	38

16. In addition, the proportion of families headed by a cohabiting couple in Northern Ireland is half that of the rest of the UK. These facts demonstrate the much greater stability of the family unit in Northern Ireland when compared to other UK regions. Legislators must understand that lowering the age of consent will encourage Northern Ireland's teenagers to engage in behaviour that will undermine this culture of family stability. Recreational sex by teenagers will lead to more teenage pregnancies and increased family breakdown.

Addressing the main arguments for lowering the age of consent

17. We consider that the Northern Ireland Office has failed to provide a satisfactory explanation for lowering the age of consent other than a perceived requirement for parity with the rest of the UK. We address this argument below, along with other key arguments put forward by those in favour of the proposal to lower the age of consent.

The need for parity with the rest of the UK

- There is no need for the two jurisdictions to have identical laws. There are distinct differences in the legal frameworks of Northern Ireland and the rest of the UK, including abortion law and alcohol licensing. The age of consent is a long-standing example, having been altered by the Northern Ireland Parliament in 1950. The NIO have not produced any examples of this difference being a problem.
- A more appropriate comparison regarding parity would be the Republic of Ireland which also has 17 as its age of consent. A lower age in Northern Ireland would precipitate 'sex tourism' of both adolescents and paedophiles from Southern Ireland.

Young people in Northern Ireland believe that the age of consent is already 16

- Where confusion exists about a certain law intended to promote public safety it is surely more sensible to advocate public awareness initiatives rather than to reduce the level of protection. We question if this argument would be used to advocate any comparable public safety law.

²² Divorces fall by 7 per cent in 2006, ONS, see <http://www.statistics.gov.uk/cci/nugget.asp?id=170>

²³ Birth Statistics: Review of the Registrar General on Births and Patterns of Family Building in England and Wales, 2006, ONS, The Stationery Office, 2007, Table 3.2, page 10 [289,266/662,915=0.44]

²⁴ Married, re-married or separated couples, figures from *Registrar General Annual Report 2006, NISRA*, Section 8, Divorces, table 8.9

²⁵ Registrar General's Annual Report 2006 – Section 3 Births, NISRA, 2007, Table 3.10 [8,772/23,044=0.38]

- A recent example of a safety law being downgraded to match a supposed public perception was the re-classification of cannabis, a move now being reviewed after heavy criticism.
- We question whether such confusion actually exists in Northern Ireland. The volume of public opposition to lowering the age of consent strongly suggests that it does not.

Lowering the age of consent will encourage young people to seek sexual health advice and treatment and thereby combat teenage pregnancy and STI rates

- The rates of teenage pregnancy and STIs are far higher in the rest of the UK compared to Northern Ireland.

	Combined maternity and abortion figures per 1,000 girls	
	15 years of age	16 years of age
England and Wales ^{26,27}	11.6	27.7
Northern Ireland ^{28,29}	4	11.9
	Sexually transmitted infections per 1,000 girls under 16 ³⁰	
England and Wales	1.16	
Northern Ireland	0.45	

²⁶ Taking 2006 figures of maternities (1,012, from *Birth Statistics: Review of the Registrar General on Births and Patterns of Family Building in England and Wales, 2006*, ONS, The Stationery Office, 2007, Table 3.2, page 10) plus abortions (2,948, from *Statistical Bulletin – Abortion Statistics, England and Wales: 2006*, Department of Health, ONS, 2007, Table 4a) divided by estimated 15 year old female population in thousands (342.5, from *England and Wales; estimated resident population by single year of age and sex; Mid-2006 Population Estimates*, ONS, StatBase, August 2007, Table 3); $1,012+2,948=3,960$. $3,960/342.5=11.6$

²⁷ Maternities, 3,537 (from *Birth Statistics: Review of the Registrar General on Births and Patterns of Family Building in England and Wales, 2006*, ONS, The Stationery Office, 2007, Table 3.2, page 10); Abortions, 5,859 (from *Statistical Bulletin – Abortion Statistics, England and Wales: 2006*, Department of Health, ONS, 2007, Table 4a); Population, 339.7 (from *England and Wales; estimated resident population by single year of age and sex; Mid-2006 Population Estimates*, ONS, StatBase, August 2007, Table 3); $3,537+5,859=9,396$; $9,396/339.7=27.7$

²⁸ Taking 2006 figures of maternities (29, from *Registrar General's Annual Report 2006 – Section 3 Births*, NISRA, 2007, Table 3.10) plus abortions (23, taken from *Statistical Bulletin – Abortion Statistics, England and Wales: 2006*, Department of Health, ONS, 2007, Table 12c) divided by estimated 15 year old population in thousands (12.8, from *Registrar General's Annual Report 2006 – Section 2 Population*, NISRA, 2007, Table 2.1); $29+23=52$; $52/12.8=4.1$

²⁹ Maternities, 113 (from *Registrar General's Annual Report 2006 – Section 3 Births*, NISRA, 2007, Table 3.10); Abortions, approximately 39 (half 16-17 figure of 78 from *Statistical Bulletin – Abortion Statistics, England and Wales: 2006*, Department of Health, ONS, 2007, Table 12c); Population, 12.8 (from *Registrar General's Annual Report 2006 – Section 2 Population*, NISRA, 2007, Table 2.1); $113+39=152$; $152/12.8=11.9$

³⁰ Totalled figures of Chlamydia, Gonorrhoea, Syphilis, Herpes and Warts in under- 16s seen at GUM clinics in 2006 (from *Diagnoses and Rates of Selected STIs as seen at GUM Clinics: 2002-2006*, Health Protection Agency, table 2a (England=2293), table 3a (Wales=109) and table 5a (Northern Ireland=35)) divided by population figures in thousands for 13-15 year olds (NI=77.3 from *Registrar Generals Annual Report 2006 – Section 2 Population*, NISRA, 2007, Table 2.1; E&W=2071.8 from *England and Wales; estimated resident population by single year of age and sex; Mid-2006 Population Estimates*, ONS, StatBase, August 2007, Table 3). $35/77.3=0.45$ per 1,000 in Northern Ireland; $2402/2071.8=1.16$ per 1,000 in England and Wales

- An obvious factor in the disparity between these figures is the lower age of consent in Great Britain. To suggest that lowering the age of consent will help to combat high teenage pregnancy and STI rates flies in the face of clear evidence. Young people in the Province are safer for longer than their counterparts in Great Britain and equalising the age of consent will threaten Northern Ireland's advantages in this respect.

An age of consent of 17 is discriminatory against young people

- It is nonsensical to argue that protecting young people from dangerous activities is discriminatory. Laws covering the sale of alcohol, ownership of firearms, gambling and driving are not considered discriminatory but necessary for the protection of all concerned. The age of consent should be considered in the same light.
- Rather than young people in Northern Ireland being discriminated against, the figures above demonstrate that young people in the rest of Great Britain suffer discrimination by being legally exposed to the risks of sexual activity at an earlier age.

The Irish Study of Sexual Health and Relationships

18. It is a matter of some irony that the Northern Ireland Office has tabled the draft Sexual Offences Order a matter of days after the publication of *Learning About Sex and First Sexual Experiences*, the first Sub-Report of the Irish Study of Sexual Health and Relationships. Commissioned by the Irish Department of Health and Children, this is the largest nationally representative study of sexual knowledge, attitudes and behaviour ever undertaken in Ireland. It is particularly relevant to the issue of Northern Ireland's age of consent because it equates to the British National Survey of Sexual Attitudes and Lifestyles, but covers a jurisdiction (the Republic of Ireland) with which Northern Ireland shares so much in common, including cultural values and a legal age of consent of 17. Its findings are illuminating:

- Participants who first had sex before 17 were over two and a half times more likely to have had an STI than those whose first intercourse occurred at or after 17.³¹
- Women who had been under 17 at first intercourse were over two and a half times more likely to report crisis pregnancy than those whose first intercourse occurred at or after 17.³²
- Women whose sexual initiation occurred before 17 were over four times more likely to have had an abortion than those who first had sex at or after 17.³³
- Of those respondents aged 18-29 reporting first intercourse at age 16, 18.8 per cent of men and 43.1 per cent of women said they "should have waited longer". For those reporting first intercourse below 16 these figures were 36.8 per cent and 59 per cent for men and women respectively.³⁴

7 May 2008

³¹ Rundle, K, Layte, R and McGee, H, *The Irish Study of Sexual Health and Relationships, Sub-Report 1: Learning About Sex and First Sexual Experiences*, 2008, page 117

³² Rundle, K, Layte, R and McGee, H, *The Irish Study of Sexual Health and Relationships, Sub-Report 1: Learning About Sex and First Sexual Experiences*, 2008, page 118

³³ Rundle, K, Layte, R and McGee, H, *The Irish Study of Sexual Health and Relationships, Sub-Report 1: Learning About Sex and First Sexual Experiences*, 2008, page 118

³⁴ Rundle, K, Layte, R and McGee, H, *The Irish Study of Sexual Health and Relationships, Sub-Report 1: Learning About Sex and First Sexual Experiences*, 2008, Table 5.6, page 114

APPENDIX 2: LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) REGULATIONS 2008 (SI 2008/1083)

Further information from the Department for Communities and Local Government

Consultation responses for the third tier of ill health provision.

Policy content and consultation responses

1. Communities and Local Government (CLG) issued a consultation letter on 21 November 2007 for the terms of the 3rd tier to complete the ill health provision in the revised Local Government Pensions Scheme (LGPS) which would come into force on 1 April 2008. The letter was issued to all local authorities in England and Wales, fire and police authorities in England and Wales, the LGA and employer organisations, trades unions, occupational health practitioners, local authority actuaries and treasurers. Comments were invited by 14 January 2008. The letter follows extensive discussions with key stakeholders including the Policy Review Group.

2. The consultation material follows the policy commitment by Ministers when the Local Government Pension Scheme (Benefits, Membership and Contribution) Regulations were laid in April 2007, to provide an ill health benefit for those who leave their local government employment because they were permanently incapable of their job but were medically judged capable of alternative gainful employment shortly after leaving. The provision could not exceed the cost envelope for the new Scheme agreed by the Government with the employers and trade unions.

3. There were 136 responses to the consultation letter comprising 89 local authorities, 11 other employer interests and 31 from Trade Unions or their branches, and 5 others. 15 responses were in overall support of the framework and 58 opposed. 39 local authorities were concerned about increased costs and 14 local authorities preferred a one off payment. 17 local authorities wanted the test as 'capable of obtaining employment' rather than the member's ability to find a job. The preferred duration of the benefit from local authorities was 2 to 3 years and a lifetime pension was particularly sought by the trades unions.

4. Ministers carefully considered all the responses and an assessment of them. Against this background, the final terms of the 3rd tier were subsequently developed with particular attention to employers' comments regarding costs and viability in relation to the cost envelope, and trades unions' comments concerning fairness to scheme members and the provision of an ill health pension.

Specific requests arising from the consultation

5. Respondents sought clarity and definition for the terms 'quite soon after leaving employment', 'reasonable period of time' and 'gainful employment'. These terms have been defined in the Regulations.

6. Employers, generally, would have preferred to retain a 2 tier system and, simply for administrative convenience, did not like the concept of a review but they were insistent that whatever was finally provided, its costs remain within the 0.1% available for this tier within the 19.5% overall payroll cost for the Scheme from April 2008. This has been achieved.

7. Employers accepted that a 3rd tier was likely to be provided in the Local Government Pension Scheme (LGPS), but they wanted payments to cease if gainful

employment was found. They also wanted an opportunity for a further medical opinion at the review, and the medical test to be one of being 'capable of gainful employment'. This has been provided.

8. Employers considered a period of 3 years would be a 'reasonable period' to enable all treatment options to be completed. The definition of 'reasonable period' is key to determining the two lower levels of benefit. Employers also wanted to stop payments at the point that an IOHP [Independent Occupational Health Professional] confirms that the 3rd tier member is capable of gainful employment following a review. CLG has addressed and accepted the representations by the employers and have included these elements in the regulations.

9. Trade Unions strongly favoured a lifelong mandatory pension from the LGPS. A mandatory pension has been provided for the 3rd tier but this cannot be for life as it would not be affordable within the available cost envelope.

10. Trades Unions believe any review mechanism should permit the member to be transferred to the enhanced 2nd tier in justified cases and we have made provision for this event in the regulations.

11. Trades unions specifically requested transitional protections to deal with those cases currently being considered and where there may have been some uncertainty as to the provisions that applied. Transitional protections, affordable within the agreed costs, are included in the Regulations.

Next steps

12. In response to some general worries expressed by stakeholders about the implementation of the new provisions (which is the final element of the three tier ill health provisions), statutory guidance is being prepared by CLG in full consultation with the employers, trades unions and pension managers.

13. An expert Ill Health Monitoring Group has been established to apply a continuous review of the effectiveness and implementation of the new ill health provisions. Its formation has been welcomed and the first meeting is scheduled for May. Membership is drawn from key national stakeholders.

24 April 2008

Further information from the Department for Communities and Local Government

Local Government Pension Scheme (Amendment) Regulations 2008

Q1: *15 responses to the consultation letter were in overall support of the framework and 58 opposed. Were all the 58 respondents who opposed the framework local authorities?*

Q2: *Employers would have preferred to retain a 2 tier system and did not like the concept of a review. Were these employers essentially the local authorities? And do the arrangements made by HMG and described at 6, 7 and 8 of DCLG's note mean that most or all of the 58 consultation respondents opposed to the framework are no longer opposed, but supportive?*

Q3: *Paragraphs 9, 10 and 11 of DCLG's note set out TU concerns and indicate what HMG has done in response. Have the TUs now indicated that they are content with these proposals?*

1. You have asked if all respondents who opposed the 3rd tier framework were local authorities; if the employers mentioned in the note were local authority employers and whether trades unions have now indicated that they are content with the proposals.

2. We believe it is important to consider the responses in the context of how the 3rd tier evolved in the policy development of the entire ill health provisions for the new LGPS. 'Where next? Options for a new-look Local Government Pension Scheme in England and Wales' published in June 2006, set out options for tiered levels of ill health provision and the need to keep cases under review. This was consistent with the Government's aim of retaining people in the workforce up to their normal retirement age and possibly beyond, and the introduction of a facility to review levels of ill health retirement benefits during ill health retirement.

3. However, it became apparent in discussions with stakeholders following that consultation exercise that trades unions were looking for an additional tier of provision, probably outside the LGPS regulations, as they did not, and still do not, agree to the test requiring the member to be permanently incapable of their current local authority employment. They continue to press for an 'Income Replacement Scheme' for those who are considered incapable of doing their current job, but who are not considered permanently incapable under the current definition. The Ill Health Monitoring Group will provide a forum to investigate this further.

4. Employers chose not to support a review mechanism fearing it to be administratively resource intensive. This stance, however, risked threatening the tight cost constraints set by Ministers and the Local Government Association.

5. It is for these reasons that the consultation letter received a measure of opposition from key stakeholders.

6. In answer to your specific questions, out of the 410 local authorities who received the consultation letter, 48 responded opposing in principle or with provisos. This is less than 12% of all authorities. Trades unions and some educational establishments were opposed to particular aspects of the proposals, as our previous note explained.

7. The 'employers' referred to in the previous note are the local authorities and their representative body, LGE. CLG has addressed key employer concerns to ensure that costs remain within the available cost envelope. The LGA and employers have, generally, welcomed this.

8. Trades unions have welcomed the mandatory pension provision within the LGPS but, as mentioned above, still have concerns that a member has to be permanently incapable of their local government employment and have a reduced likelihood of obtaining gainful employment, before ill health retirement benefits are released.

6 May 2008

Memorandum by UNISON

Ill Health Retirement

1. Regulation 13 of the Amendment Regulations amend Regulation 20 Early Leavers; Ill Health of the Local Government Pension Scheme (Benefits, Membership and Contributions) 2007 SI No.1166 ('the Benefit Regulations').

2. Regulation 18 amends Regulation 31 Early Payment of Pension: Ill Health, of the Benefit Regulations.

3. The intention was that from 1 April 2008 there would be three different benefit levels for those who qualify for ill health retirement. The Benefit Regulations set out the first two which are payable for life.

4. No reasonable prospect of obtaining gainful employment before normal retirement age (65). Service increased by 100% of potential service to normal retirement age.
5. Cannot obtain gainful employment obtain gainful employment within a reasonable time of leaving but likely to obtain gainful employment before normal retirement age. Service increased by 25% of potential service to normal retirement age.
6. Level 3 was for those who could get gainful employment within a reasonable time of leaving and the intention was they would get a pension based on the benefits they had earned to date of leaving without any service enhancement. The CLG eventually decided this tier would be in the scheme. There was a consultation and then a delay in laying the Regulations. Level 3 was finally set out in the Amendment Regulations laid before Parliament on 16 April 2008 and coming into force on 7 May 2008.

Key concerns with the Amendment Regulations on Ill Health

Regulations as they stand are “unworkable”

7. For anyone to be eligible for ill health retirement they must be permanently incapable of discharging efficiently the duties of their current employment due to ill health. This part of the definition has not changed from the old scheme. There is now an additional requirement before anyone can get ill health retirement. The member must ‘have a reduced likelihood to obtaining any gainful employment before their normal retirement age’. Under the Regulations an Independent Occupational Health Practitioner (IHOP) must decide whether the member falls within the definition. The wording could be interpreted in at least 2 alternative ways.
8. It could either mean that because the member is permanently incapable of their own job they have a reduced likelihood of obtaining gainful employment or it could mean that regardless of whether the member is permanently incapable of doing their job they could do some totally different job and therefore not qualify for any benefit at all.
9. Gainful employment is defined as paid employment for not less than 30 hours in each week for a period of not less than 12 months. To date there is no clear or indeed agreed definition of what constitutes paid employment.
10. It is difficult to see how an IHOP can make any decision under the Regulations as they stand. A lot of factors are non medical for example geographical location and when treatment is likely to be available.
11. The same would apply to early payment of a pension for somebody who has already left service on ill health grounds. The IHOP would have to determine whether the member was capable of any gainful employment and if not whether the member would be capable of gainful employment within 3 years of an unspecified date.

A key amendment to the Regulations was not consulted on prior to the Regulations being laid

12. The Amendment Regulations sets out how members will qualify for level 3 ill health retirement and how their benefits will be paid. Its intention was that somebody who qualified for ill health retirement but who could get gainful employment within a reasonable period of leaving service would get a lower level of benefit.
13. Just before the Regulations were laid and well after the period of official consultation had ended CLG decided that the reasonable period would be 3 years and that without any further consultation decided that in any event the benefit would stop after 3 years regardless of whether the member was able to seek gainful employment or not.

The Amendment Regulations are wrong in principle

14. Anyone judged as being able to do any gainful employment at the point of ill health retirement may not get any benefit at all and if they are regarded as being able to do any gainful employment within 3 years they will be put into level 3. Their pension will be reviewed after 18 months and in any event stopped after 3 years.

15. The amendment regulation gives the employer apparently unlimited powers to make enquiries of the member and forces a review after 18 months. The option to review after that date is only discretionary and there is no automatic requirement to move the member to a higher level if they are still unable to do gainful employment when the level 3 pension stops.

16. This goes far beyond the original policy intention of simply targeting benefits at the most ill. It will have penal effect on those whose jobs prospects collapse after they have to leave work on the grounds of permanent ill health and provide no safety net for those where the original decision that they can do any gainful employment within 3 years proves to be wrong.

17. It is out of step with other Public Service Schemes. The Teachers Pension Scheme and the NHS Pension Scheme will pay a pension to those who are permanently incapable of doing their job when they leave for ill health reasons only the eligibility for the upper level being linked to ability to undertake gainful employment.

18. As the Regulations stand they do not provide adequate transitional protection for those going through ill health retirement at the present time. It was agreed that the benefits of those who retire before the 1 October would be the better of the old scheme or the new scheme basis. Clearly, as they now have to satisfy the amended definition for ill health retirement the transitional protection is we believe far more limited than intended.

19. It is potentially seriously detrimental to those who were contributing to the old scheme as at 1 April. Protection only applies to those who are 45 and over and again only those who qualify for the amended definition of ill health retirement and are unfit for any gainful employment for at least 3 years after leaving.

May 2008

Response by the Department for Communities and Local Government

Local Government Pension Scheme (Amendment) Regulations 2008

1. You have sent Communities and Local Government (CLG) a copy of a paper sent to the House of Lords Merits Committee from Unison.

2. You have invited CLG to respond to the points raised and, in particular, to Unison's contention that:

- the regulations as they stand are unworkable;
- a key element was not consulted on prior to the regulations being laid; and
- the regulations are wrong in principle.

3. We believe Unison's comments do not reflect that Unison were involved in the extensive discussions and consultations, ongoing since before 2006, that led to the new three tiered ill health provisions in the new look LGPS. A mandatory pension that Unison wanted for its members has been provided.

4. Unison consider the test '...a reduced likelihood to obtaining gainful employment before their normal retirement age' [sic] to be unworkable and could be misconstrued. To

qualify for one of the three tiered benefits, there is a dual condition, i.e., permanent incapacity to perform a local government employment and a reduced likelihood of obtaining gainful employment . We are of the view that an Independent Occupational Health Practitioner (IOHP) would not consider the second test if the first test is not satisfied. If the member has not left their local government employment on the grounds of permanent ill health, then any question about their capacity to undertake gainful employment falls.

5. We do not see that the use of the words ‘paid employment’ in Regulation 20 (14) are unclear but consider that they have a normal and everyday meaning.

6. We believe that the regulations make it clear that it is the medical question that the IOHP is being asked to judge, not employment factors in a geographical region, and this was a matter that medical practitioners were in clear agreement about.

7. Unison are of the opinion that the term ‘within three years’ in the regulations was added well after the consultation period. The Consultation period closed on 14 January 2008, but as early as 3 March, informal guidance on ill health retirements in the new look scheme was published by CLG saying that based on the consultation responses, the balance of the argument was in favour of defining the term reasonable period as a set period of time and this was confirmed, subject to Ministers agreement, as three years when Pension Changes was published on 14 March. We consider that there has been a proper assessment of all the consultation responses and this permitted balanced judgements by early March.

7. We also took account of legal advice which said that it would not be appropriate to leave this definition to statutory guidance. Consultation representations confirmed that the definition of three years was the right period to permit all treatment options to be considered. Having defined ‘within’ or ‘not within’ three years, it followed that the period of payment of the 3rd tier benefit should be consistent with the duration of the reasonable period i.e. three years.

8. There is no intention for continuous review of a 3rd tier member and Regulation 20(6)(a) and (b) need to be read together.

9. Unison incorrectly believe that the opportunity to revise the 3rd tier of ill health is a discretion. The purpose of para 11(a) is to provide for an uplift from 3rd tier to 2nd tier at the review and the term ‘may’ is a permissive term. If the condition justifies an uplift, the employer may make a Regulation 20 (3) determination.

10. When the government accepted the recommendations made in HM-Treasury’s report “Ill-Health Retirement in the Public Sector” published in 2000, public service pension schemes were permitted to comply with those recommendations within a general framework allowing local variation to reflect the different occupational and employment characteristics of each scheme. It is not surprising, therefore, that there is some variation in the provisions on ill-health retirement that public sector schemes have developed when implementing the 2000 report.

11. Transitional protections have been included as we accepted that because the 3rd tier was not in place before 1 April 2008, there could have been some uncertainty about which provision applied for those cases currently being considered. Employers need to make determinations under the new look scheme because the 1st and 2nd tiers, to take effect from April 2008, and had been on the statute book since April 2007. But in the transitional period, the employer should assess benefits under both the Benefits Regulations as amended and the 1997 Regulations, and the greater of the two should be awarded.

12. The Regulations are not wrong in principle. The complete set of ill health provisions will provide improved and better targeted benefits for those most in need of financial support at a time when they are incapable of performing their current job and have no, or a reduced, prospect of future employment before their normal retirement age. The new regime also recognises that those leaving employment because they cannot undertake their current local authority job but can do other work within a reasonable period, do need some financial support while seeking alternative work.

9 May 2008

APPENDIX 3: TRANSMISSIBLE SPONGIFORM ENCEPHALOPATHIES (NO. 2) (AMENDMENT) REGULATIONS 2008 (SI 2008/1180)

Further information from the Food Standards Agency

1. This note provides further information following a request from the Committee in relation to paragraph 7.2.1 of the Explanatory Memorandum to the Transmissible Spongiform Encephalopathies (No.2) (Amendment) Regulations 2008.

2. Until May 2006, bovine vertebral column (VC) was classified as Specified Risk Material (SRM) in UK cattle aged over 30 months. This age limit was reduced to 24 months in May 2006 because of the need to harmonise controls with the rest of the EU in order get the export ban lifted. At the time the UK argued strongly for a 30 month age limit to be applied throughout the EU. The Government's Spongiform Encephalopathies Advisory Committee (SEAC)'s statement on BSE exposure risk from vertebral column made on 21 April 2005 was used to support the argument. SEAC concluded at the time that the difference in risk classifying VC as SRM at 30 months as opposed to 12 months (the age limit applicable in other Member States at the time) was very small verging on negligible. Unfortunately the 30 month proposal did not attract enough support from other Member States at the time. Since then the incidence of BSE has continued to decline. Furthermore, in April 2007, the European Food Safety Authority (EFSA) Biohazard Panel concluded that on the basis of current scientific knowledge, likely detectable infectivity in the central nervous system of cattle appears to be about three quarters of the incubation period and that it can be predicted that the infectivity would be sub-detectable or still absent in cattle aged 33 months. This provided evidence to support a change in the age at which bovine vertebral column is classified as SRM, the European Commission, Council and Parliament considered the proposal, following their considerations, the Commission adopted and published the proposal. The Community Regulation was amended and amending Regulation came into force on 26 April 2008.

3. The overall BSE risk in the UK has continued to fall since 1999 and prevalence of BSE in cattle entering the food supply is now estimated to be very low. The ban on UK beef bones for food manufacturing was retained mainly because of a concern about a possible risk from bone marrow following consideration by the Government's Spongiform Encephalopathy Advisory Committee of a single finding of infectivity in 1998. However, further testing carried out since then, using a more sensitive method, has found no further evidence of infectivity in bone marrow. Nevertheless, if infectivity does occasionally occur in beef bones, the risk will be extremely low and, with the other measures in place, the ban on UK bones in manufacturing will have little or no effect in reducing any risk, especially when imported bones of similar risk may be substituted.

May 2008

APPENDIX 4:DRAFT GAMBLING (GEOGRAPHICAL DISTRIBUTION OF LARGE AND SMALL CASINO PREMISES LICENCES) ORDER 2008

Letter from Great Yarmouth Borough Council

1. I understand that the Merits of Statutory Instruments Committee has recently examined the Draft Gambling (Geographical Distribution of Large and Small Casino Premises Licences) Order.
2. I wanted the opportunity to provide you with some comments from Great Yarmouth Borough Council, as we are one of the 16 local authorities proposed by the Order to award a large casino licence.
3. We are hopeful that the removal of the regional casino from the Order will allow the sixteen large and small casinos to go ahead. We had been reassured by the apparent cross-party support for the sixteen casino areas in last year's debates and very little has changed in that time.
4. We have invested a great deal of time and resource in the process over a long period. Our concern in Great Yarmouth is that a rejection of the Order will severely hamper our regeneration plans. The proposed large casino for Great Yarmouth has very strong cross-party support at Great Yarmouth Borough Council and is a major part of our regeneration strategy. In particular, it will provide employment opportunities for local people and help establish Great Yarmouth as a year round tourism destination.
5. We have had considerable interest from potential developers wishing to provide a casino development but can assure the Committee that no decisions have been made regarding sites. We recognise the need for fairness in selecting a casino site and support a competition process as the means of ensuring the best development for local people.
6. We note the Committee's concerns regarding traceability of impacts but the provision of other gambling facilities (including on-line gambling) is common to every authority in England, Wales and Scotland. However, the Committee raises an important point regarding the need to test the social impact of the casino and the Licensing Authority will establish studies to monitor such impact.
7. Finally, the Licensing Authority takes its responsibilities under the Gambling Act 2005 very seriously. We attach great importance to the minimisation of harm and will ensure that the licensing objectives of preventing crime and protecting the vulnerable from harm are suitably reflected in the criteria for the competition process.

Barry Coleman

Leader of the Council

8 May 2008

Letter from London Borough of Newham Council

1. I understand that the Merits of Statutory Instruments Committee has recently examined the Draft Gambling Order 2008.
2. I wanted the opportunity to provide you with some information on Newham's position as one of the 16 local authorities proposed by the Order to award a casino licence - in Newham's case a large licence.

3. It will no doubt come as little surprise to know that Newham is supportive of the geographical distribution recommended by the Casino Advisory Panel. This view and support for a casino in Newham has become more focused following two key processes - review by an Independent Commission (chaired by Sir Henry Brooke) and a citizen's jury held in the borough. I set out those processes and key findings in the attached appendix [*not submitted*].

Newham's position

4. As you will see, Newham has gone through an intensive process of looking at the evidence, assessing the impact locally, and understanding residents' views. As a consequence, we support a casino in Newham because it will complement our regeneration programme, including, crucially, providing employment opportunities for local people.

5. Newham has the third highest rates of worklessness in the country and DWP figures show us that there are 18,000 in Newham who have never worked. Worklessness is the greatest factor in high levels of poverty in the borough.

6. Combined with major developments such as Stratford City - a mixed retail, business and housing development-the casino will bring a range of employment opportunities including much needed entry level jobs. We are of course playing our part in making sure that residents are job-ready, including the provision of the skills employers tell us they need and ensuring that barriers such as the benefits trap and child care needs are removed.

7. Developers understand the need to develop a skilled workforce for their planned leisure facilities - the regulatory and financial aspects of a casino would make this an even greater priority.

8. The main potential operators all have recognition with trade unions - the GMB or Unite. The trade unions themselves believe that casinos can have a significant regenerative impact and act as a base or catalyst for other leisure developments. GMB locally have already publicly stated their support for the development of a Casino in the borough a means of providing quality, unionised jobs with training and development opportunities for local workers.

9. I understand that you have highlighted three key issues in evaluating the Order. Newham's response to each of those issues is set out below. However, I should first note that local authorities will take a significant role in ensuring the public interest in relation to the legislation is served - most notably measuring impact, ensuring benefits realisation, preventing crime and protecting the vulnerable from harm. As Newham's community leader and chief advocate I take this duty seriously. Furthermore I believe that the application of a local gambling policy and the premises licensing and competition processes provide the tools to undertake that duty.

Extent to which the Gambling Act's licensing objectives of preventing crime and protecting the vulnerable from harm had been reflected in the selection criteria

10. I cannot comment on behalf of the CAP's decision making process, but I believe that our submission carefully considered these matters which continue to be central concerns in the process going forward.

11. In common with the national picture, Crime and ASB is already a major issue for Newham's residents. The Independent Commission heard that the Metropolitan Police have found no correlation between casinos and prostitution in the context of London. This view is also reflected in the majority of research abroad.

12. The Metropolitan Police team who provided evidence voiced the view to the Independent Commission that there is no link between casinos and prostitution. Newham's Borough Commander is of the opinion that a large supermarket would bring more crime/anti-social behaviour than a casino. The Met also felt that a casino would have a sufficient level of security in place and a stringent enough admissions policy to ensure that crime did not become a problem. Indeed, this would be a requirement of our gambling policy and within the competition process. The successful operator would also be subject to stringent monitoring in this respect.

13. The evidence shows that problem gambling is prevalent in forms other than in casinos. The British Gambling Prevalence Survey 2007 found the problem gambling prevalence rate was the same as it had been in 1999 (0.6%). Problem gambling growth areas were focused on internet-based gambling and fixed odds terminals in bookmakers. The highest prevalence of problem gambling was found among those who participated in the past year in spread betting (14.7%), fixed odds betting terminals (11.2%) and betting exchanges (9.8%). There are links between problem gambling and deprivation as well as amongst certain ethnic groups.

14. GamCare states that in many bookmakers, revenue generated from fixed odds betting terminals (FOBTs) now exceeds traditional over-the-counter gambling. Up to £100 can be staked on an individual bet. Debit cards are accepted over the counter. The Gambling Commission licences betting shops and LBN cannot inspect them as we can for other licensed premises - for instance we regularly operate test purchases for the sale of alcohol, cigarettes and knives and undertake related legal action. It is fair to suspect that oversight of FBOT machines by bookmaker staff is not as focussed or effective as the oversight operated by casino operators.

15. Thus problem gambling already exists within Newham, with or without a casino. Local Authorities do not have strategies for tackling problem gambling, but Newham is in the process of developing a strategy including information sharing and enforcement activities. In Newham we also have specific issues with slot machine operators on the high street, illegal fruit machines in fast food shops and illegal street gambling. I want a casino operator who will not only deal effectively with the problem in their casino but also help resource and support a sustained campaign against the wider problem. Any operator would have to satisfy conditions we lay down - including avoiding passive gambling or causing cultural offence. I want those safeguards to be the toughest in the country.

Freedom set out in the Order to issue a licence for any site within that authority's area - non-limitation to sites proposed to the Panel

16. We support a competition process as the means of ensuring the best development for local people. Thus we support freedom within the Order to consider all applications in terms of supporting an open competition process. Of overriding importance is ensuring that the premises licence and competition processes and outcome meet public expectations including realisation of benefits, control of crime and antisocial behaviour and protection of the vulnerable from harm. Adherence to such principles will ensure that the licensed operator is sited in a location which responds to the public interest.

17. Realistically, in an urban area, there is a limit to the potential sites that could be developed as a casino, and the sites set out within our original submission to CAP remain the most likely applicants. Equally, the principles set out in our submission to CAP hold true as the guidelines for the controls and benefits within our policies and competition process. One of the clear benefits of the licensing/competition process will be our ability to lever the best possible deal in terms of employment, regeneration, security and controls, from sites where the impact can be highly controlled - and away from residential sites, schools and the like as set out in our gambling policy.

18. The potential developers tell us that a casino in Newham would be aimed and marketed at pockets of affluence outside the borough - primarily Canary Wharf and the wider South East - rather than local residents. Residents would have access to the wider leisure and entertainment facilities as well as benefiting from the employment and regeneration an entertainment complex would bring.

19. The Newham licence is highly sought after because of its location within the M25 and affords access to the South East. Infrastructure, especially after 2012, would allow operators to easily and effectively attract visitors from outside the borough.

Traceability of social impact, particularly in an urban context

20. The Committee raises an important point regarding the need to test the social impact of the casino - benefits and negative aspects - effectively and independently from other influencing factors.

21. Newham has long invested in independent, robust and longitudinal research as a means of measuring the impact of what we do and guiding our policies and service provision.

22. We are the only local authority area outside of Los Angeles to commission a Household Panel Survey, now in its fifth wave. The survey allows us to trace the circumstances, attitudes, well-being and lifestyles of households across the borough on a longitudinal basis. We also commission surveys on liveability (testing residents' experience of local areas and services), young people, older people, resident satisfaction and different communities living in the borough. In addition we undertake service user surveys (such as our annual tenants and leaseholder survey) and commission research to understand particular issues, using tools such as focus groups, impact assessments and in-depth studies of individuals' circumstance.

23. I am committed to understanding the effects of a casino in Newham, not least because I want to ensure that we will be meeting our objectives I am confident. that, such is our expertise in research and evaluation, we will ensure a robust assessment of the impact of a casino rather than measuring wider regeneration or developments.

Sir Robin Wales

Mayor

2 May 2008

Letter from Scarborough Borough Council

1. Having recently read the Merits of Statutory Instruments Committee report relating to The Gambling Order 2008 (Geographical distribution of Casino Premises Licences). Scarborough Borough Council would like to take this opportunity to provide you with some additional information and clarification on the issues raised in the report and request your support in ratification of the related Parliamentary Order.

2. As you are no doubt aware Scarborough Borough was recommended by the Casino Advisory Panel (CAP) for a small casino within the previously debated Order of 2007.

3. It is our consideration that the CAP process, which spanned 16 months, was rigorous, transparent and fair and that the criteria, based on the Governments National Policy Statement announced in Parliament in 2004, were clearly defined and consistently applied.

4. Scarborough is currently experiencing a significant period of regeneration under its “Renaissance Programme” however there remains much work to be done in order to maintain the momentum gained and secure a sustainable future by embracing and developing diverse opportunities for the future of the town and its residents.

5. A new casino development in Scarborough, when coupled with the associated regeneration opportunities, would provide a greatly valued element to achieving this goal.

6. With regard to the 2005 Gambling Act Licensing Objectives of preventing crime and protecting the vulnerable from harm Scarborough has for a long time been host to casino’s and gaming in one form or another. There is no evidence to suggest that such activity when properly regulated and managed has any detrimental effect on crime and disorder.

7. We do acknowledge that casino gaming has the potential to create additional opportunities for problem gambling to occur. However, Scarborough is currently host to one casino (not two as stated within the Merits Committee report) and a number of amusement arcades, bingo halls and betting shops. Amongst the local populous gaming is therefore part of the accepted culture and economy. A new destination casino as proposed within Scarborough would do little to change this culture or increase incidents of problem gaming.

8. In addition, Scarborough Borough Council, as part of its criteria for the selection of a casino operator will stipulate that any developer proposing to build and operate a new casino in Scarborough provide awareness, education and support for the prevention and treatment of problem gambling, not only within the new development but throughout the Borough and in association with the other gaming providers within the town. Therefore the development would provide an invaluable infrastructure to protect the vulnerable, which doesn’t currently exist.

9. In relation to the issue of traceability and measurement of social impact and the perceived problems of differentiating between the regeneration brought about from a new casino development and the existing regeneration programme. As stated previously Scarborough is currently undergoing a significant period of regeneration, much baseline data on the Boroughs socio-economic profile has been gathered. A great deal of the work undertaken within the town has been with the financial support of external funding partners. As a result, detailed records have and are being made to record the socio-economic outputs resulting from Scarborough’s existing regeneration activities.

10. Additionally, we are committed to recording and interpreting the impact of a new casino in Scarborough, in line with the objectives of Government and at a local level to ensure that the regeneration aspirations, objectives and well-being of the town are being met.

11. The impacts of a new casino development will therefore be readily differentiated from the existing regeneration activities.

Tom Fox

Leader of the Council

8 May 2008

Letter from Southampton City Council

1. As you will be aware, Southampton has been identified as one of the areas which, under the draft Order, would be granted the ability to award a licence for a large casino.

2. The Council is aware that the draft Order was debated by the Merits of Statutory Instruments Committee in March of this year and has sight of the Committee's Fourteenth Report.

3. We are very concerned that the Committee did not seek to request further or updated information from those authorities directly affected and sought to rely on the data and evidence submitted by authorities during the original bid process. Obviously, since those bids were submitted being nearly two years ago, matters have moved on and accordingly some of the information presented to the Merits Committee is outdated or, in some cases, wholly irrelevant.

4. With regard to Southampton, in paragraph 24 of the Fourteenth Report, reference is specifically made to evidence that the Committee sought last year during its previous consideration as to how the competition for the licence could be fair in certain situations. The information supplied by the Council at that time was correct, but it was based on the Council's submission for a regional casino. We do consider it very important that the current position is placed before the House of Lords when considering the draft Order.

5. It appears from the Merit Committee reports that they were concerned about, or gave the impression of, partiality and the fairness of any award competition when any Council had previously entered into some form of exclusivity agreement with a potential applicant.

6. From Southampton's perspective, we had never courted, identified or appointed a preferred operator either at that time or since. What we did have in place was a time limited exclusivity agreement during the time of our bid for a regional casino licence with an interested party. Subsequently, the Council was not short-listed for a regional casino but has been awarded a large casino licence. The operator party to the exclusivity agreement terminated the contract and has, we understand, withdrawn from the UK gambling market.

7. The Council does not have nor would it ever seek to have any further exclusivity agreement or preferred operator status being granted to any interested operator and will ensure, as will all other authorities, that any competition process is scrupulously fair and beyond legal challenge. I would not let it be anything less.

8. The Council's bid was firmly based on the unique regeneration benefits that the casino and related development would bring to deprived areas of the city including an ambitious but achievable aspiration to reclaim parts of the sea and significantly extend Mayflower Park in the heart of the city and adjacent to the Port of Southampton. Those aspirations still remain together with the direct and indirect job creation that the development would bring.

9. The Council, cross party, is also acutely aware of the possible impact that a new casino could have on the community, or certain parts of the community, and was extremely open in its bid to the Casino Advisory Panel that it would seek to place significant responsibilities on any operator awarded a licence together with detailed and workable requirements as a part the competition criteria to ensure that any operator granted a licence would be contractually bound in addition to any licence conditions attached to ensure that it fully met those responsibilities together with the Council and other responsible authorities, the Primary Care Trust, Gamcare and like bodies. However, it has to be said that there are already three well established casinos in the city and that they are very well run and have no discernable negative impact on the community. It is fully appreciated that any new style of casino would be larger than the existing ones and accordingly this may attract those who may previously have not been interested in gambling. We are fully ready to meet the possible effects of this.

10. Accordingly, we would urge the House of Lords to give its approval to the draft Order.

Mark Heath

Solicitor to the Council

9 May 2008

Letter from the City and County of Swansea Council

1. I am writing in respect of the above Order which will be debated on 15 May, and which is of great significance to the City and County of Swansea. If approved, the Order would authorise sixteen local authorities (including Swansea) to license the eight large and eight small casinos permitted by the Gambling Act 2005. I hope you will allow me to make some comments in advance of the debate.

2. Swansea is greatly encouraged by the Culture Secretary's statement on casino policy to the House of Commons on 26 February 2008. In this statement, he confirmed that there was a consensus of views, including those expressed by Opposition front bench and by their Lordships, calling for the sixteen local authorities identified by the independent Casino Advisory Panel to be incorporated into a fresh Order. In laying the new Order before Parliament, the Minister has given both Houses the opportunity to confirm their views and approve the Order. We were pleased to learn that the Order was approved by the House of Commons on 26 March 2008.

3. We feel the Culture Secretary has also responded positively to the concerns expressed by the House of Lords Merits of Statutory Instruments Committee. In withdrawing the authorisation of a regional casino from the fresh Order, he has addressed the issues raised in the Committee's 13th Report of Session 2006-7, which focussed on the sift for the regional casino. In relation to the Committee's 14th Report of Session 2007-8, the Culture Secretary has confirmed to the Committee that its concerns about the minimisation of harm would be addressed by the new rules imposed on all casinos, the extensive enforcement powers available to the Gambling Commission and the local authorities, and by the limited number of new casinos permitted under the Act. He also indicated (and the Committee acknowledges) that the sixteen local authorities represent a good range of types of areas and a good geographical spread "in order properly to assess the impact of the new casinos...", in line with the December 2004 National Policy Statement on casinos.

4. I can confirm that Swansea is fully committed to the prevention of crime and the protection of the public from harm. We will ensure that any application for the small casino licence is considered on its consistency with the regulatory licensing objectives, and is evaluated on the avoidance of harm as well as the positive benefits the applicant's proposals could bring to the public and the community at large. The Authority will use its additional powers to ensure that gambling is stringently controlled, both within a venue and across an area. We will continue our action to remove gaming machines from unlicensed premises, and work with the casino operators and our local strategic partners to ensure that gambling activity is properly conducted and that vulnerable groups are protected, and where necessary, supported.

5. We acknowledge the Committee's concern that our application for licensing powers suggested a city centre site for the potential casino development, and the opportunity that may arise for casual problem gambling. I would, however, say that Swansea has not confirmed any preferred site, and we would welcome the opportunity of

an open competition to consider the merits of sites in any part of the Authority area coming forward that can demonstrate the greatest benefit to Swansea, not only in terms of the regeneration potential to our area, but also of the avoidance of crime and harm.

6. We also note the Committee's reservations about the traceability of social impact in relation to the casino. Swansea's responses to the Casino Advisory Panel's indicated the mechanisms and partnerships in place as well as some of the indicators we would use to assess the social and economic impact of a new casino. Whilst our comments were accepted by the Panel, we welcome the Committee's additional comments and we will strive to create a robust monitoring framework that will enable the impact of the casino to be reliably and clearly determined.

7. Swansea is obviously anxious to secure the regeneration benefits anticipated from the issue of the small casino licence. At the same time, we are committed to the aims of the legislation and the licensing objectives in relation to preventing crime and disorder, protecting children and the vulnerable from harm and exploitation, and ensuring that gambling is conducted in a fair and open way. We are keen to maximise the benefits from the licence and the legislation and to generate positive outcomes in terms of prosperity and safety within our communities.

Paul Smith

Chief Executive

9 May 2008

Letter from Torbay Council

Torbay's Small Casino licence submission

1. I am writing following the publication of the Committee's report on the Draft Gambling (Geographical Distribution of Large and Small Casino Premises Licences) Order 2008 and ahead of the imminent debate to set out Torbay's continued commitment to deliver a high quality successful regeneration project using the casino license as a way to attract much needed new investment to the area.

2. Our submission to the Casino Advisory Panel was made against the background of an economy depending heavily on tourism and in need of a stronger product offer to attract more and new visitors to Torbay. This position remains the same and the development of casino with accompanying and complementary facilities remains consistent with our Community Plan and Economic Regeneration strategy.

3. I would also like to reaffirm the commitment of time that officers, members of the Council and I have invested in the process over a long period to ensure that the implementation of a license in Torbay delivers the strongest regeneration benefits for the area. I can assure you of our absolute commitment to the minimization of harm. As you will be aware there are different stages of the licensing process where we will be testing operator's commitment to providing a positive benefit and minimizing harm. To that end we have committed in our proposal to the Advisory Panel that we would seek to establish a study to analyse risk and potential harm from a casino.

4. In terms of the details of our proposal Torbay has not specified a site in its submission and we have not engaged in negotiations with operators to pre identify an operator. We believe that this leaves us in a strong position to get the regeneration benefits we require.

5. We were reassured by the apparent cross-party support for the 16 casino areas in last year's debates and believe that very little has changed in that time which should weaken that support and would hope that the debate continues to reflect that view.

6. You may not be aware that Torbay is now the poorest area in the South West and in the absence of major EU funding programmes such as in Cornwall we are looking at a range of complementary regeneration schemes in Torbay. In conclusion, Torbay is, and was, committed to the project and to the aims of the Gambling Act to minimize harm and to maximize benefit, and to the objective of enabling impact to be tested.

Nick Bye

Mayor

9 May 2008