

**DRAFT**

**Guidance to Licensing Authorities  
4<sup>th</sup> Edition**

July 2012

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This document comprises 36 parts with pages numbered relevant to their section. Future updates will be provided by section without affecting other parts of the guidance

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# Part 1: Background

## Gambling Act 2005

- 1.1** The Gambling Act 2005 ('the Act') contains the regulatory system to govern the provision of all gambling in Great Britain, other than the National Lottery and spread betting. It received Royal Assent on 7 April 2005.

### Summary of the Act

- 1.2** Gambling is unlawful in Great Britain, unless permitted by:
- the measures contained in the Act
  - measures contained in the National Lottery etc Act 1993, or pursuant to the Financial Services and Markets Act 2000.
- 1.3** Two comprehensive offences are established by the Act: providing facilities for gambling or using premises for gambling, in either case without the appropriate permission. Such permission may come from a licence, permit, or registration granted in accordance with the Act or from an exemption given by the Act. Where authority to provide facilities for gambling is granted, it is subject to varying degrees of regulation, depending on the type of gambling, the means by which it is conducted, and the people by whom and to whom it is offered.
- 1.4** The Gambling Commission (the Commission) is the unified regulator for gambling in Great Britain.
- 1.5** The Commission does not regulate spread betting, which remains the responsibility of the Financial Services Authority; nor the National Lottery, which is regulated by the National Lottery Commission. However the National Lottery Commission has been co-located with the Gambling Commission since January 2012 and the Public Bodies Bill includes legislation to merge the two Commissions.
- 1.6** The Gambling Commission has responsibility for granting operating and personal licences for commercial gambling operators and personnel working in the industry. It also regulates certain lottery managers and promoters. The Act sets out different types of operating licence that cover the full range of commercial gambling activities conducted in Great Britain. It also makes provision for the Commission to have powers of entry and inspection to regulate gambling, with safeguards for those subject to the powers.
- 1.7** Licensing authorities license gambling premises within their area, as well as undertaking functions in relation to lower stake gaming machines in clubs and miners' welfare institutes. In England and Wales local authorities have these responsibilities; in Scotland they have been given to licensing boards. The Act also provides a system of temporary and occasional use notices. These authorise premises that are not licensed generally for gambling purposes to be used for certain types of gambling, for limited periods.

### Licensing objectives

- 1.8** The Act contains three licensing objectives which underpin the functions that the Commission and licensing authorities will perform. These objectives are central to the Act. They are:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime
  - ensuring that gambling is conducted in a fair and open way
  - protecting children and other vulnerable persons from being harmed or exploited by gambling.

The Commission has an overriding obligation to pursue and have regard to the objectives, and to permit gambling so far as it thinks is reasonably consistent with them.

## **Achieving compliance with the Act**

- 1.9** Regulation of gambling in Great Britain is achieved through a variety of measures established under the Act. These include:
- regulations made by the Secretary of State or Scottish Ministers, including mandatory and default licence conditions
  - conditions on licences imposed by the Gambling Commission or by licensing authorities
  - codes of practice from the Commission
  - guidance from the Commission.

## **Guidance to licensing authorities**

- 1.10** Section 25 of the Act requires the Commission to issue guidance on:
- the manner in which local authorities are to exercise their functions under the Act
  - in particular, the principles to be applied by local authorities in exercising their functions under the Act.
- 1.11** Before issuing guidance to local authorities, the Act requires the Commission to consult:
- the Secretary of State
  - the Scottish Ministers
  - Commissioners for Her Majesty's Revenue & Customs (HMRC)
  - representatives of local authorities
  - representatives of gambling businesses
  - persons with knowledge of social problems that may be associated with gambling.
- 1.12** Depending on the nature of the guidance, the Act also requires the Commission to consult, if it thinks appropriate, members of the public and representatives of Chief Constables of police forces.
- 1.13** Licensing authorities licence gambling premises and issue a range of permits to authorise other gambling facilities in their licensing areas. In exercising their functions generally under the Act, licensing authorities must have regard to the Guidance issued by the Commission. Authorities have similar regulatory powers to the Commission with respect to their licensees, including the power to impose conditions and to review licences. However, they are not able to impose financial penalties.

## **Functions of licensing authorities**

- 1.14** The Act gives licensing authorities a number of important regulatory functions in relation to gambling. Their main functions are to:
- licence premises for gambling activities
  - consider notices given for the temporary use of premises for gambling
  - grant permits for gaming and gaming machines in clubs and miners' welfare institutes
  - regulate gaming and gaming machines in alcohol-licensed premises
  - grant permits to family entertainment centres (FECs) for the use of certain lower stake gaming machines
  - grant permits for prize gaming
  - consider occasional use notices for betting at tracks
  - register small societies' lotteries.
- 1.15** Licensing authorities have an obligation to provide information to the Gambling Commission, including details of licences, permits and registrations issued.



- 1.16** In addition, licensing authorities are required to prepare and publish, every three years, a statement of the principles which they propose to apply when exercising their functions. The statement, which may also be referred to as a 'policy', can be reviewed and re-published during the three-year period in which it has effect. In preparing the statement, licensing authorities must follow the procedure set out in the Act, including who should be consulted. (See part 6 of this Guidance for more on policy statements.)

### **Status of this Guidance**

- 1.17** In carrying out its functions under the Act a licensing authority must have regard to this Guidance. This general principle applies in relation to a number of the licensing authority's functions, including considering temporary use notices and occasional use notices, and issuing permits. 'Must have regard to' does not mean that the licensing authority must always follow the Guidance to the letter; however, the expectation is that there should be strong and defensible reasons for departing from it.
- 1.18** However, this Guidance has a particular role and significance in the context of the principles that must be applied by licensing authorities when exercising their functions in relation to Part 8 of the Act, including premises licensing. Section 153 of the Act provides that licensing authorities shall aim to permit the use of premises for gambling in so far as they think it
- (a) in accordance with any relevant code of practice under section 24
  - (b) in accordance with any relevant guidance issued by the Commission under section 25
  - (c) reasonably consistent with the licensing objectives (subject to (a) and (b) above), and
  - (d) in accordance with the statement published by the authority under section 349 (hereafter the "Licensing Authority Statement of Policy") (subject to paragraphs (a) to (c) above).
- 1.19** Therefore a licensing authority has no discretion in exercising its functions under Part 8 of the Act to grant a premises licence where that would mean taking a course which it did not think accorded with the Guidance contained in this document, any relevant Commission code of practice or the Licensing Authority Statement of Policy or to be consistent with the licensing objectives. In reaching a view that a grant would be in accordance with such Guidance, code of practice or Licensing Authority Statement of Policy a licensing authority is of course, as any public authority decision maker, obliged to act fairly and rationally.
- 1.20** In drafting this Guidance, the Commission's intention is that, where appropriate, there should be consistency across licensing authorities about the manner in which functions under the Act are carried out. That is important in two respects:
- to meet the obligations on the Commission and on licensing authorities to pursue the licensing objectives, the Commission seeks to achieve a consistent standard of regulation and shared priorities
  - in accordance with government initiatives on minimising the impact of regulation on businesses and, in particular, the Hampton Review of regulation, it is part of the Commission's role to ensure that operators receive sufficient advice to help them understand and comply with gambling regulation. Part of this requires the Commission to be satisfied that operators know what the requirements of licensing authorities are.
- 1.21** In seeking to encourage consistency across licensing areas, the Commission does not seek to fetter the discretion that authorities have under the Act. This Guidance is not intended to replace the judgement of a licensing authority in an individual case. Moreover, this Guidance cannot anticipate every set of circumstances that may arise and, except in relation to Part 8 of the Act, as long as it has been understood and taken into account, licensing authorities may depart from it where they consider it would be right to do so. As

set out above, there should however be strong and defensible reasons for departing from the Guidance; and these need to be clearly expressed and explained if a licensing authority is to avoid judicial review for failing to take the Guidance into account.

- 1.22** Licensing authorities should note that interpretation of the Act is ultimately a matter for the Courts and that they should take their own legal advice on the application and interpretation of the Act. This Guidance is not intended to replace that.
- 1.23** This Guidance should be read in conjunction with the Act, regulations and guidance issued by the Department for Culture, Media and Sport (DCMS) and Scottish Government.
- 1.24** This Guidance has been prepared in accordance with primary and secondary legislation in place or in draft form as at the time of publication. Further editions of this Guidance will be produced as more regulations come into effect and following further consultation.

## Part 2: The licensing framework

**2.1** The Gambling Act 2005 provides for three categories of licence:

- operating licences
- personal licences
- premises licences.

Within these categories, a number of different types of licence may be issued.

**2.2** Each type of licence may have conditions attached to it. Conditions may be attached in a number of ways:

- they may attach automatically, having been set out on the face of the Act
- they may attach through regulations made by the Secretary of State or Scottish Ministers
- they may be attached to operating and personal licences by the Commission or
- they may be attached to premises licences by licensing authorities.

Conditions may sometimes be general in nature (ie they attach to all licences or all licences of a particular class) or they may be specific to a particular licence.

### Operating licences

**2.3** Individuals and companies who intend to provide facilities for certain types of gambling must obtain an operating licence from the Gambling Commission. In general, these licences cover the principal commercial forms of gambling operation. Section 65 of the Act sets out the types of licences that may be issued. These are:

- a casino operating licence
- a bingo operating licence
- a general betting operating licence
- a pool betting operating licence
- a betting intermediary operating licence
- a gaming machine general operating licence (for an adult gaming centre)
- a gaming machine general operating licence (for a family entertainment centre)
- a gaming machine technical operating licence (to manufacture, supply, install, adapt, maintain or repair a gaming machine or part of a gaming machine)
- a gambling software operating licence (to manufacture, supply, install or adapt gambling software)
- a lottery operating licence.

**2.4** The first five and the tenth of these types of licence may authorise remote or non-remote gambling, and the eighth and ninth activities which may or may not be carried on by means of remote communication. However, a person who wishes to offer gambling, or carry on activities, both remotely and non-remotely will need to obtain both a remote and a non-remote operating licence. A single licence cannot authorise both remote and non-remote activities.

**2.5** By virtue of section 68 of the Act some types of operating licence carry additional permissions and a single operating licence may authorise more than one of the activities listed in paragraph 2.3.

**2.6** In considering an application, the Commission will have regard to the licensing objectives, and will consider the suitability of applicants to provide facilities for gambling. In particular, the Commission will have regard to the integrity of the applicant, and any others relevant to the application, and to their competence and financial circumstances.

**2.7** Conditions covering a range of matters may be attached to operating licences. The Commission's powers are wide. A condition could, for example, contain restrictions on the number of premises that may be operated or minimum requirements for staffing levels. In relation to particular categories of licence, conditions could cover the display of rules or the provision of information to customers. The Act provides that the Secretary of State may

impose conditions on operating licences of a specified description. At the date of this Guidance the Secretary of State has done so only in respect of the minimum number of playing positions at wholly automated roulette tables in casinos and the level of participation fees and money prizes in prize bingo played under the auspices of a bingo operating licence<sup>1</sup>. Therefore, it generally falls to the Commission to determine what licence conditions are necessary, both for particular categories of licence and, where appropriate, for particular licensees. Supporting the licence conditions there are codes of practice issued by the Commission for each sector of the gambling industry.

- 2.8** The Commission published the latest version of its *Licence Conditions and Codes of Practice* ('the LCCP') in December 2011. This document, and any subsequent update to it, is available from the Commission's website<sup>2</sup>,
- 2.9** Breach of an operating licence condition gives rise to a criminal offence (as the result of the fact that unauthorised gambling is taking place). The Commission also has a range of administrative penalties available to it, separate from taking criminal proceedings. These include warnings, unlimited fines and suspension or revocation of the licence. The Commission has also consulted on its policy in relation to financial penalties (under section 121 of the Act) and published a Statement of Principles, as part of the Licensing, Compliance and Enforcement policy. Some provisions of the Commission's principal code of practice are designated as 'social responsibility' provisions and breaches of these carry the same weight and potential penalties as breaches of licence conditions. Failure to comply with an ordinary code of practice provision will not be a criminal offence, but it may be taken into account in considering licence breaches or criminal prosecutions.
- 2.10** Operating licences are not transferable. However, there are provisions in the Act which deal with circumstances in which control of a company changes hands.

## Personal licences

- 2.11** One of the mandatory conditions that the Commission has placed on operating licences, except in the case of small-scale operators, is to ensure that for each operating licence at least one person holds a specified management office and that person must hold a personal licence from the Commission.
- 2.12** In addition, the Commission requires key employees in other management offices and those employed to carry out specified operational functions to hold a personal licence as follows:
- people holding management offices including directors, partners, those who are responsible for ensuring compliance with operating licences, marketing, information technology (in so far as it relates to gambling related information technology and software), or have management of employees involved in conducting the gambling
  - people carrying out operational functions including those who are able to influence the outcome of gambling, or handle money in relation to the gambling.
- 2.13** The purpose of the personal licence is to ensure that individuals who control facilities for gambling or are able to influence the outcome of gambling are licensed to ensure that they are suitable to carry out those functions, and that they understand the legal and compliance requirements concerned with the gambling they operate.
- 2.14** Personal licences are granted to an individual and are not transferable. They cannot be held by a company. Once granted they are portable between posts and employers provided that the same type of personal licence is appropriate. The Commission has imposed licence conditions that are specific to personal licences. These require that the holder takes reasonable steps to avoid causing a breach of an operating licence; keeps up

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<sup>1</sup> The Gambling Act 2005 (Operating Licence Conditions) Regulations 2007 SI 2007 No. 2257

<sup>2</sup> Licence conditions and codes of practice available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

to date with developments in gambling legislation or guidance; and informs the Commission of certain specified key events.

- 2.15** Small-scale operators are exempt from the obligation to have at least one member of management hold a personal licence.
- 2.16** The definition of a small-scale operator has been set out in regulations made by the Secretary of State. Individuals or companies are classed as small-scale operators if, in relation to the activity authorised by their operating licence, they have no more than three 'qualifying positions' each of which is occupied by a 'qualified person'.
- 2.17** Qualifying positions are those whose occupants have the primary responsibility for any of the following:
- management of the licensed activity
  - management of financial affairs
  - ensuring compliance with the requirements of the Act
  - marketing the licensed activity
  - management of information technology facilities used in the provision of the licensed activity
  - management of the licensed activity for a particular locality or area of Great Britain where there are five or more sets of premises for which a premises licence is held or
  - management of a single set of casino or bingo licensed premises.
- 2.18** Qualified persons are those:
- named on the operating licence as holding a qualifying position or
  - who are the subject of an application to vary the licence to add their name as a person holding a qualifying position.

## Premises licences

- 2.19** Premises licences will be granted by licensing authorities and may authorise the provision of facilities on:
- casino premises
  - bingo premises
  - betting premises, including tracks
  - adult gaming centres
  - family entertainment centres.
- 2.20** Except in the case of tracks (where the occupier of the track who gets the premises licence may not be the person who actually offers the gambling) premises licences may only be issued to people with a relevant operating licence. For example, to obtain a bingo premises licence the applicant must hold a bingo operating licence. Premises licences are transferable to someone else holding a valid operating licence.
- 2.21** The Act provides that licensing authorities may attach conditions to premises licences. Part 9 of this Guidance suggests what conditions might be considered in relation to each type of licence.
- 2.22** In addition to licences, there are other forms of authorisation that a licensing authority may grant, for example, authorisations for the temporary use of premises, occasional use notices and five different sorts of permit for unlicensed family entertainment centres, prize gaming, gaming machines on alcohol-licensed premises and club gaming and club machine permits.

## Part 3: The Gambling Commission

- 3.1** The Act established the Gambling Commission to regulate all commercial gambling in Great Britain (other than spread betting or the National Lottery).
- 3.2** The Commission was established on 1 October 2005 and has an overriding obligation to pursue and have regard to the licensing objectives as set out in section 1 of the Act, and to permit gambling so far as it thinks is reasonably consistent with them.
- 3.3** The Commission published its Statement of principles for licensing and regulation in September 2009. The Statement sets out how the Commission would approach its regulatory and other functions under the Gambling Act 2005. This document and any subsequent update to it is available from the Commission's website<sup>3</sup>.

### About the Commission

- 3.4** The Commission is headed by a Chairman and other Commissioners appointed by the Secretary of State.
- 3.5** The Commission keeps in regular contact with representatives of those it licences and with licensing authorities. It aims to meet regularly with representatives of licensing authorities such as the Local Government Association (LGA), the Convention of Scottish Local Authorities (COSLA), the Welsh Government Association (WLGA), the Society of Local Authority Lawyers and Administrators (SOLAR), and the Institute of Licensing. These meetings provide opportunities to informally review this Guidance and to discuss emerging trends and issues of concern. Changes to this Guidance may be made only after formal consultation, as required by the Act.

### Operating and personal licences

- 3.6** The Commission issues operating licences under the 2005 Act to organisations and individuals who are providing facilities for gambling. It also issues personal licences to certain categories of people working in the gambling industry.
- 3.7** The Commission has specified the conditions under which these licences are granted, and issued codes of practice for the provision and management of gambling facilities.
- 3.8** The Commission has legal powers to monitor licence holders and is able to apply penalties. Penalties for both operating and personal licences may include fines and/or revocation of the licence. The Commission also has the ability to prosecute operating and personal licence holders. It may also investigate and, where appropriate, in consultation with licensing authorities and the police, may prosecute illegal gambling.

### Advice to the Secretary of State

- 3.9** The Commission is required to advise the Secretary of State about the incidence of gambling, the manner in which gambling is carried on, the effects of gambling and the regulation of gambling. Copies of the advice are sent to Scottish Ministers.
- 3.10** To ensure that the Commission is well placed to provide advice, it monitors developments in gambling in Great Britain and in other jurisdictions. It works closely with a range of stakeholders including the National Lottery Commission, academics, the Department of Health and bodies working in the field of gambling research and problem gambling.
- 3.11** Licensing authorities have a key role in providing information to the Commission to assist it

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<sup>3</sup> Statement of principles for licensing and regulation available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

in carrying out these functions. Part 13 of this Guidance provides information regarding the Commission's advice paper which sets out the requirements on local authorities to provide data on those they licence and on compliance and enforcement action that may be necessary.

- 3.12** The Commission also requires operators to submit information and, together, these sources of information will allow it to build up a picture of gambling in Great Britain that can be relied upon so the Commission offers advice that is evidence-based.

### **Further information about the Commission**

- 3.13** Further information about the Commission can be found on our website [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)



## Part 4: Licensing authorities

### What are licensing authorities?

- 4.1** Section 2 of the Act provides that the following are licensing authorities:
- (a) in relation to England:
    - (i) a district council
    - (ii) a county council for a county in which there are no district councils
    - (iii) a London borough council
    - (iv) the Common Council of the City of London
    - (v) the Council of the Isles of Scilly
  - (b) in relation to Wales:
    - (i) a county council
    - (ii) a county borough council
  - (c) in relation to Scotland, a licensing board constituted under section 5 of the Licensing (Scotland) Act 2005.
  - (d) for the purposes of licensed premises gaming machine permits, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.
- 4.2** It should be noted that the Act uses the definitions of local authority set out in the Local Authority Act 1972. The commonly used term 'unitary authority' is not used in that Act nor in the subsequent Acts that re-organised local government (the Local Government Act 1985 and Local Government Act 1992). These Acts have created single tier unitary authorities in the form of:
- (i) London borough councils
  - (ii) non-metropolitan county councils (for areas in which there are no district councils)
  - (iii) non-metropolitan district councils (for areas where there are no county councils).

### Responsibilities of the licensing authority and delegations

- 4.3** The power of a licensing authority to delegate decision-making is set out below.

#### (a) England and Wales

Section 154 of the Act provides that all decisions relating to premises licences are delegated to the licensing committee of the authority that has been established under section 6 of the Licensing Act 2003 (referred to in this Guidance as the 'licensing committee'), except:

- a resolution not to issue casino licences, which must be taken by the whole authority (see part 17 of this Guidance for more information)
- functions in relation to the Licensing Authority Statement of Policy, which must be taken by the whole authority (see part 6 for more information)
- setting fees (to the extent that a licensing authority has delegated power in relation to fees) is the responsibility of the full council – the full council can delegate decisions to the licensing committee, but there is no automatic delegation, so each authority must decide its approach to setting fees.

#### (b) Scotland

Section 155 of the Act provides that all decisions relating to premises licences may be delegated to a committee of the authority, a member or members of the authority, the clerk of the authority, or any person appointed to assist the clerk. The exceptions to this are:

- resolutions by the licensing authority not to issue casino licences
- formulation of the Licensing Authority Statement of Policy under section 349
- the matters listed under paragraph 4.4 below.



The first two categories may not be delegated at all, but the third category may be delegated to a committee of the authority, or to a member or members of the authority.

## Delegations

- 4.4** Decisions that are delegated to a licensing committee may be further delegated to a sub-committee of the licensing committee, which may arrange for them to be taken by an officer of the authority. However, the following decisions may not be made by an officer (ie they must be made by either the sub-committee or the licensing committee):
- determination of an application for a premises licence where representations have been made and not withdrawn
  - determination of an application for variation of a premises licence where representations have been made and not withdrawn
  - determination of an application for transfer, following representations by the Commission
  - determination of an application for a provisional statement where representations have been made and not withdrawn
  - review of a premises licence.
- 4.5** Decisions on temporary use notices (see part 14 of this Guidance) are delegated to the licensing committee, and may be sub-delegated to a sub-committee, or an officer of the licensing authority. Any decision to give a counter-notice cannot be delegated to an officer, so it must be made by the full committee or a sub-committee. In Scotland, the powers mirror those in England and Wales.
- 4.6** Decisions in relation to permits (see part 23 of this Guidance) are delegated to the licensing committee and may be further delegated to a sub-committee or an officer of the authority. The following decisions may not be made by an officer of the licensing authority:
- determination of an application for a club gaming permit or club machine permit in respect of which objections have been made and not withdrawn (see Schedule 12, para 28(2))
  - cancellation of a club gaming or club machine permit.
- 4.7** It is open to licensing committees to choose not to delegate decisions. An important consideration in determining whether any particular decision should be delegated will be whether delegation might give rise to a risk of judicial review challenge (particularly on the basis of an appearance of bias). A licensing committee should consult the licensing authority lawyers where it considers that concerns of this nature may be raised.
- 4.8** Table 4.i summarises the lowest level of delegation that is permitted under sections 154 and 155. These sections do not, however, apply to certain functions under the Act (for example, the removal of the automatic gaming exemption for alcohol-licensed premises under section 284). Licensing authorities will, in relation to those functions, need to ensure that they are familiar with any changes that have been made to the relevant legislation dealing with the allocation of responsibility for functions between the authority as a whole, and the executive.<sup>4</sup> Any such changes are likely to affect the way that licensing authorities can delegate such functions under other local government legislation.

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<sup>4</sup> In England this is the Local Authorities (Functions and Responsibilities)(Amendment no 2)(England) Regulations 2007, made by the Department of Communities and Local Government (DCLG) (SI No. 2007/1557)

**Table 4.i: Summary of licensing authority delegations permitted under the Gambling Act**

Matter to be dealt with	Full Council	Sub-committee of licensing committee	Officers
Final approval of the Licensing Authority Statement of Policy	X		
Policy not to permit casinos	X		
Fee setting (when appropriate)		X (if delegated by full council)	
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Commission or responsible authority	Where no representations received from the Commission or responsible authority
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Review of a premises licence		X	
Application for club gaming/club machine permits		Where objections have been made and not withdrawn	Where no objections made/objections have been withdrawn
Cancellation of club gaming/club machine permits		X	
Applications for other permits			X
Cancellation of licensed premises gaming machine permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	

X indicates the lowest level to which decisions can be delegated

## Licensing Act 2003

**4.9** Licensing authorities in England and Wales also have responsibilities under the Licensing Act 2003. There are some inter dependencies between the Licensing Act 2003 and the Gambling Act 2005 in terms of the framework for decision making and the procedures that must be followed. But licensing authorities must take care to ensure that in dealing with applications under the Gambling Act they follow the procedures that this Act requires and only take into account issues that are relevant to this Act. Particular care should be taken to distinguish Gambling Act considerations from those relevant to alcohol licensing, public entertainment or late night refreshments.

## Licensing (Scotland) Act 2005

**4.10** The position in Scotland is similar, with similar procedures for decision making and procedures to be followed under both the Licensing (Scotland) Act 2005 and the Gambling Act 2005. The same care must therefore be taken by licensing authorities in Scotland to distinguish those issues which are relevant to Gambling Act matters in their decision

making and to ensure that the procedures prescribed by the Gambling Act and related regulations are followed in Gambling Act matters.

## Licensing committee's discretion to regulate its own proceedings

- 4.11** In carrying out its functions under this Act a local authority must 'have regard' to Guidance issued by the Commission under section 25. Please note that the definition of 'local authority' in section 25 is synonymous with the definition of 'licensing authorities' set out in section 2.
- 4.12** However, the Commission's statutory Guidance has a more specific role in the context of the principles that must be applied by licensing authorities when exercising their functions in relation to premises licensing and temporary use notices (under Part 8 of the Act) is more prescriptive. Section 153 provides that licensing authorities shall aim to permit the use of premises for gambling in so far as they think it:
- (a) in accordance with any relevant code of practice under section 24
  - (b) in accordance with any relevant guidance issued by the Commission under section 25
  - (c) reasonably consistent with the licensing objectives (subject to (a) and (b) above), and
  - (d) in accordance with the Licensing Authority Statement of Policy (subject to (a) to (c) above).
- 4.13** Therefore, as explained at paragraph 1.21 above, a licensing authority has no discretion in exercising its functions under Part 8 of the Act to grant a premises licences where that would mean taking a course which it did not think accorded with the guidance contained in this document, any relevant Commission code of practice or the Licensing Authority Statement of Policy.
- 4.14** The Commission's view is that, whenever appropriate, there should be consistency across licensing authorities in the manner in which functions under the Act are carried out. In seeking to encourage consistency across licensing areas, the Commission does not seek to fetter the discretion that authorities have under the Act. This Guidance is not intended to replace the judgement of a licensing authority in an individual case. Moreover, this Guidance cannot anticipate every set of circumstances that may arise and, except in relation to Part 8 (premises licences) of the Act, as long as it has been understood and taken into account, licensing authorities may depart from it where they consider it would be right to do so. However, as discussed in part 1 of this Guidance, there should be strong and defensible reasons for departing from the Guidance, and these will need to be clearly set out if a licensing authority is to avoid judicial review for failing to take the Guidance into account.
- 4.15** Licensing authorities should note that interpretation of the Act will ultimately be a matter for the Courts and that they should take their own legal advice on the application and interpretation of the Act. This Guidance is not intended to replace that.

## The application of other local government legislation

- 4.16** Conditions on premises licences should relate only to gambling, as considered appropriate in the light of the principles to be applied by licensing authorities under section 153 (see paragraph 4.12). Accordingly, if the Commission's *Licence Conditions and Codes of Practice* (LCCP) or other legislation places particular responsibilities or restrictions on an employer or the operator of premises, it is not necessary or appropriate to impose the same or similar duties in conditions on a premises licence issued in accordance with the Gambling Act. Similarly, where other legislation confers powers on inspection and

enforcement agencies in relation to separate activities or concerns, the Gambling Act does not affect the continued use of such powers; for example, the powers of an environmental health officer in respect of statutory nuisance under the Environmental Protection Act 1990.

## Conflicts of interest

- 4.17** Councillors in England will be aware that the model code of conduct drawn up by the Standards Board for England (now under the Department for Communities and Local Government) will apply in their decision making and that requires that public confidence in the probity of decision making is paramount<sup>5</sup>.
- 4.18** The general principles that apply in decision making to underpin the code of conduct are that members of licensing authorities should:
- serve only the public interest and should never improperly confer an advantage or disadvantage on any person
  - not place themselves in situations where their honesty and integrity may be questioned and make decisions on merit
  - be accountable to the public for their actions
  - reach their own conclusions on the issues before them and act in accordance with those conclusions
  - uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.
- 4.19** The Standards Commission for Scotland has produced similar guidance for councillors in Scotland. The Code of Conduct for Councillors emphasises the importance of all applications being dealt with fairly, and being seen to be dealt with fairly.
- 4.20** In Wales, the Local Government Ombudsman will investigate if a councillor has broken the code of conduct for councillors drawn up by their local authority.

## Where can a licensing authority obtain further advice?

- 4.21** The Gambling Commission website contains further and fuller information about the work of the Commission. Please see the website for the latest information on licence conditions, codes of practice and other guidance.
- 4.22** Please refer to the DCMS website for the latest information and for details of the regulations issued by the Secretary of State in relation to the Gambling Act. The website address is [www.culture.gov.uk](http://www.culture.gov.uk). Similar information in Scotland can be accessed on [www.scotland.gov.uk/Topics/Justice/Licensing/Gambling](http://www.scotland.gov.uk/Topics/Justice/Licensing/Gambling)

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<sup>5</sup> The National Model Code of Conduct established under the Local Government Act 2000 by Statutory Instrument 2001 number 1401 'The Relevant Authorities (General Principles) Order 2001' on 5 November 2001

## Part 5: Principles to be applied by licensing authorities

### Principles to be applied

- 5.1** In exercising most of their functions under the 2005 Act, licensing authorities must have regard to the licensing objectives set out in section 1 of the Act. In particular, licensing authorities must have regard to the licensing objectives when exercising their functions in relation to premises licences, temporary use notices and some permits. Those objectives are:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
  - ensuring that gambling is conducted in a fair and open way
  - protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 5.2** In considering applications, licensing authorities in England and Wales should take particular care to bear in mind that these objectives are not the same as those in the Licensing Act 2003. In particular, they do not include considerations in relation to public safety or prevention of public nuisance. The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling.
- 5.3** Similarly in Scotland the licensing objectives for the Licensing (Scotland) Act 2005 are different. In particular the Gambling Act does not include the objectives of preventing public nuisance and protecting and improving public health.
- 5.4** Section 153 of the Act provides that in exercising its functions under Part 8 of the Act (premises licensing and provisional statements), a licensing authority shall aim to permit the use of premises for gambling in so far as it thinks it is:
- (a) in accordance with any relevant code of practice under section 24 (i.e. such as that found within the Commission's *Licence Conditions and Codes of Practice* (LCCP))
  - (b) in accordance with any relevant guidance issued by the Commission under section 25 (ie this document)
  - (c) reasonably consistent with the licensing objectives (subject to (a) and (b) above), and
  - (d) in accordance with the Licensing Authority Statement of Policy (subject to (a) and (c) above). (See part 6 of this Guidance.)
- 5.5** Section 153 applies not only to a licensing authority's relevant functions under Part 8 of the Act (ie applications for the grant, transfer, reinstatement or review of premises licences and provisional statements) but also when it is deciding whether to give a counter notice on receipt of a temporary use notice. Its effect is that, whilst in such circumstances there is a presumption in favour of permitting the relevant premises to be used for gambling, the licensing authority may not do so unless satisfied that such use would be in accordance with the guidance contained in this document, any relevant Commission code of practice and its own statement of licensing policy as well as reasonably consistent with the licensing objectives. In reaching a view that the grant of a licence, or the giving of the temporary use notice, is in accordance with such guidance, code of practice or policy statement, a licensing authority is, in common with all such public authority decision makers, under a duty to act fairly and rationally. In cases where an authority is concerned whether a grant would be in accordance with, for example, the guidance in this document, this can be resolved by the imposition of appropriate licence conditions. In the unlikely event that a licensing authority perceives a conflict between a provision of a Commission code of practice or this Guidance and its own policy statement or view as to the application of the licensing objectives the structure of section 153 makes it plain that the Commission's codes and Guidance take precedence.
- 5.6** Section 153 also makes it clear that in deciding whether or not to grant a licence a licensing authority must not have regard to the expected demand for gambling premises that are the subject of the application.

- 5.7** The requirements in section 153 are subject to the licensing authority's power (under section 166) to resolve not to issue casino premises licences. This means that a resolution not to issue a casino premises licence applies regardless of the matters set out in section 153.
- 5.8** It should be noted that, unlike the Licensing Act, the Gambling Act does not include as a specific licensing objective the prevention of public nuisance. Any nuisance associated with gambling premises should be tackled under other relevant legislation.

## More about the licensing objectives

### Objective 1

#### **Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime**

- 5.9** The Commission play a leading role in preventing gambling from being a source of crime. It will maintain rigorous licensing procedures that aim to prevent criminals from providing facilities for gambling, or being associated with providing such facilities. The Act provides the Commission with powers to investigate the suitability of applicants for operating and personal licences, and others relevant to the application. This will provide the Commission with the power to make enquiries about and investigate those who are involved in the control of a company or the provision of gambling. In considering applications for operating and personal licences the Commission will, in particular, take a serious view of any offences involving dishonesty committed by applicants or persons relevant to the application.
- 5.10** As applicants for premises licences (except occupiers of tracks who do not propose to offer gambling themselves) will have to hold an operating licence from the Commission before the premises licence can be issued, licensing authorities will not need to investigate the suitability of an applicant. If during the course of considering a premises licence application, or at any other time, the licensing authority receives information that causes it to question the suitability of the applicant to hold an operating licence, these concerns should be brought to the attention of the Commission without delay.
- 5.11** Among other matters, licensing authorities may need to consider the location of premises in the context of this licensing objective. If an application for a licence or permit is received in relation to premises that are in an area noted for particular problems with organised crime, for example, licensing authorities should think about what (if any) controls might be appropriate to prevent those premises becoming a source of crime. These might include conditions being put on the licence, such as a requirement for door supervisors.
- 5.12** A licensing authority will need to consider questions raised by the location of gambling premises when:
- formulating its Licensing Authority Statement of Policy
  - receiving relevant representations to an application
  - dealing with applications as a responsible authority in its own right
  - considering applications before it.
- 5.13** Regulatory issues arising from the prevention of disorder are likely to focus almost exclusively on premises licensing, rather than on operating licences. (Although if there are persistent or serious disorder problems that an operator could or should do more to prevent, the licensing authority should bring this to the attention of the Commission so that it can consider the continuing suitability of the operator to hold an operating licence.)
- 5.14** Local authorities are experienced in making judgements in relation to the suitability of premises, particularly those for which they have responsibilities under the Licensing Act 2003, in which context they have wider powers to also take into account measures to prevent nuisance.



- 5.15** In relation to preventing disorder, licensing authorities have the ability under section 169 of the Act to attach additional conditions to premises licences, and are entitled to include a requirement for door supervision, as provided for in section 178 of the Act. If a person employed on door supervision would be required to hold a licence issued by the Security Industry Authority (SIA), that requirement will have force as though it were a condition on the premises licence. Further information on conditions can be found in part 9 of this Guidance.
- 5.16** Local authorities should note that in the case of gambling premises licences, disorder is intended to mean activity that is more serious and disruptive than mere nuisance. Factors to consider in determining whether a disturbance was serious enough to constitute disorder would include whether police assistance was required and how threatening the behaviour was to those who could see or hear it. There is not a clear line between nuisance and disorder and the licensing authority should take the views of its lawyers before determining what action to take in circumstances in which disorder may be a factor.

## **Objective 2**

### **Ensuring that gambling is conducted in a fair and open way**

- 5.17** The Commission is concerned to ensure that not only is gambling fair in the way it is played, but also that the rules are transparent to players and they know what to expect. It achieves this by working to ensure that:
- operating and personal licences are issued only to those who are suitable to offer gambling facilities or work in the industry
  - easily understandable information is made available by operators to players about, for example: the rules of the game, the probability of losing or winning, and the terms and conditions on which business is conducted
  - the rules are fair
  - advertising is not misleading
  - the results of events and competitions on which commercial gambling takes place are made public
  - machines, equipment and software used to produce the outcome of games meet standards set by the Commission and operate as advertised.
- 5.18** Generally the Commission would not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be a matter for either the management of the gambling business, and therefore subject to the operating licence, or will be in relation to the suitability and actions of an individual and therefore subject to the personal licence. (However, if licensing authorities suspect that gambling is not being conducted in a fair and open way this should be brought to the attention of the Commission so that it can consider the continuing suitability of the operator to hold an operating licence or of an individual to hold a personal licence.)
- 5.19** In relation to the licensing of tracks the licensing authority's role will be different from other premises in that track owners will not necessarily have an operating licence. In those circumstances the premises licence may need to contain conditions to ensure that the environment in which betting takes place is suitable. Please see part 20 of this Guidance for more information.

## **Objective 3**

### **Protecting children and other vulnerable persons from being harmed or exploited by gambling**

- 5.20** With limited exceptions, the intention of the Gambling Act is that children and young persons should not be permitted to gamble and should be prevented from entering those gambling premises which are adult-only environments. The objective refers to protecting children from being 'harmed or exploited by gambling'. That means preventing them from

taking part in gambling and for there to be restrictions on advertising so that gambling products are not aimed at children or advertised in such a way that makes them particularly attractive to children, excepting Category D gaming machines.

- 5.21** In relation to casinos, the Commission has issued a code of practice on access to casino premises by children and young persons, as provided for by section 176 of the Act. The code of practice is available as part of the *Licence Conditions and Codes of Practice (LCCP)* on the Commission website<sup>6</sup>. In accordance with that section, adherence to the code will be a condition of the premises licence. (Please see part 9 of this Guidance for more information.)
- 5.22** The Act does not seek to prohibit particular groups of adults from gambling in the same way that it prohibits children. The Commission does not seek to define ‘vulnerable persons’, but it does for regulatory purposes assume that this group includes people who gamble more than they want to; people who gamble beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to mental health needs, learning disability or substance misuse relating to alcohol or drugs.
- 5.23** Licensing authorities need to consider, in relation to particular premises, whether any special considerations apply in relation to the protection of vulnerable persons. Any such considerations need to be balanced against the authority’s objective to aim to permit the use of premises for gambling.

## Good practice in regulation

- 5.24** The Regulators’ Compliance Code (the Compliance Code) has been introduced by what is now the Department for Business, Information and Skills (BIS) The Compliance Code supports the Government’s better regulation agenda and is based on the recommendations in the Hampton Report. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business. The Regulators’ Compliance Code only applies to councils in England and those regulatory functions as specified in Part 3 of the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (which includes the Gambling Act 2005).
- 5.25** The Compliance Code does not replace the Enforcement Concordat, introduced in 1998. The Enforcement Concordat still applies to those regulatory functions in England that the Compliance Code does not apply to, and it also applies to council regulatory functions in Wales and Scotland The Compliance Code now extends to specified regulatory functions of licensing authorities in Scotland, Northern Ireland, and Wales.
- 5.26** In relation to its responsibilities, the Commission will be following best practice as set out by the Better Regulation Executive and the Hampton review on regulatory inspections and enforcement. In the absence of other guidance developed specifically for local licensing functions, licensing authorities are recommended to follow the Better Regulation and Hampton principles. These are primarily relevant to compliance and enforcement functions, but the Better Regulation principles in particular have a read-across to licensing functions. These are that regulators should be:
- proportionate – regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised
  - accountable – regulators must be able to justify decisions, and be subject to public scrutiny
  - consistent – rules and standards must be joined up and implemented fairly
  - transparent – regulators should be open, and keep regulations simple and user friendly

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<sup>6</sup> LCCP available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)



- targeted – regulation should be focused on the problem, and minimise side effects.

## Human Rights Act 1998

**5.27** The Secretary of State has certified that the Act is compatible with the European Convention on Human Rights. In considering applications, and taking enforcement action, under the Gambling Act licensing authorities should bear in mind that they are subject to the Human Rights Act and in particular:

- Article 1, Protocol 1 – peaceful enjoyment of possessions. A licence is considered a possession in law and people should not be deprived of their possessions except in the public interest
- Article 6 – right to a fair hearing
- Article 8 – respect for private and family life. In particular, removal or restriction of a licence may affect a person's private life
- Article 10 – right to freedom of expression.

Licensing authorities are reminded of their duty when applying their Licensing Authority Statement of Policy to consider whether, in the light of relevant representations made to them, exceptions to those policies should be made in any particular case.

**5.28** In deciding to reject an application, a licensing authority should rely on reasons that demonstrate that the licensing objectives are not being, or are unlikely to be, met. Licensing authorities should be aware that other considerations such as moral or ethical objections to gambling are not a valid reason to reject applications for premises licences. This is because such objections do not relate to the licensing objectives. An authority's decision cannot be based on dislike of gambling, or a general notion that it is undesirable to allow gambling premises in an area (with the exception of the casino resolution powers).

## Part 6: Licensing Authority Statement of Policy

- 6.1** Section 349 of the Act requires all licensing authorities to prepare and publish a statement of the principles that they propose to apply in exercising their functions under the Act during the three-year period to which the policy applies.
- 6.2** The Licensing Authority Statement of Policy will last for a maximum of three years, but can be reviewed and revised by the authority at any time. The statement must be produced following consultation with those bodies and persons set out in subsection (3) of section 349 of the Act. Regulations made by the Secretary of State, or Scottish Ministers in Scotland, prescribe the form of statements, and the procedure to be followed in relation to them and their publication<sup>7</sup>.

### Fundamental principles

- 6.3** All Licensing Authority Statements of Policy should begin by stating the three licensing objectives, which the policy will promote. The statement should also state that the licensing authority shall aim to permit the use of premises for gambling as set out in section 153 of the Act.
- 6.4** Licensing Authority Statements of Policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, a range of general duties are imposed on the self-employed, employers and operators of gambling premises, both in respect of employees and of the general public, by legislation governing health and safety at work and fire safety. Therefore such requirements need not be included in the Licensing Authority Statement of Policy.
- 6.5** In determining its policy, the licensing authority must have regard to this Guidance, and give appropriate weight to the views of those it has consulted. In determining what weight to give particular representations, the factors to be taken into account will include:
- who is making the representations (what is their expertise or interest)
  - relevance of the factors to the licensing objectives
  - how many other people have expressed the same or similar views
  - how far the representations relate to matters that the licensing authority should be including in its policy statement.
- 6.6** In relation to premises licensing, licensing authorities can only consider matters within the scope of the Guidance, Act and Codes of Practice. Even if there is a large response regarding a certain issue, an authority may be unable to deal with the issue under the Gambling Act. However the issue may be a matter for other legislation, for example planning.
- 6.7** It will be up to the licensing authority to ensure that it looks at the views of consultees and considers carefully whether they should be taken into account and to what extent (having regard to the above factors). A licensing authority should always be able to give reasons for the decisions it has made following consultation. Having regard to this Guidance will be important for consistency, especially where licensing authority boundaries meet.
- 6.8** As with the Commission, it is expected that local licensing authorities will regulate gambling in the public interest.
- 6.9** While statements of policy may set out a general approach to the exercise of functions under the Act, no statement of policy should override the right of any person to make an application under the Act and to have that application considered on its merits. Additionally, a statement of policy must not undermine the right of any person to make representations

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<sup>7</sup> SI No. 636: The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006  
SI No. 154: The Gambling Act 2005 (Licensing Authority Policy Statement) (Scotland) Regulations 2006

on an application or to seek a review of a licence where provision has been made for them to do so. However if a 'no-casino' resolution has been passed by an authority it does not have to consider applications for new casino premises licences in its area.

### **'Demand' for gaming premises**

- 6.10** Previous legislation required that the grant of certain gambling permissions should take account of whether there is unfulfilled demand for the facilities. Absence of unmet demand is not a criterion for a licensing authority in considering an application for a premises licence under the Gambling Act. Each application must be considered on its merits without regard to demand.
- 6.11** The Licensing Authority Statement of Policy should reflect this situation and not comment on the need for gambling premises.
- 6.12** However, the licensing authority may comment on the location of premises in so far as the location relates to the licensing objectives. So, for example, a Licensing Authority Statement of Policy could, and should, set out the general principles that the licensing authority will apply when determining whether the location of proposed gambling premises is acceptable (with or without conditions) in light of the licensing objectives. For example, a Licensing Authority Statement of Policy might set out that the authority will consider very carefully whether applications for premises licences in respect of certain gambling premises located very close to a school or a centre for gambling addicts should be granted in light of the third licensing objective. Any such policy must, however, come with the qualification that each case will be decided on its merits, and will depend to a large extent on the type of gambling that it is proposed will be offered on the premises. If an applicant for a premises licence can show how licensing objective concerns can be overcome, that will have to be taken into account.

## **Consultation**

- 6.13** Section 349 (3) requires the licensing authority to consult the following on the Licensing Authority Statement of Policy or any subsequent revision:
- in England and Wales, the chief officer of police for the authority's area
  - in Scotland, the Chief Constable of the police force maintained for the police area comprising that area
  - one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area
  - one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under this Act.
- 6.14** The list of persons to be consulted when preparing the Licensing Authority Statement of Policy is deliberately wide. This enables licensing authorities to undertake a comprehensive consultation exercise with anyone who may be affected by or otherwise have an interest in the Licensing Authority Statement of Policy.
- 6.15** Licensing authorities will develop their own consultation practices but they may like to consider the following:
- consultation with a range of organisations including faith groups, voluntary and community organisations working with children and young people, organisations working with people who are problem gamblers, medical practices or primary care trusts, and advocacy organisations (such as the Citizen's Advice Bureau and trade unions)
  - consultation with other tiers of local government (where they exist)
  - consultation with businesses that are, or will be, holders of a premises licence
  - consultation with the organisations named as responsible authorities in the Act

- using a variety of consultation methods including meetings with gambling businesses in the local authority area and open forums for the public.

**6.16** Any written consultation should follow best practice as set out by the Department for Business, Innovation and Skills including allowing 12 weeks for responses to the consultation<sup>8</sup>. Consultation documents could be provided on the licensing authority's website.

## **Form and content of the Licensing Authority Statement of Policy**

**6.17** Regulations made by the Secretary of State or Scottish Ministers set out requirements as to the form and publication of Licensing Authority Statements of Policy and subsequent revisions of statements. In addition to the requirements set out by the regulations (below), this Guidance sets out certain information that the Commission considers should be included in all Licensing Authority Statements of Policy.

**6.18** The regulations provide for the form of the statement to be determined by the licensing authority subject to the following requirements:

- Licensing Authority Statement of Policy must contain an introductory section summarising the matters contained within the statement, describing the geographical area to which the statement applies, and listing the persons consulted in preparing the statement.

**6.19** As required by the regulations, the statement should make clear the geographical area that it covers. This may be achieved by including a plan of the area covered by the statement.

**6.20** The statement should also set out the licensable activities that are covered.

**6.21** Statements of principles to be applied by the licensing authority in exercising its functions must be contained in four separate sections within the Licensing Authority Statement of Policy as set out below:

- 1) Licensing Authority Statements of Policy must contain a section that sets out the principles to be applied by the authority in designating, in writing, a body which is competent to advise the authority about the protection of children from harm.

**6.22** Section 157 of the Act sets out the responsible authorities. Within this section, the licensing authority has discretion to determine the most appropriate body competent to advise the authority about the protection of children from harm. Such a body may, but not necessarily, be the Local Safeguarding Children Board in England and Wales, or the Child Protection Committee in Scotland. The licensing authority must consider which body best fulfils this function and the Licensing Authority Statement of Policy should set out this consideration, or the criteria the authority intends to use, in order to designate that body in writing.

- 2) Licensing Authority Statements of Policy must contain a section that sets out the principles to be applied by the authority to determine whether a person is an interested party in relation to a premises licence, or in relation to an application for or in respect of a premises licence.

**6.23** Section 158 of the Act defines interested parties as persons who:

- (a) live sufficiently close to the premises to be likely to be affected by the authorised activities
- (b) have business interests that might be affected by the authorised activities or
- (c) represent persons who satisfy paragraph a) or b).

**6.24** Licensing authorities must consider whether a person is an interested party with regard to particular premises on a case by case basis, judging each on its merits. However, an authority may have regard to a number of factors when making its decision. These factors

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<sup>8</sup> Further information is available at [www.bis.gov.uk](http://www.bis.gov.uk)

should be set out in this part of the Licensing Authority Statement of Policy. An authority may take into account, for example, the size of the premises and the nature of the activities taking place. Larger premises may be considered to affect people over a broader geographical area compared with smaller premises offering similar facilities.

**6.25** Licensing authorities should include guidance in their Licensing Authority Statements of Policy whom they consider comes within the category of those who represent persons living close to premises, or have business interests that may be affected by it. For example, this category could include trade associations and trade unions and residents' and tenants' associations. It is expected that the types of organisations that may be considered to have business interests will be given a wide interpretation to include, for example, partnerships, charities, faith groups and medical practices etc.

3) Licensing Authority Statements of Policy must contain a section that sets out the principles to be applied by the authority in exercising the functions under Sections 29 and 30 of the Act with respect to the exchange of information between it and the Commission, and the functions under section 350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 of the Act.

**6.26** The Act empowers the Commission to seek information from licensing authorities, and places an obligation on authorities to comply with information requests. Specifically, section 29 of the Act entitles the Commission to request information from licensing authorities and to set out the manner in which the information is compiled, collated and provided, providing it:

- forms part of a register maintained under the Act
- is in the possession of the authority in connection with a provision of the Act.

**6.27** Section 350 of the Act allows licensing authorities to exchange information with other persons or bodies listed in Schedule 6 (1) for use in the exercise of functions under the Act as follows:

- a constable or police force
- an enforcement officer
- a licensing authority
- HMRC
- the Gambling Appeal Tribunal
- the Secretary of State
- Scottish Ministers.

**6.28** The licensing authority must set out how it will approach information exchange with other regulatory bodies under the Act, and whether it intends to establish any protocols in this regard. The statement should also include the authority's approach to data protection and freedom of information. In particular, how information will be protected, whether the confidentiality of those making representations will be maintained, what information will be shared with other agencies or persons and how information can be accessed by data subjects.

**6.29** Further information regarding the exchange of information can be found in part 13 of this Guidance.

**6.30** For the purposes of their Licensing Authority Statement of Policy, licensing authorities should confirm that they will act in accordance with the relevant legislation and Guidance from the Commission and will adopt the principles of better regulation.

4) Licensing Authority Statements of Policy must contain a section that sets out the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified in that section.

- 6.31** Licensing authorities are referred to what has been said at paragraphs 5.23 to 5.25 above concerning the Regulators' Compliance Code.
- 6.32** Further guidance on licensing authorities' compliance and enforcement responsibilities is available in part 36 of this Guidance. This has been developed following discussions between the Commission, the police, licensing authorities and other law-enforcement and regulatory agencies to agree respective roles in relation to particular types of gambling and licensed premises.
- 6.33** It is recommended that licensing authorities adopt a risk-based inspection programme. This would include targeting high-risk premises which require greater attention, whilst operating a lighter touch in respect of low-risk premises, so that resources are more effectively concentrated on problem premises. The policy statement should set out the principles to be applied by the authority in respect of such a programme and the criteria the authority is likely to use to determine the level of risk in respect of premises.
- 6.34** Many licensing authorities in England and Wales will have general enforcement policies which are in accordance with the codes of practice developed with the Crown Prosecution Service. Licensing authorities in England and Wales may wish to include in their Licensing Authority Statements of Policy that they will apply these codes in the management of criminal cases.
- 6.35** Part 36 of this Guidance covers more detailed issues such as the agreement of protocols with the local police and the Commission on enforcement issues.

## **Other matters to be covered in policy statements**

- 6.36** In addition to these requirements as set out in regulations, a number of other matters should be included in Licensing Authority Statements of Policy.

### **Consideration of applications**

- 6.37** The authority should set out in its statement what factors it may take into account when considering applications for premises licences, permits and other permissions and matters that it will consider relevant when determining whether to review a licence. This is where considerations such as the proximity of gambling premises to schools and vulnerable adult centres, or to residential areas where there may be a high concentration of families with children, should be detailed. Any such policy must, however, come with the qualification that each case will be decided on its merits, so if an applicant can show how they might overcome licensing objective concerns, that will have to be taken into account.

### **Statement regarding casino resolution**

- 6.38** Under section 166(5) of the Gambling Act, any resolution not to issue casino licences must be published in the Licensing Authority Statement of Policy. In addition, the Licensing Authority Statement of Policy should include details about how the authority has taken or will take a decision to pass (or not to pass) a casino resolution.

### **Statement of principles**

- 6.39** If an authority intends to apply a statement of principles when considering applicant suitability for applications for FEC permits under paragraph 7 of Schedule 10, or prize gaming permits under paragraph 8 of Schedule 14 of the Act, it is not obliged to include those statements as part of the Licensing Authority Statement of Policy, but may want to consider doing so to make them available in one place.

### **Declaration by licensing authority**

- 6.40** Each Licensing Authority Statement of Policy should include a declaration which sets out that in producing the final Licensing Authority Statement of Policy, the authority has had



regard to the licensing objectives of the Gambling Act 2005, the Guidance issued by the Commission, and any responses from those consulted on the policy statement. To avoid later challenge, it would be sensible if the licensing authority demonstrated how the licensing objectives and Commission Guidance have been taken into account when drawing up the statement.

- 6.41** Authorities should note that the regulations and this Guidance do not prevent authorities from including any additional information that the authority considers necessary or helpful.

## **Advertisement of the Licensing Authority Statement of Policy or Revisions**

- 6.42** Before publishing a statement or revision, the regulations made by the Secretary of State or Scottish Ministers require authorities to publish a notice of their intention to publish a statement or revision (this must be done no later than the date on which the statement or revision is to be published). The notice must:
- (a) specify the date on which the statement or revision is to be published
  - (b) specify the date on which the statement or revision will come into effect
  - (c) specify the internet address where the statement or revision will be published and the address of the premises at which it may be inspected
  - (d) be published on the authority's website and in/on one or more of the following places:
    - a local newspaper circulating in the area covered by the statement
    - a local newsletter, circular, or similar document circulating in the area covered by the statement
    - a public notice board in or near the principal office of the authority
    - a public notice board on the premises of public libraries in the area covered by the statement.

## **Publication of the Licensing Authority Statement of Policy or revisions**

- 6.43** The regulations stipulate that the Licensing Authority Statement of Policy or any subsequent revision of the statement must be published on the authority's website and be made available at reasonable times for inspection by members of the public either in the principal office of the authority, at one or more public libraries in the area covered by the statement or in other premises situated in that area. The statement or revision must be published at least four weeks before it takes effect.

## **Review of the Licensing Authority Statement of Policy**

- 6.44** The Licensing Authority Statement of Policy will have effect for three years but the licensing authority may review and alter the policy in that period.
- 6.45** Licensing authorities will need to consider, in the event of a change of policy, whether a review of the statement is necessary. For example, a change in planning policy could lead to a review and subsequent revision of a statement (if, for example, a change in planning policy led to family entertainment centres (FECs) where previously there were none, the statement may then be required to make reference to FECs where it was previously silent). Where the statement is reviewed and changes made, authorities must consult on any revision.
- 6.46** Authorities should note that where a statement is revised, it is only the revision that needs to be published and consulted on. So, for example, an authority may consult separately on whether to pass a casino resolution and then subsequently publish the resolution as part of the statement. This can be done without any need to review and reopen consultation on the main body of the statement. Any revisions must be published and advertised in the same way as a new statement.

- 6.47** Regulations provide for the form and content of revisions to the Licensing Authority Statement of Policy to be determined by the licensing authority, subject to the following requirements:
- revisions to Licensing Authority Statements of Policy must include an introductory section at or near the beginning, summarising the matters dealt with in the statement and listing the persons consulted in preparing the revision.
- 6.48** Where the revision deals with any of the matters below, these must be presented in separate sections:
- 1) the principles to be applied by the authority in exercising the powers under section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm
  - 2) the principles to be applied by the authority in exercising the powers under section 158 of the Act, to determine whether a person is an interested party in relation to a premises licence, or an application for or in respect of a premises licence
  - 3) the principles to be applied by the authority in exercising its functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act or
  - 4) the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified in that section.

## **Additional information to be made available**

- 6.49** In order to ensure that applicants and persons who wish to make representations have the necessary information to be able to do so, the information set out below should be made available by licensing authorities as part of their communications strategy.
- 6.50** It should be noted that, unlike the Licensing Act, the Gambling Act does not include as a specific licensing objective the prevention of public nuisance. There is however other relevant legislation which deals with public nuisance. It would be helpful if licensing authorities could explain that objections to new premises or requests for a review should be based on the licensing objectives of the Gambling Act.
- 6.51** It is open to licensing authorities to include any of this information in their Licensing Authority Statement of Policy. However, authorities might think it more appropriate to make it available in another form, such as on the authority website.

## **Registers**

- 6.52** Section 156 of the Act requires licensing authorities to maintain a register of the premises licences that it has issued. The register must be made available, at any reasonable time, to the public who may request copies of the entries. Authorities should ensure that information regarding the location of the registers (ie on the website, in the council offices etc), when they can be viewed, and the cost of obtaining copies is made available to the public.



## **Fees**

- 6.53** Authorities should ensure that information regarding the fees to be charged, including the level of fees, for applications for premises licences and other permissions under the Act is available to the public.
- 6.54** Separate guidance relating to the calculation of fees and accounting procedures has been produced by the Secretary of State available from the Department for Culture, Media and Sport website ([www.culture.gov.uk](http://www.culture.gov.uk)). In Scotland, all of the equivalent fees will be set centrally by Scottish Ministers<sup>9</sup>.

## **Applications**

- 6.55** Authorities should ensure that information is available on how to make applications for licences and other permissions under the Act. In particular, it would be helpful if authorities ensure that a full list of responsible authorities and their appropriate contact details, is readily available. Application forms, where appropriate, should also be made available. Authorities should note that there will be no prescribed application forms for family entertainment centre, prize gaming or licensed premises gaming machine permits. As such, the authority will need to make clear how applications for these permits should be made and in what form. Additionally, authorities will need to ensure that information regarding making representations, and applying for a review of a premises licence, is also made available.

## **Delegation**

- 6.56** Information should be provided as to how functions are delegated under the Act (ie whether decisions are to be taken by a licensing officer, licensing sub-committee or full committee etc). A table setting out the scheme of delegation required by the Act may be the most appropriate method for this and is located in part 4 of this Guidance.

## **Statutory application forms and notices**

- 6.57** There are a range of statutory application forms and notices that licensing authorities are required to use as part of their gambling licensing responsibilities. A summary list of these can be found in Appendix E. The forms and notices can be downloaded from the Department for Culture, Media and Sport website ([www.culture.gov.uk](http://www.culture.gov.uk)).

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<sup>9</sup> Gambling Act 2005 (Premises Licence Fees) (Scotland) Regulations 2007; Gambling Act 2005 (Fees) (Scotland) Regulations 2007; Gambling Act 2005 (Fees No.2) (Scotland) Regulations 2007; Gambling Act 2005 (Fees No.3) (Scotland) Regulations 2007 and Gambling Act 2005 (Fees No.4) (Scotland) Regulations 2007.

## Part 7: Premises licences

- 7.1** Where an individual or company proposes to offer gambling for which an operating licence is required, and which is premises based, that individual or company will also need to apply for a premises licence.
- 7.2** Premises licences are issued by the licensing authority with responsibility for the area in which the premises are situated.
- 7.3** The Act contains no rules about cases where premises lie within more than one authority's area. Such cases are likely to be rare. The Commission would expect an applicant to apply to the licensing authority in whose area the greater or greatest part of the premises is situated. If another authority receives an application it should discuss with the applicant and the neighbouring authority as to which is the appropriate authority. Ultimately, there is nothing in the Act giving an authority the right to turn down an application because it is responsible for a smaller area of the premises than another authority. However, in such circumstances, the other authority will be a 'responsible authority' in relation to the premises (see part 8 of this guidance), and will be able to give a view on the application through these channels. Note, this is not the same as the Licensing Act where an application must be made to the authority in which the greater part of the premises is situated.
- 7.4** Where the premises are located in two or more areas (equally or otherwise), ultimately the applicant may choose which licensing authority to apply to. In the rare cases where such premises exist, it will be important that the licensing authorities concerned maintain close contact about the grant of the premises licence, and subsequent compliance (including inspection powers) and other licensing functions. The licensing authority to which the premises licence application was made will have jurisdiction and the other(s) will need to pass relevant information about the premises to it.

### Primary gambling activity

- 7.5** In accordance with section 150 of the Act, premises licences can authorise the provision of facilities on:
- (a) casino premises
  - (b) bingo premises
  - (c) betting premises, including tracks and premises used by betting intermediaries
  - (d) adult gaming centre premises (for category B3, B4, C and D machines)
  - (e) family entertainment centre premises (for category C and D machines) (note that, separate to this category, the licensing authority may issue a family entertainment centre gaming machine permit, which authorises the use of category D machines only).
- 7.6** By distinguishing between premises types the Act makes it clear that the primary gambling activity of the premises should be that described. Thus, in a bingo premises, the primary activity should be bingo, with gaming machines as an ancillary offer on the premises. This principle also applies to existing casino licences (but not 2005 Act casinos) and betting premises licences. The latest issue of the *Licence Conditions and Codes of Practice*<sup>10</sup> sets out in full the requirements on operators. Subject to the gaming machine entitlements which various types of licence bring with them (and except in the case of tracks), the Act does not permit premises to be licensed for more than one of the above activities.
- 7.7** To assist operators of betting premises the Commission has published a document setting

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<sup>10</sup> The Licence Conditions and Codes of Practice (LCCP) is available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

out the indicators that are used to assess as to whether the requirements for betting being the primary gambling activity in any particular premises are being met<sup>11</sup>.

- 7.8** Please see part 16 of this Guidance for more information about gaming machine categories.

## Casino premises

- 7.9** New casino premises licences issued under the Act will fall into one of two categories:
- (a) large casino premises licence
  - (b) small casino premises licence.

- 7.10** These premises are subject to separate regulations, involving a two-stage application process. Details of the two stage process can be found in part 17 of this Guidance.

- 7.11** In addition, there is a third category of casino that is permitted through transitional arrangements under Schedule 18 of the Act. Most of these casinos fall below the size thresholds of the other two categories. Such casinos may operate as card clubs without offering casino games.

- 7.12** Please see part 17 of this Guidance for more information about the definition of casinos and the licensing of those premises.

## Meaning of premises

- 7.13** In the Act, 'premises' is defined as including 'any place'. Section 152 therefore prevents more than one premises licence applying to any place. But, there is no reason in principle why a single building could not be subject to more than one premises licence, provided they are for different parts of the building, and the different parts of the building can reasonably be regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as pleasure parks, tracks, or shopping malls to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about sub-division of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.

- 7.14** In most cases the expectation is that a single building/plot will be the subject of an application for a licence, for example, 32 High Street. But that does not mean that 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Commission does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises.

- 7.15** We recognise that different configurations may be appropriate under different circumstances but the crux of the matter is whether the proposed premises are genuinely separate premises that merit their own licence with, for example, the machine entitlements that brings and are not an artificially created part of what is readily identifiable as a single premises.

- 7.16** The Act sets out that the type and number of higher stake gaming machines allowable in premises is restricted according to the type of premises licence or permit granted. For example, a converted casino licence allows for 20 gaming machines in categories B, C or

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<sup>11</sup> Indicators of betting as a primary gambling activity (November 2011), available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

D. With the exception of AGCs and FECs, premises are not permitted to be used exclusively for making available gaming machines, but rather to provide the gaming facilities corresponding to the premises licence type. The Licence Conditions and Codes of Practice (LCCP) , sets out in full the requirements on operators. The latest version of the LCCP can be found on the Commission's website.

- 7.17** With the exception of bingo clubs, tracks on race-days and licensed family entertainment centres, children will not be permitted to enter licensed gambling premises. Therefore businesses will need to consider carefully how they wish to configure their buildings if they are seeking to develop multi-purpose sites.
- 7.18** Licensing authorities should take particular care in considering applications for multiple premises licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:
- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling where they are prohibited from participating.
  - Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not 'drift' into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
  - Customers should be able to participate in the activity named on the premises licence.
- 7.19** In determining whether two or more proposed premises are truly separate, the licensing authority should be aware of factors which could assist them in making their decision. Depending on all the circumstances of the case, these may include:
- Is a separate registration for business rates in place for the premises?
  - Is the premises' neighbouring premises owned by the same person or someone else?
  - Can each of the premises be accessed from the street or a public passageway?
  - Can the premises only be accessed from any other gambling premises?
- 7.20** Where more than one premises licence is permitted within a building the gaming machine entitlement for the separately licensed premises may not be aggregated and no more than the permitted number and category of machines for the relevant type of premises may be placed in any one of the individual sets of premises within the building.
- 7.21** The proper application of section 152 means that different premises licences cannot apply in respect of single premises at different times. There is no temporal element to a premises licence. Therefore, premises could not, for example, be licensed as a bingo club on week days and a betting shop at weekends.

## **Division of premises and access between premises**

- 7.22** An issue that may arise when division of a premises is being considered is the nature of the unlicensed area from which a customer may access a licensed gambling premises. For casinos, bearing in mind the wide definition of a street, access might be from a foyer or other area which the public might enter for purposes other than gambling. The precise nature of this public area will depend on the location and nature of the premises. Licensing authorities will need to consider whether the effect of any division is to create a machine shed-type environment with very large banks of machines, which is not the intention of the access conditions, or whether it creates a public environment with gambling facilities being made available. Licensing authorities should, in particular, remember that where they have concerns about the use of premises for gambling, these may be addressed through licence conditions.

- 7.23** The Gambling Act 2005 (Mandatory and Default Conditions) Regulations<sup>12</sup> set out the access provisions for each type of premises. The broad principle is that there can be no access from one licensed gambling premises to another, except between premises which allow access to those under the age of 18 and with the further exception that licensed betting premises may be accessed from other licensed betting premises. Under-18s can go into family entertainment centres, tracks, pubs and some bingo clubs. So access is allowed between these types of premises.
- 7.24** It should be noted that the Gambling Act 2005 (Mandatory and Default Conditions) Regulations define street as ‘including any bridge, road, lane, footway, subway, square, court, alley or passage (including passages through enclosed premises such as shopping malls) whether a thoroughfare or not’. This is to allow access, for example, to casinos from hotel foyers.
- 7.25** There is no definition of ‘direct access’ in the Act or regulations. However, it could be said that there should be an area separating the premises concerned (for example a street or cafe), which the public go to for purposes other than gambling, for there to be shown to be no direct access.
- 7.26** The relevant access provisions for each premises type is as follows:

#### **Casinos**

- the principal entrance to the premises must be from a street (as defined above)
- no entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons
- no customer must be able to enter a casino directly from any other premises which holds a gambling premises licence.

#### **Adult gaming centres**

- no customer must be able to access the premises directly from any other licensed gambling premises.

#### **Betting shops**

- access must be from a street (as defined above) or from other premises with a betting premises licence
- no direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind and you could not have a betting shop at the back of a cafe – the whole area would have to be licensed.

#### **Tracks**

- no customer should be able to access the premises directly from:
  - a casino
  - an adult gaming centre.

#### **Bingo premises**

- no customer must be able to access the premises directly from:
  - a casino
  - an adult gaming centre
  - a betting premises, other than a track.

#### **Family entertainment centres**

- no customer must be able to access the premises directly from:
  - a casino

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<sup>12</sup> SI no 1409: The Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007  
SI no 266: The Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007

- an adult gaming centre
- a betting premises, other than a track.

## **Management of areas where category B and C gaming machines are located in premises that admit children and young people**

- 7.27** According to mandatory and default conditions relating to premises that admit under 18s, any area where category B and C gaming machines are located must be:
- separated from the rest of the premises by a physical barrier which is effective to prevent access other than by an entrance designed for that purpose
  - supervised (see below) at all times to ensure that under-18s do not enter the area
  - arranged in a way that ensures that all parts of the area can be observed
  - supervised either by:
    - one or more persons whose responsibilities include ensuring that under-18s do not enter the areas
    - CCTV monitored by one or more persons whose responsibilities include ensuring that under-18s do not enter the areas.

A notice stating that no person under the age of 18 is permitted to enter the area must be displayed in a prominent place at the entrance to the area.

- 7.28** There are a range of other conditions which attach to each type of premises. These are not covered in this section, but are set out in part 9 and the parts of this document relating to each type of premises.

## **Access to gambling by children and young people**

- 7.29** The Act contains the objective of ‘protecting children and other vulnerable persons from being harmed or exploited by gambling’. Children (defined in the Act as under-16s) and young persons (16–17s) may take part in private and non-commercial betting and gaming but the Act contains a number of restrictions on the circumstances in which they may participate in gambling or be on premises where gambling is taking place. An adult is defined as 18 and over. In summary:
- casinos are not permitted to admit anyone under 18
  - betting shops are not permitted to admit anyone under 18
  - bingo clubs may admit those under 18 but must have policies to ensure that they do not play bingo, or play category B or C machines that are restricted to those over 18
  - adult entertainment centres are not permitted to admit those under 18
  - family entertainment centres and premises with a liquor licence (for example pubs) can admit under-18s, but they must not play category C machines which are restricted to those over 18
  - clubs with a club premises certificate can admit under-18s, but they must have policies to ensure those under 18 do not play machines other than category D machines
  - all tracks can admit under-18s, but they may only have access to gambling areas on days where races or other sporting events are taking place, or are expected to take place. This was extended to other sporting venues under the Gambling Act 2005 (Exclusion of Children from Track Areas) Order 2007. Tracks will be required to have policies to ensure that under-18s do not participate in gambling other than on category D machines.

- 7.30** Licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware that entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not ‘drift’ into a gambling area. The plan of the premises should clearly denote entrances and exits.



## Vessels and vehicles

- 7.31** The Act permits premises licences to be granted for passenger vessels. Separate application forms are prescribed for vessels under the Premises Licences and Provisional Statements Regulations. The definition of a vessel in section 353(1) of the Act is:
- anything (other than a seaplane or amphibious vehicle), designed or adapted for use on water
  - a hovercraft
  - anything, or part of any place, situated on or in water.
- 7.32** This last part of the definition should be given a normal and sensible interpretation. Structures which are an extension of the land are not vessels, even if they arch over water. Thus, neither a pier nor a bridge is to be considered a vessel. Instead, they remain premises under the Act. This is important because not all forms of permit are available to vessels.
- 7.33** The Act allows pleasure boats to apply for premises licences. As with multi-purpose buildings, the part of the vessel where gambling takes place will be licensed and the usual restrictions on access for children will apply. The Act applies in relation to a vessel that is not permanently moored or berthed as if it were premises situated in a place where it is usually moored or berthed. The relevant licensing authority for considering an application for a premises licence in respect of a vessel is therefore the licensing authority for the area in which it is usually moored or berthed.
- 7.34** Vehicles (trains, road vehicles, aircraft, sea planes and amphibious vehicles, other than a hovercraft) may not be the subject of a premises licence and therefore all forms of commercial betting and gaming will be unlawful in a vehicle in Great Britain. Certain allowances are made for private and non-commercial gaming or betting to take place in a vehicle, but these are subject to a number of stringent requirements. These ensure that, at no point, can the gambling become a commercial activity.
- 7.35** Where a premises licence is sought in connection with a vessel which will be navigated while licensable activities take place, the licensing authority should be concerned with the promotion of the licensing objectives on board the vessel. It should not focus on matters relating to safe navigation or operation of the vessel, the general safety of passengers or emergency provision, all of which are subject to regulations which must be met before the vessel is issued with its Passenger Certificate and Safety Management Certificate.
- 7.36** Licences are not required for gambling if it takes place aboard a vessel engaged on an international journey. Such gambling is exempted from the offences under the Act if the vessel is on a journey which has taken it, or is intended to take it, into international waters (so this includes cross-channel ferries). In the case of aircraft, no offence takes place if the gambling takes place in international airspace.
- 7.37** This means that licensing authorities will have jurisdiction over gambling conducted on vessels on all inland waterways, at permanent moorings, and on all aircraft on the ground or in domestic airspace. If an ocean-going vessel is involved, authorities will need to establish where the vessel has been, or is intending to go.

## Single and combined licences

- 7.38** Only one premises licence may be issued for any particular premises at any time, although the licence may authorise more than one type of gambling. Details of the gambling permissible under each type of licence are set out in the Act and in the premises specific parts of this Guidance.
- 7.39** There is one exception to this rule, namely a track (that is a horse racing course, dog track or other premises where races or sporting events take place), which may be subject to

more than one premises licence, provided each licence relates to a specified area of the track.

- 7.40** The Act sets out that there will be a main (betting premises) licence for the track, and, in addition, subsidiary premises licences for other gambling activities may be issued. The normal limitations in respect of access by children and young persons will apply, although in relation to a premises licence for a track, children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog racing and/or horse racing takes place. This is subject to the rule that children and young persons may not enter any area where gaming machines (other than category D machines) are provided.
- 7.41** In principle there is no reason why multiple types of gambling should not co-exist on a track (with the exception of a casino or adult gaming centre), but authorities will want to think about how the third licensing objective is delivered by the co-location of premises. As with the granting of multiple licences in a single building, licensing authorities will need to ensure that entrances to each type of premises are distinct and that under-18s are excluded from gambling areas where they are not permitted to enter.

## Who can make an application?

- 7.42** An application for a premises licence may only be made by persons (which includes companies or partnerships):
- who have the right to occupy the premises
  - who have an operating licence which allows them to carry out the proposed activity, for example a bingo operating licence for a bingo premises, or have applied for an operating licence (the premises licence cannot be determined until an operating licence has been issued).
- 7.43** The exception to this is an applicant for a premises licence to allow a track to be used for betting, as these applicants are not required to hold an operating licence if they are merely providing space for other people to provide betting (and those other people hold valid betting operating licences). However, if a track owner is also acting as a betting operator or running pool betting he will have to have the relevant type of operating licence.
- 7.44** An applicant for a premises licence must be 18 or over.
- 7.45** An application must be made to the relevant licensing authority in the form prescribed in regulations laid down by the Secretary of State or Scottish Ministers.
- 7.46** The application must be accompanied by:
- the prescribed fee
  - the prescribed documents (that is a plan of the premises; the plan needs to be to scale, however, a specific scale has not been prescribed).
- 7.47** The Secretary of State and Scottish Ministers have made regulations<sup>13</sup> requiring the applicant to publish notice of his application and to notify responsible authorities and other persons about the application. This will allow representations to be made.
- 7.48** Notice must be given in three ways:
- a notice placed outside the premises for 28 consecutive days in a place where it can be read conveniently
  - in a newspaper or newsletter of local relevance, on at least one occasion within ten days of the application being made

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<sup>13</sup> SI No. 459: The Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007  
SI No. 196: The Gambling Act 2005 (Premises Licences and Provisional Statements)(Scotland) Regulations 2007



- to all responsible authorities within seven days of the application being made (the Commission is one of these responsible authorities).

## Representations

- 7.49** In dealing with an application, licensing authorities are obliged to consider representations from two categories of person, referred to in the Act as ‘responsible authorities’ and ‘interested parties’. Please see part 8 of this Guidance for more information on these categories.
- 7.50** It would be helpful if licensing authorities provide advice in a form that is readily accessible (for example, on their websites) about how representations can be made.
- 7.51** When considering a representation, the first thing the licensing authority should determine is whether the representation has been made by a responsible authority or interested party. This is very important as only representations from these two categories of person are admissible. If the representation has not been made by a responsible authority or interested party it is inadmissible.
- 7.52** Licensing authorities should be aware that their decision on this initial issue could be subject to legal challenge in the courts. There is no right of appeal under the Act against a licensing authority’s determination that representations are not admissible.
- 7.53** After determining whether the representation has come from a responsible authority or interested party, and consequently whether it is admissible or inadmissible, the authority must then determine its relevance. The only representations that are likely to be relevant are those that relate to the licensing objectives, or that raise issues under the Licensing Authority Statement of Policy, or the Commission’s Guidance or Codes of Practice (that is those matters mentioned in section 153 of the Act).
- 7.54** The Secretary of State and Scottish Ministers have made regulations under section 160 of the Act concerning notice of application. These require applicants for premises licences to give notice of their application to the responsible authorities. They also stipulate that applicants publish notice of their application in a local newspaper and display it on the premises for the benefit of interested parties. These provisions apply, with one or two necessary modifications, in relation to applications for provisional statements and some ancillary applications that can be made in relation to a premises licence. Responsible authorities will have a legitimate interest in the development of the premises, because of the functions that they will need to carry out in relation to them. But licensing authorities must take care to ensure that the concerns that responsible authorities may have in relation to their own functions are not taken into account if they are not relevant to the application for a premises licence under the Act. Thus, the following examples of possible representations would not likely be relevant:
- that there are already too many gambling premises in the locality (although it may be relevant if it points, as a result, to rising problems in crime, disorder, underage gambling or problem gambling)
  - that the proposed premises are likely to be a fire risk
  - that the location of the premises is likely to lead to traffic congestion; or that the premises will cause crowds of people to congregate in one area, which will be noisy and create a nuisance.
- This list is by no means exhaustive, and each case must be decided on the facts.
- 7.55** It should be noted that, unlike the Licensing Act, the Gambling Act specifically does not include as a licensing objective the prevention of public nuisance. Any nuisance associated with gambling premises should be tackled under other relevant laws.
- 7.56** Linked to this is the question of what is a ‘frivolous’ or ‘vexatious’ representation. This is a question of fact, and authorities are advised to seek help from their legal advisers in interpreting these phrases. Representations that could be considered ‘frivolous’ or

'vexatious' are more likely to come from interested parties. However, matters that licensing authorities will want to look at are likely to include:

- who is making the representation, and whether there is a history of making representations that are not relevant
- whether it raises a 'relevant' issue
- whether it raises issues specifically to do with the premises that are the subject of the application.

**7.57** The Commission does not routinely make representations on premises licence applications. However, the fact that the Commission has not made a representation on a particular premises licence application should not be taken as indicating the Commission's approval of that application. Exceptionally, where an application for a premises licence, or the operation of a current premises licence, raises matters of wider or national significance, the Commission will consider making representations or requesting a review.

## **Making a decision**

**7.58** As explained earlier in this Guidance, in relation to premises licences, the licensing authority's primary obligation under section 153(1) is to permit the use of premises in so far as it thinks that to do so is:

- a) in accordance with relevant codes of practice issued by the Commission
- b) in accordance with guidance issued by the Commission
- c) reasonably consistent with the licensing objectives (subject to (a) and (b) above), and
- d) in accordance with the Licensing Authority Statement of Policy published by the authority (subject to (a) to (c) above).

**7.59** For guidance as to the meaning and effect of section 153, see paragraph 5.5 above. If, in a particular case, a licensing authority were to decide either to grant or to refuse a premises licence in circumstances in which the Commission's Guidance indicated the opposite conclusion the decision could be challenged on appeal or by judicial review.

## **Relationship between planning permission, building regulations and granting of a premises licence**

**7.60** In determining applications the licensing authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, in effect those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal. Licensing authorities should bear in mind that a premises licence, once it comes into effect, authorises premises to be used for gambling. Accordingly, a licence to use premises for gambling should only be issued in relation to premises that the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use. This is why the Act allows a potential operator to apply for a provisional statement if construction of the premises is not yet complete, or they need alteration, or he does not yet have a right to occupy them. See part 11 of this Guidance for more information about provisional statements.

**7.61** As the Court has held in a 2008 case<sup>14</sup>, operators can apply for a premises licence in respect of premises which have still to be constructed or altered, and licensing authorities are required to determine any such applications on their merits. Such cases should be considered in a two stage process; first, licensing authorities must decide whether, as a matter of substance after applying the principles in section 153 of the Act, the premises ought to be permitted to be used for gambling; second, in deciding whether or not to grant

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<sup>14</sup> The Queen (on the application of) Betting Shop Services Limited –v- Southend-on-Sea Borough Council [2008] EWHC 105 (Admin)

the application a licensing authority will need to consider if appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place. An authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.

- 7.62** For example, where the operator has still to undertake final fitting out of the premises but can give a reasonably accurate statement as to when the necessary works will be completed, it may be sufficient to simply issue the licence with a future effective date, as is possible under the Regulations<sup>15</sup>. The application form allows the applicant to suggest a commencement date and the notice of grant allows the licensing authority to insert a date indicating when the premises licence comes into effect. In other cases, it may be appropriate to issue the licence subject to a condition that trading in reliance on it shall not commence until the premises have been completed in all respects in accordance with the scale plans that accompanied the licence application. If changes to the pre-grant plans are made, then parties who have made representations should be able to comment on the changes made. See part 9 of this Guidance for more information about licence conditions.
- 7.63** If the plans submitted at the time of the application for a premises licence are changed in any material respect during the fitting out of the premises after the grant of the licence, then the applicant will be in breach of the licence. If the applicant wishes to change the proposed plans after grant then, in order to avoid breaching the licence, it will be necessary for the applicant to either make a fresh application under section 159 or seek an amendment to a detail of the licence under section 187 of the Act. If there are substantive changes to the plans then this may render the premises different to those for which the licence was granted. In such a case, variation of the licence under section 187 is not possible. For this reason, and while this is a matter of judgement for the licensing authority, we consider it would be more appropriate in the case of any material post grant change, for the applicant to make a fresh application under section 159 to preserve the rights of interested parties and responsible authorities to make representations in respect of the application.
- 7.64** The local authority will need to be satisfied in any individual case that the completed works comply with the original, or changed, plan attached to the premises licence. Depending upon circumstances, we consider that this could be achieved either through physical inspection of the premises or written confirmation from the applicant or surveyor that the condition has been satisfied.
- 7.65** Requiring the building to be complete before trading commences would ensure that the authority could, if considered necessary, inspect it fully, as could other responsible authorities with inspection rights under Part 15 of the Act. Inspection will allow authorities to check that gambling facilities comply with all necessary legal requirements. For example, category C and D machines in a licensed family entertainment centre must be situated so that people under 18 do not have access to the category C machines. The physical location of higher stake gaming machines in premises to which children have access will be an important part of this, and inspection will allow the authority to check that the layout complies with the operator's proposals and the legal requirements.
- 7.66** If faced with an application in respect of uncompleted premises which it appears are not going to be ready to be used for gambling for a considerable period of time, a licensing authority ought to consider whether, applying the two stage approach advocated in paragraph 7.61 above, it should grant a licence or whether the circumstances are more appropriate to a provisional statement application. For example, the latter would be the case if there was significant potential for circumstances to change before the premises opens for business. In such cases, the provisional statement route would ensure that the

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<sup>15</sup> SI 2007/459 Premises Licensing and Provisional Statements Regulations  
SI No. 196: The Gambling Act 2005 (Premises Licences and Provisional Statements)(Scotland) Regulations 2007

limited rights of responsible authorities and interested parties to make representations about matters arising from such changes of circumstance are protected. Licensing authorities may choose to discuss with individual applicants which route is appropriate, to avoid them having to pay a fee for, say, an application that the authority did not think was grantable, when it seems likely at an early stage that a provisional statement might be the better option.

**7.67** When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have to comply with the necessary planning or building consents. Nor should fire or health and safety risks be taken into account. Those matters should be dealt with under relevant planning control, building and other regulations, and must not form part of the consideration for the premises licence. Section 210 of the Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally, the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

## Part 8: Responsible authorities and interested parties – definitions

- 8.1** The Act sets out two categories of organisations and individuals ('responsible authorities' and 'interested parties') that may feature in applications for and reviews of premises licences.

### Responsible authorities

- 8.2** Responsible authorities are public bodies that must be notified of applications and that are entitled to make representations to the licensing authority in relation to applications for, and in relation to, premises licences. All representations made by responsible authorities are likely to be relevant representations if they relate to the licensing objectives.

- 8.3** Section 157 of the Act identifies the bodies that are to be treated as responsible authorities. They are:

- (a) a licensing authority in England and Wales in whose area the premises is wholly or partly situated
- (b) the Gambling Commission
- (c) the chief officer of police or chief constable for the area in which the premises is wholly or partially situated
- (d) the fire and rescue authority for the same area
- (e) (i) in England and Wales, the local planning authority, or  
(ii) in Scotland, the planning authority
- (f) the relevant authority as defined in section 6 of the Fire (Scotland) Act 2005
- (g) an authority which has functions in relation to pollution to the environment or harm to human health
- (h) anybody, designated in writing by the licensing authority as competent to advise about the protection of children from harm
- (i) HM Revenue & Customs
- (j) any other person prescribed in regulations by the Secretary of State.

- 8.4** Section 211(4) of the Act provides that in relation to a vessel, but no other premises, responsible authorities also include navigation authorities, within the meaning of section 221(1) of the Water Resources Act 1991, that have statutory functions in relation to the waters where the vessel is usually moored or berthed, or any waters where it is proposed to be navigated at a time when it is used for licensable activities. This would include:

- (a) the Environment Agency
- (b) the British Waterways Board
- (c) the Secretary of State (Note: in practice, the Secretary of State for Transport who acts through the Maritime and Coastguard Agency).

For applications in Scotland, the reference to the Environment Agency can reasonably be taken to refer to the Scottish Environment Protection Agency.

- 8.5** The Act contains a similar list of responsible authorities to that contained in the Licensing Act 2003, despite the lack of the corresponding licensing objective of public safety, whilst the Licensing (Scotland) Act 2005 does not define responsible authorities at all. The result the Act aims to achieve through the inclusion of a wide range of responsible authorities is one where all relevant regulatory bodies and organisations are made aware of applications for gambling premises licences or other permissions. In many instances comments that responsible authorities make are relevant to the licensing authority's determination.

- 8.6** Equally, in some cases, representations may not relate to matters that lead to the licensing authority refusing a premises licence. However, a policy of wide dissemination of applications allows responsible authorities to take action under their own legislation and enforcement powers, even if there is no direct role for them in the gambling licence process.

- 8.7** The Act contains no obligation on responsible authorities to respond to applications for premises licences if they do not wish to do so. The Commission would not wish to second guess what is for the licensing authority to decide and so will not normally comment on an application unless it has particular observations to make about the operator. If no response is received from the Commission, licensing authorities should not assume we have any view (whether supportive or otherwise) on the merits of the particular premises licence application. Licensing authorities will, of course, be aware of the Commission's views on generic issues as set out in this Guidance.
- 8.8** Licensing authorities are required to set out, in their policy statement made under section 349, their approach to their functions under the Act. One of those functions is to determine who will be competent to advise them about the protection of children from harm. Regulations<sup>16</sup> made by the Secretary of State and Scottish Ministers require licensing authorities to set out their approach in a separate section of the Licensing Authority Statement of Policy.
- 8.9** In many licensing authority areas, the body recognised by the licensing authority as competent in this regard is the local Safeguarding Children Board in England and Wales, or the Child Protection Committee in Scotland.
- 8.10** The Secretary of State and Scottish Ministers may prescribe other responsible authorities by means of regulations. For example, Scottish Ministers have prescribed that a responsible authority under the Act includes an enforcing authority under the Fire (Scotland) Act 2005<sup>17</sup>

## Interested parties

- 8.11** Section 158 of the Act defines interested parties. To accept a representation from an interested party, the licensing authority must take the view that the person:
- (a) lives sufficiently close to the premises to be likely to be affected by the authorised activities
  - (b) has business interests that might be affected by the authorised activities
  - (c) represents persons in either of these two groups.
- 8.12** Interested parties can be people who are democratically elected such as councillors and MPs. Where appropriate, this will include county, parish and town councillors. Other than these persons, authorities should require written evidence that a person 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or business interests that might be affected by the authorised activities. A letter from one of these persons requesting the representation is sufficient.
- 8.13** The following gives further advice on how licensing authorities can determine whether someone is an interested party.

### People living close to the premises

- 8.14** The approach taken by licensing authorities in determining who is an interested party is also a function that should be dealt with in their Licensing Authority Statement of Policy. As with responsible authorities, regulation<sup>18</sup> requires this information to be in a separate section of the Licensing Authority Statement of Policy.

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<sup>16</sup> SI No. 636: The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006

SI No. 154: The Gambling Act 2005 (Licensing Authority Policy Statement) (Scotland) Regulations 2006

<sup>17</sup> SI No. 475: The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006

<sup>18</sup> SI No. 636: The Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006  
SI No. 154: The Gambling Act 2005 (Licensing Authority Policy Statement) (Scotland) Regulations 2006



- 8.15** The factors that licensing authorities should take into account when determining what ‘sufficiently close to the premises’ means (in each case) might include:
- the size of the premises
  - the nature of the premises
  - the distance of the premises from the location of the person making the representation
  - the potential impact of the premises (number of customers, routes likely to be taken by those visiting the establishment)
  - the circumstances of the complainant. This is not the personal characteristics of the complainant, but the interests of the complainant which may be relevant to the distance from the premises.

For example, it could be reasonable for an authority to conclude that ‘sufficiently close to be likely to be affected’ could have a different meaning for (a) a private resident, (b) a residential school for children with truanting problems, and (c) a residential hostel for vulnerable adults.

### **The nature and scope of business interests that could be affected**

- 8.16** It could be argued that any gambling business could be affected by another gambling business expanding into any part of Great Britain. But that is unlikely to be enough to satisfy the test of being ‘a person with business interests that might be affected by the premises’ under consideration. For example, an operator in a particular sector (be it casino, bingo, betting, etc) should not be able to lodge representations on every application put in by a rival operator anywhere in the country, simply because they are in competition within the same gambling sector. The licensing authority should be satisfied that the relevant business is likely to be affected. In this respect, licensing authorities should bear in mind that the ‘demand test’ from the 1963 and 1968 Acts is not continued in the 2005 Act. Factors that are likely to be relevant include:
- the size of the premises
  - the ‘catchment’ area of the premises (that is, how far people travel to visit the premises)
  - whether the person making the representation has business interests in that catchment area that might be affected.

### **People representing those in the above categories**

- 8.17** Licensing authorities should include guidance in their Licensing Authority Statement of Policy on whom they consider comes within this category. For example, it should include democratically elected representatives such as local councillors and MPs, and could include bodies such as trade associations and trade unions, and residents’ and tenants’ associations. In other cases licensing authorities should satisfy themselves on a case by case basis, and possibly request written evidence, that a person does represent interested parties. For example, a school head or governor might act in representing the interests of pupils or parents and a community group might represent vulnerable people living near to the proposed premises.
- 8.18** Licensing authorities will need to have regard to anything an interested party says about their status to make representations.

## Part 9: Premises licence conditions

- 9.1** The Act provides that conditions may be attached to licences in a number of ways:
- they may attach automatically, having been set out on the face of the Act
  - they may attach through regulations made by the Secretary of State or Scottish Ministers
  - they may be attached to operating and personal licences by the Commission
  - they may be attached to premises licences by licensing authorities.
- 9.2** Conditions may sometimes be general in nature (in effect they attach to all licences or all licences of a particular class) or they may be specific to a particular licence.
- 9.3** Conditions on premises licences should relate only to gambling, as considered appropriate in the light of the principles to be applied by licensing authorities under section 153. Accordingly, if the Commission's Licence Conditions and Codes of Practice or other legislation places particular responsibilities or restrictions on an employer or the operator of premises, it is not necessary or appropriate to impose the same or similar duties in conditions on a premises licence issued in accordance with the Gambling Act. Similarly, where other legislation confers powers on inspection and enforcement agencies in relation to separate activities or concerns, the Gambling Act does not affect the continued use of such powers; for example, the powers of an environmental health officer in respect of statutory nuisance under the Environmental Protection Act 1990.

### Conditions and authorisations that attach automatically to premises licences by virtue of provisions on the face of the Act

- 9.4** The following paragraphs discuss the sections of the Act that provide for conditions to be attached automatically to premises licences, or for authorisations to be granted automatically. The Secretary of State may make regulations requiring these conditions to be set out on the premises licence. There is no discretion to decide not to include them, or to modify them.

#### Section 172

- 9.5** Section 172 provides for premises licences to permit a specified number of gaming machines of particular categories in each type of gambling premises. These permissions are set out in detail in part 16 of this Guidance.

#### Section 173

- 9.6** Section 173 authorises the holder of a casino premises licence or a betting premises licence to make facilities available for betting on virtual events. This is separate from betting on virtual events by means of a gaming machine. It is intended to cover facilities such as Portman Park, which is currently provided in some betting shops. These are person-to-person transactions, involving virtual images that are not displayed on a machine.

#### Section 174

- 9.7** Section 174 authorises the holder of a casino premises licence for a small or large casino to make available the following types of gambling in addition to casino games (see part 17 of this document for details of the casino games authorised by the Commission):
- equal chance games
  - betting (but not in pre-2005 Act casinos with grandfather rights and only with a betting operating licence)
  - bingo (but only in large casinos and only with a bingo operating licence).

- 9.8** For the purposes of the Act, equal chance games are ones which do not involve playing or staking against a bank and in which the chances are equally favourable to all players. Licensing authorities must not restrict the equal chance gaming available (for example by prohibiting mah-jong) nor prohibit casino games that have not been prohibited by the Commission (see part 17 of this document).

## **Section 176**

- 9.9** Section 176 requires the Commission to issue at least one code of practice about access to casino premises for children and young persons. In particular, the code must:
- specify steps that the premises licence holder must take to ensure that under-18s do not enter casino premises, including ensuring that each entrance to the casino is supervised by at least one person ('the supervisor') who is responsible for compliance with the code of practice
  - require that, unless the supervisor is certain that a person seeking admittance is an adult, evidence of age must be provided by those seeking to enter the casino or gambling area.
- 9.10** Section 176 also makes it a condition of the premises licence that the licensee must comply with the code of practice issued under this section. The relevant code of practice has been issued by the Commission and is available along with other codes and conditions on the Commission's website.. Licensing authorities should note that the requirement under this section to identify a 'supervisor' is separate from any other condition that may be attached relating to 'door supervision' more generally.

## **Section 177**

- 9.11** Section 177 attaches a condition to casino premises licences and bingo premises licences that prohibits the licensee from:
- giving credit in connection with the gambling taking place on the premises
  - participating in, arranging, permitting or knowingly facilitating the giving of credit in connection with the gambling on the premises.
- 9.12** However, section 177 does not prevent the licensee from contracting a third party to install cash dispensers (ATMs) on their premises, which may accept both credit and debit cards. Such an arrangement is subject to requirements that the premises licence holder has no other commercial connection in relation to gambling with the provider of the ATMs (aside from the agreement to site the machines), does not profit from the arrangement, and does not make any payment in connection with the machines. All premises licences also include a mandatory condition which requires that any ATM made available for use on the premises must be located in a place that requires any customer who wishes to use it to cease gambling in order to do so.
- 9.13** This part of the Guidance deals only with the issue of credit in the context of section 177. The provision of credit by gambling operators and the use of credit cards are separate matters that are managed through operating licence conditions and codes of practice issued by the Commission.

## **Section 178**

- 9.14** Section 178 relates to door supervision at premises licensed for gambling. It defines a condition for door supervision as one requiring someone to be responsible for 'guarding the premises against unauthorised access or occupation, against outbreaks of disorder or against damage'. Where a licensing authority chooses to attach such a condition, section 178 also provides that if the person carrying out such duties is required to be licensed under the Private Security Industries Act 2001 (PSIA), then that requirement must be

treated as though it were a condition of the premises licence. There is, however, an exemption from the PSIA licensing requirement for in-house employees working as door supervisors at casino and bingo premises, details of which can be found in part 33 of this Guidance.

## **Section 179**

**9.15** Section 179 provides that a track betting premises licence may not authorise pool betting to take place other than in respect of dog or horse racing and only where the acceptance of bets is by the holder of the betting premises licence, or in accordance with arrangements made by him. In the case of dog racing, this preserves the existing arrangements at dog tracks where the totalisator is operated by or on behalf of the occupier of the track. In the case of horse racing, pool betting can only be made available at racetracks by Betfred following their purchase of the Tote.

## **Section 180**

**9.16** Section 180 applies to all betting premises licences, except a licence in respect of a dog track. It provides that pool betting on dog racing, for example in a high street betting office, may be offered only in accordance with arrangements made with the occupier of the dog track at which the racing is taking place. This means that the dog track operator controls whether or not pool betting on the races that take place at his track is available outside the track, in other premises where betting is permitted. If he does wish this to happen, he can make arrangements with other betting operating licence holders for them to offer pool betting on the events he holds. This is a transitional measure and it will lapse on 31 December 2012, unless it is repealed before then.

## **Section 182**

**9.17** Section 182 applies only to betting premises licences in relation to tracks. It requires the licensee to ensure that children and young persons are excluded from any area in which facilities for betting are provided and from any area where a gaming machine (other than a category D gaming machine) is situated. The exception to this, for betting areas only, is on race days (that is, on those days when racing occurs or is expected to take place) at a dog racing track or horse racing track. On race days, on those tracks only, under-18s may have access to betting areas, but licensing authorities should note that this exception does not affect the prohibition on betting by children and young persons.

## **Section 183**

**9.18** Section 183 applies to all premises licences. It attaches the condition to the premises licence that facilities for gambling must not be provided on Christmas Day. In this context, 'Christmas Day' covers the period of 00.01 hours on 25 December until 00.00 hours on 26 December.

## **Conditions attached through regulations made by the Secretary of State or Scottish Ministers**

**9.19** These conditions fall into two categories. The first are mandatory conditions under section 167 of the Act, which provides for the Secretary of State or Scottish Ministers to set out in regulations conditions that must be attached to premises licences.

**9.20** The second category relates to default conditions which may be imposed under section 168 of the Act, which provides for the Secretary of State or Scottish Ministers to make conditions that apply, unless the licensing authority decides to exclude them using its powers under section 169.

**9.21** Mandatory and default conditions apply to all premises licences.

- 9.22** The Secretary of State and Scottish Ministers have made regulations setting mandatory and default conditions to be attached to premises licences<sup>19</sup>.
- 9.23** Licensing authorities should note that mandatory conditions are set by the Secretary of State and Scottish Ministers with the intention that no further regulation in relation to that matter is required. Therefore, it is extremely unlikely that licensing authorities will need to impose individual conditions that will lead to a more restrictive regime in relation to matters that are already dealt with by mandatory conditions. Licensing authorities should only consider doing so where there are regulatory concerns of an exceptional nature, and any additional licence conditions must relate to the licensing objectives.
- 9.24** Licensing authorities have more flexibility in relation to default conditions, and may exclude a default condition and substitute it with one that is either more or less restrictive. Licensing authorities should note, however, that default conditions are intended to be the basic industry norm. While, given the requirements of section 153, the Commission would expect default conditions to be excluded and replaced with less rigid conditions on a relatively regular basis, licensing authorities should ensure that they have clear regulatory reasons for excluding default conditions and replacing them with more restrictive ones.
- 9.25** In addition to the following conditions the regulations also specify conditions that relate to each category of premises licence. Details of these can be found in parts 17, 18, 19, 20, 21 and 22 of this Guidance.

## **Mandatory conditions attaching to all premises licences**

- 9.26** The following mandatory conditions apply to all premises licences:
- the summary of the terms and conditions of the premises licence issued by the licensing authority must be displayed in a prominent place on the premises
  - the layout of the premises must be maintained in accordance with the plan that forms part of the premises licence
  - neither National Lottery products nor tickets in a private or customer lottery may be sold on the premises.

There are also mandatory conditions attaching to each type of premises licence controlling access between premises. There can be no direct access between one premises licensed under the Gambling Act 2005 and another premises licensed under the Gambling Act 2005, with the following exceptions:

- between licensed betting premises
- between bingo premises and alcohol-licensed premises/clubs with a club gaming or club machine permit/FECs and tracks
- between tracks and alcohol-licensed premises/clubs with a club gaming or club machine permit/FECs/betting premises and bingo premises
- between FECs and alcohol-licensed premises/bingo halls/clubs with club gaming or club machine permit and tracks.

## **Conditions that may be imposed on or excluded from premises licences by licensing authorities**

- 9.27** Section 169 of the Act gives licensing authorities:
- the ability to exclude from premises licences any default conditions that have been imposed under section 168
  - the power to impose conditions on the premises licences that they issue.

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<sup>19</sup> SI no 1409: The Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007  
SSI no 266: The Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007

**9.28** Licensing authorities should bear in mind their duty to act in accordance with the principles set out in section 153. Since they must aim to permit the use of premises for gambling, they should not attach conditions that limit the use of premises for gambling, except where that is necessary as a result of the requirement to act:

- in accordance with this Guidance, the Commission's codes of practice or their own Licensing Authority Statement of Policy
- in a way that is reasonably consistent with the licensing objectives.

Conversely, licensing authorities should not turn down applications for premises licences where relevant objections can be dealt with through the use of conditions.

**9.29** Conditions imposed by the licensing authority must be proportionate to the circumstances which they are seeking to address. In particular, licensing authorities should ensure that the premises licence conditions are:

- relevant to the need to make the proposed building suitable as a gambling facility
- directly related to the premises and the type of licence applied for
- fairly and reasonably related to the scale and type of premises
- reasonable in all other respects.

**9.30** It is the Commission's view that the conditions necessary for the general good conduct of gambling premises are those set as default and mandatory conditions by the Secretary of State and Scottish Ministers. Therefore, a pool of additional conditions published by the Commission is not necessary. Where there are specific, evidenced risks or problems associated with a particular locality, or specific premises or class of premises, a licensing authority will be able to attach individual conditions to address this. That will be a matter for them in the light of local circumstances.

**9.31** Licensing authorities should take decisions on individual conditions on a case-by-case basis, although this will be against the background of any general policy set out in this Guidance or their own Licensing Authority Statement of Policy.

## **Conditions that may not be attached to premises licences by licensing authorities**

**9.32** The Act sets out certain matters that may not be the subject of conditions, as follows:

- section 169(4) prohibits an authority from imposing a condition on a premises licence which makes it impossible to comply with an operating licence condition
- section 172(10) provides that conditions may not relate to gaming machine categories, numbers, or method of operation
- section 170 provides that membership of a club or body cannot be required by attaching a condition to a premises licence (the Act specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated)
- section 171 prevents an authority imposing conditions in relation to stakes, fees, winnings or prizes.



## Part 10: Review of premises licence by licensing authority

- 10.1** A premises licence may be reviewed by the licensing authority of its own volition or following the receipt of an application for a review, which is essentially a request by a third party to the licensing authority to review a particular licence. Licensing authorities should note that reviews cannot be delegated to an officer of the licensing authority – the lowest level of delegation permitted is to a licensing sub-committee.

### Initiation of review by licensing authority

- 10.2** Section 200 of the Act provides that licensing authorities may initiate a review in relation to a particular class of premises licence or in relation to particular premises. Officers may be involved in the initial investigations of complaints leading to a review, or may try informal mediation or dispute resolution techniques prior to a full-scale review being conducted. Licensing authorities may wish to consider in their scheme of delegation who initiates reviews, and whether a ‘filter’ system should be implemented to prevent unwarranted reviews from being conducted.
- 10.3** In relation to a class of premises, the licensing authority may review the use made of premises and, in particular, the arrangements that premises licence holders have made to comply with licence conditions. In relation to these general reviews, the authority would most likely be acting as a result of specific concerns or complaints about particular types of premises, which would cause them to want, for example, to look at the default conditions that apply to that category of licence.
- 10.4** In relation to particular premises, the licensing authority may review any matter connected with the use made of the premises if it has reason to suspect that premises licence conditions are not being observed, or for any other reason (such as a complaint from a third party) which gives them cause to believe that a review may be appropriate.
- 10.5** A formal review would normally be at the end of a process of ensuring compliance by the operator. If the operator does not meet the requirements then, after a formal review, the licensing authority may impose additional conditions or revoke the licence.
- 10.6** The licensing authority must give notice in writing to the licence holder that it intends to undertake a review, and must also publish notice of its intention to carry out the review. Regulations<sup>20</sup> for reviews state that the notice should be published in a local newspaper at least once in the ten working days following the day on which the application to review was made to the authority, or should be published on the licensing authority’s website and remain there for 28 consecutive days starting from eight days after the application to review was made. In addition, regulations state that the notice must also be displayed outside the premises itself, and remain there for the 28 days referred to above.

### Application for a review

- 10.7** Section 197 of the Act provides that an application for review may be made by a responsible authority or an interested party (see part 8 of this Guidance). Such applications must be submitted to the licensing authority in the prescribed form and state the reasons why a review is being requested, together with any supporting information and documents. The regulations referred to in paragraph 10.6 require the applicant for a review to provide notice in writing of their application to the premises licence holder, and to all responsible authorities, within seven days of making their application. Failure to do this will mean that the application process is halted until notice is received by all parties.

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<sup>20</sup> SI No. 2258: The Gambling Act 2005 (Premises Licences)(Review) Regulations 2007  
SSI No. 394: The Gambling Act 2005 (Review of Premises Licences)(Scotland) Regulations 2007

**10.8** Representations must be made within 28 days, commencing seven days after the date on which the application was received. During these seven days the licensing authority is required to publish notice of the application, as per the process set out in the regulations referred to in paragraph 10.6.

## **Decision whether to grant an application for a review**

**10.9** The decision to grant a review must not, and if properly managed will not, amount to pre-judging the outcome of a review.

**10.10** Section 199 provides that an authority must grant an application for a review, unless it decides to reject the application under section 198 of the Act. An application for a review may be (but need not be) rejected if the licensing authority thinks that the grounds on which the review is sought:

- (a) are not relevant to the principles that must be applied by the licensing authority in accordance with section 153 - so, if the application raises issues that are not relevant to the Commission Guidance/codes of practice, the Licensing Authority Statement of Policy, or the licensing objectives, then the licensing authority may reject it. In addition, if the application raises general objections to gambling as an activity, that is likely to be irrelevant to the principles in section 153, given that a licensing authority is required to permit the use of premises for gambling insofar as it thinks that permission is in accordance with the matters set out in that section. Examples that are likely to be irrelevant include demand for gambling premises, issues relating to planning, public safety, and traffic congestion
- (b) are frivolous
- (c) are vexatious
- (d) 'will certainly not' cause the authority to revoke or suspend a licence or to remove, amend or attach conditions on the premises licence
- (e) are substantially the same as the grounds cited in a previous application relating to the same premises. Here the licensing authority must take into account how much time has passed since the earlier application in reaching a judgement about whether it is reasonable to rely on this as a reason not to review the licence
- (f) are substantially the same as representations made at the time the application for a premises licence was considered. As with sub-section (e) the licensing authority will need to take into account the period of time that has passed since the representations were made, but the underlying requirement is that the licensing authority should not review the licence on the basis of the same arguments considered on the grant of the premises licence.

**10.11** Most applications for a review are likely to be the result of a public complaint or a complaint from the police. It is important that licensing authorities process applications for review without delay, so that both the review applicant and the premises operator know where they stand.

## **Carrying out a review**

**10.12** Having given notice of their intention to initiate a review or having determined that a review initiated by a third party should go ahead, section 201 of the Act requires the licensing authority to carry out the review as soon as possible after the 28 day period for making representations has passed.

**10.13** The purpose of the review will be to determine whether the licensing authority should take any action in relation to the licence. If action is justified, the options are to:

- (a) add, remove or amend a licence condition imposed by the licensing authority
- (b) exclude a default condition imposed by the Secretary of State or Scottish Ministers (relating to, for example, opening hours) or remove or amend such an exclusion
- (c) suspend the premises licence for a period not exceeding three months
- (d) revoke the premises licence.

In determining what action, if any, should be taken following a review, the

licensing authority must have regard to the principles set out in section 153 of the Act, as well as any relevant representations.

- 10.14** In particular, the licensing authority may take action as described above on the grounds that a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.
- 10.15** The licensing authority must hold a hearing, unless the applicant and any person who has made representations that have not been withdrawn (that are not vexatious, frivolous or irrelevant) consent to the review being conducted without one.
- 10.16** Once the review has been completed, the licensing authority must, as soon as possible, notify its decision to:
- the licence holder
  - the applicant for review (if any)
  - the Commission
  - any person who made representations
  - the chief officer of police or chief constable
  - HM Revenue and Customs.
- 10.17** Please see part 12 of this Guidance for information on rights of appeal.

## Part 11: Provisional statements

- 11.1** Section 204 of the Act provides for a person to make an application to the licensing authority for a provisional statement in respect of premises that he or she:
- expects to be constructed
  - expects to be altered
  - expects to acquire a right to occupy.
- 11.2** Developers may wish to apply for provisional statements before they enter into a contract to buy or lease property or land to judge whether a development is worth taking forward in light of the need to obtain a premises licence. It is also possible for an application for a provisional statement to be made for premises that already have a premises licence (either for a different type of gambling or the same type).
- 11.3** Applicants for premises licences must fulfil certain criteria. They must hold or have applied for an operating licence from the Commission (except in the case of a track), and they must have the right to occupy the premises in respect of which their premises licence application is made. However, these restrictions do not apply in relation to an application for a provisional statement. In circumstances in which an applicant has also applied to the Commission for an operating licence, the Commission will not be able to comment on whether the application is likely to be granted; and the licensing authority should not speculate on or otherwise take into account the likelihood of an operating licence being granted in its consideration of the application for a provisional statement.
- 11.4** An application for a provisional statement must be accompanied by plans and the prescribed fee. Licensing authorities in England and Wales set their own provisional statement fees up to a pre-determined maximum, whereas licensing authorities in Scotland must use the provisional statement fees set by Scottish ministers<sup>21</sup>.
- 11.5** Subject to any necessary modifications (and the differences already set out in paragraph 11.3), the process for considering an application for a provisional statement is the same as that for a premises licence application. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and interested parties may make representations and there are rights of appeal. Please note that the provisions in the Act relating to provisional statements are not the same as those in the Licensing Act 2003 or the references to provisional licences in the Licensing (Scotland) Act 2005.
- 11.6** Once the premises are constructed, altered, or acquired the holder of a provisional statement can put in an application for the necessary premises licence. A premises licence application for a premises where the applicant already holds a provisional statement for that premises attracts a lower application fee. Section 205 of the Act sets out rules on how the authority must treat this application. Licensing authorities should note that, in the absence of a requirement that an applicant for a provisional licence must have the right to occupy the premises, there may be more than one valid provisional statement in respect of the same premises.
- 11.7** If a provisional statement has been granted, the licensing authority is constrained in the matters it can consider when an application for a premises licence is made subsequently in relation to the same premises.
- 11.8** No further representations from relevant authorities or interested parties can be taken into account unless they concern matters which could not have been addressed at the provisional statement stage, or they reflect a change in the applicant's circumstances.

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<sup>21</sup> SI no. 479: The Gambling (Premises Licence Fees) (England and Wales) Regulations 2005  
SSI no. 197: The Gambling (Premises Licence Fees) (Scotland) Regulations 2005

- 11.9** In addition, the authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:
- which could not have been raised by way of representations at the provisional licence stage
  - which, in the authority's opinion, reflect a change in the operator's circumstances
  - where the premises has not been constructed in accordance with the plan and information submitted with the provisional statement application. This must be a substantial change to the plan and licensing authorities should discuss any concerns they have with the applicant before making a decision.
- 11.10** Section 210 of the Act (which applies to premises licences and provisional statements) makes it clear that a licensing authority must not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with planning or building law.

## Part 12: Rights of appeal and judicial review

### Appeals

- 12.1** This part deals only with appeals relating to premises licensing and other decisions by licensing authorities. Please note that any appeals against decisions made by the Commission (on operating and personal licences) must be made to the First-tier Tribunal (Gambling) (which replaces the Gambling Appeals Tribunal - for more information see the Commission's website, [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)).
- 12.2** This part is divided into sections dealing with premises licences and permits to provide facilities for gambling. Licensing authorities will be aware that their decisions may be subject to judicial review.

### Premises licences

- 12.3** The avenues of appeal against decisions by a licensing authority are set out in sections 206 to 209 of the Act.

### Who may appeal?

- 12.4** If an application under Part 8 of the Act is rejected, only the applicant may appeal.
- 12.5** If an application under Part 8 of the Act is granted, the applicant and a person who made representations may appeal. It does not automatically follow that the person who made the representations will be the appellant. It could be the licensee who is appealing, because he or she considers conditions attached to the licence too onerous. Similar arrangements will apply in appeals against a decision not to take action following a review, and in relation to the grant of temporary use notices. A licensing authority may choose who it has as its witnesses.
- 12.6** If a licensing authority takes action or determines to take no action (which may include revocation or suspension of the licence, or the removal or addition of licence conditions) after a review of a licence (see part 10 of this Guidance), any of the following may appeal:
- the licence holder
  - a person who made representations in relation to the review
  - where relevant, the person who applied for the review
  - the Commission.
- 12.7** Where a licensing authority makes a decision in relation to the transfer of a premises licence, which may involve amending licence conditions, the licence holder and the applicant for transfer have a right of appeal.
- 12.8** Notice of an appeal must be given within 21 days of notice of the decision being received by the appellant. During that period, and until any appeal that has been brought has been finally determined, a determination or other action by the licensing authority under Part 8 of the Act will not have effect unless the authority so directs (see section 208 of the Act).

### Giving reasons for decisions

- 12.9** In many cases, it is a requirement of the Act that a licensing authority gives clear and comprehensive reasons for a rejection of an application, and it is good practice for reasons to be given in relation to all decisions (see section 165, which is also applied in relation to other applications under Part 8 of the Act). A failure to give reasons may compel a person to appeal, and may suggest that the licensing authority did not make its decision with regard to all the information that it should have had regard to, and in line with its obligation



under section 153 (regardless of the decision that was reached). It is particularly important that reasons should address the extent to which the decision has been made with regard to the Licensing Authority's Statement of Policy and the Commission's Guidance. Reasons for decisions should be made available to all of the parties of any process which might give rise to an appeal under the terms of the Act.

## Appellate authorities

**12.10** In England and Wales an appeal against a decision of a licensing authority has to be made to the magistrates' court for the local justice area in which the premises concerned are situated. In Scotland, the appeal is made to the local sheriff court in the sheriffdom in which the premises are situated.

## How to appeal

**12.11** An appeal has to be commenced by the giving of a notice of appeal by the appellant to the local magistrates' court/sheriff within a period of 21 days, beginning with the day on which the appellant was notified by the licensing authority of the decision being appealed.

**12.12** It should be noted that unless he is the appellant, the licence holder or a person who has made an application for:

- a licence
- the transfer or reinstatement of a licence
- a provisional statement

is a respondent in any appeal, in addition to the licensing authority.

## What the court may take into account

**12.13** In hearing an appeal against a decision made by a licensing authority, the magistrates' court or sheriff will have regard to the Licensing Authority Statement of Policy, guidance issued by the Commission, relevant codes of practice issued by the Commission and the licensing objectives (after hearing the evidence).

## Outcome of appeals

**12.14** On determining an appeal, the court or sheriff may:

- dismiss the appeal
- substitute the decision appealed against with any other decision that could have been made by the licensing authority
- remit the case to the licensing authority to dispose of the appeal in accordance with the direction of the court/sheriff.

**12.15** The court or sheriff may make such order as to costs as they think fit, but will be required to bear in mind guidance and legislation about the awarding of costs against a public body.

**12.16** The court or sheriff, on hearing any appeal, may therefore review the merits of the decision on the facts and consider points of law or address both.

**12.17** There is a further right of appeal from the magistrates' court or sheriff to the High Court in England and Wales or the Court of Session in Scotland.

## Implementing the determination of the courts

**12.18** As soon as the decision of the magistrates' court or sheriff has been notified to all parties, licensing authorities should not delay its implementation. Any attempt to delay such

implementation will bring the appeal system into disrepute. Standing orders should therefore be put in place that, on receipt of the decision, necessary action should be taken forthwith unless ordered by the court/sheriff or a higher court to suspend such action (for example, as a result of an on-going judicial review).

## **Provisional statements**

**12.19** A provisional statement can be refused on exactly the same grounds as a premises licence (the provisions of Part 8 of the Act which apply to a premises licence apply, by virtue of section 204(2), to a provisional statement). The applicant may appeal against the rejection of an application for a provisional statement under section 206(1); and a person who made representations or the applicant may appeal against the grant of an application.

## **Permits**

**12.20** The process of appeals in respect of permits is different to that for premises licences and is set out in the relevant Schedules of the Act.

## **Schedule 10 – family entertainment centre gaming machine permits**

**12.21** Schedule 10, paragraph 22 sets out the processes for appeals for family entertainment centre gaming machine permits. The applicant or holder of a permit may appeal if the licensing authority has rejected an application (for a permit or renewal), given notice that the premises are not being used as an FEC or stated that the holder is incapable of carrying out an FEC business by reason of mental or physical incapacity. The appeal, which must be made within 21 days of receipt of a notice of the decision, must be made to the local magistrates' court, or sheriff court in Scotland.

**12.22** In considering an appeal, the court will take into account any statement prepared by the licensing authority which sets out the principles that it applied in making its decision. This statement may specify particular matters for consideration in determining the suitability of the applicant and may include such matters as the authority thinks fit in determining the suitability of an applicant for a lower stake gambling establishment. In addition, the court will take into account the following factors:

- the authority's duty to have regard to the Commission's Guidance and to what extent this duty was discharged
- to what extent, if any, the local authority had regard to the Act's licensing objectives.

**12.23** On an appeal, the magistrates' court or sheriff may take the following action: dismiss the appeal, substitute any decision that the licensing authority could have made, restore a permit, or remit it back to the authority to decide in accordance with a determination of the court, and make an order for costs. It should be noted that if the decision is remitted to the authority, the same rights of appeal will apply as for the original decision.

## **Schedule 11 (Parts 4 and 5) – small society lotteries**

**12.24** Schedule 11, paragraph 51 sets out the processes for appeals for small society lotteries. A society may appeal if the local authority (the Act states that local authorities register societies to run lotteries rather than licensing authorities) has refused an application for registration or revoked their registered status. The appeal must be made to the local magistrates' court, or sheriff in Scotland, within 21 days of the decision being notified to the society.

**12.25** In considering an appeal, the magistrates' court or sheriff may uphold the licensing authority's decision, reverse it, or make any other order. It should be noted that, if the decision is remitted to the authority, the same rights of appeal will apply as for the original

decision. In addition, the court will take account of any of the following factors:

- the authority's duty to have regard to Commission Guidance and to what extent this duty has been discharged
- to what extent, if any, the authority had regard to the Act's licensing objectives.

## **Schedule 12 – club gaming permits and club machine permits**

**12.26** Schedule 12, paragraph 25 sets out the process of appeal for club gaming permits and club machine permits. If the authority rejects an application for the issue or renewal of a permit the applicant may appeal. The holder of a permit may appeal if the permit is cancelled. A person who made an objection to the grant of the permit, or made representations in relation to the cancellation of a permit, may appeal against a grant or refusal to cancel respectively. The appeal must be made to the local magistrates' court, or sheriff in Scotland, within 21 days of the appellant receiving information about the decision.

**12.27** The authority may only refuse an application on one or more of the following grounds:

- (a) (i) for a club gaming permit: the applicant is not a members' club/miners' welfare institute
- (ii) for a club machine permit: the applicant is not a members' club, miners' welfare institute or commercial club
- (b) the premises are used by children or young persons
- (c) an offence or a breach of a condition of the permit has been committed by an applicant
- (d) a permit held by an applicant has been cancelled during the last ten years
- (e) an objection has been made by the Commission or local chief officer of police.

**12.28** The authority may only cancel a permit on one of the following grounds:

- (a) if the premises are used wholly or mainly by children or young persons
- (b) if an offence or breach of condition of the permit has been committed in the course of gaming activities.

**12.29** Therefore, in considering an appeal the court will determine whether any of these statutory grounds apply. In addition, the court will take into account the following factors:

- (a) any objections made by the Commission or local police chief
- (b) the authority's duty to have regard to both the Commission's Guidance and the Act's licensing objectives, and to what extent these duties were discharged.

**12.30** In England and Wales only, there is a fast track procedure for holders of a club premises certificate under section 72 of the Licensing Act 2003. In these circumstances the Commission and police do not have to be consulted and therefore the authority will not receive any objections. The permit must be granted unless:

- (a) the applicant is established or conducted wholly or mainly for the purposes of the provision of facilities for gaming, other than gaming of a prescribed kind
- (b) the applicant is established or conducted wholly or mainly for the purposes of the provision of facilities for gaming of a prescribed kind and also provides facilities for gaming of another kind
- (c) a club gaming permit or club machine permit issued to the applicant has been cancelled during the period of ten years ending with the date of the application.

There is no equivalent provision for clubs in Scotland under the Licensing (Scotland) Act 2005.

**12.31** On an appeal, the magistrates' court or sheriff may take the following action: dismiss the appeal, substitute any decision that the local authority could have made, restore a permit, remit it back to the authority to decide in accordance with a determination of the court, and make an order for costs. It should be noted that if the decision is remitted to the authority, the same rights of appeal will apply as for the original.

## Schedule 13 – licensed premises gaming machine permits

- 12.32** Schedule 13, paragraph 21 sets out the appeal process for licensed premises gaming machine permits. This applies to England and Wales only. The Scottish Government has set regulations<sup>22</sup> on permits for alcohol-licensed premises in Scotland. An applicant for a permit may appeal if the application is rejected. The holder of a permit may appeal if he is permitted fewer or a different category of machines than applied for, or if the licensing authority gives a notice which cancels or varies the entitlements of the permit. The application has to be made to the local magistrates' court within 21 days of the notice of the decision being received.
- 12.33** In considering an appeal, the court will take into account the authority's duty to have regard to the Commission's Guidance, the licensing objectives and such other matters as they think relevant, and to what extent these duties were discharged.
- 12.34** On an appeal, the magistrates' court may take the following action: dismiss the appeal, substitute any decision that the local authority could have made, restore a permit, remit it back to the authority to decide in accordance with a decision of the court, and make an order for costs. It should be noted that if the decision is remitted to the authority, the same rights of appeal will apply as for the original.

## Schedule 14 – prize gaming permits

- 12.35** Schedule 14, paragraph 22 sets out the appeal process for prize gaming permits. If the licensing authority rejects an application for the issue or renewal of a permit, the applicant may appeal to the magistrates' court or sheriff within 21 days of the decision.
- 12.36** In considering an appeal, the court will look at any statement of principles prepared by the licensing authority which sets out specific matters for consideration in determining the suitability of an applicant to hold a permit. In addition, the court will take account of the following factors:
- the authority's duty to have regard to Commission Guidance and to what extent this duty has been discharged
  - to what extent, if any, the local authority had regard to the licensing objectives.
- 12.37** On an appeal, the magistrates' court or sheriff may take the following action: dismiss the appeal, substitute any decision that the local authority could have made, remit it back to the authority to decide in accordance with a determination of the court, and make an order for costs. It should be noted that if the decision is remitted to the authority, the same rights of appeal will apply as for the original.

## Temporary use notices

- 12.38** Appeals in relation to temporary use notices are dealt with in section 226 of the Act. This section grants the right to appeal to the magistrates' court (or sheriff's court in Scotland) to both the applicant and any person entitled to receive a copy of the notice (that is the Commission, local chief of police and HM Revenue & Customs). Appeals must be made within 21 days of receiving notice of the licensing authority's decision. If the appeal is against the decision of the authority not to issue a counter-notice, then the person giving notice must be joined with the licensing authority as a respondent in the case.
- 12.39** The magistrates' court or sheriff may take the following action: dismiss the appeal, direct the authority to take specified action, remit it back to the authority to decide in accordance with a decision of the court, and make an order for costs. It should be noted that if the

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<sup>22</sup> SSI no. 505: The Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007

decision is remitted to the authority, the same rights of appeal will apply as for the original decision.

- 12.40** There is no stay of proceedings in relation to temporary use notices (as there are in relation to applications under Part 8 of the Act). However, the time limits are such that the Commission would expect proceedings on an appeal to be heard before the temporary use notice would otherwise take effect.

## Judicial review

- 12.41** Any party to a decision may apply for judicial review if they believe that the decision taken by the licensing authority is:
- illegal – that is beyond the powers available to the licensing authority
  - subject to procedural impropriety or unfairness – which is a failure in the process of reaching the decision, such as not observing the ‘rules of natural justice’
  - irrational – where a decision is so unreasonable that no sensible person could have reached it (in effect ‘perverse’ or ‘Wednesbury’ unreasonable).

- 12.42** For an application to succeed, the application must show that:
- the applicant has sufficient standing to make that claim
  - the actions of the reviewed licensing authority give grounds for review.
- But the remedy is a discretionary one and the Court may decline judicial review if, for example, it considers that the applicant has an alternative remedy which is more appropriate to pursue, such as a right of appeal, or has a private law claim against the defendant.

- 12.43** The applicant can ask the Court to grant a number of orders. A mandatory order compels the reviewed body to do something; a prohibitory order compels it to refrain from doing something; a ‘declaration’ sets out the court’s view on the legality of a particular course of action; and a quashing order nullifies a decision and remits it for reconsideration. In addition, the applicant can seek an injunction (interdict in Scotland) which is, in practice, similar to a mandatory or a prohibitory order.

## Part 13: Information exchange

### Information exchange between the Commission and licensing authorities

#### Underlying principles

- 13.1** Under section 26 of the Act, the Commission has a duty to advise the Secretary of State about the incidence of gambling and the manner in which it is conducted. Section 29 of the Act entitles the Commission to seek information from licensing authorities, and places an obligation on authorities to comply with its information requests, providing the information is:
- part of a register maintained by the licensing authority
  - in the licensing authority's possession in connection with a provision of the Act.
- 13.2** The purpose of information exchange is not only to fulfil the requirements under the Act, but also to enable both the Commission and the licensing authorities to carry out work related to their regulatory functions in a risk-based manner, using the best available information. It is essential for both parties to establish a framework by which information and knowledge can be exchanged between all parties to the regime.
- 13.3** In keeping with the Hampton principles and the Regulators Compliance Code, we seek to avoid the risk of duplication or over-regulation and maximise the efficient use of our resources. To accomplish this, we recognise the need to share information about our inspections and compliance activities regularly.

#### Information requirements

##### Premises data

- 13.4** It is important for the Commission to maintain registers of the various forms of gambling activity to understand the national picture and for licensing authorities to gain a regional and in some cases a national picture. It is therefore important to share this information with each other to effectively work together.
- 13.5** The Act requires licensing authorities to maintain data on premises licences and to provide this information to the Commission. As part of the application process for a premises licence, applicants will forward notice of the application to the Commission, and licensing authorities subsequently notify the Commission of the outcome of each application - whether it is granted or refused.
- 13.6** Licensing authorities are also required to inform the Commission of any changes to licences, such as variations, transfers, lapses, reinstatements, and surrenders. It is important that the Commission's national data set for premises licences is accurate as it is used for conducting national compliance work. Accuracy also reduces the need for the Commission to request ad hoc information on particular premises from the licensing authorities, which is time consuming and resource intensive.
- 13.7** The Commission may make observations and representations on the suitability of the applicant for a premises licence or any other aspect of the application. In such cases, the Commission and licensing authority will discuss matters pertaining to the application, and the appropriate action to take. An example of how this works in practice is provided in the shaded box below. More information on the Commission's role as a responsible authority and its involvement in individual premises licence applications is given in part 8 of this guidance.

##### Returns



- 13.8** All licensing authorities are required to submit returns to the Commission on an annual basis, providing information on licensed gambling activity and details of compliance and regulatory work undertaken. This includes providing details of permits and notices issued, premises inspections conducted, and reasons for and outcome of licence reviews.
- 13.9** The Annual Return is now included in the Single Data List that has been issued by DCLG. The List is a catalogue of all the datasets that local government must submit to central government and such organizations as the Commission in a given year.
- 13.10** The returns are an important source of information and can assist both the Commission and the licensing authorities in improving their work as risk based regulators. The returns provide the Commission with details of licensing authority compliance and regulatory work. Both parties will work together to ensure that the returns process is managed effectively.
- 13.11** Licensing authorities will ensure that the information on the returns is accurate and sent to the Commission within agreed timescales. In return, the Commission will ensure that information derived from the returns is analysed and reported to licensing authorities to help identify risks and prioritise work.
- 13.12** The Commission will minimise the burden imposed on licensing authorities by keeping its data requests to an absolute minimum. The data requirements will be kept under review to ensure that any data requests have a clear and valid regulatory purpose.

#### List of data requirements

Licensing function	Event requiring information to be sent to Commission
<b>Premises licences and provisional statements</b>	Licensing authority has granted / rejected an application for a premises licence or provisional statement
	A premises licence has lapsed
	Licensing authority has granted or rejected an application to reinstate a premises licence
	Licensing authority has granted or rejected an application to transfer or vary a premises licence
	A review of a premises licence has been completed and a decision made
	A hearing is to be held where the Commission has made a representation
	A premises licence has been surrendered
<b>Club permits</b>	A club permit application has been granted / rejected

Licensing function	Event requiring information to be sent to Commission
<b>Small society lottery</b>	Licensing authority registers a society to operate small lotteries

<b>registration</b>	Licensing authority cancels a society's registration to operate small lotteries
	Where a society has exceeded the permitted proceeds for small lotteries
<b>Issue of permits and temporary permissions</b>	LA Returns
<b>Inspections and reviews</b>	LA Returns

### Other information requirements

**13.13** Small society lotteries: licensing authorities are responsible for registering societies to run small society lotteries and are required to record details of the society on a register and to notify both the applicant and the Commission of this registration.

**13.14** Club Gaming Permits: When a licensing authority either grants or rejects an application for a Club Gaming Permit they are required to inform both the applicant and the Commission.

### Information on specific operators that the Commission makes available to licensing authorities

**13.15** The Commission is required under section 106 of the Act to maintain a register of operating licence holders and make this publicly available. Where a licensing authority needs to check if an applicant for a premises licence holds an operating licence, verification can be found on the edited register on the Commission's website. An unedited register can be made available upon request.

**13.16** The Commission will inform the relevant licensing authorities of any changes to operating licences that may have an impact on the status of related premises licences.

## Part 14: Temporary use notices

- 14.1** Part 9 of the Act sets out the position in relation to temporary use notices. These allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a temporary use notice include hotels, conference centres and sporting venues.
- 14.2** A temporary use notice may only be granted to a person or company holding a relevant operating licence, in effect a non-remote casino operating licence.
- 14.3** Regulations<sup>23</sup> state that temporary use notices may only be used to permit the provision of facilities for equal chance gaming, where the gaming is intended to produce a single overall winner. However, the facilities may not be provided in circumstances where any person participating in the gaming does so by means of a gaming machine. Equal chance gaming is gaming which does not involve playing or staking against a bank and gives equally favourable chances to all participants. Examples of equal chance gaming include games such as backgammon, mah-jong, rummy, kalooki, dominoes, cribbage, bingo and poker.

### Meaning of premises

- 14.4** Section 218 of the Act refers to a 'set of premises' and provides that a set of premises is the subject of a temporary use notice if 'any part' of the premises is the subject of a notice. This is not the same as the references to 'premises' in Part 8 of the Act. The reference to 'a set of premises' prevents one large premises from having a temporary use notice in effect for more than 21 days in a year by giving notification in relation to different parts of the premises and re-setting the clock.
- 14.5** The meaning of 'premises' in Part 8 of the Act is discussed in part 7 of this Guidance. As with 'premises', the definition of 'a set of premises' will be a question of fact in the particular circumstances of each notice that is given. In the Act 'premises' is defined as including 'any place'. In considering whether a place falls within the definition of 'a set of premises', licensing authorities will need to look at, amongst other things, the ownership/occupation and control of the premises. A large exhibition centre, for example, would be likely to come within the definition as it is properly one premises, and should not be granted a temporary use notice for 21 days in respect of each of its exhibition halls. But in relation to other covered areas, such as shopping centres, the licensing authority will need to consider whether different units are in fact different 'sets of premises', given that they may be occupied and controlled by different people. This is a new permission and licensing authorities should be ready to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises.

### Procedure for giving notice

- 14.6** The holder of an operating licence must give notice to the licensing authority in whose area the premises are situated. The Secretary of State has prescribed the form of the notice which must specify information including:
- the type of gaming to be carried on
  - the premises where it will take place
  - the dates and times the gaming will take place
  - any periods during the previous 12 months that a temporary use notice has had effect for the same premises
  - the date on which the notice is given
  - the nature of the event itself.

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<sup>23</sup> SI No. 3157: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007

## Maximum period

- 14.7** The same set of premises may not be the subject of a temporary use notice for more than 21 days in any 12-month period, but may be the subject of several notices provided that the total does not exceed 21 days.
- 14.8** If the premises have been the subject of one or more temporary notice for more than a total of 21 days in the past 12 months, the licensing authority must issue a counter-notice that has the effect of stopping the temporary notice coming into effect. Failure to comply with the counter-notice will be an offence. A licensing authority may issue a counter-notice which limits the number of days that the temporary use notice comes into effect, bringing it within the 21-day limit. Such counter-notices require consultation with the applicant to ensure that the restrictions they impose do not result in an unworkable event.
- 14.9** As notices may be given by different operators in respect of the same premises, the licensing authority will always need to check whether a counter-notice is appropriate.
- 14.10** A notice may not be given in respect of a vehicle. A notice may be given in respect of a vessel, but only if it is a passenger vessel or a vessel that is situated at a fixed place. A vessel at a fixed place would include a structure on water that is not intended to be able to move (such as an oil rig, or an artificially constructed island in the middle of a lake). Licensing authorities should note that a notice could only be given in respect of a vessel that is moored permanently at a place (ie it could move but it does not) if it is a passenger vessel.

## Giving notice

- 14.11** A temporary use notice must be lodged with the licensing authority not less than three months and one day before the day on which the gambling event will begin. The application, fee<sup>24</sup> and counter-notices are specified by the Secretary of State and Scottish Ministers. The application must be copied to:
- the Commission
  - the police
  - HM Commissioners for Revenue and Customs
  - if applicable, any other licensing authority in whose area the premises are situated.
- 14.12** The person who is giving the temporary use notice must ensure that the notice and the copies are with the recipients within seven days of the date of the notice. Where the premises are situated in the area covered by more than one authority, the person giving notice must send the notice to one authority and copy to the other(s). Licensing authorities will have to work closely together in such circumstances to ensure that the 21-day maximum period for temporary notices is not breached.
- 14.13** When the licensing authority receives a notice, it must send a written acknowledgement as soon as is reasonably practicable. A written acknowledgement may include one sent by electronic mail.

## Objections

- 14.14** The licensing authority and the other bodies to which the notice is copied should consider whether they wish to give notice of objection. In considering whether to do so, they must have regard to the licensing objectives and if they consider that the gambling should not take place, or only with modifications, they must give a notice of objection to the person who gave the temporary use notice. Such a notice must be copied to the licensing authority

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<sup>24</sup> The fee for England and Wales can be set by each licensing authority to a maximum of £500, as set out in regulations SI 2007/3157. The fee for Scottish licensing boards has been set as £350 by regulations SSI 2007/461

(unless it is given by the licensing authority). The notice of objection and the copy to the licensing authority must be given within 14 days of the date of the temporary use notice. An objection may be withdrawn by giving written notice to those to whom the notice of objection was sent and copied.

- 14.15** Licensing authorities should note the timescales set out in the Act. The need to give a notice of objection within 14 days of the date of the temporary use notice means that there must be procedures to ensure that such notices are considered without delay so that, where appropriate, the opportunity to lodge an objection is not missed.
- 14.16** If objections are received, the licensing authority must hold a hearing to listen to representations from the person who gave the temporary use notice, all the objectors and any person who was entitled to receive a copy of the notice. If all the participants agree that a hearing is unnecessary, it may be dispensed with.
- 14.17** Those who raise objections may offer modifications to the notice that will alleviate their concerns. Remedies may include a reduction in the number of days when gambling occurs or a restriction on the type of gambling permitted. If the modifications are accepted by the applicant, a new temporary notice must be prepared and the original notice withdrawn. The three-month time limit and fee will not apply to the new notice. The person who made the original objection and proposed the modification may not object to the new notice, but others to whom it is copied may object. If there are no new objections, there will be no need for a hearing.
- 14.18** If the licensing authority, after a hearing has taken place or has been dispensed with, considers that the temporary use notice should not have effect, it must issue a counter-notice which may:
- prevent the temporary use notice from taking effect
  - limit the activities that are permitted
  - limit the time period of the gambling
  - allow the activity to take place subject to a specified condition.
- 14.19** The principles that the authority must apply in issuing a counter-notice are the same as those in determining premises licence applications. In particular, the licensing authority should aim to permit the provision of facilities for gambling under a temporary use notice subject to its view as to whether to do so accords with a Commission code, this Guidance, or the Licensing Authority Statement of Policy and is reasonably consistent with the licensing objectives.
- 14.20** If the licensing authority gives a counter-notice, it must give reasons for doing so and must copy the counter-notice to all those who received copies of the temporary use notice.
- 14.21** If the licensing authority decides not to issue a counter-notice, the temporary use notice will take effect. The authority must give notice of its decision to the person who gave the temporary use notice and others to whom it was copied.

## Appeals

- 14.22** An appeal against the licensing authority's decision may be made by the applicant, or any person entitled to receive a copy of the temporary use notice, to the magistrates' court or sheriff's court within 21 days of receiving notice of the authority's decision. There is a further right of appeal to the High Court or Court of Session on a point of law.

## Endorsement of the notice

- 14.23** If no objections are made within 14 days of the date of the notice, the licensing authority must endorse the notice as valid and return it to the person who gave it. If the endorsed

copy of the notice is lost, stolen or damaged, the person who gave the notice may request a new endorsed copy from the licensing authority, subject to the payment of a fee.

- 14.24** Section 228 sets a time limit of six weeks for the completion of all proceedings on a temporary use notice. This includes considering whether to give a notice of objection; holding a hearing, if that is necessary; and giving a counter-notice or notice dismissing the objections.
- 14.25** The person who gives a temporary notice may notify the authority that it is withdrawn at any time up to and during the time it has effect. In those circumstances the notice will have no effect, and any unexpired period of time will not count towards the 21-day maximum for a temporary use notice having effect on the premises.

## **Displaying the notice**

- 14.26** While the gambling is taking place, a copy of the temporary use notice must be displayed prominently on the premises. It is an offence not to produce the notice endorsed by the authority when requested to do so by a constable, an officer of HM Revenue and Customs, an enforcement officer, or an authorised local authority officer.



## Part 15: Occasional use notices

- 15.1** Section 39 of the Act provides that where there is betting on a track on eight days or less in a calendar year, betting may be permitted by an occasional use notice without the need for a full premises licence. Licensing authorities and track operators and occupiers should note that the processes set out in the Act for applying for an occasional use notice are different to those for temporary use notices.
- 15.2** While tracks are normally thought of as permanent racecourses, authorities should note that the meaning of 'track' in the Act covers not just horse racecourses or dog tracks, but also any other premises on any part of which a race or other sporting event takes place, or is intended to take place (section 353(1)). The Commission's Guidance relating to tracks is contained in part 20 of this document.
- 15.3** This means that land which has a number of uses, one of which fulfils the definition of track, can qualify for the occasional use notice provisions (for example agricultural land upon which a point-to-point meeting takes place). Land used temporarily as a track can qualify, provided races or sporting events take place or will take place there. The track need not be a permanent fixture.
- 15.4** The intention behind occasional use notices is to permit licensed betting operators (with appropriate permission from the Commission) to use tracks for short periods for conducting betting, where the event upon which the betting is to take place is of a temporary, infrequent nature. The occasional use notice dispenses with the need for a betting premises licence for the track in these circumstances.
- 15.5** The Commission is aware of some instances of the apparent misuse of OUNs, by the arrangement of a contrived sporting event at a premises solely in order to apply for an OUN and to permit betting on premises where it would not normally be allowed. We consulted on a new licence condition limiting the betting to bets on the outcomes of a race, competition or other sporting event taking place at the track in question whilst the OUN is in force. We decided that this would be too restrictive but are keeping the situation under review. Further details on this topic can be found on the Commission's website<sup>25</sup>.
- 15.6** Occasional use notices may not be relied upon for more than eight days in a calendar year. Note that the requirement relates to a calendar year (starting 1 January) and not to any period of 12 months. The Secretary of State has the power to increase or decrease the number of occasional use notices that are permitted, but there are currently no plans to use this power.
- 15.7** Licensing authorities should keep a record of the number of notices served in relation to each track.

### Procedure

- 15.8** A notice must be served by a person who is responsible for the administration of events on the track or by an occupier of the track. The notice must be served on the licensing authority and copied to the chief officer of police for the area in which the track is located. The notice must specify the day on which it has effect. Notices may be given in relation to consecutive days, so long as the overall limit of eight days is not exceeded in the calendar year.
- 15.9** Provided that the notice will not result in betting facilities being available for more than eight days in a calendar year, there is no provision for counter-notices or objections to be submitted.

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<sup>25</sup> Occasional Use Notices Response Document October 2010 is available at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

- 15.10** The Act does not require the applicant or the local authority to notify the Commission that an occasional use notice has been given. However the Commission does require licensing authorities to submit returns showing how many occasional use notices were received during each quarter – more information on this can be found in part 13 of this Guidance document.
- 15.11** It should be noted that betting operators cannot provide gaming machines at tracks by virtue of an occasional use notice. Gaming machines may be made available by betting operators and this is reliant on a betting premises licence, which refers to a specific licensed area, but does not enable the operator to site gaming machines outside of that area.

## Part 16: Gaming machines

- 16.1** This part of the Guidance describes the categories of gaming machine and the number of such machines that may be permitted in each type of gambling premises as set out in the Act. Licensing authorities should note that the term 'gaming machine' now covers all machines on which people can gamble and the term has been preserved in the Act, because it is one that is readily understood by people.
- 16.2** Section 235 of the Act sets out the definition of a gaming machine. The definition is wider than those included in previous gaming legislation and covers all types of gambling activity that can take place on a machine, including betting on virtual events. However, the following should be noted:
- there remains a distinction between skill machines and gaming machines, in that skill machines are unregulated
  - section 235 contains important exemptions for equipment that is not to be considered a gaming machine, even when gambling can be performed on it – for example, a home PC is not classed as a gaming machine, even though someone could access remote gambling facilities on a home PC.
- 16.3** Specific guidance on machines that are exempt from the definition laid out in the Act is set out later in this section of the Guidance, although licensing authorities should take legal advice or contact the Commission directly if they have concerns about the precise legal status of equipment being used on premises.
- 16.4** The Commission is responsible for licensing manufacturers and suppliers of gaming machines and advises operators to obtain machines from Commission-licensed suppliers. Similarly, permit holders and those applying for permits for clubs, alcohol-licensed premises or family entertainment centres will also be advised through Commission guidance to obtain gaming machines from Commission-licensed suppliers.
- 16.5** The Commission has set Gaming Machine Technical Standards relating to the way in which each category of machine will operate<sup>26</sup>. The Commission has also set out a testing strategy that details the testing arrangements for each category of machine<sup>27</sup>. The Commission has the power to test gaming machines, both before they are supplied and when in operation in premises, to ensure that they are operating as advertised.
- 16.6** If a licensing authority has concerns relating to the manufacture, supply or repair of gaming machines, or the manner in which they are operating, it should contact the Commission.
- 16.7** Section 172 of the Act prescribes the number and category of gaming machines that are permitted in each type of gambling premises licensed by authorities. Neither the Commission nor licensing authorities have the power to set different limits or further expand or restrict the categories of machine that are permitted (with the exception of alcohol-licensed premises holding gaming machine permits where authorities have discretion to specify the number of permitted gaming machines). In addition, limits are set separately in the Act for certain types of permit issued by authorities. Machine limits are summarised at Appendix A of this Guidance.

### Categories of gaming machines<sup>28</sup>

- 16.8** Regulations define four categories of gaming machine (as per section 236 of the Act): categories A, B, C and D, with category B divided into a further five subcategories. The

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<sup>26</sup> The Gaming Machine Technical Standards is available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

<sup>27</sup> The Gaming Machine testing strategy is available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

<sup>28</sup> Category C and complex category D gaming machines stakes and prizes are currently under review. Once these have been confirmed the new stakes and prize limits will be incorporated into the Guidance as a codicil.

categories and sub-categories have been defined according to the maximum amount that can be paid for playing the machine and the maximum prize it can deliver. Please see Appendix B for a breakdown of machine categories and entitlements.

## Age restrictions

- 16.9** There is a minimum age of 18 for all players for all category A, B and C machines, including category B3A gaming machines offering lottery style games. However there is no minimum age for players of category D machines. The holder of any permit or premises licence has to comply with the codes of practice issued by the Commission on the location of and access to gaming machines by children and young persons, and the separation from category C and B machines where those are also located on the same premises.

## Maximum number of machines by premises type

- 16.10** The maximum number of machines permitted, and in the case of casinos the ratios between tables and machines, is set out by premises type below, and is also summarised in Table 16.ii (note that this information includes premises with permit entitlements, as well as licensed premises).

### Large casinos

- 16.11** Section 172(4) provides that large casinos must have at least one gaming table to qualify for gaming machines, and are permitted five machines (of category B, C or D) for each gaming table available for use (see paragraph 17.6). Large casinos therefore need 30 gaming tables available for use to qualify for the maximum 150 machines.

### Small casinos

- 16.12** Section 172(5) provides that small casinos must have at least one gaming table to qualify for gaming machines, and are permitted two machines (of category B, C or D) for each gaming table available for use (see paragraph 17.6). Small casinos therefore need 40 gaming tables available for use to qualify for the maximum 80 machines.

### Converted casinos (Schedule 18 of the Act (Part 7))

- 16.13** Unless an existing casino decides to apply for one of the new casino premises licences (and the application is granted), it will operate under the 2005 Act by virtue of preserved rights for existing casino operators. These casinos will retain the rights to gaming machines equivalent to their entitlements under previous legislation. That means they are permitted no more than 20 machines of category B to D (except B3A machines), or they may elect to have any number of category C or D machines instead (as was previously the case under section 32 of the 1968 Gaming Act<sup>29</sup>). There is no table-to-machine ratio in these casinos.

### Bingo premises

- 16.14** Section 172(7) provides that the holder of a bingo premises licence may make available for use a number of category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises and any number of category C or D machines. Premises in existence before 13 July 2011 are entitled to make available eight category B gaming machines, or 20% of the total number of gaming machines, whichever is the greater. The holder of a bingo premises licence granted on or after 13 July 2011 but before 1 April 2014 is entitled to make available a maximum of eight category B gaming machines or 20% of the total number of gaming machines, whichever is the greater; from 1 April 2014 these premises will be entitled to 20% of the total number of

<sup>29</sup> Commencement No 6 and Transitional Provisions Order SI 2006/3272 Schedule 4 paragraph 65(6)

gaming machines only.. Regulations state that category B machines at bingo premises are restricted to sub-category B3 and B4 machines but not B3A machines.

### **Betting premises (including track operators with pool betting licence)**

- 16.15** Section 172(8) provides that the holder of a betting premises licence may make available for use up to four gaming machines of category B, C or D. By virtue of section 172(9) this permission extends to tracks, but only those where the licence holder also holds a pool betting operating licence. Regulations state that category B machines at betting premises are restricted to sub-category B2, B3 and B4 machines, but not B3A machines.

### **Adult gaming centres**

- 16.16** Section 172(1) provides that the holder of an adult gaming centre premises licence may make available for use a number of category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises and any number of category C or D machines. Premises in existence before 13 July 2011 are entitled to make available four category B gaming machines, or 20% of the total number of gaming machines, whichever is the greater. The holder of an adult gaming centre premises licence granted on or after 13 July 2011 but before 1 April 2014 is entitled to make available a maximum of four category B gaming machines or 20% of the total number of gaming machines, whichever is the greater; from 1 April 2014 these premises will be entitled to 20% of the total number of gaming machines only. Regulations state that category B machines at adult gaming centres are restricted to sub-category B3 and B4 machines, but not B3A machines.

### **Family entertainment centres (with a Commission operating licence)**

- 16.17** Section 172(2) provides that the holder of a family entertainment centre premises licence may make available for use any number of category C and D machines. However category C machines must be in a separate area to ensure the segregation and supervision of machines that may only be played by adults.

### **Family entertainment centres (with gaming machine permit)**

- 16.18** Section 247 provides that the holder of a family entertainment centre gaming machine permit may make available for use any number of category D machines. As with the position on licences, there is no power for the licensing authority to set a limit on the number of machines under the permit.

### **Clubs**

- 16.19** The automatic entitlement to two gaming machines permitted by section 282 does not apply to clubs. However, section 273 provides that the holder of a club gaming permit or club machine permit may make available for use on premises operated by a members' club, a commercial club or a miners' welfare institute, up to three machines of category B, C or D (that is, three machines in total). As well as clubs with alcohol licences, premises that are not licensed to sell alcohol, for example, works premises which operate membership-based social clubs, are able to apply for club machine permits or club gaming permits. They need to have 25 members, be permanently established and be for the benefit of the members. Regulations state that category B machines for club machine permits are restricted to sub-category B3A and/or B4 machines, depending on the class of club. Commercial clubs are restricted to B4 machines only whereas members' clubs and miners' welfare institutes may site sub-category B3A and/or B4 machines. CORCA, the trade association representing the majority of members' clubs, entered into a voluntary agreement to site only one B3A machine as part of the allowance of three machines in each of their clubs. CORCA is responsible for ensuring that its 11 member associations and their clubs abide by the agreement.

## **Pubs and other premises with a qualifying on-premises alcohol licence (or equivalent in Scotland)**

- 16.20** Section 282 provides that certain persons are automatically entitled to make gaming machines available for use by virtue of holding an alcohol licence. Specifically, these are the non-premises alcohol licence holder (or holder of the equivalent Scottish licence) for premises, which contain a bar at which alcohol is served, but without a requirement that alcohol is served only with food.
- 16.21** There is an automatic entitlement to two gaming machines of category C or D, subject to the licence holder notifying the licensing authority, paying the prescribed fee and complying with any relevant code of practice issued by the Commission. If the person ceases to be the holder of the on-premises alcohol licence for the premises, the automatic entitlement to the two gaming machines also ceases. In order to retain the entitlement to gaming machines, whoever applies for the new premises alcohol licence would also need to apply under section 282(2), notifying the licensing authority of their intention to make the gaming machines available for use and paying the prescribed fee.
- 16.22** In addition, in accordance with section 283, an application may be made for a licensed premises gaming machines permit, which allows for further category C or D machines to be made available in alcohol-licensed premises. There is no limit in the Act to the number of additional machines that may be authorised. Note that this is a total figure and is not in addition to the two machines which can be sited automatically. This will be a matter for the licensing authority to determine in each case, and specify on the permit.

### **Travelling fairs**

- 16.23** Sections 286 and 287 provide that any number of category D machines may be made available for use at travelling fairs, subject to a requirement that the facilities for gambling (including but not confined to gaming machines) amount to no more than an ancillary amusement at the fair. There is no application or notification requirement, but licensing authorities will want to satisfy themselves from time to time that the gambling offered by virtue of these sections is taking place at a travelling fair within the definition contained in section 286. Travelling fairs may be adequately controlled through bye-laws and therefore no additional regulation through the Act is imposed.

### **Amusement with prizes machines in non-amusement premises**

- 16.24** Permits for amusement with prizes gaming machines (AWPs) granted under section 34 of the 1968 Act in respect of non-amusement premises (such as, chip shops, taxi offices, corner tearooms), were valid only until their natural expiry date, or 31 July 2009, whichever was the earlier. AWPs are no longer permitted in non-amusement premises.

### **The meaning of 'available for use'**

- 16.25** The offence in section 242 of the Act committed by a person who does not hold an operating licence or other permission covering gaming machines and where no other exemption applies, is that of making a gaming machine 'available for use'. However, the Act does not define what 'available for use' means here. In this section we aim to assist licensing authorities by providing guidance on the meaning of 'available for use'.
- 16.26** The Commission considers that a gaming machine is 'available for use' if a person can play it. It follows that more than the permitted number of machines may be physically located on a premises, provided the operator has a system in place that ensures no more than the permitted number are 'available for use' at any one time. The operator must control this system. If there is more than one player position, that is two or more people can



play a gaming machine simultaneously, then the machine counts as two or more machines<sup>30</sup>.

- 16.27** An example of an appropriate system may be a situation where the power supply for machines of a certain category is controlled by the operator (and is not accessible to the player) so that one machine must be unplugged before another machine can be played. An example of an inappropriate system would be where an additional machine was located on premises and there was a spare socket which a player could plug the machine into at will, allowing play on more than the permitted number of machines.
- 16.28** If an operator does wish to put more than the permitted number of machines in a public area, the onus will be on the operator to demonstrate that no more than the permitted number of machines are 'available for use' at any one time.
- 16.29** A machine that can operate at more than one category, which is operating at a lower category, does not contribute to the number of machines 'available for use' at a higher category until it switches to that category. However, the operator must also have a system in place for these machines which ensures no more than the permitted number are 'available for use' at any one time.
- 16.30** The Commission permits systems in which a number of machines are networked so that the player can select which game and category they play at, but which adhere to any restrictions on the number of machines at a certain category.

## **Machines other than gaming machines in gambling premises**

### **Automated roulette**

- 16.31** There are two types of automated casino equipment that are excluded from the definition of a gaming machine established by the Act. The first type is those linked to a live game of chance, for example, roulette. These enable the player to gamble on a live game as it happens, without actually being seated at the table, sometimes referred to as 'electronic roulette'. These are not regulated as gaming machines but as live gaming and there is no limit on the number of items of such equipment. The second type is a machine that plays a live game but is fully automated, that is, it operates without any human intervention. For example, a roulette wheel that is electrically or mechanically operated with an air blower to propel the ball around the wheel. Again, these are not regulated as gaming machines, although casinos are bound by controls on the specification and number of player positions using such equipment. The Act requires that equipment used to play a game of chance, for example, cards, dice and roulette wheels is 'real' and not 'virtual' if it is not to be classed as a gaming machine.

### **Bet receipt terminals**

- 16.32** Section 235(2)(c) provides that a machine is not a gaming machine by reason only of the fact that it is designed or adapted for use to bet on future real events. Some betting premises may make available for use machines that accept bets on live events, such as a sporting event, as a substitute for placing a bet over the counter. These 'betting machines' are not gaming machines and therefore neither count towards the maximum permitted number of gaming machines, nor have to comply with any stake or prize limits. Such betting machines merely replicate and automate the process that can be conducted in person, and therefore do not require regulation as gaming machines.
- 16.33** However, a machine made available to take bets on virtual races (that is, images generated by computer to resemble races or other events) is classified as a gaming

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<sup>30</sup> SI No. 2289: The Gaming Machine (Single Apparatus) Regulations 2007

machine and does, therefore, count towards the maximum permitted number of gaming machines. Accordingly, it must meet the relevant category limitations for the premises.

**16.34** Section 181 of the Act contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available, by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino). When considering whether to impose a condition to restrict the number of betting machines in these premises, the licensing authority, amongst other things, should take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of employees to monitor the use of the machines by vulnerable people. The authority should also bear in mind that the mandatory conditions set by the Secretary of State for large and small casinos already set a maximum of 40 player positions in relation to betting machines.

## Skill games

**16.35** The Act does not cover machines that give prizes as a result of the application of pure skill by players. A skill with prizes machine (SWP) is one on which the winning of a prize is determined only by the player's skill – any element of chance imparted by the action of the machine would cause it to be a gaming machine. An example of a skill game would be trivia game

machines, popular in pubs and clubs, which require the player to answer general knowledge questions to win cash prizes. Other examples include racing games, such as F1 simulators, and shooting games. Many family entertainment centres have games that give prizes by redemption of tickets accumulated. Providing these machines give prizes according to the skill of the player, for example getting a high score shooting basketball, they will be exempt.

**16.36** Further information on skill with prizes machines, and advice on how to distinguish between these machines and gaming machines, can be found on the Commission's website.

## Other exclusions

**16.37** Section 235 of the Act sets out a number of exclusions, covering machines that are not considered gaming machines, even though gambling may take place on them, as follows:

- A domestic or dual use computer is not a gaming machine just because it can be used to take part in remote gambling. Regulations define a 'domestic computer' as one capable of being used for a purpose not related to gambling that is located in a private dwelling and used only on domestic occasions. A 'dual use computer' is also defined as having to be capable of being used for a purpose not related to gambling, but in addition must not be knowingly adapted or presented in such a way as to facilitate or draw attention to the possibility of its use for gambling<sup>31</sup>.
- A telephone or other 'machine facilitating communication' that could be used for gambling purposes, for example, a mobile phone via which text message based lotteries can be entered, is not considered to be a gaming machine unless that is its primary purpose. Ordinary mobile phones are therefore exempt from the definition, but telephones designed or adapted for the purpose of enabling gambling would not be.
- Some machines that allow the purchase of lottery tickets are not gaming machines. However, this is intended as an exemption for the sale of tickets in a real lottery with other participants (for example a lottery vending machine), and not a virtual scratch card lottery conducted only by means of the machine. This means, first, that if the results of the lottery are determined by the machine, the machine is not exempt; and, second, if the machine announces the results of the lottery (determined otherwise than by the machine) by display or communication then the

<sup>31</sup> The regulations defining these terms are SI No. 2082: The Gambling Act 2005 (Gaming Machines)(Definitions) Regulations 2007

interval between the sale of the ticket and the announcement of the result must comply with the minimum period of time specified by regulations<sup>32</sup>. It should be noted that regulations have created a category of gaming machine that is defined by the fact that it is a lottery machine. These are category B3A machines and can only be sited in members' clubs and miners' welfare institutes.

- A machine operated by virtue of a bingo operating licence for the purpose of playing bingo will be exempt provided it complies with any conditions set by the Commission. This covers what are known as mechanised cash bingo and electronic bingo ticket minders.
- Also exempted are machines used for the playing of bingo by way of prize gaming in Adult Gaming Centres and Family Entertainment Centres, however, the prize gaming regulations must be followed.

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<sup>32</sup> SI No. 2495: The Gambling (Lottery Machine Interval) Order 2007

## Part 17: Casinos

- 17.1** Section 7(1) of the Act states that ‘a casino is an arrangement whereby people are given an opportunity to participate in one or more casino games’. Casino games are defined by the Act to mean a game of chance which is not equal chance gaming. Equal chance gaming is gaming which does not involve playing or staking against a bank, and where the chances are equally favourable to all participants. The Act gives the Commission power through conditions attached to operating licences to restrict the types of casino games that may be made available.
- 17.2** In March 2011 the Commission consulted on licence condition 9 of the Licence Conditions and Codes of Practice (LCCP): Types and rules of casino and other games. The licence condition was amended with effect from 20 June 2011 and effectively removed the requirement for casino operators in Great Britain to seek approval to trial new games. The Commission now only prescribes a list of games that may not be played (none at present).
- 17.3** One final edition of the Rules of casino games in Great Britain was published (June 2011) to accurately capture all those games, side bets and variations that were available in casinos in Great Britain at the time that the new licence condition came into effect on 20 June 2011. The Commission has published a document entitled Rules of core casino games in Great Britain - June 2011 which will serve as its replacement, and which outlines the basic rules of the most popular casino games: roulette, blackjack, punto banco, three card poker and dice. Player information on the specific rules and odds applied to these and any other table games by individual operators are displayed in each casino, as required by code of practice 3 of the LCCP.
- 17.4** Operators who are interested in running a trial of a new game, side bet or variation should contact the industry-led Casino Games Review Group (CGRG) which has been set up to co-ordinate new games and determine their suitability for the market place.
- 17.5** Under the Act, licensing authorities in England and Wales have been given the new role of issuing premises licences for casinos and monitoring those licences. In Scotland the licensing boards become licensing authorities and continue to have responsibilities for granting permissions for casinos in the form of premises licences.

### Protection of children and young persons

- 17.6** No-one under the age of 18 is permitted to enter a casino and operators are required to display notices to this effect at all entrances to a casino. Children and young persons are not allowed to be employed at premises with a casino premises licence. Licensing authorities are able to find information about the restrictions that apply in the *LCCP*, which is published on the Commission’s website.

### New casinos

- 17.7** Section 174 of the Act specifies the categories of casino premises licence that may be issued under the Act. These relate to the categories of casino provided for by section 7(5) of the Act. The gaming machines permitted to be made available in new casinos are related to the number of gaming tables available for use<sup>33</sup>.
- No more than eight large casino premises licences will be permitted. Large casinos will have a minimum total customer area of 1,500m<sup>2</sup>. This category of casino will be able to offer casino games, bingo and/or betting and up to 150 gaming machines in any combination of categories B1 to D (except B3A lottery machines) provided that a maximum ratio of 5:1 gaming machines to gaming tables is met.

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<sup>33</sup> SI No.1970 The Gambling Act 2005 (Gaming Tables in Casinos) (Definitions) Regulations 2009

- Large casino premises licences may be issued by the following licensing authorities: Great Yarmouth Borough Council; Kingston upon Hull City Council; Leeds City Council; Middlesbrough Borough Council; Milton Keynes Borough Council; Newham London Borough Council; Solihull Metropolitan Borough Council, and Southampton City Council.
- No more than eight small casino premises licences will be permitted. Small casinos will have a minimum total customer area of 750m<sup>2</sup>. A small casino will be able to offer casino games, betting and up to 80 gaming machines in any combination of categories B1 to D (except B3A lottery machines) provided that a maximum ratio of 2:1 gaming machines to gaming tables is met.
- Small casino premises licences may be issued by Bath and North East Somerset District Council; East Lindsey District Council; Luton Borough Council; Scarborough Borough Council; Swansea City and County Council; Torbay Borough Council; Wigtown Divisional Licensing Board in the area of Dumfries and Galloway Council; and Wolverhampton City Council.

## The process for issuing casino premises licences

- 17.8** As a first step in licensing a casino, the licensing authority will have to invite applications for any casino premises licences that it may issue. Regulations set out how the process of inviting applications is to be done.<sup>34</sup>
- 17.9** It is possible that the number of applications that the relevant licensing authorities will receive will exceed the number of licences available. The Act lays down a framework for a two-stage process for considering applications in these circumstances.
- 17.10** As with all deliberations in premises licences, the authority should not confuse planning and building regulation considerations with the matter before it.
- 17.11** Licensing authorities whose areas have been chosen for the new casinos should, in their Licensing Authority Statement of Policy, set out the principles they intend to apply when determining the ‘winner’ of a premises licence competition.
- 17.12** Authorities should think carefully before entering into any agreements or arrangements with potential casino operators which might be perceived to affect their ability to exercise their stage two functions objectively and without having prejudged any of the issues. If any such agreements or arrangements are entered into, it will be important that authorities are able to demonstrate (for example, through having obtained independent and impartial advice on the competing applications) that any decision they reach is objectively based and is not affected by the arrangements.

### Stage one

- 17.13** If more applications are received than the number of available licences, the authority must determine whether each application would be granted a licence if there were no limit on the number of licences that the authority could grant. Each application must be considered separately and no reference made to the other applications received.
- 17.14** During this process each of the other applicants will be considered an ‘interested party’ and may make representations. The consideration of representations should be the same as that for normal applications for premises licences (see part 7 of this Guidance).
- 17.15** This process will result in one or more provisional decisions to grant a premises licence.

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<sup>34</sup> SI No. 469; The Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008

**17.16** As with other decisions on premises licences, the decision of the authority may be appealed against. Until all appeals are determined the licensing authority may not proceed to stage two.

## **Stage two**

**17.17** The second stage of the process only applies where the number of applications which the licensing authority would provisionally grant under the stage one process exceeds the number of available casino premises licences.

**17.18** Under the second stage of the process the authority has to decide between the competing applications and grant any available licences to those applications which in their opinion will result in the greatest benefit to its area. The principles which the licensing authority are going to apply in determining the stage two competition must be included in the authority's policy statement and therefore should be available to potential applicants before the authority invites applications for the available casino premises licence(s). The unsuccessful applicants must be informed of the result of the competition.

**17.19** There is no right of appeal against the grant or refusal at stage two (other than by way of judicial review).

**17.20** The Secretary of State has issued a code of practice about the procedure to be followed by licensing authorities in making determinations at both stage one and stage two, and also about the matters authorities are to take into account in making such determinations. The Act requires licensing authorities to comply with any code of practice issued by the Secretary of State.

**17.21** Where an authority invites applications, those applications may be in the form of an application for a provisional statement as well as in the form of an application for the grant of a full casino premises licence. Where an application is made in the form of a provisional statement it is to be treated in the same way as an application for a casino premises licence and included in any two-stage determination process that the authority is required to carry out. If an application for a provisional statement is successful in that process, then it is not necessary for a further two-stage licensing process to be held when a casino premises licence application is eventually made by the operator to whom the statement has been issued.

**17.22** Where a licensing authority issues a provisional statement following a two-stage determination process, they may limit the period of time for which the statement has effect. This is so that the authority can control the period within which the full casino premises licence application has to be made. Under Schedule 9 to the Gambling Act the authority is allowed to extend the period for which the provisional statement has effect if the person to whom it is issued applies to have it extended.

## **Casino resolutions**

**17.23** Section 166(1) of the Act states that a licensing authority may resolve not to issue casino premises licences.

**17.24** The decision to pass such a resolution may only be taken by the authority as a whole and cannot be delegated to the licensing committee. In passing such a resolution the authority may take into account any principle or matter, not just the licensing objectives. Where a resolution is passed, it must be published by the authority in its Licensing Authority Statement of Policy.

**17.25** The resolution must apply to casino premises generally, so that the authority cannot limit its effect to geographic areas or categories of casinos. The resolution must specify the date it comes into effect. The authority may revoke the resolution by passing a counter-resolution (again the whole authority must pass that resolution). The resolution will lapse after three years, so the authority should pass a resolution every three years to keep such a policy in place.



**17.26** A resolution not to issue casino premises licences will only affect new casinos. It will not have any effect on casino premises licences issued before the resolution takes effect or on provisional statements issued before that date. Similarly a resolution will not affect the ability of existing casinos with preserved entitlements from the 1968 Act from continuing to operate as casinos.

## **Converted casinos (with preserved rights under Schedule 18 of the Act)**

**17.27** Casino operators with licences granted under the 1968 Act are eligible to be granted a casino premises licence under 'grandfathering' arrangements. Additionally, special provisions apply to enable these operators to relocate premises by way of a variation to a converted casino premises licence providing those premises are wholly or partly situated in the area of the licensing authority which issued the licence.<sup>35</sup>

**17.28** These premises licences are subject to the normal system of review as outlined in part 10 of this Guidance. Where a licensing authority in whose area there are existing casinos has passed a 'no new casinos' resolution, the fact that such a resolution has been passed will not be a relevant factor to take into account in considering whether to review a premises licence.

## **Casino premises licence conditions**

**17.29** Part 9 of this Guidance discusses the conditions that may or may not be attached to premises licences, and those that are attached automatically. The Secretary of State and Scottish Ministers have set out in regulations the conditions relating specifically to casino premises. The paragraphs below discuss these conditions, both mandatory conditions – those that must be attached to casino premises; and default conditions – those that will apply unless the licensing authority chooses to exclude them using its powers under section 169.

### **Mandatory conditions attaching to all casino premises licences**

**17.30** Access to premises is regulated to add additional safeguards for both the public and industry. Mandatory conditions that must be attached to all casino premises licences require that the principal entrance to the casino should be from a street. A street is defined as including any bridge, road, lane, footway, subway, square, court, alley or passage (including passages through enclosed premises such as shopping centres), whether it is a thoroughfare or not.

**17.31** A mandatory condition requires that no customer must be able to enter the casino from any other premises holding a casino, bingo, AGC, FEC or betting premises licence, or from premises where a FEC, club gaming and club machine, or licensed premises gaming machine permit, has effect.

**17.32** There should be no access to a casino from premises wholly or mainly used by children and young persons.

**17.33** No other gambling equipment may be situated within two metres of any ordinary gaming table. For the purposes of these conditions an ordinary gaming table means one which is not wholly or partially automated.

**17.34** A maximum of 40 separate player positions may be made available for use in relation to wholly automated gaming tables at any time.

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<sup>35</sup> SI No. 3272; The Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006; schedule 4, paragraph 65(12,13)

- 17.35** All casinos must display the rules of each type of casino game that can be played on the premises in a prominent place within both the table gaming area and other gambling areas to which customers have unrestricted access. Licensees may do this either by displaying clear and legible signs or by making available to customers leaflets or other written material setting out the rules.
- 17.36** ATMs must be positioned so that customers must cease to gamble at tables or gaming machines in order to use them.

### **Mandatory conditions attaching to large casino premises licences**

- 17.37** A notice shall be displayed at all entrances to the casino stating that no person under the age of 18 will be admitted.
- 17.38** Large casinos must provide a minimum table gaming area of 1000m<sup>2</sup>. In determining the floor area of the table gaming area, any number of separate areas within the casino may be taken into account. However, no area counting towards the minimum table gaming area may comprise less than 12.5% of the total minimum table gaming area. No gambling shall be permitted in the table gaming area of the premises other than gambling by way of table gaming.
- 17.39** Large casinos must offer a non-gambling area of a minimum of 500m<sup>2</sup>. The non-gambling area may consist of one or more areas within the casino. These areas must be readily available to customers (ie offices, kitchen areas, employee areas will not count). They may include but should not consist exclusively of, lavatories and lobby areas. The area must also include recreational facilities for casino customers that are available for use when the casino is open; where there is more than one area each area must contain recreational facilities. No gambling facilities may be offered in the non-gambling areas.
- 17.40** Clear and accessible information about the terms on which a bet may be placed should be displayed in a prominent position on the premises.
- 17.41** Any admission charges, the charges for playing bingo games and the rules of bingo must be displayed in a prominent position on the premises. Rules can be displayed on a sign, by making available leaflets or other written materials containing the rules, or running an audio-visual guide to the rules prior to any bingo game being commenced.
- 17.42** No more than 40 separate betting positions may be made available for use in relation to betting terminals at any time.
- 17.43** In addition to these conditions the Commission has issued a code of practice relating to access to casinos by children and young people. This can be found in the Commission's *Licence Conditions and Codes of Practice*, which is available on the Commission's website<sup>36</sup>.

### **Mandatory conditions attaching to small casino premises licences**

- 17.44** A notice shall be displayed at all entrances to the casino stating that no person under the age of 18 will be admitted.
- 17.45** Small casinos must provide a minimum table gaming area of 500m<sup>2</sup>. In determining the floor area of the table gaming area, any number of separate areas within the casino may be taken into account. However, no area counting towards the minimum table gaming area may comprise less than 12.5% of the total minimum table gaming area. No gambling shall be permitted in the table gaming area of the casino other than gambling by way of table gaming.

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<sup>36</sup> Licence Conditions and Codes of Practice, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

- 17.46** Small casinos must offer a non-gambling area of a minimum of 250m<sup>2</sup>. The non-gambling area may consist of one or more areas within the premises. These areas must be readily available to customers (ie offices, kitchen areas, employee areas will not count). They may include, but should not consist exclusively of, lavatories and lobby areas. The area must also include recreational facilities for casino customers that are available for use when the casino is open; where there is more than one area each area must contain recreational facilities. No gambling facilities may be offered in the non-gambling areas.
- 17.47** Clear and accessible information about the terms on which a bet may be placed should be displayed in a prominent position on the premises.
- 17.48** No more than 40 separate betting positions may be made available for use in relation to betting machines at any time.
- 17.49** In addition to these conditions the Commission has issued a code of practice relating to access to casinos by children and young people. This can be found in the *Licence Conditions and Codes of Practice*, which is available on the Commission's website. .

### **Mandatory conditions attaching to converted casino premises licences**

- 17.50** A notice shall be displayed at all entrances to the casino stating that no person under the age of 18 will be admitted.
- 17.51** Casinos with converted licences, and that have a gambling area of over 200m<sup>2</sup>, must offer a minimum non-gambling area equivalent to at least 10% of its total gambling area. In determining the floor area of the gambling area, all areas in which facilities for gambling are provided should be taken into account. The non-gambling area may consist of one or more areas within the casino. These areas must be readily available to customers (i.e. offices, kitchen areas, employee areas will not count). They may include, but should not consist exclusively of, lavatories and lobby areas. The area must also include recreational facilities for casino customers that are available for use when the casino is open; where there is more than one area each area must contain recreational facilities. No gambling facilities may be offered in the non-gambling areas.
- 17.52** In addition to these conditions the Commission has issued a code of practice relating to access to casinos by children and young people. This can be found in the Commission's *Licence Conditions and Codes of Practice*, which is available on the Commission's website.

### **Default conditions attaching to all casino premises licences**

- 17.53** The default opening hours of all casinos are noon to 6am.

### **Primary Gambling Activity**

- 17.54** An operating licence condition provides that gaming machines may be made available for use in casinos only on those days when sufficient facilities for playing casino games or games of equal chance are also available for use.
- 17.55** In this respect, when a casino exclusively offers fully automated casino games, there must be more individual player positions made available for these games than there are gaming machines made available for use.
- 17.56** The *Licence Conditions and Codes of Practice*, sets out in full the requirements on operators which are found in licence condition 16 and in associated code of practice provision 9. This document, and any subsequent update to it, is available from the Commission's website.

## Part 18: Bingo

- 18.1** Bingo is not given a statutory definition in the Act other than that it means any version of the game irrespective of by what name it is described. It is to have its ordinary and natural meaning. Two types of bingo are commonly understood:
- cash bingo, where the stakes paid make up the cash prizes that are won
  - prize bingo, where various forms of prizes are won, not directly related to the stakes paid.
- 18.2** Cash bingo is the main type of bingo played in commercial bingo premises. They also offer prize bingo, largely as interval games. The distinction between the two versions of the game is abolished for commercial operators, and the holder of a bingo operating licence will be able to offer any type of bingo game, whether cash or prize. This means that only premises with a bingo premises licence, or a 2005 Act large casino premises licence (where the operator holds a bingo as well as a casino operating licence), will be able to offer bingo in all its forms.
- 18.3** Apart from commercial bingo premises, prize bingo is traditionally a game played in arcades, especially seaside amusement arcades, or at travelling funfairs. For these operators, prize bingo is being subsumed within the allowances for prize gaming in the Act. This means that, subject to limits on participation fees and prizes, adult gaming centres, both licensed and unlicensed family entertainment centres, and travelling fairs, (or any premises with a prize gaming permit) are able to offer prize gaming, which includes prize bingo. In this form of gaming, the nature of the prize must not be determined by reference to the number of people playing the game, and the nature or the size of the prize must not be determined by reference to the amount paid for or raised by the gaming. See part 27 of this Guidance for a fuller discussion of prize gaming.
- 18.4** Licensing authorities need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. This is a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.

## Protection of children and young persons

- 18.5** Under the Act, children and young persons (anyone up to the age of 18) cannot be employed in providing any facilities for gambling on bingo premises, and children (under 16) cannot be employed, in any capacity, at a time when facilities for playing bingo are being offered. However, young persons, aged 16 and 17, may be employed in bingo premises (while bingo is being played), provided the activities on which they are employed are not connected with the gaming or gaming machines. Licensing authorities are able to find information about the restrictions that apply in *Licence Conditions and Codes of Practice*.
- 18.6** Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

## Gaming machines

- 18.7** Section 172(7) provides that the holder of a bingo premises licence may make available for use a number of category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises. Premises in existence before 13 July 2011 are entitled to make available eight category B gaming machines, or 20% of the total number of gaming machines, whichever is the greater. The holder of bingo premises licence granted on or after 13 July 2011 but before 1 April 2014 is entitled to make available a maximum of eight category B gaming machines or 20% of the total

number of gaming machines, whichever is the greater; from 1 April 2014 these premises will be entitled to 20% of the total number of gaming machines only. Regulations state that category B machines at bingo premises should be restricted to sub-category B3 and B4 machines, but not B3A lottery machines.

- 18.8** The gaming machines must remain within the licensed area covered by the premises licence. In the unusual circumstance that an existing bingo premises covered by one premises licence applies to vary the licence and acquire additional bingo premises licences (so that the area that was the subject of a single licence will become divided between a number of separate licensed premises) it is not permissible for all of the gaming machines to which each of the licences brings an entitlement to be grouped together within one of the licensed premises. So for example, where two separate bingo premises have been created by genuinely splitting a pre-existing premises into two adjacent premises, it is not permissible to locate sixteen category B3 gaming machines in one of the resulting premises (with none in the other one), as the gaming machine entitlement for that premises would be exceeded.
- 18.9** Equipment operated by a bingo operating licence for the purpose of playing bingo, for example what are currently known as mechanised cash bingo and electronic bingo terminal (EBTs), will be exempt from controls on gaming machines provided they comply with any conditions set by the Commission and (in the case of EBTs) do not hold gaming machine content.
- 18.10** An EBT that offers gaming machine content in addition to bingo content is considered to be a gaming machine for the purposes of primary gambling activity and would count towards the total number of gaming machines. Correspondingly, that terminal would not count towards the offering of bingo for primary gambling activity purposes. Any EBTs that do not offer gaming machine content would not count towards the number of gaming machines.

## **Primary Gambling Activity**

- 18.11** An operating licence condition provides that gaming machines may be made available for use in licensed bingo premises only on those days when sufficient facilities for playing bingo are also available for use.
- 18.12** In this respect, in cases where bingo is exclusively offered by means of electronic bingo terminals or bingo machines, there must be more individual player positions made available for bingo than there are gaming machines made available for use.
- 18.13** The Licence Conditions and Codes of Practice (LCCP), sets out in full the requirements on operators.
- 18.14** Should a licensing authority receive an application to vary a premises licence for bingo or betting in order to extend the opening hours, the authority should satisfy itself that the reason for the application is in line with the requirements on primary gambling activity. (i.e. the need for operating licence holders to ensure that the gambling activity appropriate to the licence type ('the primary activity' or 'the principal activity') is actually offered at those premises and not replaced by the making available of gaming machines). Therefore, the applicant should be able to demonstrate that the extension of the opening hours is not designed solely to benefit from the machine entitlement and activity which is ancillary to the primary activity of the premises, namely betting or bingo.

## **Bingo in clubs and alcohol-licensed premises**

- 18.15** Bingo is a class of equal chance gaming permitted on alcohol-licensed premises, and in clubs and miners' welfare institutes, under the allowances for exempt gaming in Part 12 of



the Act. There are regulations setting controls on this form of gaming, to ensure that it remains a low stakes and prizes activity.<sup>37</sup>

- 18.16** In addition, new rules are laid down in the Act about the playing of bingo specifically in alcohol-licensed premises, clubs and miners' welfare institutes. Where the level of bingo played in these premises reaches a certain threshold, it will no longer be authorised by these rules and a bingo operating licence will have to be obtained from the Commission for future bingo games. The aim of these provisions is to prevent bingo becoming a predominant commercial activity on such non-gambling premises.
- 18.17** The threshold is reached if the bingo played during any seven-day period exceeds £2,000 (either in money taken or prizes awarded) once in a year, referred to as 'high turnover bingo'. There is a legal duty on the licensee or club to inform the Commission if they offer high turnover bingo in any seven day period. That allows the Commission to monitor the bingo activity on the premises, and discuss with the relevant licensee or club the point at which a bingo operating licence may be needed. A 'high turnover period' begins with the first day of the seven day period in which the threshold was exceeded and lasts for a year. If a second period of high turnover bingo occurs within that year, a bingo operating licence will be required. Where bingo is played in a members club under a bingo operating licence no premises licence will be required.
- 18.18** If it comes to the attention of licensing authorities that alcohol-licensed premises or clubs or institutes are playing bingo during the course of a week which involves significant stakes and prizes, that makes it possible that the £2,000 in seven days is being exceeded, authorities should inform the Commission. To help clubs and institutes to comply with the full range of statutory requirements for gaming the Commission has developed a statutory code of practice. The *Code of Practice for gaming in clubs and premises with an alcohol licence* is available on the Commission website.

## Bingo in casinos

- 18.19** The eight large casinos will be able to offer bingo. Bingo will be permitted as part of their casino premises licence and they will not require a separate bingo premises licence, though they will need to obtain a bingo operating licence (which may be combined with their casino licence) in order to offer facilities for bingo at a casino. The standards in this respect will be no lower than for operators seeking only to provide facilities for bingo alone.

## Bingo premises licence conditions

- 18.20** Part 9 of this Guidance discusses the conditions that may or may not be attached to premises licences, and those that are attached automatically. The Secretary of State and Scottish Ministers have set out in regulations the conditions relating specifically to bingo premises. The paragraphs below discuss these conditions, both mandatory conditions – those that must be attached to bingo premises; and default conditions – those that will apply unless the licensing authority chooses to exclude them using its powers under section 169.

### Mandatory conditions attaching to bingo premises licences

- 18.21** A notice stating that no person under the age of 18 years is permitted to play bingo on the premises shall be displayed in a prominent place at every entrance to the premises.
- 18.22** No customer shall be able to enter bingo premises directly from a casino, an adult gaming centre or betting premises (other than a track).

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<sup>37</sup> SI No. 1940; The Gambling Act 2005 (Exempt Gaming in Alcohol-Licensed Premises) Regulations 2007  
SI No. 1944; The Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007



- 18.23** Over 18 areas within bingo halls that admit under-18s must be separated by a barrier with prominently displayed notices stating that under-18s are not allowed in that area and with adequate supervision in place to ensure that children and young people are not able to access these areas or the category B or C machines. Supervision may be done either by placing the terminals within the line of sight of an official of the operator or via monitored CCTV.
- 18.24** Any admission charges, the charges for playing bingo games and the rules of bingo must be displayed in a prominent position on the premises. Rules can be displayed on a sign, by making available leaflets or other written material containing the rules, or running an audio-visual guide to the rules prior to any bingo game being commenced.
- 18.25** Any ATM made available for use on the premises shall be located in a place that requires any customer who wishes to use it to cease gambling in order to do so.

### **Default conditions attaching to bingo premises licences**

- 18.26** Bingo facilities in bingo premises may not be offered between the hours of midnight and 9am. However, there are no restrictions on access to gaming machines in bingo premises.

## Part 19: Betting premises

- 19.1** The Act contains a single class of licence for betting premises. However, within this single class of licence, there are different types of premises which require licensing. This part of the Guidance discusses off-course betting, that is, betting that takes place other than at a track in what was previously known as a licensed betting office. Tracks are discussed in part 20 of this Guidance. Please note that there are also betting offices on tracks, that have a separate premises licence from the track licence. Those are also discussed in part 20 of this Guidance.
- 19.2** The Act also permits betting intermediaries to operate from premises, although betting intermediaries usually offer their services via remote communication, such as the internet. In principle, however, there is nothing to stop a betting intermediary applying for a betting premises licence to offer intermediary services upon the premises.
- 19.3** Under the Gambling Act, licensing authorities are responsible for issuing and monitoring premises licences for all betting premises. The issuing of premises licences is discussed in part 7 of this Guidance.

### Protection of children and young persons

- 19.4** Children and young persons are not able to enter premises with a betting premises licence, although special rules apply to tracks, as explained in part 20 of this Guidance. Children and young persons are not allowed to be employed at premises with a betting premises licence unless the premises are shut and any gaming machines are switched off.

### Betting premises licence conditions

- 19.5** Part 9 of this Guidance discusses the conditions that may or may not be attached to premises licences, and those that are attached automatically. The Secretary of State and Scottish Ministers have set out in regulations the conditions relating specifically to betting premises. The paragraphs below discuss these conditions, both mandatory – those that must be attached to betting premises; and default – those that will apply unless the licensing authority chooses to exclude them using its powers under section 169.

#### Mandatory conditions attaching to betting premises licences

- 19.6** A notice shall be displayed at all entrances to the betting premises stating that no person under the age of 18 will be admitted. The notice should be clearly visible to people entering the premises.
- 19.7** There must be no access to betting premises from other premises that undertake a commercial activity (except from other premises with a betting premises licence including tracks). Except where it is from other licensed betting premises, the entrance to a betting shop should be from a street (defined as including any bridge, road, lane, footway, subway, square, court, alley or passage – including passages through enclosed premises such as shopping centres – whether a thoroughfare or not).
- 19.8** Any automated telling machine (ATM) made available for use on the premises shall be located in a place that requires any customer who wishes to use it to leave any gaming machine or betting machine in order to do so.
- 19.9** No apparatus for making information or any other material available in the form of sounds or visual images may be used on the licensed premises, except where used to communicate:
- information about or coverage of sporting events, including information relating to betting on such events (and incidental information including advertisements);
  - or

- information relating to betting (including results) on any event in connection with which bets may have been effected on the premises.

Betting operator-owned TV channels are permitted.

- 19.10** No music, dancing or other entertainment is permitted on betting premises. This includes any form of entertainment such as apparatus producing sound or visual images which do not fall within paragraph 19.9 or machines which do not come within the categories of machine explicitly allowed in betting premises under section 172(8) of the Act.
- 19.11** The consumption of alcohol on the premises is prohibited.
- 19.12** The only publications that may be sold or made available on the premises are racing periodicals or specialist betting publications.
- 19.13** A notice setting out the terms on which a bet may be placed must be displayed in a prominent position on the premises.

### **Default conditions attaching to betting premises licences**

- 19.14** Gambling facilities may not be offered in betting premises between the hours of 10pm on one day and 7am on the next day, on any day.

### **Gaming machines**

- 19.15** Section 172(8) provides that the holder of a betting premises licence may make available for use up to four gaming machines of category B, C or D. Regulations state that category B machines at betting premises are restricted to sub-category B2, B3 and B4 machines. See part 16 of this Guidance for information on gaming machines.

### **Betting machines (bet receipt terminals)**

- 19.16** Section 235(2)(c) provides that a machine is not a gaming machine if it is designed or adapted for use to bet on future real events. Some betting premises may make available machines that accept bets on live events, such as horse racing, as a substitute for placing a bet over the counter. These 'betting machines' are not gaming machines and therefore neither count towards the maximum permitted number of gaming machines, nor have to comply with any stake or prize limits. Such betting machines merely automate the process that can be conducted in person and therefore do not require regulation as a gaming machine.
- 19.17** However, where a machine is made available to take bets on virtual races (that is, images generated by computer to resemble races or other events) that machine is a gaming machine and does count towards the maximum permitted number of gaming machines, and must meet the relevant category limitations for the premises.
- 19.18** Section 181 contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino). When considering whether to impose a condition to restrict the number of betting machines in particular premises, the licensing authority, amongst other things, should take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of employees to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people.

## Primary Gambling Activity

- 19.19** It is not permissible for an operator to offer gaming machines on a premises which is licensed for betting but not to offer sufficient facilities for betting. A betting operating licence authorises its holder to 'provide facilities for betting' (section 65(2)(c) of the Act). Likewise, a betting premises licence authorises premises to be used for 'the provision of facilities for betting...' (section 150(1)(e) of the Act). The ability to make up to four gaming machines, within categories B2 – D, available is an additional authorisation conferred upon the holder of a betting premises licence (section 172(8) of the Act); it is not a free standing right to make gaming machines available for use. It follows that unless a betting premises operator offers sufficient facilities for betting it should not be making gaming machines available on the premises in question.
- 19.20** In the Commission's view it is also important, in relation to the licensing objective of protecting vulnerable persons from being harmed or exploited by gambling, that customers should be offered a balanced mix of betting and gaming machines in licensed betting premises. Thus, whilst the Commission recognises that betting premises are permitted to offer gaming machines, including B2 gaming machines, the Commission considers that betting should be the primary element of the gambling facilities being offered to customers in such premises. Betting may be provided by way of betting terminals or over a counter (face to face).
- 19.21** Accordingly, an operating licence condition provides that gaming machines may be made available for use in licensed betting premises only at times when there are also sufficient facilities for betting available.
- 19.22** In this respect, such facilities must include information that enables customers to access details of events on which bets can be made, make such bets, learn of the outcome and collect any winnings. Where betting facilities are provided only by betting machines the number of betting machines must exceed the number of gaming machines made available for use.
- 19.23** The Licence Conditions and Codes of Practice (LCCP) sets out the full requirements on operators. To assist operators of betting premises the Commission has published a document setting out the indicators that are used to assess as to whether the requirements for betting being the primary gambling activity in any particular premises are being met<sup>38</sup>.
- 19.24** Should a licensing authority receive an application to vary a premises licence for bingo or betting in order to extend the opening hours, the authority should satisfy itself that the reason for the application is in line with the requirements on primary gambling activity. (i.e. the need for operating licence holders to ensure that the gambling activity appropriate to the licence type ('the primary activity' or 'the principal activity') is actually offered at those premises and not replaced by the making available of gaming machines). Therefore, the applicant should be able to demonstrate that the extension of the opening hours is not designed solely to benefit from the machine entitlement and activity which is ancillary to the primary activity of the premises, namely betting or bingo.

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<sup>38</sup> Indicators of betting as a primary gambling activity (November 2011), available at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

## Part 20: Tracks

### Introduction to tracks

#### Definition of a track

- 20.1** Section 353 of the Act defines a track as a horse racecourse, greyhound track or other premises on any part of which a race or other sporting event takes place or is intended to take place.
- 20.2** The Act does not give a list of premises that are officially recognised as ‘tracks’ but there are a number of venues where sporting events do or could take place, and accordingly could accommodate the provision of betting facilities. Examples of tracks include:
- a horse racecourse (referred to in this Guidance as ‘racecourses’)
  - a greyhound track
  - a point-to-point horserace meeting
  - football, cricket and rugby grounds
  - an athletics stadium
  - a golf course
  - venues hosting darts, bowls, or snooker tournaments
  - a premises staging boxing matches
  - a section of river hosting a fishing competition
  - a motor racing event.
- 20.3** This list is by no means exhaustive, as, in theory, betting could take place at any venue where a sporting or competitive event is occurring. While many of these venues are not commonly understood to be ‘tracks’, they fall within the definition of ‘track’ defined by the Act. Licensing authorities may be of the view that they have few tracks in their administrative area, but the very nature of the Act’s definition indicates that most localities are likely to have venues that could be classified as a track for betting purposes.
- 20.4** The Act also provides for tracks which do not currently offer betting facilities, but may elect to do so at some stage in the future. This means that land which has a number of uses, one of which fulfils the definition of a track, could qualify for a premises licence. Examples could include agricultural land upon which a point-to-point meeting takes place or a theatre, arena or exhibition centre where sporting events such as darts or snooker competitions are held. Under the Act, these may all be classified as tracks.
- 20.5** The Act does not define what constitutes a sporting event or race and the Commission leaves this to licensing authorities to decide on a case by case basis.
- 20.6** If an individual or company wants to offer betting facilities on a sporting event then different forms of ‘approval’ are available, one of which must be obtained if betting is to be provided, irrespective of whether the betting is generally incidental to the main sporting activity. The different types of approval for the provision of betting facilities at premises are:
- a premises licence
  - an occasional use notice.

### Licences and other permissions for the provision of betting facilities

- 20.7** A track premises licence permits the premises to be used for the provision of facilities for betting, but does not permit the licence holder to provide casino, bingo or other types of gambling on tracks, as these activities must be the subject of separate premises licences.
- 20.8** As outlined above, sporting events and races take place at many different venues including hotels, conference centres, on agricultural land, and at designated sporting venues such as football grounds. In many cases such venues do not hold sporting events all year round

and the number of 'event' days may be limited. The Act provides that if certain conditions are met, a premises licence is not always required to permit betting facilities at such events.

- 20.9** The Act allows a temporary use notice to be issued to allow premises to be used for gambling where there is no premises licence but where an operator wishes to use the premises temporarily for providing facilities for gambling. Part 14 of this Guidance has already established the process for issuing these notices, which can be issued by a person or company holding an operating licence granted by the Commission, and allow specified gambling facilities to take place for a maximum period of 21 days within any 12 month period.
- 20.10** Section 39 of the Act provides that where there is betting on a track on eight days<sup>39</sup> or fewer in a calendar year, betting may be permitted by an occasional use notice, as described at part 15 of this Guidance, without the full need for a premises licence. This permits licensed betting operators to use tracks for short periods for conducting betting. An occasional use notice may be suitable for a point-to-point track which holds race meetings eight times a year or less. No conditions are attached to an occasional use notice. However, only licensed betting operators may offer betting facilities at such tracks, otherwise an offence would be committed under section 33 of the Act.
- 20.11** It is the responsibility of the track owner and/or gambling operator to determine which route is the most appropriate for their particular circumstances.

## Betting on tracks

- 20.12** There are various types of betting which take place in relation to tracks, often divided into 'on-course' and 'off-course'.

### 'On-course' betting

- 20.13** The 'on-course' betting operator is one who comes onto the track, temporarily, while races or sporting events are taking place, and operates at the track-side. On-course betting operators tend to offer betting only on the events taking place on the track, that day. For example, betting operators attending horserace and greyhound racing meetings will only attend on race days. Similarly, betting operators at cricket and football grounds are only likely to attend on days when matches are taking place.
- 20.14** Betting on tracks is organised in different ways and can take place in different parts of the track in many different forms. These include the following:
- **Betting rings** (at racecourses and greyhound tracks)  
For horse racing, a betting ring means an area or areas at a racecourse designated by the racecourse and approved by the Horserace Betting Levy Board (HBLB) as an area where a bookmaker may receive or negotiate bets.  
The ring can be dispersed throughout the track, and can include 'temporary' rings at large meetings, but all different locations form part of the approved betting ring. On-course betting operators will be located in the betting ring according to a position ('pitch') allocated to them. For greyhound tracks, the betting ring is not an official term but marks that area of the track where track premises licence holders allow betting operators, by virtue of a permit, to provide betting facilities.
  - **Betting counters or kiosks** (permanent/temporary)

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<sup>39</sup> The Secretary of State has the power to increase or decrease the number of occasional use notices that an operating licence holder could apply for each calendar year. At the time of going to print, the Secretary of State had no plans to exercise this power. The Commission also understands that 'day' is defined as midnight to midnight, so an event that starts on one calendar day and ends on the following day would count as two days.



A betting counter or booth may be a permanent or temporary stand or a facility where a bookmaker receives or negotiates bets. Examples include manned stands or portacabins located at football grounds on match days, and the temporary erected stands used by bookmakers at cricket grounds during test matches.

- **Mobile betting**  
Mobile betting machines (often hand held) operated by employees of betting operators allow customers to place a bet or receive payouts outside of betting kiosks or the betting ring.
- **Bet receipt terminals**  
A bet receipt terminal is sometimes known as a 'betting machine'<sup>15</sup> and in simple terms is a machine that allows customers to place bets. Unlike gaming machines they do not pay out winnings. The terminals lack the direct human intervention of a betting counter staffed by a cashier, and can be located at different parts of tracks.
- **Pool betting** (also known as totalisator betting)  
This involves the pooling of stakes on a given event, and the splitting of the total pool, less a commission for the operator amongst the winners. This form of betting was often provided by the Horserace Totalisator Board, commonly known as the 'Tote'. In 2011 the Tote was purchased by BetFred. As part of the sale process Betfred received an exclusive seven year licence to operate pool betting operations on all UK racecourses, one condition of which is a requirement to provide pool betting on every approved racecourse in the country. . Pool betting is also offered at greyhound tracks, usually by the owner of the track under a pool betting operating licence or a person authorised to act on their behalf. Tracks may also conduct inter-track pool betting when other tracks are holding races.

### **'Off-course' betting**

- 20.15** 'Off-course' betting operators are those who provide betting facilities other than at a track in betting premises such as those found on the high street. In addition to premises away from the track, betting operators may operate self-contained betting premises or designated areas such as a row of betting kiosks within the track premises. Self-contained premises provide facilities for off-course betting (in effect, the opportunity to bet on other events not just those taking place on the track), although they normally operate only on race days.
- 20.16** Licensing authorities will need to familiarise themselves with the different types of betting that take place on tracks and the locations where it is intended that betting takes places.

### **Track premises licences – differences from other premises licences**

- 20.17** A betting premises licence permits a premises to be used for the provision of facilities for betting, whether by making or accepting bets, by acting as a betting intermediary, or by providing other facilities for the making or accepting of bets.
- 20.18** While there is no special class of betting premises licence for a track, the Act does contain rules which apply specifically to premises licences granted in respect of a track.
- 20.19** Premises licences in relation to tracks differ from other types of premises licence in a number of ways. Most importantly, the applicant for the licence need not hold an operating licence from the Commission<sup>40</sup>. That is because, unless the occupier of the track wishes to offer pool betting (or general betting) facilities himself (for which he will need a licence), the betting that is provided upon the track will not be provided by him, but will be provided by other operators who come onto the track. Since those operators will require the necessary operating licences, the Act allows the track premises licence holder to obtain a premises licence, without also having to hold an operating licence.

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<sup>40</sup>Section 159 (3) (4) of the Act

- 20.20** The secondary aspect to this rule is that each individual operator coming onto the track on race days does not need to hold a premises licence. Instead they are covered by the umbrella of the premises licence held by the track premises licence holder.
- 20.21** Tracks may also benefit from rules permitting low-level, infrequent betting activity, under the provisions for occasional use notices as explained above.
- 20.22** In addition, tracks are the only class of premises that may be subject to more than one premises licence, provided each licence relates to a specified area of the track. The Act sets out that there can be a primary premises licence for the track and, in addition, subsidiary premises licences for other parts of the track<sup>41</sup>. This allows track venues to develop leisure facilities such as a casino and apply for a premises licence for that part of the track.
- 20.23** Tracks are distinguishable from other betting premises licences as under section 47(4) of the Act, children and young persons are allowed to be present on the track while betting is taking place on those licensed premises.
- 20.24** There are also a limited number of track premises licence holders who have an operating licence because they operate a pool. An example of these is the 28 greyhound tracks which are approved by the Greyhound Board of Great Britain<sup>42</sup>. In addition to admitting independent fixed-odds betting operators, these tracks may run their own pool betting facilities as permitted by sections 179 and 180 of the Act, and are subject to licence conditions applicable to their status as both betting operators and track premises licence holders.
- 20.25** Tracks are also recognised as multi-purpose venues having a wide range of facilities that enable them to host various other activities, often on non-event days, including:
- private dinners and parties
  - weddings
  - retail events (auctions, car boot sales etc)
  - concerts
  - conferences
  - exhibitions.
- 20.26** The Act recognises that tracks are primarily premises intended for entertainment other than gambling and therefore places no restrictions on offering ancillary entertainment including allowing music, dancing or other entertainment on the premises and the sale of alcohol.
- 20.27** These provisions outline the difference between track premises licences and most other premises licences. In essence, tracks admit third-party operators to provide betting facilities, whereas other premises licence holders – betting shops, bingo clubs and casinos for instance – provide the gambling facilities themselves and are subject to the conditions of the operating licence as well as the premises licence.

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<sup>41</sup> Section 152 (3) of the Act

<sup>42</sup> A small number of point-to-point track owners also offer pool betting but the Commission expects these will be subject to occasional use notices (see Part 15 for further details)

## The premises

### Defining the premises

- 20.28** Section 151 of the Act requires applicants for premises licences to submit plans of the premises with their application. This ensures that licensing authorities have the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan also informs future premises inspection activity.
- 20.29** Plans for tracks need not be in a particular scale, but should be drawn to scale and should be sufficiently detailed to include the information required by regulations.
- 20.30** In the majority of cases, such as greyhound tracks, racecourses, football stadia and cricket grounds, defining the extent of boundaries may be assisted by reference to existing plans already submitted to obtain other permissions. These could include:
- the obtaining of a safety certificate under 'Safety at Sports Ground' legislation (this applies in respect of sports grounds with capacity to accommodate more than 10,000 spectators)
  - the approval of a racecourse by the Horserace Betting Levy Board
  - the historic boundaries under previous legislation such as, the approval of tracks under Schedule 3 of the Betting, Gaming and Lotteries Act 1963.
- 20.31** Some tracks may be situated on agricultural land where the perimeter is not defined by virtue of an outer wall or fence, such as point-to-point racetracks. In such instances, where an entry fee is levied, track premises licence holders may erect temporary structures to restrict access to premises.
- 20.32** In the rare cases where the outer perimeter cannot be defined, it is likely that the track in question will not be specifically designed for the frequent holding of sporting events or races. In such cases betting facilities may be better provided through occasional use notices where the boundary premises do not need to be defined.
- 20.33** The Commission appreciates that it is sometimes difficult to define the precise location of betting areas on tracks. The precise location of where betting facilities are provided is not required to be shown on track plans, both by virtue of the fact that betting is permitted anywhere on the premises and because of the difficulties associated with pinpointing exact locations for some types of track. Licensing authorities should satisfy themselves that the plan indicates the main areas where betting might take place. For racecourses in particular, any betting areas subject to the 'five times rule' (commonly known as betting rings, and discussed later in this section) must be indicated on the plan.
- 20.34** As the plan forms part of the licence document, it also needs to be sufficiently flexible to ensure that a relatively small change in the premises layout would not require an operator to submit an application to vary the track premises licence. Only a significant change to the track layout would require a licence variation. For example, moving a category C gaming machine from one end of a bar that had been marked on the plan as a gaming machine area to another may not necessitate a full variation to a tracks premises licence, nor would the establishment of a new betting ring at a racetrack, as neither of these events have any impact on the purpose of the licence or the conditions attached to it. However, relocating category C machines to entirely different parts of a track or relocating an existing betting ring protected by the 'five times rule' would generally need to be the subject of an application to vary the premises licence.
- 20.35** Some tracks extend across the geographical boundaries of licensing authority areas. In such cases applications can only be made to licensing authorities in whose area the premises is wholly or partly situated, although the Act contains no rules about cases where premises lie across multiple authority areas. In such cases, applicants will note this on the application form, and the application can be made to any of the authorities that the track extends over. The applicant is then required to notify the other licensing authorities covered

by the track location about the application (as they would be designated as responsible authorities and therefore entitled to make representations about the application). The Commission expects applicants will apply to the licensing authority in whose area the greater or greatest part of the track site is situated, although ultimately the Act does not entitle an authority to reject an application because it is responsible for a smaller area of the premises than another authority.

## Ensuring that premises are fit for the provision of gambling facilities

**20.36** Licensing authorities are required to ensure that premises are fit for a specific type of gambling. Premises which meet the conditions required to operate as, for example, a casino may not meet the requirements for offering track betting facilities.

**20.37** Track premises that safeguard the achievement of the three licensing objectives may generally be considered fit for gambling, and some general principles whereby licensing authorities can establish whether a track is fit for the provision of gambling facilities are as follows:

Licensing objective	Issues to consider	Reason to consider a track premises unfit for gambling purposes?	Part of this Guidance containing specific information
<b>The protection of children and other vulnerable persons from being harmed or exploited by gambling</b>	Tracks permit access to children.	No - Children are allowed access to tracks on race days.	Part 4
	Bet receipt terminals in areas where there is no supervision which would allow children or young persons to use machines undetected.	No - It is a mandatory condition of the operating licence that operators ensure that bet receipt terminals are supervised. This is not an issue for the premises licence.	Part 6
	Children are allowed access to areas holding category B and C gaming machines.	It is a mandatory condition of the operating licence that operators ensure that children are not allowed access to areas where category B and C gaming machines are provided. However, section 182 of the Act also creates a premises licence condition that children and young persons must be excluded from areas where any gaming machines other than category D are located.	Part 7

Licensing objective	Issues to consider	Reason to consider a track premises unfit for gambling purposes?	Part of this Guidance containing specific information
<p><b>The protection of children and other vulnerable persons from being harmed or exploited by gambling</b></p>	<p>Betting areas adjacent to areas where children/young persons are present such as play areas</p>	<p>No - Children are allowed access to tracks on race days and so will be exposed to gambling areas.</p>	<p>Part 9</p>
		<p>It is a mandatory condition of the operating licence that operators do not accept bets from children or young persons.</p>	
		<p>The Commission considers that the location of betting does not generally pose a risk to this licensing objective. Licensing authorities may impose their own local conditions where they perceive problems.</p>	
Licensing objective	Issues to consider	Reason to consider a track premises unfit for gambling purposes?	Part of this Guidance containing specific information
<p><b>Ensure gambling is conducted in a fair and open way</b></p>	<p>The rules of betting are not displayed on the premises.</p>	<p>No (not an issue at application stage) - it is a mandatory condition of the premises licence that the rules of betting are displayed.</p>	<p>Part 8</p>
	<p>Unlicensed betting operators are allowed to operate on tracks.</p>	<p>No (not an issue at application stage) - it is a mandatory condition of the premises licence that licence holders make arrangements to ensure that they only allow licensed operators on track.</p>	<p>Part 8</p>
	<p>Betting takes place out of approved hours.</p>	<p>No (not an issue at application stage) - it is a mandatory condition of the premises licence that betting only takes place within the specified hours.</p>	<p>Part 5</p>

Licensing objective	Issues to consider	Reason to consider a track premises unfit for gambling purposes?	Part of this Guidance containing specific information
Prevent gambling from being a source of crime and disorder	Betting is allowed in all parts of a track resulting in greater difficulties for track premises licence holders to identify instances of illegal Betting.	No - the Commission's view is that this does not generally pose a risk to this objective. Licensing authorities may impose their own conditions should they perceive a problem.	Part 9
	No formal exit/entry points allowing easy access for unapproved operators and customers.	No - the Commission's view is that this does not generally pose a risk to this objective. Licensing authorities may impose their own conditions should they perceive a problem.	Part 9

## Access

### Access to premises and other parts of the track

**20.38** Section 152 of the Act provides that premises may not have more than one premises licence authorising a type of activity, with the exception of track premises, whereby a track may be the subject of multiple premises licences.

**20.39** Access between premises licensed for gambling and non-gambling areas is an important local licensing consideration, for reasons such as the following:

- to prevent operators from seeking to circumvent the Act by artificially subdividing a premises and securing separate premises licences for its composite parts
- to ensure that operators do not circumvent regulations governing the maximum number of gaming machines applicable to specific premises
- to ensure that people who have entered a premises for one type of gambling are not exposed to another, potentially harder, form of gambling
- to ensure that there is no direct access between gambling premises to which children have access and those which they are prohibited from entering
- to ensure that all gambling premises have publicly accessible entrances
- to ensure that gambling premises are not developed in the backrooms of other commercial premises.

**20.40** As tracks may be the subject of multiple premises licences, regulations<sup>43</sup> have been laid to stipulate the access requirements between gambling premises, and when entering or leaving gambling premises. By virtue of the regulations no direct access is allowed from a track to a casino or adult gaming centre. Therefore if, for example, a casino is built on a track premises that is the subject of a track premises licence, clearly defined public thoroughfares should be in place to ensure that customers have to leave one gambling premises, and be aware they have done so, before entering another.

<sup>43</sup> SI no 1409: The Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007  
SI no 266: The Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007



## Access by children – special dispensation for tracks

- 20.41** The Act forbids all persons under 18 years old to enter premises when betting facilities are being provided, other than at tracks. This dispensation allows families to attend premises such as greyhound tracks or racecourses on event days, and children to be permitted into areas where betting facilities are provided, such as the betting ring, where betting takes place.
- 20.42** Licensing authorities should note however that the exemption allowing children access to betting areas on tracks does not extend to areas within a track where category C or above machines are provided, or other premises to which under 18 year olds are specifically not permitted access.
- 20.43** As under-18s are permitted to enter betting areas on tracks on event days, there are licensing requirements in place at tracks to mitigate the likelihood of underage betting occurring. Licensed betting operators at tracks are bound by their operating licence conditions which prevent them from accepting bets from persons who are under 18 years old. The track premises licence holder is also required through premises licence conditions to display a notice in a prominent place at every public entrance stating that no person under the age of 18 is permitted to bet on the premises.
- 20.44** Licensing authorities should be aware that there was an anomaly in the Act, wholly prohibiting the employment of children and young people on tracks, which DCMS is taking steps to remedy through the use of a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006. This will create an exemption under section 55 of the Gambling Act 2005, allowing the employment of children and young persons in non-gambling roles on tracks (such as racecourses) which hold a betting premises licence. This was the original policy intention; which would allow young people to work for example as jockeys, stable lads, or dog handlers. Section 51 of the Act, which prohibits people under 18 from working in gambling jobs, is not affected by these proposals and would continue to apply. Subject to the outcome of consultation and Parliamentary consideration, DCMS have proposed that the changes are implemented from 1 October 2012.
- 20.45** Where betting facilities are provided through a self-contained betting office on a track which has a separate betting premises licence, the betting operator of the self-contained premises is expected to exclude under-18s from their premises.

## Betting on event and non-event days

### Hours of betting on event days

- 20.46** Regulations<sup>44</sup> state that gambling facilities may be provided at any time when a sporting event is taking place on a track.
- 20.47** As such, licensing authorities should establish the upcoming fixtures and events to be held at tracks, at the time of application – a list could be provided by the applicant themselves, or could be retrieved from the applicant's website. While such lists may be subject to change, licensing authorities will need indicative dates to inform local compliance and enforcement activity at tracks (for example, to determine inspection dates). Significant changes to the fixture/events listing have a bearing on the licence conditions in that track premises licence holders will be expected to comply with the mandatory and default conditions applicable to them on both event and non-event days (as discussed below). As such, licensing authorities may wish to establish a local mechanism by which they are made aware of any significant fixture changes. Licensing authorities will not generally need to reassess licence applications as a result of such changes.

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<sup>44</sup> SI no 1409: The Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007  
SI no 266: The Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007

## Hours of betting on non-event days

- 20.48** On days when no public sporting event is taking place on a track, regulations state that gambling facilities may only be provided on the track between the hours of 7am and 10pm.
- 20.49** Some tracks have traditionally offered, and will wish to continue to offer, facilities for gambling outside the proposed gambling hours on non-event days. For example, to screen live televised events from other time-zones (which may take place after 10pm or before 7am) and provide betting facilities during those events.
- 20.50** Tracks will be able to continue to provide these betting facilities on a limited number of days a year by virtue of occasional use notices permitted by section 39 of the Act. This permission enables tracks to offer occasional betting facilities on international events, such as the Superbowl or the Melbourne Cup, without becoming frequent providers of out-of-hours betting facilities, since section 39 limits the number of occasional uses to eight days per calendar year.
- 20.51** An event running past midnight and ending on the following day accounts for two occasional use days, even though in practice it is one event. At the time of publishing this document, the Secretary of State has no plans to change the definition of 'a day' or to vary the number of occasional use notices that can be issued by betting operators per calendar year.
- 20.52** Where tracks plan to open and allow provision for betting facilities on non-event days, betting operators will need to either exclude children from the premises on these days or demonstrate that they are able to exclude children and young persons from betting areas<sup>45</sup>. In simple terms, on non-event days, tracks become similar to licensed betting offices on the high street. Tracks may achieve this requirement by:
- locating all betting areas inside an area of the premises that is separated from the remainder of the premises by a physical barrier, thereby preventing access other than through a designated entrance
  - only admitting adults to the part of the track where betting areas are located, by establishing procedures for verifying customer ages and refusing entry to adult-only areas for those unable to produce an acceptable form of identification (and taking action where there are unlawful attempts to enter adult-only areas)
  - placing prominent notices in front of and inside each entrance stating that access to the area is prohibited to persons under 18.
- 20.53** Licensing authorities may choose to reduce the default gambling hours, providing any reduction is in line with the principles set out in section 153 of the Act.

## Bet receipt terminals

- 20.54** Section 235(2)(c) of the Act provides that a machine is not a gaming machine by reason only of the fact that it is designed or adapted for use to bet on future real events. Betting operators may make available machines that accept bets on live events, such as horseracing, as a substitute for placing a bet over the counter. These 'betting machines' are commonly known as bet receipt terminals and are not gaming machines; they merely automate the process that can be conducted in person and therefore are not regulated as gaming machines. The other difference is that a bet receipt terminal only accepts a bet; it does not pay out winnings (although this situation may develop in the future). Therefore any person under the age of 18 seeking to obtain their winnings will have to speak to one of the betting operator's employees. The betting operator's operating licence requires that any winning bets placed by an underage person are considered void and the stake returned, but not any winnings.

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<sup>45</sup> Section 182 (2) of the Act

- 20.55** Licensed operators may install bet receipt terminals on tracks. There is no restriction on the number of bet receipt terminals that may be in use but operators must, by virtue of their operating licence conditions, supervise such terminals to prevent them being used by those under 18 years of age.
- 20.56** There is no formal requirement on track premises licence holders to involve themselves in the procedures used by betting operators to supervise their bet receipt terminals (unless specific local conditions specifying supervisory arrangements are added to the track premises licence by the licensing authority). Some betting operators may agree supervisory assistance to be provided by employees of the track premises licence holders, but this is a commercial matter between the track owner and betting operators.
- 20.57** While track premises licence holders have no formal responsibilities in this regard, the Commission has advised them to inform it of instances where they are aware that betting operators are persistently failing to ensure the adequate supervision of their bet receipt terminals.
- 20.58** At many tracks, betting operators receive bets via hand-held devices, which are also regarded as betting machines by the Act as opposed to gaming machines. These are only operated by employees of the betting operator, and as such are deemed automatically to fulfil the supervision requirement.

## Gaming machines

- 20.59** A track premises licence does not of itself entitle the holder to provide gaming machines, as this type of premises licence can be held without any corresponding operating licence. However, by virtue of section 172(9) of the Act, track owners holding both a track premises licence *and* a pool betting operating licence issued by the Commission (in effect, greyhound tracks only), may site up to four gaming machines within categories B2 to D on the track.
- 20.60** Some tracks will also qualify for an alcohol licence and as such they will be automatically entitled under section 282 of the Act to two gaming machines of category C or D. This permission is activated by notifying the licensing authority and paying them the required fee. If a track premises licence holder has both an alcohol licence and a pool betting operating licence, then they will be entitled to a total of six gaming machines (two via the alcohol licence and four via the operating licence). In such scenarios the operating licence entitlement does not take precedence, and each licence has its own requirements that must be complied with.
- 20.61** Applications for permits to allow additional gaming machines are not permitted where the premises is already covered by a track premises licence<sup>46</sup>. This represents a change to previous legislation whereby betting (track) premises licence holders could hold gaming machine permits authorising in excess of two gaming machines. However, there is special provision for alcohol-licensed premises within tracks in England and Wales which are allowed to continue to hold gaming machine permits or apply for new ones. For these premises, Schedule 13, paragraph 1(2) of the 2005 Act will not apply<sup>47</sup>.
- 20.62** Children and young persons can play category D gaming machines on a track, but are not allowed to play other categories of machine.
- 20.63** It is a condition of section 282 of the Act that alcohol-licensed premises licence holders (not necessarily the owners) must comply with any relevant provision of a code of practice under section 24 about the location and operation of a gaming machine. The gaming machine permits code of practice can be found on the Commission's website. Where track premises licence holders possess a pool betting operating licence, the Commission places a mandatory licence condition on such operators that they must:

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<sup>46</sup> Schedule 13, section 1 (2), of the Act

<sup>47</sup> SI 2006/3272 - The Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 - (C.119), section 30

- have and put into effect documented policies and procedures to prevent underage gambling
- monitor the effectiveness of these.

## Track administration

### Administration of betting

**20.64** Different systems of administrative and quasi-regulatory arrangements are in place to ensure that activities held on tracks run smoothly for paying customers, track operators and betting operators. These administrative arrangements are considered to be outside the remit of the Act unless they affect the licensing objectives.

### The role of track premises licence holders

**20.65** Track premises licence holders act effectively as landlords, letting out parts of their premises to licensed betting operators. The responsibilities of track premises licence holders are established by the mandatory and default licence conditions attaching to their premises licence. The licensed betting operators authorised by track owners to provide betting facilities at tracks must comply with their operating licence conditions and codes of practice issued by the Commission.

**20.66** The Commission has assessed the impact of existing administrative arrangements upon the achievement of the licensing objectives, and some of the existing rules within these arrangements relating to the conduct and administration of licensed betting operators have been incorporated into operating licence or premises licence conditions. The Commission considers all other issues as administrative matters for the premises licence holder and betting operators.

**20.67** The Commission expects that track premises licence holders will make their own arrangements for dealing with administrative matters. They may undertake the administration and control of betting areas themselves or they can make arrangements with another body to take on this work. Whichever way, the track premises licence holder retains the responsibility to meet all relevant conditions attached to their premises licence.

**20.68** Track premises licence holders have a responsibility to report regulatory breaches or potential breaches relating to the premises itself or to betting operators. The Commission may then liaise with the relevant licensing authorities regarding action taken towards the breaches.

### Acceptance of bets

**20.69** Under section 33(2) of the Act, only licensed betting operators may accept bets or provide facilities for gambling. The Commission is responsible for issuing betting operating licences, and each betting operator must comply with the conditions of their operating licence. The Commission can invoke penalties or revoke licences if they fail to do so.

**20.70** Track premises licences for greyhound tracks and racecourses are subject to mandatory licence conditions requiring access to be offered at the track-side to betting operators generally. This prevents track premises licence holders who are also pool betting operators from becoming a monopoly supplier of betting on tracks. While this does not mean that there must be independent betting operators on tracks on event days, track premises licence holders cannot hold event days without at least making places available to licensed operators. To this end, any terms imposed by track premises licence holders on allowing betting operators access to their betting areas must comply with the law, including competition law. The Commission does not, however, expect licensing authorities to get involved in such matters – they are included here for information purposes only.

## Pool betting

- 20.71** By virtue of sections 179 and 180 of the Act, holders of track premises licences on licensed greyhound tracks are given exclusivity to offer pool betting facilities on greyhound racing. They may also authorise other people to conduct such pool betting on their behalf, although in all cases a relevant operating licence will be required to license this activity. A totalisator<sup>48</sup> on a licensed greyhound track will only be permitted while the public are admitted to the track for the purpose of attending greyhound races, and no other sporting events are taking place. A mandatory condition is attached to the premises licence to this effect.
- 20.72** On racecourses, pool betting is offered exclusively by Betfred for seven years from the date of the sale of the Tote in 2011 (see paragraph 20.14 above).

## Admission of betting operators

- 20.73** It is a mandatory premises licence condition of track premises licences that the licence holder makes arrangements to ensure that the betting operators they admit to their track operate under valid operating licences.
- 20.74** Track premises licence holders, or their appointees, are therefore responsible for identifying and admitting those providing facilities for betting to operate on-course. This means both betting operating licence holders themselves and persons 'employed by the licensee under a written contract of employment'<sup>49</sup>. General betting operating licences enable employees to be named on the licence, provided they are required in the course of their employment to accept bets on behalf of, and are employed under a written contract of employment by, the main licence holder.
- 20.75** Track premises licence holders are responsible for determining their own arrangements for the verification of betting operators. As part of this process, the track premises licence holder should make arrangements for ensuring that the betting operator holds an operating licence. Additionally, both parties should agree a procedure for assessing that persons accepting bets on behalf of a betting operator either themselves hold operating licences in their own right, or are employed by the operator under a written contract of employment. This could be achieved by requiring all persons providing betting facilities within a betting area to produce their operating licence or a copy of the operating licence on which they are authorised as an employee of the main operating licence holder. Alternatively an employee ID card or other photographic form of identification (such as a passport or new-style driving licence) could be used to establish identity.
- 20.76** The Commission does not consider that bookmakers' assistants – such as computer operators and floormen – need to appear on the operator's licence. However, the Commission monitors this situation in case evidence emerges that suggests this conflicts with the upholding of the licensing objectives.
- 20.77** In instances where an operator holds more than one pitch at a track he can staff his subsequent pitches with non-licensed employees as long as those pitches are networked to the first pitch and the operator or a Schedule Y representative is in attendance at the track and operating the first pitch. In this situation the licensee or Schedule Y representative is responsible for all actions carried out by employees on the pitches that he is not physically standing on. Again, the Commission monitors this situation in case evidence emerges that suggests this conflicts with the upholding of the licensing objectives.

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<sup>48</sup> A system of pool betting

<sup>49</sup> Section 92 of the Act



**20.78** Licensing authorities should be aware that, as track premises licence holders are required through mandatory licence conditions to make arrangements for identifying and admitting only valid betting operating licence holders to offer betting on-track, different arrangements may be in place at different tracks to achieve this. Licensing authorities should make themselves aware of the processes used by tracks that they licence in their localities.

## **Removal of illegal betting operators**

**20.79** Track premises licence holders are required by a mandatory licence condition to take reasonable steps to remove from the racecourse anybody found to be providing facilities for gambling without authorisation – in effect illegal bookmakers. This could include someone claiming to be a representative of a licensed betting operator who has been unable to prove their identity to the track premises licensee. Failure to uphold this requirement could result in action being taken against the premises licence holder.

**20.80** Track premises licence holders are not expected to have proactive policies and procedures for identifying illegal gambling other than the mandatory requirement to verify that betting operators offering betting facilities on their track hold suitable operating licences.

**20.81** The Commission will inform licensing authorities and track premises licence holders where a betting operating licence is revoked.

**20.82** Track premises licence holders should record all instances of illegal gambling and refer these to the Commission within 14 days of the incident. While this is not a condition of the premises licence, the Commission welcomes all information that may help it to discharge its duties.

## **Display of rules**

**20.83** It is a mandatory condition of premises licences that clear and accessible information about the terms on which a bet may be placed must be displayed at betting premises, including tracks.

**20.84** The Commission recognises that there are often multiple locations of betting on a track. For instance, on a large racecourse there may be a number of betting rings and Tote outlets and at least one betting shop, while at a football ground there could be several betting booths located throughout the various stadium concourses.

**20.85** The Commission considers that it is disproportionate and unnecessary to insist that betting rules are displayed at each distinct betting location; rather, the rules should be made available at suitable central locations. The track premises licence holder should make the necessary arrangements to ensure that betting rules are accessible to all customers, regardless of which area of the track they are in. If certain areas are restricted to certain customers (such as different stands within a football ground) then rules could be displayed at various parts of the track. Other measures could be taken to ensure that they are made available to the public, such as printing them in the race-card or programme. The requirement could also be met by making a copy of the rules available in leaflet form from the main track office, and customers could be given a copy if they request one.

**20.86** As track premises licence holders do not necessarily provide betting facilities themselves (unless they hold a pool betting licence), they do not have their own set of betting rules to apply. In such cases, the licence holder should make it clear that the operator's betting rules will apply. At horserace meetings, for example, betting operators generally abide by Tattersall's 'Rules on Betting', and as such the premises licence holder should make this clear to customers. At a sports stadium where betting facilities are provided by a high street operator, the track licence holder may choose to state on the centrally provided notice that the rules followed by the betting operator will apply throughout the track.



- 20.87** Betting operators offering betting facilities on racecourses and at greyhound tracks are required through the conditions of their operating licence to clearly display any of their own rules that differ from those that the track premises licence holder elects to display, and their rules concerning voids, late bets, and maximum payouts. For racecourses and greyhound tracks, the maximum payout will vary according to the rules of individual on-course operators. The Commission expects track premises licence holders to refer customers to the rules of individual on-course betting operators who are required to display this information on their stands (often referred to as 'bookmaker joints').
- 20.88** Licensing authorities need not concern themselves with the terms or rules of betting (apart from the requirement to display them), as this is a consideration of the Commission in respect of the licensing of betting operators.

## **Approved betting areas**

### **Betting areas**

- 20.89** The Secretary of State has determined not to impose any default conditions on tracks restricting where betting can take place (other than in relation to the 'five times rule' for horserace courses as set out below). Moreover the Act does not prevent permanent or temporary structures being erected on the track for providing facilities for betting.
- 20.90** In considering applications, the licensing authority would need to take into account the licensing objectives and assess whether these objectives are compromised by proposed betting arrangements. It is the Commission's view that the location of betting areas (other than those for gaming machines and bet receipt terminals) does not generally pose a threat to the licensing objectives and that no additional conditions should be imposed by licensing authorities.

### **Five times rule (horse racecourses only)**

- 20.91** The 'five times rule' requires that the charge made to a betting operator for entry to offer betting facilities in a designated area of a racecourse does not exceed five times the cost of the highest charge made to the public to enter that place, or one times the charge for any bookmaker's assistant. Since 1 September 2007 track owners have also been able to levy a charge to cover the costs reasonably incurred in association with permitting betting operators to operate in the betting area.
- 20.92** The 'five times rule' is replicated as a mandatory condition on betting premises licences for horserace courses in relation to the betting rings that were subject to the five times rule on 31 August 2007, including temporary betting areas. The 'five times rule' remains in place until 31 August 2012. After this date commercial agreements between the track owners and bookmakers representatives will replace the five times rules.
- 20.93** If track premises licence holders wish to vary the location of betting rings that were subject to the 'five times rule' on 31 August 2007, then they may apply to vary the premises licence. However, the Commission advises that licensing authorities should only approve such variations where they are satisfied that the new proposed location of the ring offers no material commercial disadvantages to betting operators when compared with the location of the existing betting ring.
- 20.94** From 1 September 2007 racecourses were permitted to establish new betting rings which are not subject to a mandatory condition replicating the 'five times rule'. The cost of establishing a pitch in these new areas was left to regulation by the market.
- 20.95** Licensing authorities will need to ensure that existing betting rings are marked separately on submitted plans if they are to oversee this provision.

## Multiple licences

- 20.96** Section 152(3) of the Act permits the issuance of more than one premises licence for a track provided that each licence relates to a distinct specified area of the track (although there cannot be more than one premises licence covering the same area of the track.)
- 20.97** This enables track owners to extend existing facilities to provide other gambling facilities such as a casino on their existing tracks, whereby these additional gambling activities are covered by separate premises licences. In the event that track owners intend to apply for additional premises licences, they will need to take into consideration access issues and in particular whether access to the desired premises will be allowed directly from the track. This is particularly significant as direct access between a track and other betting premises (other than a track betting shop) is not permitted. The track owner would need to make arrangements so that access to a casino or bingo hall would be via a street, not via the track itself.
- 20.98** The Act permits self-contained parts of tracks, such as a permanent betting office on a racecourse or at a sports stadium, to be the subject of a separate betting premises licence. The effect of this approach would be that the betting premises licence holder would be responsible for upholding the premises licence conditions relating to the self-contained premises. Accordingly this removes premises licence condition responsibilities from the main track premises licence holder towards the self-contained premises. The betting premises licence holder would be responsible for maintaining the conditions associated with the licence (no alcohol consumption, and so on).
- 20.99** A track betting licence for a track can authorise the entire track premises to be used for providing betting facilities, which would avoid the need for a separate betting premises licence to cover any self-contained betting premises.
- 20.100** Where a particular area of a track is already subject to a premises licence, and a person wishes to apply for a licence to offer another type of activity in that area, an application must be made to the issuing licensing authority to vary the original premises licence, under section 187 of the Act. The new track premises licence can only be granted at the same time as, or after, the original licence has been varied.
- 20.101** Licensing authorities may receive applications indicating separate betting areas that may not necessarily have clear physical boundaries, such as walls or fencing. Such areas could still be the subject of a separate betting premises licence provided the area is clearly delineated, both in terms of making it clear to the public that they are entering a 'betting office', and to keep out persons aged under 18. The Commission considers that customers will be aware that they are moving into a separate betting area operated by an independent betting operator by virtue of the fixtures and fittings bearing the betting operator's corporate identity. The delineation of such an area is best achieved through a physical barrier. A licensing authority concerned that such an area cannot be satisfactorily delineated may wish to refuse an application for a separate betting premises licence.
- 20.102** Conditions applicable to off-track betting premises also apply to self-contained betting premises on tracks that are the subject of their own betting premises licence, which entitles the self-contained premises to offer up to four gaming machines (from categories B2 to D).
- 20.103** The Commission considers that track owners should decide in conjunction with the betting operators offering facilities at their track which premises licensing arrangement best suits the specific nature and circumstances of their track.

## Social responsibility considerations for tracks

- 20.104** The achievement of the licensing objectives requires betting operators to adopt socially responsible gambling policies and procedures designed both to ensure that gambling is

open and fair and that children and other vulnerable people are not harmed or exploited by gambling.

**20.105** While betting operators must put into effect policies and procedures to promote socially responsible gambling, there is no equivalent requirement on track premises licence holders. However, section 182(1)(a) of the Act places a condition on the track premises licence that the licensee shall ensure that children and young persons are excluded from any area where facilities for betting are provided (unless on race days at racetracks and at greyhound tracks).

**20.106** The Commission considers that track premises licence holders should accept some accountability for promoting socially responsible gambling on their premises, and that the level of responsibility should be commensurate with the volume and intensity of gambling that occurs on their premises. Specific guidance on responsibilities in this area can be found in the *'Advice to track premises licence holders'* document, available on the Commission's website.

## Part 21: Adult gaming centres

- 21.1** Persons operating an Adult Gaming Centre (AGC) must hold a gaming machines general operating licence (Adult Gaming Centre) from the Commission and must seek a premises licence from the licensing authority. They will be able to make category B, C and D gaming machines available to their customers.

### Gaming machines

- 21.2** Section 172(1) of the Act provides that the holder of an adult gaming centre premises licence may make available for use a number of category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises and any number of category C or D machines. Premises in existence before 13 July 2011 are entitled to make available four category B gaming machines, or 20% of the total number of gaming machines, whichever is the greater. The holder of an adult gaming centre premises licence granted on or after 13 July 2011 but before 1 April 2014 is entitled to make available a maximum of four category B gaming machines or 20% of the total number of gaming machines, whichever is the greater; from 1 April 2014 these premises will be entitled to 20% of the total number of gaming machines only. Regulations specify that the category B machines should be restricted to sub-category B3 and B4 machines, but not B3A machines.
- 21.3** Where the operator of an existing AGC premises licence applies to vary the licence and acquire additional AGC premises licences (so that the area that was the subject of a single licence will become divided between a number of separate licensed premises) each separate licensed premises must only contain the allowed machine entitlement. So for example, where two separate AGC premises have been created adjacent to each other by genuinely splitting a pre-existing premises, it is not permissible to locate eight category B3 gaming machines in one of the resulting premises (with none in the other one), as the gaming machine entitlement for that premises would be exceeded.

### Protection of children and young persons

- 21.4** No-one under the age of 18 is permitted to enter an AGC. Licensing authorities will wish to have particular regard to the location of and entry to AGCs to minimise the opportunities for children to gain access. This may be of particular importance in areas where young people may be unsupervised for example, where an AGC is in a complex, such as a shopping centre or airport.

### AGC premises licence conditions

- 21.5** Part 9 of this Guidance discusses the conditions that may or may not be attached to premises licences, and those that are attached automatically. Currently there are no default conditions specific to AGCs. It was considered unnecessary to set default opening hours for AGCs, leaving the matter to be decided locally by licensing authorities on a case by case basis.
- 21.6** The Secretary of State and Scottish Ministers have set out in regulations the conditions relating specifically to AGC premises. The paragraphs below discuss these conditions, all of which are mandatory.

#### Mandatory conditions attaching to adult gaming centre premises licences

- 21.7** A notice must be displayed at all entrances to AGCs stating that no person under the age of 18 years will be admitted to the premises.
- 21.8** There can be no direct access between an AGC and any other premises licensed under the Act or premises with an FEC, club gaming, club machine or licensed premises gaming

machine permit. There is no definition of 'direct access' in the Act or regulations. However, it could be said that there should be an area separating the premises concerned (for example, a street or cafe), which the public go to for purposes other than gambling, for there to be shown to be no direct access.

- 21.9** Any ATM made available for use on the premises shall be located in a place that requires any customer who wishes to use it to cease gambling at any gaming machine in order to do so.
- 21.10** The consumption of alcohol in AGCs is prohibited at any time during which facilities for gambling are being provided on the premises. A notice stating this should be displayed in a prominent place at every entrance to the premises.

## Part 22: Licensed family entertainment centres

**22.1** The Act creates two classes of family entertainment centre (FEC). This part of the Guidance concerns licensed FECs. Persons operating a licensed FEC must hold a gaming machine general operating licence (Family Entertainment Centre) from the Commission and must seek a premises licence from the licensing authority. They will be able to make category C and D gaming machines available to their customers. Unlicensed FECs provide category D machines only and are regulated through FEC gaming machine permits (see part 24 of this Guidance).

### Protection of children and young persons

**22.2** Children and young persons will be permitted to enter an FEC and may play on the category D machines. They are not permitted to play on category C machines, and it is a requirement that there must be clear segregation between the two types of machine, so that children do not have access to category C machines.

**22.3** In the gaming machine general operating licence (Family Entertainment Centre), the Commission has set out conditions that require operators to ensure that employees prevent access to the area containing category C machines by under-18s and challenge children or young persons who do attempt to play the machines. Licensing authorities will find it helpful to refer to the Commission's website to see the conditions that apply.<sup>50</sup> Regulations<sup>51</sup> relevant to the way in which the area containing the category C machines should be set out are specified in the mandatory conditions that apply to premises licences (see below).

### Licensed FEC premises licence conditions

**22.4** Part 9 of this guidance discusses the conditions that may or may not be attached to premises licences, and those that are attached automatically. Currently there are no default conditions specific to FECs. It was considered unnecessary to set default opening hours for FECs, leaving the matter to be decided locally by licensing authorities on a case by case basis.

**22.5** The Secretary of State and Scottish Ministers have set out in regulations the conditions relating specifically to FEC premises. The paragraphs below discuss these conditions, all of which are mandatory.

#### **Mandatory conditions attaching to family entertainment centre premises licences**

**22.6** The summary of the terms and conditions of the premises licence issued by the licensing authority under section 164(1)(c) of the Act must be displayed in a prominent place within the premises.

**22.7** The layout of the premises must be maintained in accordance with the plan.

**22.8** The premises must not be used for the sale of tickets in a private lottery or customer lottery, or the National Lottery.

**22.9** No customer shall be able to enter the premises directly from a casino, an adult gaming centre or betting premises (other than a track). There is no definition of 'direct access' in the Act or regulations. However, it could be said that there should be an area separating

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<sup>50</sup> Code of Practice on Licensed Family Entertainment Centres, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

<sup>51</sup> SI No. 1409: The Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007  
SSI No. 266: The Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007



the premises concerned (for example, a street or cafe), which the public go to for purposes other than gambling, for there to be shown to be no direct access.

- 22.10** Any ATM made available for use on the premises must be located in a place that requires any customer who wishes to use it to cease gambling at any gaming machine in order to do so.
- 22.11** Over-18 areas within FECs that admit under-18s must be separated by a barrier with prominently displayed notices at the entrance stating that under-18s are not allowed in that area and with adequate supervision in place to ensure that children and young persons are not able to access these areas or the category C machines. Supervision may be done either by placing the terminals within the line of sight of an official of the operator or via monitored CCTV.
- 22.12** The consumption of alcohol in licensed FECs is prohibited at any time during which facilities for gambling are being provided. A notice stating this should be displayed in a prominent position on the premises.

## Part 23: Introduction to permits

- 23.1** The Act introduces a range of permits for gambling which are granted by licensing authorities. Permits are required when premises provide a gambling facility but either the stakes and prizes are very low or gambling is not the main function of the premises. The permits regulate gambling and the use of gaming machines in specific premises.
- 23.2** Holders of alcohol-licensed premises gaming machine permits and club permits are required to comply with codes of practice, drawn up by the Commission, on the location and operation of machines. Information on this code can be found on the Commission's website<sup>52</sup>.
- 23.3** The following parts of the Guidance discuss, amongst other things, the various permits that licensing authorities are responsible for issuing:
- Part 24 – family entertainment centre gaming machine permits (as set out in Schedule 10 of the Act)
  - Part 25 – club gaming permits and club machine permits (as set out in Schedule 12)
  - Part 26 – alcohol-licensed premises gaming machine permits (as set out in Schedule 13)
  - Part 27 – prize gaming permits (as set out in Schedule 14).
- 23.4** Licensing authorities may only grant or reject an application for a permit. No conditions may be attached to a permit.
- 23.5** There are different factors to be taken into account by licensing authorities when considering the different types of permit applications. Please see the relevant parts of this Guidance for further information.
- 23.6** In addition, licensing authorities are responsible for receiving, from holders of alcohol licences under the Licensing Act 2003 or the Licensing (Scotland) Act 2005, notifications that they intend to exercise their automatic entitlement to two gaming machines in their premises under section 282 of the Act.

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<sup>52</sup> Gaming Machine Permits Code of Practice, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

## Part 24: Unlicensed family entertainment centres

- 24.1** Family entertainment centres (FECs) are commonly located at seaside resorts, in airports and at motorway service stations, and cater for families, including unaccompanied children and young persons. Unlicensed FECs are able to offer only category D machines in reliance on a gaming machine permit. Any number of category D machines can be made available with such a permit subject to other considerations, such as fire regulations and health and safety. Permits cannot be issued in respect of vessels or vehicles.
- 24.2** If the operator of a family entertainment centre wants to make category C machines available in addition to category D machines, the operator will need to apply for a gaming machine general operating licence (Family Entertainment Centre) from the Commission and a premises licence from the licensing authority (see part 7 of this Guidance).
- 24.3** Schedule 10 of the Act sets out the application process and regulatory regime for FEC gaming machine permits.

### Applying for a permit

- 24.4** The application for a permit can only be made by a person who occupies or plans to occupy the premises to be used as an unlicensed FEC and, if the applicant is an individual, he or she must be aged 18 or over. Applications for a permit cannot be made if a premises licence is in effect for the same premises. The application must be made to the licensing authority in whose area the premises are wholly or partly situated.
- 24.5** The licensing authority must specify the form and manner in which the application should be made, and specify what other information and documents (such as insurance certificates, plans of building, and so on) they require to accompany the application. Applications must also be accompanied by a fee, as prescribed in regulations<sup>53</sup> set by the Secretary of State for England and Wales and Scottish Ministers for Scotland.
- 24.6** In its Licensing Authority Statement of Policy, a licensing authority may include a statement of principles that it proposes to apply when exercising its functions in considering applications for permits. In particular it may want to set out the matters that it will take into account in determining the suitability of the applicant. Given that the premises will particularly appeal to children and young persons, licensing authorities may want to give weight to matters relating to child protection issues.

### Granting or refusing a permit

- 24.7** The licensing authority can grant or refuse an application for a permit, but cannot add conditions. An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application. Unlicensed FECs, by definition, will not be subject to scrutiny by the Commission as no operating (or other) licences will be applied for and issued. Licensing authorities might wish to consider asking applicants to demonstrate:
- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs
  - that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act)
  - that employees are trained to have a full understanding of the maximum stakes and prizes.

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<sup>53</sup> SI No 454/2007: The Gambling Act 2005 (Family Entertainment Centre Gaming Machine)(Permits) Regulations 2007  
SSI No 309/2007: The Gambling Act 2005 (Fees)(Scotland) Regulations 2007

- 24.8** The licensing authority may not refuse an application unless it has notified the applicant of the intention to refuse and the reasons for it, and given them an opportunity to make representations orally or in writing or both. The rights of appeal in relation to permits are discussed in part 12 of this Guidance.
- 24.9** If a permit is granted, the licensing authority must issue it as soon as is reasonably practicable. The Secretary of State has set out the form of the permit in regulations<sup>54</sup>. The permit must specify the person to whom it is issued, the premises it relates to, the date on which it takes effect, the date on which it expires and the name and address of the licensing authority issuing it.
- 24.10** The permit will have effect for ten years, unless it ceases to have effect because it is surrendered or lapses or is renewed. There is no annual fee for FEC gaming machine permits.
- 24.11** If the person to whom the permit is issued changes their name, or wants to be known by another name, they may send the permit to the issuing authority for amendment, together with the appropriate fee. The authority must comply with the request and return the permit to the holder.

## **Lapse, surrender and forfeiture**

- 24.12** The permit may lapse for a number of reasons, namely:
- if the holder ceases to occupy the premises
  - if the licensing authority notifies the holder that the premises are not being used as an unlicensed FEC
  - if an individual permit holder dies, becomes incapable by reason of mental or physical incapacity, becomes bankrupt, or sequestration of his estate is ordered
  - if the company holding the permit ceases to exist, or goes into liquidation.
- 24.13** The purpose of the second reason listed in the previous paragraph is to ensure that there is no erosion of the principle that an unlicensed FEC permit should be obtained for premises that are wholly or mainly used for gaming machines. Licensing authorities would need to use this power in circumstances in which, since the grant of the permit, other activities have been introduced in the premises that mean the gaming machines have become ancillary.
- 24.14** In the last two circumstances listed in paragraph 24.12, the Act provides that the personal representative (in the case of death), trustee of the bankrupt estate or liquidator of the company may rely on the permit for a period of six months as though it had effect and was issued to them.
- 24.15** The permit may also cease to have effect if the holder surrenders it to the licensing authority. Notice of such surrender must be accompanied by the permit, or by an explanation of why the permit cannot be produced.
- 24.16** If the permit holder is convicted of a relevant offence (that is, an offence listed in Schedule 7 of the Act) the court may order the forfeiture of the permit. The court may order the holder to deliver the permit to the licensing authority; and it must in any case notify the licensing authority that it has made a forfeiture order as soon as is reasonably practicable after making the order. Such an order may be suspended by a higher court, pending appeal.

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<sup>54</sup> SI No 454/2007: The Gambling Act 2005 (Family Entertainment Centre Gaming Machine) (Permits) Regulations 2007

## Renewal

**24.17** In accordance with paragraph 18 of Schedule 10 of the Act, an application for renewal of a permit must be made during the period beginning six months before the permit expires and ending two months before it expires. The procedure for renewal is the same as for an application. The licensing authority may only refuse to renew a permit on the grounds that:

- an authorised local authority officer has been refused access to the premises without reasonable excuse
- renewal would not be reasonably consistent with the licensing objectives. In this respect, the licensing authority will have the benefit of having consulted the chief officer of police and will be aware of any concerns that have arisen about the use of the premises during the life of the permit.

**24.18** The duration of the permit will not be curtailed while a renewal application is pending, including an appeal against a decision not to renew.

## Maintenance

**24.19** The permit must be kept on the premises and it is an offence not to produce it when requested to do so by a constable, an enforcement officer, or an authorised local authority officer.

**24.20** If a permit is lost, stolen or damaged, the holder may apply for a replacement, subject to paying a fee that has been set by the Secretary of State or Scottish Ministers in regulations. The licensing authority must grant the application if it is satisfied that the permit has been lost, stolen or damaged and a report has been made to the police. The authority should issue a copy and certify it as a true copy of the original permit.

## Part 25: Clubs

**25.1** This part of the Guidance covers the following types of premises:

- Members' clubs
- Commercial clubs
- Miners' welfare institutes

### Defining clubs

**25.2** The Act separates gaming in clubs from that in other alcohol licensed premises (commonly known as pubs).

**25.3** The Act creates two types of club for the purposes of gaming: members' clubs (including miners' welfare institutes) and commercial clubs. This is an important distinction in respect of the gaming that may take place.

#### Members' club

**25.4** A members' club is a club that is not established as a commercial enterprise, and is conducted for the benefit of its members. Examples include working men's clubs, miners' welfare institutes, branches of the Royal British Legion and clubs with political affiliations. Members' clubs may apply to their local licensing authority for club gaming permits and club machine permits.

**25.5** The Act states that members' clubs must have at least 25 members and be established and conducted 'wholly or mainly' for purposes other than gaming, unless the gaming is restricted to bridge and whist. Members' clubs must be permanent in nature, but there is no need for a club to have an alcohol licence.

#### Miners' welfare institute

**25.6** The definition of a miners' welfare institute has changed since they were first set up. They are associations established for recreational or social purposes. They are managed by representatives of miners or use premises regulated by a charitable trust which has received funds from one of a number of mining organisations. Miners' welfare institutes may also apply for club gaming permits and club machine permits.

#### Commercial club

**25.7** A commercial club is a club established for commercial gain (whether or not they are making a commercial gain). Examples include snooker clubs, clubs established as private companies and clubs established for personal profit. There are established tests in respect of determining a club's status. In case of doubt, legal advice should be sought. Commercial clubs may only apply for club machine permits.

### Bingo in clubs

**25.8** Clubs and miners' welfare institutes are able to provide facilities for playing bingo under section 275 of the Act, or in accordance with a permit under section 271, provided that the restrictions in section 275 are complied with. These include that in any seven day period the aggregate stakes or prizes for bingo must not exceed £2,000. If that limit is breached the club must hold a bingo operator's licence and the relevant operating, personal and premises licences must be sought (see part 18 of the Guidance). The bingo must comply with any code issued by the Commission under section 24 of the Act. Information about this code can be found on the Commission's website<sup>55</sup>.

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<sup>55</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)



## Betting in clubs

- 25.9** Commercial betting, regardless of the level of stakes, is not allowed in clubs. Those who facilitate such betting in clubs – whether designated premises supervisors or club officials – are providing illegal facilities for gambling and are breaking the law. Even where designated premises supervisors or club officials accept bets on behalf of licensed bookmakers, or just facilitate betting through their own telephone accounts, they are acting as betting intermediaries and could be prosecuted.
- 25.10** Licensed bookmakers with a full or ancillary remote licence may accept telephone bets from a customer watching an event in a club, as long as that customer has an individual account with them. It is illegal for bookmakers to sit in the club taking bets themselves. Similarly, it is also illegal for operators to put their agent in clubs, for example, in a working men's club on a Saturday, to take bets.

## Exempt gaming

- 25.11** Exempt gaming is equal chance gaming generally permissible in any club. Such gaming should be ancillary to the purposes of the premises. This provision is automatically available to all such premises, but is subject to statutory stakes and prize limits determined by the Secretary of State.
- 25.12** Equal chance gaming is gaming that does not involve staking against a bank and the chances of winning are equally favourable to all participants. It includes games such as backgammon, mah-jong, rummy, kalooki, dominoes, cribbage, bingo and poker.
- 25.13** The Secretary of State has set both daily and weekly prize limits for exempt gaming. Different, higher stakes and prizes are allowed for exempt gaming in clubs than in alcohol-licensed premises<sup>56</sup>. These limits are set out in Appendix C to this Guidance.
- 25.14** Exempt gaming should be supervised by a nominated gaming supervisor and comply with any code of practice issued by the Commission under section 24 of the Act<sup>57</sup>.
- 25.15** Clubs may levy a charge for participation in equal chance gaming under the exempt gaming rules. The amount they may charge is as prescribed in regulations<sup>58</sup>. See Appendix C for further details.
- 25.16** In order to qualify as exempt gaming, clubs may not charge a rake on games or levy or deduct an amount from stakes or winnings.
- 25.17** Members' clubs may only be established wholly or mainly for the purposes of the provision of facilities for gaming, if the gaming is of a prescribed kind. The Secretary of State has decided that bridge and whist should be the only prescribed kinds of gaming<sup>59</sup>. So long as it does not provide facilities for other types of non-machine gaming, a bridge or whist club may apply for a club gaming permit. If gaming is the principal reason for attendance at a club (other than a dedicated whist or bridge club), then it is not exempt gaming under section 269 of the Gambling Act 2005. This would include poker clubs and the like established primarily for the purpose of providing poker or other gaming. Such clubs require Commission operating licences and premises licences.
- 25.18** The gaming offered must not be linked to gaming in other premises and no person under 18 may participate in the gaming.
- 25.19** Gaming which meets these conditions needs no permission from the licensing authority. However, if an authority believes that these conditions are being breached, it has a power to remove the exemption and ban gaming in a specific pub or club.

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<sup>56</sup> SI No 1944/2007: The Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007

<sup>57</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

<sup>58</sup> SI No1944/2007: The Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007

<sup>59</sup> SI No 1942/2007: The Gambling Act 2005 (Gaming in Clubs) Regulations 2007

- 25.20** The Commission has issued a code of practice under section 24 of the Act in respect of exempt equal chance gaming. This can be found on the Commission's website<sup>60</sup>.
- 25.21** The code of practice requires owners/licensees to adopt good practice measures for the provision of gaming in general and poker in particular. The code also sets out the stakes and prizes limits and the limits on participation fees laid out in regulations.
- 25.22** The emphasis of the regulations and the code of practice is on self-regulation by the management of the premises and licensing authorities should take a strong line in cases where breaches are detected.

## Club permits

- 25.23** Schedule 12 of the Act sets out the application process and regulatory regime for club gaming permits and club machine permits. Scottish Ministers may, with the consent of the Secretary of State, make separate regulations in relation to club gaming or club machine permits in place of Schedule 12, if the applicant or the holder of the permit is the holder of a certificate of registration under section 105 of the Licensing (Scotland) Act 1976. Scottish Ministers have made regulations in this regard<sup>61</sup>. In exercising a function under Schedule 12, the licensing authority must have regard to this Guidance and, subject to the Guidance, the licensing objectives.
- 25.24** A club gaming permit or club machine permit may not be issued in respect of a vessel or vehicle.

## Club gaming permits

- 25.25** Under section 271 of the Act, the licensing authority may grant members' clubs and miners' welfare institutes (but not commercial clubs) club gaming permits which authorise the establishments to provide gaming machines, equal chance gaming (without having to abide by the stake and prize limits which would apply to exempt gaming in the absence of a permit) and games of chance as prescribed in regulations<sup>62</sup>, namely pontoon and *chemin de fer*. This is in addition to the exempt gaming authorisation under section 269 of the Act.
- 25.26** Club gaming permits allow the provision of no more than three gaming machines. These may be from categories B3A, B4, C or D but only one B3A machine can be sited as part of this entitlement. See part 16 of this Guidance for information on machine categories.
- 25.27** Where a club has gaming machines they are required to comply with the code of practice, which has been issued by the Commission on the location and operation of machines. Information about this code can be found on the Commission's website<sup>63</sup>.
- 25.28** The gaming which a club gaming permit allows is subject to conditions:
- (a) in respect of equal chance gaming:
- the club must not deduct money from sums staked or won
  - the participation fee must not exceed the amount prescribed in regulations
  - the game takes place on the premises and must not be linked with a game on another set of premises.
- Two games are linked if:
- the result of one game is, or may be, wholly or partly determined by reference to the result of the other game, or
  - the amount of winnings available in one game is wholly or partly determined by reference to the amount of participation in the other game, and a game which is

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<sup>60</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

<sup>61</sup> SSI No 504/2007: The Club Gaming and Club Machine Permits (Scotland) Regulations 2007

<sup>62</sup> SI No 1945/2007: The Gambling Act 2005 (Club Gaming Permits) (Authorised Gaming) Regulations 2007

split so that part is played on one site and another part is played elsewhere is treated as two linked games

- only club members and their genuine guests participate.

(b) in respect of other games of chance:

- the games must be pontoon and chemin de fer only
- no participation fee may be charged otherwise than in accordance with the regulations
- no amount may be deducted from sums staked or won otherwise than in accordance with the regulations.

**25.29** There are limits on stakes and prizes for poker played in those clubs and institutes that do not hold a club gaming permit issued by their local licensing authority. The introduction of these limits reflects significant recent growth in the popularity of poker, and the need to address the particular risks associated with such gaming. The regulations<sup>64</sup> impose a stakes limit of £10 per person per game, within a premises limit of up to £250 in stakes per day and £1,000 per week. The maximum fees that clubs may charge their members for participating in gaming has been set at £1 per day (or £3 if they hold a club gaming permit). Clubs and institutes holding a club gaming permit are also able to provide facilities for specified banker's games.

**25.30** To help clubs and institutes to comply with the full range of statutory requirements for gaming, the Commission has issued a statutory code of practice on equal chance gaming in consultation with interested parties. The *Code of Practice for equal chance gaming in clubs and premises with an alcohol licence* is available from the Commission's website<sup>65</sup>. The provisions of the code (which also applies to alcohol-licensed premises) include:

- ensuring that young people and children are protected by excluding them from gaming (even if they are permitted on the premises)
- ensuring that gaming is fair and open by requiring close supervision of the games, record keeping (as appropriate), the need for standard rules and the display of stakes and prizes limits and the rules during play.

**25.31** A 48 hour rule applies in respect of all three types of gaming, so that the games may only be played by people who have been members of the club for at least 48 hours, or have applied or been nominated for membership or are genuine guests of a member.

### **Protection of children and young persons**

**25.32** The gambling provided under the authority of a club gaming permit must also meet the following conditions:

(a) in respect of gaming machines:

- no child or young person may use a category B or C machine on the premises
- that the holder must comply with any relevant provision of a code of practice about the location and operation of gaming machines.

(b) the public, children and young persons must be excluded from any area of the premises where the gaming is taking place.

### **Club machine permits**

**25.33** If a members' club or a miners' welfare institute does not wish to have the full range of facilities permitted by a club gaming permit, they may apply to the licensing authority for a club machine permit under section 273 of the Act. This authorises the holder to have up to

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<sup>64</sup> SI No 1944/2007: The Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007

<sup>65</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

three gaming machines of categories B3A, B4, C and D. Commercial clubs are not permitted to provide non-machine gaming (other than exempt gaming under section 269 of the Act) so they should apply for a club machine permit, however, they will not be able to site category B3A gaming machines offering lottery games in their club.

- 25.34** There are a number of premises, such as work premises which operate membership-based social clubs that are not licensed to sell alcohol but are allowed to apply for a club machine permit. Before granting the permit the licensing authority will need to satisfy itself that the premises meet the requirements of a members' club and may grant the permit if the majority of members are over 18 years of age. The permit will allow up to three machines of category B3A, B4, C or D. If under-18s use the club, for example they are apprentices, they may play the category D, but not the B4 or C, machines.
- 25.35** Holders of licensed premises club machine permits are required to comply with the code of practice, which has been issued by the Commission on the location and operation of machines. Information about this code can be found on the Commission's website<sup>66</sup>.

### **Protection of children and young persons**

- 25.36** Section 273 sets out the conditions that will apply to the club machine permit, including that in respect of gaming machines no child or young person uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines. It should be noted that clubs do not have to have permanent premises or an alcohol licence.

### **Applications for club gaming permits and club machine permits**

- 25.37** The Secretary of State has made regulations in relation to applications for these permits, and Scottish Ministers have made separate regulations setting out the fees and applications requirements that apply in Scotland.
- 25.38** Applications must be made to the licensing authority in whose area the premises are located, and must be accompanied by the fee and documents prescribed in regulations<sup>67</sup>. Within a time prescribed in the regulations, the applicant must also copy the application to the Commission and to the chief officer of police. The Commission and the police may object to the permit being granted. The period within which such objections must be lodged and the grounds on which they may be made are set out in regulations. If any objections are made, the authority must hold a hearing (unless consent has been given to dispense with it), otherwise no hearing is necessary.
- 25.39** A licensing authority may grant or refuse a permit, but it may not attach any conditions to a permit. The authority has to inform the applicant, the Commission and the police of the outcome of the application and of any objections made.
- 25.40** Licensing authorities may only refuse an application on the grounds that:
- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied
  - (b) the applicant's premises are used wholly or mainly by children and/or young persons
  - (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities

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<sup>66</sup> Code of practice for gaming machines in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

<sup>67</sup> SI No 1834/2007: The Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007, and SI No 2689/2007: The Gambling Act 2005 (Club Gaming and Club Machine Permits)(Amendments) Regulations 2007  
SSI No 504/2007: The Club Gaming and Club Machine Permits (Scotland) Regulations 2007

- (d) a permit held by the applicant has been cancelled in the previous ten years
- (e) an objection has been lodged by the Commission or the police.

- 25.41** If the authority is satisfied that (a) or (b) is the case, it must refuse the application. Licensing authorities shall have regard to relevant guidance issued by the Commission and (subject to that guidance), the licensing objectives.
- 25.42** In cases where an objection has been lodged by the Commission or the police, the licensing authority is obliged to determine whether the objection is valid.

## **Fast-track procedure**

- 25.43** There is a fast-track procedure for clubs in England and Wales which hold a club premises certificate under section 72 of the Licensing Act 2003. Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the grounds upon which an authority can refuse a permit are reduced. This is because the club or institute will already have been through a licensing process in relation to its club premises certificate under the 2003 Act, and it is therefore unnecessary to impose the full requirements of Schedule 12. Commercial clubs cannot hold club premises certificates under the Licensing Act 2003 and so cannot use the fast-track procedure. The fast-track procedure also does not apply in Scotland.
- 25.44** Those clubs applying for permits by way of conversion of their pre-existing 1968 Act Part II or Part III club registrations do not have the fast track procedure available to them, even if they hold club premises certificates. In these instances, the club must still send a copy of the application to the Gambling Commission and chief officer of police. However, the Gambling Commission (and the police) may not object to the application and the licensing authority is, in fact, obliged to grant the application.
- 25.45** The grounds on which an application under this process may be refused are that:
- (a) the club is established primarily for gaming, other than gaming prescribed by regulations under section 266 of the Act
  - (b) in addition to the prescribed gaming, the applicant provides facilities for other gaming
  - (c) a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled.

## **Factors to consider when granting a club gaming permit**

- 25.46** The licensing authority has to satisfy itself that the club meets the requirements of the Act to obtain a club gaming permit. It is suggested that applicants for permits should be asked to supply sufficient information and documents to enable the licensing authority to take account of the matters discussed in paragraphs 25.47 to 25.49, at the time they submit their applications to the licensing authority.
- 25.47** In determining whether a club is a genuine members' club, the licensing authority should take account of a number of matters, such as:
- Is the primary purpose of the club's activities something other than the provision of gaming to its members? This is an indicator that it's a genuine members' club.
  - Are the profits retained in the club for the benefit of the members? This is the key difference between a members' club and a commercial club.
  - Are there 25 or more members? This is the amount of members a club has to have to qualify.
  - Are there genuine domestic addresses on the register of members? Are domestic addresses listed for every member? Are members local to the club? These are all indicators that the member lists are bona fide and are made up of genuine members.



- Do members participate in the activities of the club via the internet? It is less likely to be a genuine members' club if this is the case.
- Do guest arrangements link a member to every guest? Is there evidence of a signing-in register for guests? Guests must be genuine guests of members and not members of the general public.
- Is the 48 hour rule between applying for membership and participating in any gaming properly applied? This is an indication that the club has a proper membership scheme.
- Are there annual accounts for more than one year? This would indicate that the club is permanent in nature, rather than temporary.
- How is the club advertised and listed in directories, including on the internet? If the club is categorised under "gaming" or "poker", it is less likely to be genuine members' club.
- Are children permitted into the club? The more access they have to areas of the premises, the less likely it is that the club is primarily for gambling activities.
- Does the club have a constitution and can it provide evidence that the constitution was approved by the members of the club? This provides further evidence that it is a properly constituted members' club.
- Is there a list of committee members and evidence of their election by the members of the club? Can the club provide minutes of committee and other meetings? These are further evidence that the club is a properly constituted members' club.

**25.48** The constitution of the club could also indicate whether it is a legitimate members' club. Amongst the things to consider when examining the constitution are the following:

- Who makes commercial decisions on behalf of the club and what are the governance arrangements? Clubs are normally run by a committee made up of members of the club, rather than individuals or managers, who make decisions on behalf of the members. There will normally be a system (consultation, voting, paper ballots, annual general meetings, special meetings, etc) which allows members to be involved in major decisions concerning the management and running of the club. Such arrangements would normally be spelt out in the constitution.
- Are the aims of the club set out in the constitution? A lack of aims or aims which involve gaming could indicate that it is not a genuine members' club.
- Are there shareholders or members? Shareholders would indicate a business enterprise linked to a commercial club.
- Is the members' club permanently established? Clubs can't be temporary and must be permanent in nature
- Can people join with annual or quarterly membership? This would indicate that the club is permanent in nature.
- Are there long term membership benefits? This would also indicate that the club is permanent in nature and that it is a genuine members' club. The benefits of membership would normally be set out in the rules of membership.

**25.49** Other than bridge and whist clubs, which are separately catered for in regulations, a club cannot be established wholly or mainly for purposes of gaming. In applying for a club gaming permit, a club must therefore provide substantial evidence of activities other than gaming. Useful questions which a licensing authority should consider include:

- How many nights is gaming made available? If gaming is available for all or most nights with little other activity, then it is likely that the club is established wholly or mainly for gaming.
- Is the gaming advertised? If gaming is advertised with little or no reference to the other activities of the club, then it is likely that gaming is the main activity of the club and that the gaming is run commercially.
- What are the stakes and prizes offered? The stakes and prizes limits must be complied with. Unlimited stakes and prizes are only available to genuine members' clubs once a club gaming permit has been granted. If high stakes and prizes are



offered, this is also likely to indicate that gaming is one of the main activities of the club.

- Is there evidence of leagues with weekly/monthly/annual winners? This could indicate that the club's main activity is gaming.
- Is there evidence of non-playing members? If members participate in gaming exclusively, this is an indication that the main or only activity of the club is gaming.
- Are there teaching sessions to promote gaming, such as poker? This could be evidence that the club's main activity is gaming.
- Is there tie-in with other clubs offering gaming, such as poker, through tournaments or leagues? This is also an indication that gaming is possibly one of the main activities of the club.
- Is there sponsorship by gaming organisations, for example on-line poker providers? Similarly, this could indicate that poker is one of the main activities of the club.
- Are participation fees within limits? The licensing authority could consider club records and adverts for gaming, etc. Fees that exceed the limits could indicate that the gaming is run commercially.

**25.50** The Commission advises that a visit to the premises before granting of the permit may assist the licensing officer to understand how the club will operate.

## **Factors to consider for gaming under a club machine permit**

**25.51** The licensing authority should satisfy itself that the gaming on offer meets the conditions set out in the Act and relevant regulations. To do this, the licensing authority may wish to ask questions of the applicant or ensure that the exempt gaming complies with these conditions. The conditions are:

- There must be no rake from the pot (that is, the organiser cannot take any money from the prize fund, or deduct money from the stakes or winnings). Licensing authorities should examine the records for gaming or, if possible, observe or get statements about the pot.
- There must be no side bets. This is probably only going to be possible to verify through observation.
- Participation fees must be within the limits prescribed in the regulations. Is there evidence of excess participation fees in club records, adverts for gaming in or outside of the club or from complaints? Participation fees must not be disguised as charges for dealers, mandatory tipping of dealers, table charges or hire charges. Again, observation of the gaming may be necessary.
- Prizes must be within the limits prescribed in the regulations. Is there evidence that they are excessive from records at the club, in adverts for gaming, etc? Note that daily and weekly limits must be monitored by the operator and that "money or money's worth" (for example, goods) counts towards the prize limits.
- Where the games are poker tournaments or leagues, the licensing authority may find it useful to consult part 29 which sets out how the law applies to poker. This should help the licensing authority to determine whether the gaming is within the law from evidence such as records in the club and adverts for gaming.

## **Factors to consider when monitoring club gaming permits**

**25.52** Once the licensing authority has issued a club gaming permit, it is recommended that various aspects need to be considered by licensing authorities in monitoring the club gaming permit. In addition to monitoring whether the club continues to meet the requirements of the Act for a club gaming permit (that is, whether it remains a genuine members' club) and whether the gaming meets the conditions set out in the Act and the relevant regulations, licensing authorities may also wish to consider the issues described in the paragraphs that follow.

- 25.53** Where clubs have computers available for use by members, licensing authorities should be aware that these may be so-called dual use computers which, among other things, allow club members to access gambling websites via the internet. In certain circumstances, these computers may be taken to be gaming machines. Generally, a computer is not a gaming machine merely because there is a possibility of accessing a gambling website via the internet. However, a computer will be taken to be a gaming machine if it is knowingly adapted or presented to facilitate or draw attention to the possibility of it being used for gambling.
- 25.54** It is not possible to provide a definitive list of examples of what constitutes a computer that is knowingly adapted or presented to facilitate or draw attention to the possibility of it being used for gambling. Each case will need to be looked at individually and ultimately the decision regarding whether a machine is a gaming machine is one for the courts to make.
- 25.55** The precise circumstances in which the facilities are offered – including the environment in which they are offered and the relationship with other gambling facilities provided – will need to be taken into account when assessing the status of those facilities. The Commission has provided the following indicators that may help in making decisions about whether a computer is knowingly adapted or presented to facilitate or draw attention to the possibility of it being used for gambling. This list is not exhaustive, and the presence or absence of any single factor is not necessarily conclusive:
- icons for gambling websites displayed on the desktop screen
  - links to gambling websites available via the start menu
  - screensavers, desktop wallpapers referring to gambling websites
  - internet browsing history or favourites menu containing gambling websites
  - promotional material (posters, flyers) indicating the use of computers for gambling
  - gambling software downloaded onto a computer
  - staff informing customers of the existence of the computer for access to gambling websites
  - email messages or other promotional material sent to customers/individuals referring to the availability of computers on premises for gambling purposes.
- 25.56** Licensing authorities should note that permission to advertise gambling in Great Britain is restricted to operators licensed by the Commission, operators from the European Economic Area, Gibraltar and the white-listed jurisdictions (Alderney, Antigua and Barbuda, Isle of Man and Tasmania).
- 25.57** Club premises, computer terminals in the club or the club website may contain advertising of ‘foreign gambling’, or clubs may offer seats at overseas poker tournaments as prizes in poker tournaments run on the club premises. In the Commission’s view, this amounts to advertising of non-UK gambling, as defined by section 327 of the Act. Unless the overseas tournament is based in the European Economic Area, Gibraltar or the white-listed jurisdictions, this is likely to amount to the advertising of ‘foreign gambling’, which is an offence under section 331 of the Act.
- 25.58** Any of the factors mentioned in the preceding paragraphs in this section may give rise to the need to review the club gaming permit or take appropriate enforcement action.
- 25.59** The Commission provides advice and guidance to licensing authorities on permits and related matters and, on a case-by-case basis, will undertake targeted collaborations with licensing authorities in order to establish principle and precedent, and a clear understanding of the legal requirements.
- 25.60** An agency that may also be able to assist licensing authority enquiries is HM Revenue and Customs (HMRC). If a club is trading under the auspices of a club gaming permit (as a members’ club) but is in fact a commercial club with, for example, their main activity being poker, they would be liable for gaming duty. Licensing authorities should bear in mind that clubs of this nature have premises to maintain, as well as staff and other costs, so the sums involved may be significant. There may also be other aspects of the financing of such clubs that would cause HMRC to become involved.

## Maintenance of permits

- 25.61** The permit will have effect for ten years, unless it ceases to have effect because it is surrendered or lapses or is renewed.
- 25.62** The holder of the permit must pay to the licensing authority the first annual fee, and an annual fee before each anniversary of the issue of the permit, in accordance with regulations.
- 25.63** Permits may be amended to meet changing circumstances. Licensing authorities may only refuse a variation if on consideration of a completely new application they would refuse the permit.
- 25.64** The permit, which is to be kept on the premises it relates to, must be in a form specified by the regulations and, if obtained through the fast-track procedure, must identify the appropriate club premises certificate it relates to. It is an offence not to produce the permit when requested to do so by a constable or an enforcement officer.
- 25.65** If a permit is lost, stolen or damaged, the holder may apply for a replacement, subject to payment of a prescribed fee. The licensing authority must grant the application if it is satisfied that the permit has been lost, stolen or damaged and, where the permit is lost or stolen, a report has been made to the police. It should issue a copy and certify it as a true copy.
- 25.66** A permit will lapse if the holder of the permit stops being a club or miners' welfare institute, or if it no longer qualifies under the fast-track system for a permit. In addition, a permit will cease to have effect upon being surrendered to the authority. A notice to surrender must be accompanied by the permit or a statement explaining why it cannot be produced. The authority must inform the police and the Commission when a permit has been surrendered or lapsed.

## Cancellation and forfeiture of permits

- 25.67** The licensing authority may cancel the permit if:
- the premises are used wholly by children and/or young persons
  - an offence or breach of a permit condition has been committed in the course of gaming activities by the permit holder.

Reference here to 'a permit condition' means a condition in the Act or in regulations that the permit is operating under.

- 25.68** Before cancelling a permit, the licensing authority must give the permit holder at least 21 days' notice of the intention to cancel and consider any representations that they may make. The authority must hold a hearing if the permit holder so requests and must comply with any other procedural requirements set out in regulations. If there is no appeal, the cancellation will take effect 21 days after notice of the intention to cancel was given. The authority must notify the permit holder, the Commission and the police that the permit has been cancelled and the reasons for the cancellation.

## Renewal of permits

- 25.69** In accordance with paragraph 24 of Schedule 12 of the Act, an application for renewal of a permit must be made during the period beginning three months before the licence expires and ending six weeks before it expires. The procedure for renewal is the same as for an application.
- 25.70** The duration of the permit will not be curtailed while a renewal application is pending, including an appeal against a decision not to renew.

**25.71** If, at the time a permit is renewed, the applicant holds a club premises certificate, the fast track procedure will apply as it does when application is first made for the permit.

## Appeals

**25.72** The rights of appeal in relation to permits are discussed in part 12 of this Guidance.

## Commission codes of practice

**25.73** The Commission has issued a code of practice under section 24 of the Act in respect of exempt equal chance gaming. This can be found on the Commission's website<sup>68</sup>.

**25.74** The code of practice requires clubs and welfare institutes to adopt good practice measures for the provision of gaming. The code also sets out the stakes and prizes limits and the limits on participation fees (as applicable) laid out in regulations.

**25.75** The emphasis of the regulations and the code of practice is on self-regulation by the management of the premises and licensing authorities should take a strong line in cases where breaches are detected.

**25.76** Additionally, the Commission's code of practice for gaming machines in clubs can be found on the Commission's website<sup>69</sup>. This code includes sections relating to:

- the location and operation of machines, which are a requirement of club permits
- access to gambling by children and young persons, which sets out good practice guidance for permit holders
- customer complaints and disputes, which again sets out good practice for permit holders.

## Powers in respect of club premises

**25.77** Section 312 of the Act provides that:

- a constable or enforcement officer can enter club or miners' welfare institute premises, or premises which they reasonably believe to be used by a club or institute, to determine whether:
  - gaming is taking place on the premises or is about to take place on the premises
  - any gaming that is taking place or is about to take place on the premises meets the requirements for exempt gaming in section 269 of the Act, a club gaming permit or a club machine permit
- an authorised local authority officer can enter premises in respect of which an application for a club gaming permit or club machine permit has been made for a purpose connected with the consideration of the application.

**25.78** An enforcement officer is an employee of the Commission designated as an enforcement officer for the purposes of the Act, or a person other than an employee appointed as an enforcement officer for the same purpose. An authorised local authority officer is an officer of a LA designated as an authorised person for the purposes of section 304 of the Act, where the premises are wholly or partly situated in the LA's area.

**25.79** As the Act indicates that local licensing officers are not authorised to enter club premises under the Act once the club permit has been issued, this has generally been assumed to mean that the LAs lack all the necessary powers and the Commission is, therefore, the

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<sup>68</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

<sup>69</sup> Code of practice for gaming machines in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

default organisation for enforcement action. However, the necessary powers are available to the police and the Commission suggests that LAs, working in partnership with local police forces, have the ability to enforce compliance by clubs where needed.

**25.80** LAs may also want to consider whether their officers have powers under other relevant Acts, such as the Licensing Act or Local Government Act.

## Part 26: Alcohol-licensed premises

**26.1** Sections 279 to 284 of the Act only apply to premises in respect of which an on-premises alcohol licence (in England and Wales) or a licence for sale by retail or supply of alcoholic liquor, but excluding an off-sale licence (in Scotland), has been issued and that have a bar at which alcohol is served, without a requirement that alcohol is served only with food. So, any hotel, restaurant or pub that has a bar can offer gambling under Part 12 of the Act, but hotels and restaurants that serve alcohol only with food cannot.

### Automatic entitlement to two machines

**26.2** Section 282 of the Act provides an automatic entitlement to alcohol licence holders make available two gaming machines (of category C or D) for use in alcohol-licensed premises. To take advantage of this entitlement, the person who holds the on-premises licence (under the Licensing Act 2003) or relevant Scottish licence must give notice to the licensing authority of their intention to make gaming machines available for use, and must pay the prescribed fee (as set by regulations)<sup>70</sup>. If the person ceases to be the holder of the on-premises alcohol licence for the premises, the automatic entitlement to the two gaming machines also ceases. Whoever applies for the new premises alcohol licence would also need to apply under section 282 (2), notifying the licensing authority of their intention to make the gaming machines available for use and paying the prescribed fee.

**26.3** This is not an authorisation procedure. Licensing authorities have no discretion to consider the notification or to turn it down. The only considerations to apply are whether the person applying for the automatic gaming machine entitlement is the holder of the alcohol licence and whether the prescribed fee has been paid.

### Removal of exemption

**26.4** Licensing authorities can remove the automatic authorisation in respect of any particular premises by making an order under section 284 of the Act. That section provides for the licensing authority to make such an order if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives
- gaming has taken place on the premises that breaches a condition of section 282 – for example, the gaming machines have been made available in a way that does not comply with requirements on the location and operation of gaming machines
- the premises are mainly used for gaming
- an offence under the Act has been committed on the premises.

**26.5** Before making an order, the licensing authority must give the licensee at least 21 days' notice of the intention to make the order and consider any representations that they may make. The authority must hold a hearing if the licensee so requests and must comply with any other procedural requirements set out in regulations. If there is no appeal, the order will take effect 21 days after notice of the intention was given. The authority must give the licensee a copy of the order and written reasons for making it. The licensee may appeal to the magistrates' court or the sheriff.

### Licensed premises gaming machine permits

**26.6** Licensing authorities may issue licensed premises gaming machine permits for any number of category C or D machines in licensed premises. Where a permit authorises the making available of a specified number of gaming machines in particular premises, this will effectively replace, and not be in addition to, any automatic entitlement to two machines under section 282.

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<sup>70</sup> SI No 1832/2007: The Gaming Machines in Alcohol Licensed Premises (Notification Fee)(England and Wales) Regulations 2007  
SSI No 311/2007: The Gambling Act 2005 (Fees No. 2)(Scotland) Regulations 2007



- 26.7** Holders of alcohol-licensed premises gaming machine permits are required to comply with a code of practice, which has been drawn up by the Commission on the location and operation of machines. Information about this code can be found on the Commission's website<sup>71</sup>.
- 26.8** The detail of how to apply for licensed premises gaming machine permits is set out in Schedule 13 of the Act.
- 26.9** Applications must be made by a person who, or organisation which, holds the 'on-premises' alcohol licence for the premises for which the application is made. An application may not be made if a premises licence under the Gambling Act is in effect at the premises. The application must be made to an authority in whose area the premises are wholly or partly situated. The Act requires an application to include certain information – the premises to which it relates and the number and category of gaming machines sought. Apart from this it is for the authority to direct the form and manner of the application and what additional information and documents are required.
- 26.10** In determining an application, the authority must have regard to the licensing objectives and to this Guidance. They may also take account of any other matters that are considered relevant to the application. The application does not require notification to the Commission or police before determination. However, licensing authorities are able to specify this as a requirement should they see fit.
- 26.11** The authority may grant or refuse an application. In granting the application, the authority may vary the number and category of gaming machines authorised by the permit. If the authority grants the application, they must issue the permit as soon as possible after that. Where they refuse the application they must notify the applicant as soon as possible, setting out the reasons for refusal. The authority must not refuse an application, or grant it for a different number or category of machines, unless they have notified the applicant of their intention to do so and given the applicant an opportunity to make representations (orally or in writing, or both).
- 26.12** The permit must specify the person or organisation to which it is issued, the number of gaming machines for which the permit has effect, the address of the premises and the date on which it takes effect.
- 26.13** The permit holder can apply to the authority to amend the permit to reflect a change in the holder's name. The authority must comply with the request, provided the prescribed fee is paid.
- 26.14** The permit holder must keep the permit on the premises, and it must be produced on request for inspection by a constable, enforcement officer or local authority officer (not to do so will be an offence). If the permit is lost, stolen or damaged, the holder may apply to the issuing authority for a copy. The application must be accompanied by the prescribed fee.
- 26.15** There are no renewal provisions for this class of permit because these permits are indefinite, and continue in force for so long as the premises continues to have an alcohol licence and the holder of the permit continues to hold that licence. The permit can lapse if the holder surrenders it to the licensing authority.
- 26.16** The holder may apply to vary the permit by changing the number and/or category of machines authorised by it.
- 26.17** The licensing authority is able to cancel a permit. It may only do so in specified circumstances which include if the premises are used wholly or mainly by children or young

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<sup>71</sup> Code of practice for gaming machines in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

persons or if an offence under the Act has been committed. Before it cancels a permit the licensing authority must notify the holder, giving 21 days notice of intention to cancel, consider any representations made by the holder, hold a hearing if requested, and comply with any other prescribed requirements relating to the procedure to be followed. Where the authority cancels the permit, the cancellation does not take effect until the period for appealing against that decision has elapsed, or (where an appeal is made) until the appeal is determined.

- 26.18** The authority can also cancel a permit if the holder fails to pay the annual fee (unless failure is the result of an administrative error). The court may order forfeiture of the permit if the holder is convicted of a relevant offence.
- 26.19** Where a person applies to a licensing authority for the transfer of an alcohol premises licence, they will also need to apply separately for the transfer of the licensed premises gaming machine permit. Both applications will require a fee to be paid.
- 26.20** The applicant may appeal to the magistrates' court against an authority's decision not to issue a permit. The holder can also appeal against a decision to cancel a permit.

## Exempt gaming

- 26.21** Exempt gaming is equal chance gaming generally permissible in any club or alcohol-licensed premises. Such gaming should be ancillary to the purposes of the premises. This provision is automatically available to all such premises, but is subject to statutory stakes and prize limits determined by the Secretary of State.
- 26.22** Equal chance gaming is gaming that does not involve staking against a bank and the chances of winning are equally favourable to all participants. It includes games such as backgammon, mah-jong, rummy, kalooki, dominoes, cribbage, bingo and poker.
- 26.23** The Secretary of State has set both daily and weekly prize limits for exempt gaming in alcohol-licensed premises<sup>72</sup>. These limits are set out in Appendix C to this Guidance.
- 26.24** Exempt gaming should be supervised by a nominated gaming supervisor and comply with any code of practice issued by the Commission under section 24 of the Act. Information about this code can be found on the Commission's website<sup>73</sup>.
- 26.25** A fee may not be levied for participation in the equal chance gaming offered by an alcohol-licensed premises under the exempt gaming rules. A compulsory charge, such as charging for a meal, may constitute a participation fee, depending on the particular circumstances.
- 26.26** In order to qualify as exempt gaming, clubs and alcohol-licensed premises may not charge a rake on games or levy or deduct an amount from stakes or winnings.
- 26.27** The gaming offered must not be linked to gaming in other premises and no person under 18 may participate in the gaming.
- 26.28** Information about poker in alcohol-licensed premises can be found in Part 29 of this guidance.

## Removal of exemption

- 26.29** Licensing authorities can remove the automatic authorisation for exempt gaming in respect of any particular premises by making an order under section 284 of the Act. That section provides for the licensing authority to make such an order if:
- provision of the gaming is not reasonably consistent with the pursuit of the licensing objectives

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<sup>72</sup> SI No 1940/2007: The Gambling Act 2005 (Exempt Gaming in Alcohol Licensed Premises) Regulations 2007

<sup>73</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

- gaming has taken place on the premises that breaches a condition of section 279 – for example, the gaming does not abide by the prescribed limits for stakes and prizes, a participation fee is charged for the gaming or an amount is deducted or levied from sums staked or won
- the premises are mainly used for gaming
- an offence under the Act has been committed on the premises.

**26.30** Before making an order, the licensing authority must give the licensee at least 21 days' notice of the intention to make the order and consider any representations that they may make. The authority must hold a hearing if the licensee so requests and must comply with any other procedural requirements set out in regulations. If there is no appeal, the order will take effect 21 days after notice of the intention was given. The authority must give the licensee a copy of the order and written reasons for making it. The licensee may appeal to the magistrates' court or the sheriff.

## Bingo

**26.31** Alcohol-licensed premises are able to provide facilities for bingo under section 281 of the Act, provided that the restrictions in section 281 are complied with. These include that, in any seven day period, the aggregate stakes or prizes for bingo must not exceed £2,000. If that limit is exceeded, the relevant operating and personal licences must be sought (see part 18 of the Guidance).

**26.32** The bingo must comply with any code issued by the Commission under section 24 of the Act. Information about this code can be found on the Commission's website<sup>74</sup>.

## Betting

**26.33** Commercial betting, regardless of the level of stakes, is not permitted in alcohol-licensed premises. Those who facilitate such betting in pubs are providing illegal facilities for gambling and are breaking the law. Even where publicans accept bets on behalf of licensed bookmakers, or just facilitate betting through their own telephone betting accounts, they are acting as betting intermediaries and could be prosecuted.

**26.34** Licensed bookmakers who knowingly accept bets from pub customers through a single account are encouraging illegal gambling and may be in breach of the Act and could risk losing their licence.

**26.35** Licensed bookmakers with a remote or ancillary licence can accept telephone bets from a customer watching an event in a pub, as long as that customer has an individual account with them. It is illegal for bookmakers or their agents to sit in the pub taking bets themselves.

**26.36** It should be noted, however, that the prohibition on commercial betting in alcohol-licensed premises does not apply in relation to tracks, but only in certain circumstances. Where the betting takes place under the authority of a track premises licence, it can take place in an area on the track licensed for the sale of alcohol, provided that the licensing authority has approved the betting area as part of the track premises licence application. However, this does not apply in relation to separate and discrete premises on the track where betting takes place under the authority of a general betting licence. In this case, the consumption of alcohol on those premises is prohibited.

## Commission codes of practice

**26.37** The Commission has issued a code of practice under section 24 of the Act in respect of exempt equal chance gaming. This can be found on the Commission's website<sup>75</sup>.

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<sup>74</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

- 26.38** The code of practice requires owners/licensees to adopt good practice measures for the provision of gaming in general and poker in particular. The code also sets out the stakes and prizes limits laid out in regulations.
- 26.39** The emphasis of the regulations and the code of practice is on self-regulation by the management of the premises and licensing authorities should take a strong line in cases where breaches are detected.
- 26.40** Under section 310(2) of the Act, an authorised licensing authority officer may enter premises with an alcohol licence for the purpose of:
- a) determining whether the gaming satisfies the conditions in section 279 of the Act;
  - b) in the case of bingo played on the premises, determining:
    - i) whether the terms and conditions of any relevant operating licence are being complied with;
    - ii) whether section 281 of the Act applies;
  - c) ascertaining the number and category of gaming machines being made available for use on the premises.
- 26.41** Additionally, the Commission's code of practice on gaming machines in alcohol-licensed premises can be found on the Commission's website<sup>76</sup>. This code includes sections relating to:
- the location and operation of machines, which are a requirement of machine permits
  - access to gambling by children and young persons, which sets out good practice guidance for permit holders
  - customer complaints and disputes, which again sets out good practice for permit holders.

## Scotland

- 26.42** The provisions of the Act which relate to gaming and gaming machines in licensed premises also apply to Scotland. In Scotland they apply to premises which have a 'licence granted under section 9(1) of the Licensing (Scotland) Act 1976 (licence for sale by retail or supply of alcoholic liquor) provided it is not an off-sale licence'.
- 26.43** The provisions affecting licensed premises gaming machine permits in Scotland have been set out separately. This is because Schedule 13 of the Act does not apply in Scotland. Instead, Scottish Ministers have power under section 285 of the Act to make regulations about the regime in Scotland. The same also applies to gaming and gaming machine permits for clubs in Scotland. Schedule 12 of the Act does not apply in that case and, instead, Scottish Ministers have the power to make provision in regulations about the regime for club gaming and club machine permits. The Scottish Executive has made separate regulations in this regard<sup>77</sup>. It is also important to note that, in Scotland, Schedule 12 does not apply to clubs licensed to sell alcohol (by virtue of section 274(2) of the Act).

## Alcohol-licensed premises gaming machine permits (section 34 permits)

- 26.44** With effect from 1 September 2007, all old 'section 34' permits issued under the Gaming Act 1968 were renamed 'alcohol-licensed premises gaming machine permits'. With effect from that date, amongst other things, the renamed section 34 permits (alcohol-licensed premises gaming machine permits) can be transferred in accordance with Schedule 13 to the Gambling Act 2005. However, it should be noted that the alcohol-licensed premises

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<sup>75</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

<sup>76</sup> Code of practice for gaming machines in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

<sup>77</sup> SSI No 505/2007: The Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007 and SSI No 504/2007: The Club Gaming and Club Machine Permits (Scotland) Regulations 2007.

gaming machine permit can only be approved by the licensing authority if the transfer of the relevant on-premises alcohol licence is approved. These permits expired on 31 August 2010.<sup>78</sup>.

## Protection of children and young persons

**26.45** The Commission's code of practice relating to the location and operation of gaming machines provides that, in respect of gaming machines in alcohol-licensed premises, the licence holder or permit holder should put into effect procedures intended to prevent underage gambling. This should include procedures for:

- checking the age of apparently underage customers; and
- refusing access to anyone who appears to be underage, and who tries to use category B or C gaming machines and cannot produce an acceptable form of identification.

It requires that all gaming machines situated on the premises must be located in a place within the premises where their use can be supervised, either by staff whose duties include such supervision (including bar or floor staff) or by other means. Alcohol premises licence holders or permit holders must have in place arrangements for such supervision.

**26.46** In respect of exempt equal chance gaming, the code requires the gaming supervisor to put into effect procedures designed to prevent underage gambling. These should include:

- holding the gaming in premises or parts of premises which are restricted to adults;
- checking the age of potentially underage players; and
- refusing access to the gaming to anyone apparently underage who cannot produce an acceptable form of age verification and identification.

Procedures should be in place for dealing with cases where an underage person repeatedly attempts to gamble, including verbal warnings and reporting the offence to the Commission and the police. The gaming supervisor should also take reasonable steps to ensure that all employees understand their responsibilities under the code of practice.

## Prohibited gaming

**26.47** No bankers' games may be played either in commercial clubs or alcohol licensed premises or in members' clubs/miners' welfare institutes unless they have a club gaming permit. With a permit the two bankers' games of pontoon and *chemin de fer* may be played. Otherwise, games such as blackjack, roulette and any others which involve staking against the holder of the bank are unlawful on such premises

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<sup>78</sup> SI No 3272/2006: The Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006

## Part 27: Prize gaming and prize gaming permits

- 27.1** Section 288 defines gaming as prize gaming if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming. Normally the prizes are determined by the operator before play commences.
- 27.2** A prize gaming permit is a permit issued by the licensing authority to authorise the provision of facilities for gaming with prizes on specified premises.

### Prize gaming without a prize gaming permit

- 27.3** Casinos are able to offer any form of prize gaming, other than bingo. That is because a casino operating licence gives authority to provide all games of chance, except any form of bingo, which is excluded from the scope of the casino licence by section 68(3)(b). If a casino wishes to provide bingo generally, it would need to obtain a bingo operating licence. If a casino should wish to offer prize bingo, it could obtain a prize gaming permit. It is more likely that the casino will apply for an operating licence to cover all forms of bingo, rather than the more limited permit.
- 27.4** Section 291 enables any form of prize gaming to be provided in bingo premises on the back of the bingo operating licence. This provision allows bingo operators to provide prize gaming in respect of casino games as well as games of equal chance, which they would not otherwise be able to do under the conditions of their operating licence. In the case of bingo operators, the Commission or Secretary of State could impose conditions preventing specified games from being offered, although there are currently no plans to do so.
- 27.5** Section 290 provides that any type of prize gaming may be provided in adult gaming centres and licensed family entertainment centres, and that unlicensed family entertainment centres may offer equal chance prize gaming under the auspices of their gaming machine permit, without the need for a prize gaming permit.
- 27.6** Section 292 provides that travelling fairs are also able to offer equal chance prize gaming without a permit, provided that, taken together, the facilities for gambling are an ancillary amusement at the fair.
- 27.7** Children and young persons may participate in equal chance prize gaming only.
- 27.8** Section 293 sets out four conditions that permit holders, AGCs, FECs and travelling fairs must comply with to lawfully offer prize gaming. These are:
- the limits on participation fees, as set out in regulations<sup>79</sup>, must be complied with
  - all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played
  - the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize)
  - participation in the gaming must not entitle the player to take part in any other gambling.

### Prize gaming permits

- 27.9** Schedule 14 sets out the application process and regulatory regime for prize gaming permits.

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<sup>79</sup> SI No 1777/2007: The Gambling Act 2005 (Limits on Prize Gaming) Regulations 2007



- 27.10** An application for a permit can only be made by a person who occupies or plans to occupy the relevant premises and if the applicant is an individual, he must be aged 18 or over. An application for a permit cannot be made if a premises licence or club gaming permit is in effect for the same premises. The application must be made to the licensing authority in whose area the premises are wholly or partly situated.
- 27.11** The authority must specify the form and manner in which the application should be made, and specify what information and documents (for example, insurance certificates, plans of building) they require to accompany the application. An application must specify the premises and the nature of the gaming for which the permit is sought.
- 27.12** In their Licensing Authority Statement of Policy, licensing authorities should include a statement of principles that they propose to apply when exercising their functions in considering applications for permits. In particular, they may want to set out the matters that they will take into account in determining the suitability of the applicant. Given that the premises will particularly appeal to children and young persons, in considering what to take into account in the application process and what information to request from the applicant, licensing authorities will want to give weight to child protection issues. Licensing authorities should ask the applicant to set out the types of gaming that he or she is intending to offer and the applicant should be able to demonstrate that:
- they understand the limits to stakes and prizes that are set out in regulations
  - the gaming offered is within the law.

## Granting or refusing a permit

- 27.13** The licensing authority can grant or refuse an application for a permit, but cannot add conditions. The licensing authority may grant a permit only if they have consulted the chief officer of police about the application. The licensing authority will want to take account of any objections that the police may wish to make which are relevant to the licensing objectives. Relevant considerations would be the suitability of the applicant in terms of any convictions that they may have that would make them unsuitable to operate prize gaming; and the suitability of the premises in relation to their location and issues about disorder. Licensing authorities need not (but may) have regard to the licensing objectives and shall have regard to this Guidance.
- 27.14** A permit cannot be issued in respect of a vessel or a vehicle.
- 27.15** The licensing authority may not refuse an application unless they have notified the applicant of the intention to refuse and the reasons for it, and given them an opportunity to make representations orally or in writing or both.
- 27.16** If a permit is granted, the licensing authority must issue it as soon as is reasonably practicable. The Secretary of State has set out the form of the permit in regulations<sup>80</sup>. The permit must specify the person to whom it is issued, the premises to which it relates, the nature of the gaming, the date on which it takes effect, the date on which it expires, and the name and address of the licensing authority issuing the permit. Scottish Ministers have made separate regulations<sup>81</sup> in respect of fees associated with prize gaming permits.
- 27.17** If the person to whom the permit is issued changes their name, or wants to be known by another name, they may send the permit to the issuing authority for amendment, together with the appropriate fee. The authority must comply with the request and return the permit to the holder.

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<sup>80</sup> SI No 455/2007: The Gambling Act 2005 (Prize Gaming) (Permits) Regulations 2007

<sup>81</sup> SSI No 309/2007: The Gambling Act 2005 (Fees)(Scotland) Regulations 2007

## Duration, lapse, surrender and forfeiture

- 27.18** The permit will have effect for ten years, unless it ceases to have effect or is renewed. There is no annual fee for prize gaming permits.
- 27.19** The permit may lapse for a number of reasons:
- if the holder ceases to occupy the premises
  - if an individual permit holder dies, becomes incapable by reason of mental or physical incapacity, becomes bankrupt, or sequestration of his estate is ordered
  - if a company holding the permit goes into liquidation
  - if the holder (for example a partnership) otherwise ceases to exist.
- 27.20** Where a permit lapses, the Act provides that the permit may be relied upon for a period of six months after it has lapsed, by the following persons:
- the personal representative of the holder (in the case of death)
  - the trustee of the bankrupt estate (in the case of individual bankruptcy)
  - the holder's interim or permanent trustee (in the case of an individual whose estate is sequestrated)
  - the liquidator of the company (in the case of a company that goes into liquidation).
- 27.21** The permit may also cease to have effect if the holder surrenders it to the licensing authority. Notice of such surrender must be accompanied by the permit, or by an explanation of why the permit cannot be produced.
- 27.22** If the permit holder is convicted of a relevant offence (that is an offence listed in Schedule 7 of the Act), the court may order the forfeiture of the permit. The court must order the holder to deliver the permit to the licensing authority, or provide a statement explaining why it is not reasonably practicable to produce it. The court must notify the licensing authority that it has made a forfeiture order as soon as is reasonably practicable after making the order. Such an order may be suspended by a higher court pending appeal against conviction of a relevant offence.

## Renewal

- 27.23** In accordance with paragraph 18 of Schedule 14, an application for renewal of a permit must be made during the period beginning six months before the permit expires and ending two months before it expires. The procedure for renewal is the same as for an application.
- 27.24** A permit will not cease to have effect while a renewal application is pending, including an appeal against a decision not to renew.

## Maintenance

- 27.25** The permit must be kept on the premises and it is an offence not to produce it when requested to do so by a constable, an enforcement officer, or an authorised local authority officer.
- 27.26** If a permit is lost, stolen or damaged, the holder may apply for a replacement subject to paying the fee set by the Secretary of State and Scottish Ministers. The licensing authority must grant the application if it is satisfied that the permit has been lost, stolen or damaged and a report has been made to the police. It should issue a copy and certify it as a true copy.

## Appeals

- 27.27** The rights of appeal in relation to permits are discussed in part 12 of this Guidance.

## Part 28: Non-commercial and private gaming and betting

- 28.1** The Act permits gambling without any specific permissions under limited circumstances. In summary these are:
- non-commercial gaming
  - incidental non-commercial lotteries (these are discussed in part 32 – small society lotteries)
  - private gaming and betting

### Non-commercial gaming

- 28.2** The Act permits non-commercial gaming if it takes place at a non-commercial event, either as an incidental or principal activity at the event. Events are non-commercial if no part of the proceeds is for private profit or gain. The proceeds of such events may benefit one or more individuals if the activity is organised:
- by, or on behalf of, a charity or for charitable purposes
  - to enable participation in, or support of, sporting, athletic or cultural activities.

So it would be possible to raise funds for an individual providing the proceeds were, for example, for a wheelchair or to support a sporting endeavour. Additionally, popular events such as race nights or casino nights may be permitted if they comply with the regulations and profits go to a 'good cause'. More details about these can be found later in this part.

- 28.3** Section 297(3) of the Act defines proceeds as:

(a) the sums raised by the organisers (whether by way of fees for entrance or for participation, by way of sponsorship, by way of commission from traders, or otherwise), minus

(b) amounts deducted by the organisers in respect of costs reasonably incurred in organising the event.

However, sums raised by other persons will not form part of the proceeds of the event and may be appropriated for private gain. An example would be refreshments provided at the event by an independent third party.

- 28.4** If someone uses any profits from non-commercial gaming for something other than the specified purpose, then they commit an offence under section 301 of the Act. The maximum penalty, upon conviction for such an offence, is a term of imprisonment not exceeding 51 weeks for England and Wales (six months in Scotland), and/or a level five fine.

- 28.5** The Act identifies two types of permissible non-commercial gaming:
- prize gaming (which must comply with the conditions set out in section 299 of the Act)
  - equal chance gaming (which must comply with the conditions set out in section 300 of the Act and the conditions prescribed in regulations).

### Non-commercial prize gaming

- 28.6** Provided that the conditions set out in section 299 are met, the organiser does not need to have an operating or premises licence nor a prize gaming permit. In summary, the conditions are:
- players are told that the purpose of the gaming is to raise money for a specified charitable, sporting, athletic or cultural purpose
  - profits are not for private gain
  - the event cannot take place in a venue (other than a track) which has a premises licence. If at a track the premises licence cannot be in use (in effect no betting can be taking place) and no temporary use notice can have effect

- the gaming must be on the premises and not be remote gaming.
- 28.7** In these circumstances, prize gaming occurs if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming. Normally the prizes will be determined by the operator before play commences.

## Non-commercial equal chance gaming

**28.8** The conditions set out under section 300 are as follows:

- All players must be told what purpose the money raised from the gaming is going to be used for (this must be something other than private gain), and the profits must be applied for that purpose
- The gaming must also comply with regulations<sup>82</sup> made by the Secretary of State:
- limiting the maximum payment each player can be required to make to participate in all games at an event to £8
- limiting the aggregate amount or value of prizes in all games played at an event to £600, although where an event is the final one of a series in which all of the players have previously taken part, a higher prize fund of up to £900 is permitted.
- The non-commercial event cannot take place on premises (other than a track) which hold a premises licence, nor on a track at a time when activities are being carried on in reliance on a premises licence, nor on premises at a time when activities are being carried on in reliance on a temporary use notice. There is nothing to stop such premises running charitable or other gambling events to raise money for good causes, but they should do so using the gambling permissions granted to them by their premises licence or use notice. The one exception to this is that a non-commercial event can take place at a track, provided no licensed gambling activities are taking place at the same time. This enables a track to be used for non-commercial gambling when races are not taking place
- The gaming must be non-remote gaming. In other words, the authorisation can only apply to gaming which takes place at events, on premises, and for gaming in person.

## Private gaming

**28.9** Private gaming can take place anywhere to which the public do not have access. That would include a workplace, for example. Domestic and residential gaming are two subsets where non-equal chance gaming is allowed:

- Domestic gaming is permitted without the need for permissions if:
  - it takes place in a private dwelling
  - it is on a domestic occasion
  - no charge or levy is made for playing.
- Residential gaming is permitted when:
  - it takes place in a hall of residence or hostel not administered in the course of a trade or business
  - more than 50% of the participants are residents.

**28.10** Private gaming can potentially take place on commercial premises in circumstances where a members' club hires a room in, for example, a pub or hotel for a private function where equal chance gaming only is played. However, organisers would need to scrutinise very carefully the arrangements put in place to make sure that the particular area of the pub, hotel or other venue in which the gaming takes place is not, on the occasion of the private function, a place to which the public have access and that those participating are not

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<sup>82</sup> SI No 2041/2007: The Gambling Act 2005 (Non-Commercial Equal Chance Gaming) Regulations 2007

selected by a process which means that, in fact, they are members of the public rather than members of the club. The law in this area is complex and organisers should be advised to seek their own legal advice before organising events of this nature.

- 28.11** It is a condition of private gaming that no charge (by whatever name called) is made for participation and Schedule 15 to the Act makes it clear that a deduction from or levy on sums staked or won by participants in gaming is a charge for participation in the gaming. It is irrelevant whether the charge is expressed to be voluntary or compulsory, particularly if customers are prevented from playing if they do not make the “voluntary” donation, or there is strong peer pressure to make the donation. A relevant decided case in another licensing field is that of *Cocks v Mayner* (1893) 58 JP 104, in which it was found that an omnibus said to be available free of charge but whose passengers who were invited to (and in some cases did) make a voluntary contribution was “plying for hire” without the appropriate licence.
- 28.12** Additionally, the decided cases of *Panama (Piccadilly) Ltd v Newberry* (1962) 1WLR 610 and *Lunn v Colston-Hayter* (1991) 155 JP 384 are helpful in guiding local authorities in deciding whether a person ceases to be a member of the public merely because they have agreed to become a member of a club.
- 28.13** In the first of these cases (which related to a strip show), the court said that an applicant for membership of the club and admission to the show was and remained a member of the public, as the whole purpose (of membership) was to get members of the public to see the show and there was no sufficient segregation or selection to cause an applicant to cease to be a member of the public and to acquire a different status as a member of a club on signing his application form and paying the charge. In the second (which related to an acid house party), the judge said that it was impossible, merely because of the existence of a formal scheme of club membership enforced to the extent of requiring tickets to be obtained 24 hours in advance of the event, to regard those who obtained such membership and tickets as having ceased to be members of the public.
- 28.14** This means that people joining a club to attend and take part in a “private” event are likely to remain members of the public, particularly if “club membership” is acquired only a short time before, and in order to attend the event. The courts will not readily allow “membership” status to be abused in order to circumvent the law in this way.

## **Non-commercial and private betting**

- 28.15** The Act also says that betting is private if it is domestic betting or workers’ betting. Domestic betting is a betting transaction made on premises in which each party to the transaction habitually resides. Workers’ betting is where a betting transaction is made between persons who are employed by the same employer. A person does not commit an offence under section 33 or 37 of the Act if he or she provides facilities for private betting.

### **Occasional use notices**

- 28.16** Section 39 of the Act provides that where there is betting on a track on eight days or fewer in a calendar year, betting may be permitted by an occasional use notice (OUN), without the need for a full premises licence.
- 28.17** While tracks are normally thought of as permanent racecourses, the meaning of ‘track’ in the Act covers not just horse racecourses or dog tracks, but also any other premises on any part of which a race or other sporting event takes place, or is intended to take place (see section 353(1) of the Act). This could include football grounds, cricket grounds, golf courses and the like.
- 28.18** This also means that land which has a number of uses, one of which fulfils the definition of a track, can qualify for the OUN provisions (for example, agricultural land on which a point-to-point meeting takes place). Land used temporarily as a track can qualify, provided races

or sporting events take place or will take place there. The track need not be a permanent fixture.

- 28.19** The intention of OUNs is to permit licensed betting operators to use tracks for short periods for conducting betting, where the event upon which the betting is to take place is of a temporary, infrequent nature. OUNs dispense with the need for a betting premises licence for the track in these circumstances. OUNs can also potentially be used to facilitate betting at non-commercial or charity events.
- 28.20** It should be noted that betting operators cannot provide gaming machines at tracks by virtue of an OUN.
- 28.21** Non-commercial, fund raising race nights can be run as betting events at sporting venues under the authority of an OUN, whether or not the sporting event on which the bets are taken is held at that venue. The sporting event on which the bets are or will be taken also need not be taking place at the same time as the betting under the OUN.
- 28.22** An OUN must be sent in writing to the relevant local authority in advance of the event and be copied to the chief officer of police for the area in which the venue is located (or, in Scotland, the chief constable of the police force for the area) and specify a day on which it is to have effect. OUNs must be given for each day on which they are to have effect and must be given by the person responsible for the administration of events on the track or the occupier of the track.
- 28.23** No more than eight OUNs may be issued in a calendar year (that is, for a total of eight days per calendar year), in respect of any one venue. OUNs may be given for consecutive days, so long as the overall limit of eight days is not exceeded in the calendar year.

## **Non-commercial ‘casino night’**

- 28.24** A non-commercial casino night is an event where participants stake money on casino-style games, such as poker or roulette, at a non-commercial event, where none of the money the organisers raise from the event is used for private gain.
- 28.25** Apart from reasonable costs, proceeds (including any entrance fees, sponsorship, the difference between stakes placed and payout made):
- must not be used for private gain
  - must all be given to a good cause.
- Reasonable costs would include costs incurred by providing the prizes. If third parties are selling goods or services at the event, for example if someone is selling refreshments, this does not count as money raised for the charity or good cause and can be retained by that third party.
- 28.26** A non-commercial casino night can be run without a licence, or any other form of permission, providing the operation of the gaming falls into one of the three categories discussed below.
- 28.27** Organisers should note that, under the Act, it is illegal to organise a *commercial* casino night outside of a licensed casino. As the law stands, only the holder of a valid non-remote casino operating licence can apply to a licensing authority for a temporary use notice (TUN) in respect of other premises to offer gaming on a commercial basis, and then only in respect of equal chance gaming organised on a tournament basis with a single overall winner<sup>83</sup>.

## **Casino night as non-commercial prize gaming**

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<sup>83</sup>SI No 3157/2007: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007



**28.28** Casino nights can be held as non-commercial prize gaming. The players must be told what good cause will benefit from the profits of the gaming before placing a bet. The prizes must be advertised in advance and must not depend on the number of people playing or the stakes raised. In non-commercial prize gaming, the casino gaming determines the individual winner or winners, for example by counting who has the most casino chips at a set time. The winners are then awarded the prizes that have been advertised in advance.

### **Casino night as non-commercial equal chance gaming**

**28.29** Casino nights can also be run as non-commercial equal chance gaming. Equal chance gaming is gaming where the chances are equally favourable to all participants and players are not competing against a bank. In non-commercial equal chance gaming, the charitable funds are usually raised through an entrance fee, participation fee, or through other payments related to the gaming. The maximum amount that a player may be charged is £8 per day (this includes entrance or participation fees, stakes and any other payments in relation to the gaming). Organisers must ensure that the total amount paid out in prizes remains below £600 in total across all players. However, where an event is the final one of a series in which all of the players have previously taken part, a higher prize fund of up to £900 is allowed.

### **Casino night as private gaming**

**28.30** A casino night may also be run under the private gaming provisions in the Act. Private gaming may only occur in a place to which the public does not have access (normally a private dwelling, hostel, hall of residence or similar establishment). No charge may be made for participation in private gaming (and that includes an entrance fee or other charge for admission), nor may any amounts be deducted from stakes or prizes. No profits can be made from private gaming, irrespective of how the organiser intended to use those profits and, thus, even if intended for charitable purposes.

**28.31** Private gaming is restricted to equal chance gaming (poker, for example), except where it is domestic or residential gaming.

**28.32** Private gaming can potentially take place on commercial premises in circumstances where a members' club hires a room in, for example, a pub or hotel for a private function where equal chance gaming only is played. However, organisers would need to scrutinise very carefully the arrangements put in place to make sure that the particular area of the pub, hotel or other venue in which the gaming takes place is not, on the occasion of the private function, a place to which the public have access and that those participating are not selected by a process which means that, in fact, they are members of the public rather than members of the club. The law in this area is complex and organisers are advised to seek their own legal advice before organising events of this nature.

## **Non-commercial 'race night'**

**28.33** 'Race nights' are permitted for charitable purposes. However, in some circumstances, they can only be undertaken by a licensed betting operator and after the premises owner has notified the local authority.

**28.34** A non-commercial race night is an event where participants stake money on the outcome of live, recorded or virtual races. The money the organisers raise from the event is called the proceeds.

**28.35** Apart from reasonable costs, proceeds (including any entrance fees, sponsorship, the difference between stakes placed and payout made):

- must not be used for private gain
- must all be given to a good cause

Reasonable costs would include costs reasonably incurred, for example by providing any prizes and for betting slips. If third parties are selling goods or services at your event, for

example if someone is selling refreshments, this does not count as money raised for the charity or good cause and can be retained by that third party.

**28.36** Broadly there are three types of race nights which can be organised for charitable purposes.

### **Race night as non-commercial gaming**

**28.37** The first type of race night occurs where the selection of a 'horse' by a participant is totally dependent on chance, and where no 'odds' or 'form' are available to assist the gambler's selection. An example would be the use of archive films of horseracing without revealing the details of each race.

**28.38** Such nights can be run without a licence, or any other form of permission, providing the operation of the gaming falls into one of the three categories discussed below.

### **Incidental non-commercial lottery**

**28.39** Where the race night is not the only or main purpose of a non-commercial event, it is possible to operate it as an incidental lottery. In this case there are no limits on the amount that players may be charged to participate, but no more than £500 may be deducted from the proceeds of the lottery for the cost of prizes (which may be in cash or in kind), and no more than £100 for other expenses. The organisers can only sell tickets at the event and they have to announce the results at the event. As an example, a 'horse' might be picked at random for each paying customer who is awarded a prize if the horse 'wins'.

### **Race night as non-commercial prize gaming**

**28.40** Race nights can be held as non-commercial prize gaming. The players must be told what good cause will benefit from the profits of the gaming. The prizes must be advertised in advance and must not depend on the number of people playing or the stakes raised. In non-commercial prize gaming, the 'race' determines the individual winner or winners, for example, those who have paid are allocated or select a named horse in the race. The winners are then awarded the prizes that had been advertised in advance.

### **Non-commercial equal chance gaming**

**28.41** Race nights can also be run as non-commercial equal chance gaming. Equal chance gaming, which also includes games such as poker or bingo, is gaming where the chances are equally favourable to all participants and players are not competing against a bank.

**28.42** The maximum amount that a player may be charged is £8 per day (this includes entrance or participation fees, betting stakes and any other payments in relation to the gaming). Organisers must ensure that the total amount paid out in prizes remains below £600 in total across all players. However, where an event is the final one of a series in which all of the players have previously taken part, a higher prize fund of up to £900 is allowed. This could take place, for example, where each participant pays a fee for a randomly selected 'horse' in each 'race' and the participant with the winning horse or chooser of the winning horse receives a prize commensurate with the stakes placed.

### **Race night under occasional use notices**

**28.43** The second type of race night relies on bets being taken by a licensed betting operator on events, including cases where odds and form are available to gamblers.

**28.44** This type of race night can only be organised at sporting venues under the authority of an Occasional Use Notice (OUN). It does not matter, however, whether or not the sporting event on which the bets are taken is held at that venue. The sporting event on which the bets are or will be taken also need not be taking place at the same time as the betting under the OUN.

- 28.45** An OUN must be sent in writing to the relevant local authority in advance of the event and be copied to the chief officer of police for the area in which the venue is located (or, in Scotland, the chief constable of the police force for the area) and specify a day on which it is to have effect. OUNs must be given for each day on which they are to have effect and must be issued by the person responsible for the administration of events on the track or the occupier of the track.
- 28.46** No more than eight OUNs may be issued in a calendar year (that is, for a total of eight days per calendar year), in respect of any one venue. OUNs may be given for consecutive days, so long as the overall limit of eight days is not exceeded in the calendar year.
- 28.47** The person administering the betting under an OUN must have a Gambling Commission general betting operating licence (that is, he or she must be a licensed bookmaker).

### **Race night as private gaming**

- 28.48** A non-commercial race night may also be run under the private gaming provisions in the Act. Private gaming may only occur in a place to which the public does not have access (a private dwelling, hostel, hall of residence or similar establishment). No charge may be made for participation in private gaming (and that includes an entrance fee or other charge for admission), nor may any amounts be deducted from stakes or prizes. Thus, no profits can be made from private gaming, irrespective of how the organiser intended to use those profits, and not even for charitable purposes.

## Part 29: Poker

### Introduction

- 29.1** Poker is a card game which, like bridge, involves elements of both chance and skill. It is, therefore, classified as a game of chance under the Act. There are many variations on the game of poker, but this Part deals primarily with equal chance poker where players compete against each other on equal terms.
- 29.2** In most forms of equal chance poker, players bet or stake progressively into a communal pot or kitty, with the player holding the best hand at the end of the game winning the accumulated stakes. An example of equal chance poker is “Texas Hold ‘Em”.
- 29.3** Unequal chance poker, on the other hand, is where the banker or dealer participates in the game and holds a mathematical edge over the other players. An example of unequal chance poker is “Casino stud poker”. Unequal chance poker may only be played in licensed casinos or, if it is ‘domestic’ or ‘residential’ gaming, under the private gaming provisions in the Act.
- 29.4** This Part sets out all the circumstances in which poker can be legally provided. These circumstances include:
- poker in casinos (including under temporary use notices)
  - poker as exempt gaming in clubs and alcohol-licensed premises
  - poker under a club gaming permit
  - poker as non-commercial gaming
  - poker as private gaming

### Poker in casinos

- 29.5** Poker can be played in casinos licensed by the Commission. Casinos can also run poker tournaments at temporary venues, for a limited amount of time, under temporary use notices (TUNs).
- 29.6** Casinos can offer both equal chance and unequal chance poker, except where the poker is provided under a temporary use notice, in which case it can only be equal chance poker.

#### Temporary use notices

- 29.7** TUNs allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a temporary use notice include hotels, conference centres and sporting venues.
- 29.8** A temporary use notice may only be granted to a person or company holding a relevant operating licence, in effect a non-remote casino operating licence.
- 29.9** Regulations<sup>84</sup> state that TUNs may only be used to permit the provision of facilities for equal chance gaming, where the gaming is intended to produce a single overall winner. However, the facilities may not be provided in circumstances where any person participating in the gaming does so by means of a gaming machine. Equal chance gaming is gaming which does not involve playing or staking against a bank and gives equally favourable chances to all participants. This includes games of equal chance poker.
- 29.10** Further information about TUNs can be found in Part 14 of this guidance.

### Poker as exempt gaming in clubs and alcohol-licensed premises

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<sup>84</sup> SI No 3157/2007: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007

- 29.11** Exempt gaming is equal chance gaming generally permissible in any club or alcohol-licensed premises. Such gaming should be ancillary to the purposes of the premises. This provision is automatically available to all such premises, but is subject to statutory stakes and prize limits determined by the Secretary of State.
- 29.12** Equal chance gaming is gaming that does not involve staking against a bank and the chances of winning are equally favourable to all participants. It includes games such as backgammon, mah-jong, rummy, kalooki, dominoes, cribbage, bingo and poker.
- 29.13** The Secretary of State has set both daily and weekly prize limits for exempt gaming<sup>85</sup>. Different, higher stakes and prizes are allowed for exempt gaming in clubs than in alcohol-licensed premises<sup>86</sup>. These limits are set out in Appendix C to this Guidance.
- 29.14** A fee may not be levied for participation in poker offered by alcohol-licensed premises under the exempt gaming rules. A compulsory charge, such as charging for a meal, may constitute a participation fee, depending on the particular circumstances. However, clubs may charge a participation fee. The amount they may charge is as prescribed in regulations<sup>87</sup>. See Appendix C for further details.
- 29.15** In order for the poker to qualify as exempt gaming, clubs and alcohol-licensed premises may not charge a rake on games or levy or deduct an amount from stakes or winnings.
- 29.16** Members' clubs may only be established wholly or mainly for the purposes of the provision of facilities for gaming, if the gaming is of a prescribed kind. The Secretary of State has decided that bridge and whist should be the only prescribed kinds of gaming. So long as it does not provide facilities for other types of non-machine gaming, a bridge or whist club may apply for a club gaming permit. If gaming is the principal reason for attendance at a club (other than a dedicated whist or bridge club), then it is not exempt gaming under section 269 of the Act. This would include poker clubs and the like established primarily for the purpose of providing poker or other gaming. Such clubs require Commission operating licences and premises licences.

## Removal of exemption for alcohol-licensed premises

- 29.17** Licensing authorities can remove the automatic authorisation for exempt gaming in respect of any particular alcohol-licensed premises by making an order under section 284 of the Act. That section provides for the licensing authority to make such an order if:
- provision of the gaming is not reasonably consistent with the pursuit of the licensing objectives
  - gaming has taken place on the premises that breaches a condition of section 279 – for example, the gaming does not abide by the prescribed limits for stakes and prizes, a participation fee is charged for the gaming or an amount is deducted or levied from sums staked or won
  - the premises are mainly used for gaming
  - an offence under the Act has been committed on the premises.
- 29.18** Before making an order, the licensing authority must give the licensee at least 21 days' notice of the intention to make the order and consider any representations that they may make. The authority must hold a hearing if the licensee so requests and must comply with any other procedural requirements set out in regulations. If there is no appeal, the order will take effect 21 days after notice of the intention was given. The authority must give the licensee a copy of the order and written reasons for making it. The licensee may appeal to the magistrates' court or the sheriff.
- 29.19** This is an important power for licensing authorities where, for example, they discover that poker is being offered in alcohol-licensed premises that consistently breaches the

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<sup>85</sup> SI No 1940/2007: The Gambling Act 2005 (Exempt Gaming in Alcohol-Licensed Premises) Regulations 2007

<sup>86</sup> SI No 1944/2007: The Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007

<sup>87</sup> SI No 1944/2007: The Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007

prescribed limits on stakes and prizes, participation fees are being charged for the poker, amounts are deducted from stakes or winnings, or poker (and other gaming) is the main activity offered on the premises.

## Code of practice

- 29.20** The Commission has issued a code of practice under section 24 of the Act in respect of exempt equal chance gaming. This can be found on the Commission's website<sup>88</sup>.
- 29.21** The code of practice requires owners/licensees/clubs/welfare institutes to adopt good practice measures for the provision of gaming in general, and poker in particular. The code also sets out the stakes and prizes limits and the limits on participation fees (for clubs) laid out in regulations.
- 29.22** The emphasis of the regulations and the code of practice is on self-regulation by the management of the premises and licensing authorities should take a strong line in cases where breaches are detected.

## Poker leagues and tournaments

- 29.23** Gaming is only covered by the Act if it is played for prizes of money or money's worth. However, since 2004 a number of poker tournaments and leagues have been established in alcohol-licensed premises based on playing for points. In some leagues the organisers offer 'prizes' at the end of a series of weekly games for the players with the most points.
- 29.24** It is likely that the association of a prize with a monetary value with a game or series of games constitutes gaming, certainly by the latter stages of the competition. If the eventual prize is worth more than the maximum prize set out in regulations then it could be unlawful gaming. For example, if a tournament simply involves a series of straightforward 'knockout' qualifying rounds, culminating in a 'final' game, then the winner's prize in the final - whether it comprises the stakes laid in that game, a separate prize provided by the organiser, or a combination of the two - must not exceed £100. The regulations set a limit of £100 on a prize that may be won in any game of poker. In a knockout tournament, the overall prize is clearly referable to a single game (the 'final') and is therefore won in a game of poker and subject to the prize limit. The stake and prize limits must also, of course, be applied to each game in the tournament.
- 29.25** In other leagues the prize competed for is the opportunity to play in 'invitational cash tournaments'. Notwithstanding that these 'prizes' may be of an uncertain value, and are likely to be held in mainstream gaming venues under regulated conditions, usually a casino, the Act prohibits gaming in alcohol licensed premises being linked to gaming in any other premises. Players competing across premises for a 'prize' are likely to be engaged in linked gaming, which is unlawful. Consequently, organisers should not host events where players are competing against players in other premises for a prize.
- 29.26** In some types of tournaments there will be no single 'final' game in which it can be said with certainty that the player won the overall prize. In such circumstances, the Commission's view is that one should look to the individual games played by the overall winner and ensure that the overall prize does not cause any of those individual games to exceed the maximum £100 prize limit per game and the maximum stake of £100 per day. The overall winner wins the pot in each game and wins an overall prize based on points
- 29.27** If the tournament winner played three games in the whole tournament, and his winnings (from the pot) in each of these games were £100, £70 and £60 respectively, each game would fall under the £100 prize limit. This would leave £0 from the first game, £30 from the second game and £40 from the third game, which could be put towards the winner's overall

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<sup>88</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)



tournament prize. In these circumstances, the tournament prize could be up to £70 (£0 + £30 + £40). Thus where the pot in individual games is under £100, the tournament winner's overall prize must not exceed the aggregate of the shortfall in each of the games he plays. The overall winner is only awarded points in each game and wins an overall prize based on points.

- 29.28** Let's still assume that the tournament winner plays three games in the whole tournament. If there is no individual prize in any of the three games, then the overall prize can be up to £300 (£100 for each game the winner has played). If, on the other hand, the winner played in only two games, then his overall prize may not exceed £200, and so on. Please note that the relevant number of games is the games in which the winning player participated, and not only the games that they won.
- 29.29** Organisers of such competitions will therefore need to work out the total value of any overall prize with reference to the number of games to be played by the overall winner and the total pot (if any) in each game.
- 29.30** While 'non-cash' poker for points leagues can provide harmless and legal entertainment, those promoting such leagues should be aware of the Commission's code of practice on equal chance gaming<sup>89</sup>, and take steps to prevent individual stakes limits being exceeded through side bets or illegal activity such as agreements to 'settle' games outside the gaming area. Where illegal activity is detected, licensing authorities should consider the removal of the alcohol-licensed premises' exemption, which allows poker and other exempt gaming to be played. The overall winner is only awarded points in each game and wins an overall prize such as the opportunity to participate in a major poker tournament, casino vouchers, holidays, etc
- 29.31** In these circumstances, tournament organisers must ensure that the statutory limits for poker in alcohol-licensed premises and clubs are complied with. In particular, they must carefully consider the value of the prizes offered for games leading up to the tournament final (including money's worth or non-monetary prizes such as holidays, cars, casino vouchers, or buy-ins or seats at the final). In addition, organisers should take into account that where players are competing across premises for an overall prize, they are likely to be engaged in linked gaming, which is not permitted.
- 29.32** Free or donated prizes are awarded to players in addition to the maximum prize pools for poker in clubs and alcohol licensed premises. The Act refers to money or money's worth in respect of prizes. This would include free or donated prizes which have an intrinsic value. Any prizes offered in addition to the prize pool must remain within the limits for prizes in games of poker in clubs and alcohol licensed premises. The prize limit is £250 per game in a club and £100 per game in a pub. Therefore, for example, if the prize pool available for a particular game is £80, then any non-monetary prizes must not have a value exceeding £20.
- 29.33** Poker is offered in a members' club or miners' welfare institute with a club gaming permit. Members' clubs or miners' welfare institutes with club gaming permits may offer poker with unlimited stakes and prizes, but the only persons who may participate in such gaming are club members and their genuine guests. In this regard, the club must be able to demonstrate that it has a genuine and legitimate club membership scheme. Clubs must also ensure that the statutory limits on participation fees are not exceeded. The limit for bridge and whist is £20 and for other gaming is £3. In addition, there is a limit of a maximum of £2,000 per week in stakes and prizes for bingo in a members' club or welfare institute. If it is the intention of the club or institute to exceed these limits, it will be necessary for them to apply for an operating licence.

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<sup>89</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

## What constitutes 'money's worth'?

- 29.34** Money's worth relates to the realistic value of the prize offered. It includes emoluments, vouchers, goods or other items which have a value.
- 29.35** A prize such as a 'goody bag' would be considered money's worth and is, therefore, subject to the statutory limits for exempt gaming. Donated prizes would also be considered money's worth. This would include prizes such as the buy-ins at major poker tournaments or the opportunity to participate in poker tournaments at venues such as Las Vegas, especially as this type of prize is likely to include the cost of the airfare and accommodation.

## Poker under a club gaming permit

- 29.36** A club gaming permit can only be granted to a members' club (including a miners' welfare institute), but cannot be granted to a commercial club or other alcohol-licensed premises.
- 29.37** Other than in the case of clubs established to provide the prescribed games of bridge and whist, clubs seeking club gaming permits must be established 'wholly or mainly' for purposes other than gaming. When a club gaming permit is granted there are no limits on the stakes and prizes associated with poker
- 29.38** If bridge or whist clubs have a club gaming permit they may not offer any other gaming besides bridge and whist. If they do not have a permit, they may provide exempt gaming. If they wish to offer other non-exempt gaming they will require a Commission casino operating licence and any relevant personal licences.
- 29.39** The poker which a club gaming permit allows is subject to conditions:
- (a) in respect of equal chance gaming:
- the club must not deduct money from sums staked or won
  - the participation fee must not exceed the amount prescribed in regulations
  - the game takes place on the premises and must not be linked with a game on another set of premises.
- Two games are linked if:
- the result of one game is, or may be, wholly or partly determined by reference to the result of the other game, or
  - the amount of winnings available in one game is wholly or partly determined by reference to the amount of participation in the other game, and a game which is split so that part is played on one site and another part is played elsewhere is treated as two linked games
  - only club members and their genuine guests participate.
- (b) in respect of other games of chance:
- the games must be pontoon and chemin de fer only
  - no participation fee may be charged otherwise than in accordance with the regulations
  - no amount may be deducted from sums staked or won otherwise than in accordance with the regulations.
- 29.40** To help clubs and institutes to comply with the full range of statutory requirements for gaming, the Commission has issued a statutory code of practice on equal chance gaming in consultation with interested parties. The code of practice is available from the Commission's website<sup>90</sup>. The provisions of the code (which also applies to alcohol-licensed premises) include:

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<sup>90</sup> Code of practice for equal chance gaming in clubs and premises with an alcohol licence, available from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

- ensuring that young people and children are protected by excluding them from gaming (even if they are permitted on the premises)
- ensuring that gaming is fair and open by requiring close supervision of the games, record keeping (as appropriate), the need for standard rules and the display of stakes and prizes limits and the rules during play.

**29.41** A 48 hour rule applies in respect of all three types of gaming, so that the games may only be played by people who have been members of the club for at least 48 hours, or have applied or been nominated for membership or are genuine guests of a member.

**29.42** More information about club gaming permits can be found in Part 25, but there are certain matters we wish to highlight here.

### **Factors to consider when granting a club gaming permit**

**29.43** The LA has to satisfy itself that the club meets the requirements of the Act to obtain a club gaming permit. It is suggested that applicants for permits should be asked to supply sufficient information and documents to enable the LA to take account of the matters discussed in paragraphs 29.44 to 29.46, at the time they submit their applications to the LA.

**29.44** In determining whether a club is a genuine members' club, the LA should take account of a number of matters, such as:

- Is the primary purpose of the club's activities something other than the provision of gaming to its members? This is an indicator that it's a genuine members' club.
- Are the profits retained in the club for the benefit of the members? This is the key difference between a members' club and a commercial club.
- Are there 25 or more members? This is the amount of members a club has to have to qualify.
- Are there genuine domestic addresses on the register of members? Are domestic addresses listed for every member? Are members local to the club? These are all indicators that the member lists are bona fide and are made up of genuine members.
- Do members participate in the activities of the club via the internet? It is less likely to be a genuine members' club if this is the case.
- Do guest arrangements link a member to every guest? Is there evidence of a signing-in register for guests? Guests must be genuine guests of members and not members of the general public.
- Is the 48 hour rule between applying for membership and participating in any gaming properly applied? This is an indication that the club has a proper membership scheme.
- Are there annual accounts for more than one year? This would indicate that the club is permanent in nature, rather than temporary.
- How is the club advertised and listed in directories, including on the internet? If the club is categorised under "gaming" or "poker", it is less likely to be genuine members' club.
- Are children permitted into the club? The more access they have to areas of the premises, the less likely it is that the club is primarily for gambling activities.
- Does the club have a constitution and can it provide evidence that the constitution was approved by the members of the club? This provides further evidence that it is a properly constituted members' club.
- Is there a list of committee members and evidence of their election by the members of the club? Can the club provide minutes of committee and other meetings? These are further evidence that the club is a properly constituted members' club.

**29.45** The constitution of the club could also indicate whether it is a legitimate members' club. Amongst the things to consider when examining the constitution are the following:

- Who makes commercial decisions on behalf of the club and what are the governance arrangements? Clubs are normally run by a committee made up of members of the club, rather than individuals or managers, who make decisions on behalf of the members. There will normally be a system (consultation, voting, paper ballots, annual general meetings, special meetings, etc) which allows members to be involved in major decisions concerning the management and running of the club. Such arrangements would normally be spelt out in the constitution.
- Are the aims of the club set out in the constitution? A lack of aims or aims which involve gaming could indicate that it is not a genuine members' club.
- Are there shareholders or members? Shareholders would indicate a business enterprise linked to a commercial club.
- Is the members' club permanently established? Clubs can't be temporary and must be permanent in nature
- Can people join with annual or quarterly membership? This would indicate that the club is permanent in nature.
- Are there long term membership benefits? This would also indicate that the club is permanent in nature and that it is a genuine members' club. The benefits of membership would normally be set out in the rules of membership.

**29.46** Other than bridge and whist clubs, which are separately catered for in regulations, a club cannot be established wholly or mainly for purposes of gaming. In applying for a club gaming permit, a club must therefore provide substantial evidence of activities other than gaming. Useful questions which a LA should consider include:

- How many nights is gaming made available? If gaming is available for all or most nights with little other activity, then it is likely that the club is established wholly or mainly for gaming.
- Is the gaming advertised? If gaming is advertised with little or no reference to the other activities of the club, then it is likely that gaming is the main activity of the club and that the gaming is run commercially.
- What are the stakes and prizes offered? The stakes and prizes limits must be complied with. Unlimited stakes and prizes are only available to genuine members' clubs once a club gaming permit has been granted. If high stakes and prizes are offered, this is also likely to indicate that gaming is one of the main activities of the club.
- Is there evidence of leagues with weekly/monthly/annual winners? This could indicate that the club's main activity is gaming.
- Is there evidence of non-playing members? If members participate in gaming exclusively, this is an indication that the main or only activity of the club is gaming.
- Are there teaching sessions to promote gaming, such as poker? This could be evidence that the club's main activity is gaming.
- Is there tie-in with other clubs offering gaming, such as poker, through tournaments or leagues? This is also an indication that gaming is possibly one of the main activities of the club.
- Is there sponsorship by gaming organisations, for example on-line poker providers? Similarly, this could indicate that poker is one of the main activities of the club.
- Are participation fees within limits? The LA could consider club records and adverts for gaming, etc. Fees that exceed the limits could indicate that the gaming is run commercially.

**29.47** The Commission advises that a visit to the premises before granting of the permit may assist the licensing officer to understand how the club will operate.

### **Factors to consider when monitoring club gaming permits**

**29.48** Once the LA has issued a club gaming permit, it is recommended that various aspects need to be considered by LAs in monitoring the club gaming permit. In addition to monitoring whether the club continues to meet the requirements of the Act for a club

gaming permit (that is, whether it remains a genuine members' club) and whether the gaming meets the conditions set out in the Act and the relevant regulations, LAs may also wish to consider the issues described in the paragraphs that follow.

- 29.49** Where clubs have computers available for use by members, LAs should be aware that these may be so-called dual use computers which, among other things, allow club members to access gambling websites via the internet. In certain circumstances, these computers may be taken to be gaming machines. Generally, a computer is not a gaming machine merely because there is a possibility of accessing a gambling website via the internet. However, a computer will be taken to be a gaming machine if it is knowingly adapted or presented to facilitate or draw attention to the possibility of it being used for gambling.
- 29.50** It is not possible to provide a definitive list of examples of what constitutes a computer that is knowingly adapted or presented to facilitate or draw attention to the possibility of it being used for gambling. Each case will need to be looked at individually and ultimately the decision regarding whether a machine is a gaming machine is one for the courts to make.
- 29.51** The precise circumstances in which the facilities are offered – including the environment in which they are offered and the relationship with other gambling facilities provided – will need to be taken into account when assessing the status of those facilities. The Commission has provided the following indicators that may help in making decisions about whether a computer is knowingly adapted or presented to facilitate or draw attention to the possibility of it being used for gambling. This list is not exhaustive, and the presence or absence of any single factor is not necessarily conclusive:
- icons for gambling websites displayed on the desktop screen
  - links to gambling websites available via the start menu
  - screensavers, desktop wallpapers referring to gambling websites
  - internet browsing history or favourites menu containing gambling websites
  - promotional material (posters, flyers) indicating the use of computers for gambling
  - gambling software downloaded onto a computer
  - staff informing customers of the existence of the computer for access to gambling websites
  - email messages or other promotional material sent to customers/individuals referring to the availability of computers on premises for gambling purposes.
- 29.52** LAs should note that permission to advertise gambling in Great Britain is restricted to operators licensed by the Commission, operators from the European Economic Area, Gibraltar and the white-listed jurisdictions (Alderney, Antigua and Barbuda, Isle of Man and Tasmania).
- 29.53** Club premises, computer terminals in the club or the club website may contain advertising of 'foreign gambling', or clubs may offer seats at overseas poker tournaments as prizes in poker tournaments run on the club premises. In the Commission's view, this amounts to advertising of non-UK gambling, as defined by section 327 of the Act. Unless the overseas tournament is based in the European Economic Area, Gibraltar or the white-listed jurisdictions, this is likely to amount to the advertising of 'foreign gambling', which is an offence under section 331 of the Act.
- 29.54** Any of the factors mentioned in the preceding paragraphs in this section may give rise to the need to review the club gaming permit or take appropriate enforcement action.
- 29.55** The Commission provides advice and guidance to LAs on permits and related matters and, on a case-by-case basis, will undertake targeted collaborations with LAs in order to establish principle and precedent, and a clear understanding of the legal requirements.
- 29.56** An agency that may also be able to assist LA enquiries is HM Revenue and Customs (HMRC). If a club is trading under the auspices of a club gaming permit (as a members'



club) but is in fact a commercial club with, for example, their main activity being poker, they would be liable for gaming duty. LAs should bear in mind that clubs of this nature have premises to maintain, as well as staff and other costs, so the sums involved may be significant. There may also be other aspects of the financing of such clubs that would cause HMRC to become involved.

## Powers in respect of premises

**29.57** Section 310 of the Act prescribes that a constable, enforcement officer or authorised local authority officer can enter alcohol-licensed premises to determine whether any gaming that is taking place satisfies the conditions for exempt gaming in section 279 of the Act.

**29.58** Section 312 of the Act prescribes that:

- a constable or enforcement officer can enter club or miners' welfare institute premises, or premises which they reasonably believe to be used by a club or institute, to determine whether:
  - gaming is taking place on the premises or is about to take place on the premises
  - any gaming that is taking place or is about to take place on the premises meets the requirements for exempt gaming in section 269 of the Act, a club gaming permit or a club machine permit
- an authorised local authority officer can enter premises in respect of which an application for a club gaming permit or club machine permit has been made for a purpose connected with the consideration of the application.

**29.59** An enforcement officer is an employee of the Commission designated as an enforcement officer for the purposes of the Act, or a person other than an employee appointed as an enforcement officer for the same purpose. An authorised local authority officer is an officer of a LA designated as an authorised person for the purposes of section 304 of the Act, where the premises are wholly or partly situated in the licensing authority's area.

**29.60** As the Act indicates that local licensing officers are not authorised to enter club premises under the Act once the club permit has been issued, this has generally been assumed to mean that licensing authorities lack all the necessary powers and the Commission is, therefore, the default organisation for enforcement action. However, the necessary powers are available to the police and the Commission suggests that licensing authorities, working in partnership with local police forces, have the ability to enforce compliance by clubs where needed.

**29.61** LAs may also want to consider whether their officers have powers under other relevant Acts, such as the Licensing Act or Local Government Act. In addition, in England and Wales, sections 87, 88 and 89 of the Licensing Act give licensing authorities the ability to review club premises certificates, including suspending and withdrawing certificates, and section 90 allows licensing authorities to withdraw certificates where it appears to the LA that the club does not satisfy the conditions for being a qualifying club.

## The position in Scotland

**29.62** In Scotland, the relevant licensing authority is called a licensing board. The powers of licensing boards are similar to those of licensing authorities in England and Wales in that they grant, review and cancel club gaming permits and club machine permits.

**29.63** However, due to an oversight, sections 310 and 312 have created an anomaly in Scotland. In Scotland the equivalent of a licensing officer is a 'licensing standards officer' (LSO). Although section 304(2) of the Act was intended to provide licensing authorities with the opportunity to empower licensing authority staff already involved in licensing, it does not apply to Scotland because those given responsibility by Scottish licensing authorities



(usually the LSOs) are not officers of the licensing authority. The licensing boards are separate and LSOs are deliberately legally separated from the boards.

- 29.64** Section 304(3) and (4) of the Act was intended to provide licensing authorities with the opportunity to empower staff involved in other regulatory roles, such as trading standards officers and environmental health officers, but because most Scottish licensing authorities have given responsibility to LSOs instead, they are unable to do this.
- 29.65** However, it must be emphasised that the local police in Scotland have similar powers under the Act to those given to their equivalents in England and Wales. This means that the licensing authorities should approach the police for assistance if needed.
- 29.66** It should also be noted that police officers have the power to enter alcohol-licensed premises issued under the Licensing (Scotland) Act 2005, as long as it is regarded as a pre-planned operation and where a warrant would be appropriate.

## **Poker as non-commercial gaming**

- 29.67** The Act permits non-commercial gaming if it takes place at a non-commercial event, either as an incidental or principal activity at the event. Events are non-commercial if no part of the proceeds is for private profit or gain. The proceeds of such events may benefit one or more individuals if the activity is organised:
- by, or on behalf of, a charity or for charitable purposes
  - to enable participation in, or support of, sporting, athletic or cultural activities.

So it would be possible to raise funds for an individual providing the proceeds were, for example, for a wheelchair or to support a sporting endeavour. Additionally, popular events such as casino nights or poker nights may be permitted if they comply with the regulations and profits go to a 'good cause'. More details about these can be found later in this Part.

- 29.68** Section 297(3) of the Act defines proceeds as:

(a) the sums raised by the organisers (whether by way of fees for entrance or for participation, by way of sponsorship, by way of commission from traders, or otherwise), minus

(b) amounts deducted by the organisers in respect of costs reasonably incurred in organising the event.

However, sums raised by other persons will not form part of the proceeds of the event and may be appropriated for private gain. An example would be refreshments provided at the event by an independent third party.

- 29.69** If someone uses any profits from non-commercial gaming for something other than the specified purpose, then they commit an offence under section 301 of the Act. The maximum penalty, upon conviction for such an offence, is a term of imprisonment not exceeding 51 weeks for England and Wales (six months in Scotland), and/or a level five fine.
- 29.70** The Act identifies two types of permissible non-commercial gaming:
- prize gaming (which must comply with the conditions set out in section 299 of the Act)
  - equal chance gaming (which must comply with the conditions set out in section 300 of the Act and the conditions prescribed in regulations).

## **Non-commercial prize gaming**

- 29.71** Provided that the conditions set out in section 299 are met, poker can be offered as non-commercial prize gaming without the need to have an operating or premises licence, nor a

prize gaming permit. In summary, the conditions are:

- players are told that the purpose of the gaming is to raise money for a specified charitable, sporting, athletic or cultural purpose
- profits are not for private gain
- the event cannot take place in a venue (other than a track) which has a premises licence. If at a track the premises licence cannot be in use (in effect no betting can be taking place) and no temporary use notice can have effect
- the gaming must be on the premises and not be remote gaming.

**29.72** In these circumstances, poker as prize gaming occurs if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming. Normally the prizes will be determined by the organiser before play commences.

### **Non-commercial equal chance gaming**

**29.73** Provided that the conditions set out under section 300 are met, poker can be offered as non-commercial equal chance gaming without the need to have an operating or premises licence. In summary, the conditions are:

- All players must be told what purpose the money raised from the gaming is going to be used for (this must be something other than private gain), and the profits must be applied for that purpose
- The gaming must also comply with regulations<sup>91</sup> made by the Secretary of State:
- limiting the maximum payment each player can be required to make to participate in all games at an event to £8
- limiting the aggregate amount or value of prizes in all games played at an event to £600, although where an event is the final one of a series in which all of the players have previously taken part, a higher prize fund of up to £900 is permitted.
- The non-commercial event cannot take place on premises (other than a track) which hold a premises licence, nor on a track at a time when activities are being carried on in reliance on a premises licence, nor on premises at a time when activities are being carried on in reliance on a temporary use notice. There is nothing to stop such premises running charitable or other gambling events to raise money for good causes, but they should do so using the gambling permissions granted to them by their premises licence or use notice. The one exception to this is that a non-commercial event can take place at a track, provided no licensed gambling activities are taking place at the same time. This enables a track to be used for non-commercial gambling when races are not taking place
- The gaming must be non-remote gaming. In other words, the authorisation can only apply to gaming which takes place at events, on premises, and for gaming in person.

### **Non-commercial 'casino night' or 'poker night'**

**29.74** A non-commercial casino night or poker night is an event where participants stake money on casino-style games, such as poker, at a non-commercial event, where none of the money the organisers raise from the event is used for private gain.

**29.75** Apart from reasonable costs, proceeds (including any entrance fees, sponsorship, the difference between stakes placed and payout made):

- must not be used for private gain
- must all be given to a good cause.

Reasonable costs would include costs incurred by providing the prizes. If third parties are selling goods or services at the event, for example if someone is selling refreshments, this

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<sup>91</sup> SI No 2041/2007: The Gambling Act 2005 (Non-Commercial Equal Chance Gaming) Regulations 2007

does not count as money raised for the charity or good cause and can be retained by that third party.

- 29.76** A non-commercial casino night or poker night can be run without a licence, or any other form of permission, providing the operation of the gaming falls into one of the three categories discussed below.
- 29.77** Organisers should note that, under the Act, it is illegal to organise a *commercial* casino night or poker night outside of a licensed casino. As the law stands, only the holder of a valid non-remote casino operating licence can apply to a licensing authority for a temporary use notice (TUN) in respect of other premises to offer gaming on a commercial basis, and then only in respect of equal chance gaming organised on a tournament basis with a single overall winner<sup>92</sup>.

### **Casino night or poker night as non-commercial prize gaming**

- 29.78** Casino nights or poker nights can be held as non-commercial prize gaming. The players must be told what good cause will benefit from the profits of the gaming before placing a bet. The prizes must be advertised in advance and must not depend on the number of people playing or the stakes raised. For example, the individual winner or winners could be determined by counting who has the most casino chips after the game or tournament ends. The winners are then awarded the prizes that have been advertised in advance.

### **Casino night or poker night as non-commercial equal chance gaming**

- 29.79** Casino nights or poker nights can also be run as non-commercial equal chance gaming. In non-commercial equal chance gaming, the charitable funds are usually raised through an entrance fee, participation fee, or through other payments related to the gaming. The maximum amount that a player may be charged is £8 per day (this includes entrance or participation fees, stakes and any other payments in relation to the gaming). Organisers must ensure that the total amount paid out in prizes remains below £600 in total across all players. However, where an event is the final one of a series in which all of the players have previously taken part, a higher prize fund of up to £900 is allowed.

## **Poker as private gaming**

- 29.80** Poker offered as private gaming can take place anywhere to which the public do not have access. That would include a workplace, for example. Domestic and residential gaming are two subsets where non-equal chance gaming is allowed:

- Domestic gaming is permitted without the need for permissions if:
  - it takes place in a private dwelling
  - it is on a domestic occasion
  - no charge or levy is made for playing.
- Residential gaming is permitted when:
  - it takes place in a hall of residence or hostel not administered in the course of a trade or business
  - more than 50% of the participants are residents.
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- 29.81** Private gaming can potentially take place on commercial premises in circumstances where a members' club hires a room in, for example, a pub or hotel for a private function where equal chance gaming only is played. However, organisers would need to scrutinise very carefully the arrangements put in place to make sure that the particular area of the pub, hotel or other venue in which the gaming takes place is not, on the occasion of the private function, a place to which the public have access and that those participating are not selected by a process which means that, in fact, they are members of the public rather than

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<sup>92</sup>SI No 3157/2007: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007

members of the club. The law in this area is complex and organisers should be advised to seek their own legal advice before organising events of this nature.

- 29.82** It is a condition of private gaming that no charge (by whatever name called) is made for participation and Schedule 15 to the Act makes it clear that a deduction from or levy on sums staked or won by participants in gaming is a charge for participation in the gaming. It is irrelevant whether the charge is expressed to be voluntary or compulsory, particularly if customers are prevented from playing if they do not make the “voluntary” donation, or there is strong peer pressure to make the donation. A relevant decided case in another licensing field is that of *Cocks v Mayner* (1893) 58 JP 104, in which it was found that an omnibus said to be available free of charge but whose passengers who were invited to (and in some cases did) make a voluntary contribution was “plying for hire” without the appropriate licence.
- 29.83** Additionally, the decided cases of *Panama (Piccadilly) Ltd v Newberry* (1962) 1WLR 610 and *Lunn v Colston-Hayter* (1991) 155 JP 384 are helpful in guiding local authorities in deciding whether a person ceases to be a member of the public merely because they have agreed to become a member of a club.
- 29.84** In the first of these cases (which related to a strip show), the court said that an applicant for membership of the club and admission to the show was and remained a member of the public, as the whole purpose (of membership) was to get members of the public to see the show and there was no sufficient segregation or selection to cause an applicant to cease to be a member of the public and to acquire a different status as a member of a club on signing his application form and paying the charge. In the second (which related to an acid house party), the judge said that it was impossible, merely because of the existence of a formal scheme of club membership enforced to the extent of requiring tickets to be obtained 24 hours in advance of the event, to regard those who obtained such membership and tickets as having ceased to be members of the public.
- 29.85** This means that people joining a club to attend and take part in a “private” event are likely to remain members of the public, particularly if “club membership” is acquired only a short time before, and in order to attend the event. The courts will not readily allow “membership” status to be abused in order to circumvent the law in this way.

## Advertising

- 29.86** Section 331 of the Act specifically prohibits the advertising of ‘foreign gambling’ in the United Kingdom. Foreign gambling in this sense is gambling which takes place outside of the European Economic Area (including Gibraltar and Malta) or white-listed states<sup>93</sup> (the Isle of Man, Alderney, Tasmania and Antigua and Barbuda). Therefore advertising of this nature would be illegal, but if the prize advertised was an all-expenses paid holiday to Las Vegas for example, then the operator would not fall foul of section 331 of the Act.
- 29.87** Many poker websites promote other online gambling websites, usually by the provision of a hyperlink to that website. A hyperlink has been deemed to constitute advertising as it brings facilities for advertising to the attention of the person who clicks on the link. The provision of a hyperlink to a gambling website operating outside of the EEA or white-listed states (the Isle of Man, Alderney, Tasmania and Antigua and Barbuda) by a poker operator will constitute advertising of foreign gambling, which is not permitted.

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<sup>93</sup> As of July 2012, these are the current white-listed states.

## Part 30 Travelling fairs

- 30.1** The Act defines a travelling fair as ‘wholly or principally’ providing amusements and they must be on a site that has been used for fairs for no more than 27 days per calendar year. The Act does not change the principles on which travelling fairs have been regulated under previous legislation.
- 30.2** Travelling fairs do not require a permit to provide gaming machines, but must comply with legal requirements about the way the machine operates. They may provide an unlimited number of Category D gaming machines provided that facilities for gambling amount to no more than an ancillary amusement at the fair. Current stakes and prizes can be found on the Commission’s website.
- 30.3** Part 27 of the Guidance discusses the prize gaming that may be provided at travelling fairs.
- 30.4** Licensing authorities should note that the 27-day maximum is during a calendar year and not in any 12-month period, and applies to the piece of land on which fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. Authorities should therefore monitor the use of land and maintain a record of the dates on which it is used. If the land straddles licensing authority areas, the authorities concerned will need to work together to maintain a central log.
- 30.5** Local authorities may adopt byelaws to control travelling fairs under a discretionary power set out in section 75 of the Public Health Act 1961, as amended by section 22 of the Local Government (Miscellaneous Provisions) Act 1976.

## Part 31: Crown immunity and excluded premises

- 31.1** With the exception mentioned below, the Act applies to the Crown. This includes government departments and therefore there is no immunity for establishments such as civil service social clubs, which must apply for club machine permits or other permissions in the normal way.
- 31.2** However the Act has no effect in relation to anything done on premises occupied, either on a permanent or temporary basis, by the armed forces, in effect Her Majesty's naval, military or air forces.
- 31.3** The Act enables the Secretary of State to classify a premises as exempt from the Act on the grounds of national security. There are no plans at present for the Secretary of State to use this power.



## Part 32: Territorial application of the Gambling Act 2005

- 32.1** The Act only applies to Great Britain (England, Wales and Scotland) except for two main areas which also apply in Northern Ireland. These are:
- Chain gift schemes (see part 35 of this Guidance)
  - Offences relating to foreign gambling (see section 331 of the Act).
- 32.2** A fixed premise such as a building or a track in Great Britain will need the appropriate licences to operate.

### Vessels

- 32.3** Vessels such as cruise ships, ferries, boats and hovercrafts are required to have a premises licence if commercial gambling is provided at them. However if a vessel is engaged on a journey into or from international waters then no premises licence is required (see part 7 paragraphs 7.31 to 7.37).

### Vehicles

- 32.4** No premises licences can be issued in respect of a vehicle. A car, lorry or coach is obviously a vehicle, and the Act also provides that 'vehicle' includes a train, aircraft, seaplane and any amphibious vehicle other than a hovercraft. There is no exemption for international travel. Whilst this is ultimately a matter for the courts it is the Commission's view that a vehicle remains a vehicle not only when stationary but also if located permanently at a particular site, perhaps with its wheels removed but capable of being re-instated.

### Aircraft

- 32.5** No offence occurs if gambling is conducted on an aircraft which is in international space. As an aircraft is a vehicle, no premises licences can be granted to aircraft for gambling in domestic airspace.

### Airports

- 32.6** The Act applies to all parts of an airport including both domestic and international departure halls. Therefore any business that would normally require a premises licence will also require a licence to operate at an airport.
- 32.7** Due to differences in jurisdictional application, there is an anomaly in respect of granting gaming machine permits to pubs and bars where alcohol is sold airside in airports.
- 32.8** In England and Wales, the Licensing Act 2003 applies to pubs and bars in the domestic part of the airport and therefore these businesses are able to qualify for the automatic gaming machine entitlement or can apply for a gaming machine permit for more than two gaming machines (see part 26 of this Guidance for more details). The Licensing Act does not apply airside, so pubs and clubs are not required to obtain a licence to serve alcohol. This has created an anomaly which DCMS have taken steps to rectify. DCMS intends to use a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 to reform the Gambling Act 2005 insofar as it governs the gambling entitlements at airside bars and at wharves. The LRO will amend section 278 of the Gambling Act 2005 and will remedy a technical problem caused by a legislative oversight to enable airside bars to continue to provide low-level gambling facilities, as they have been doing for some time without giving rise to any problems.. Subject to the outcome of consultation and Parliamentary consideration, DCMS have proposed that the changes are implemented from 1 October 2012.

**32.9** In Scotland, designated airports which currently hold alcohol licences under the Licensing (Scotland) Act 2005, qualify for the automatic gaming machine entitlement and can apply for gaming machine permits. However, , a situation also exists in Scotland where the Licensing (Scotland) Act 2005 does not apply to airside pubs. It is expected that DCMS's proposed LRO will also correct this anomaly.

## Part 33: Door supervision

- 33.1** If a licensing authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example, by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a premises licence condition to this effect.
- 33.2** Section 178 of the Gambling Act 2005 sets out a definition of 'door supervisor', and provides that where a person employed in such a role is required to hold a licence issued by the Security Industry Authority (SIA), that requirement will have force as though it were a condition on the premises licence.
- 33.3** The SIA regulates the private security industry in England, Wales and Scotland, and is responsible for licensing individuals working within the various industry sectors, by virtue of the Private Security Industry Act 2001 (PSIA). The majority of persons employed to work as door supervisors at premises licensed for gambling, and carrying out the functions listed under Schedule 2 Part 1 of the PSIA, will need to be licensed by the SIA. There are, however, exceptions to this requirement.
- 33.4** The PSIA requires that all contract staff (those employed under a contract for services) carrying out the functions set out under Schedule 2 Part 1 of the PSIA require licensing by the SIA. However, certain premises also need to have their in-house employees (those employed under a contract of service), who carry out these functions, licensed. These premises include those holding a premises licence for the supply of alcohol or regulated entertainment under the Licensing Act 2003.
- 33.5** This requirement is relaxed when applied to door supervisors at casino and bingo premises. Where 'contract' staff are employed as door supervisors at casino or bingo premises, such staff will need to be licensed by the SIA. However, 'in-house' employees working as door supervisors at casino and bingo premises are exempt from these requirements.
- 33.6** In Scotland, the PSIA currently applies in respect of the Licensing (Scotland) Act 2005 by virtue of the Licensing (Scotland) Act 2005 (Consequential provisions) Order 2009, Scottish SI 2009/248. This ensures that the same requirements in relation to the licensing of staff by the SIA in England and Wales also apply in Scotland

## Part 34: Small society lotteries

**34.1** The Act denotes local authorities as being responsible for registering societies to run small society lotteries, as opposed to licensing authorities. Section 2 of the Act defines licensing authorities, and section 25 defines local authorities, and both are given the same definition. The Commission considers therefore that for the purposes of the Act both terms are broadly the same, and in the interests of consistency with the other areas of guidance contained in this document, we refer throughout this section to licensing authorities, as opposed to local authorities.

### The status of lotteries under the Act

**34.2** The Act sets out a definition of a lottery and provides that promoting or facilitating a lottery is illegal, unless it falls into one of two categories of permitted lottery, namely:

- licensed lotteries:  
these are large society lotteries and lotteries run for the benefit of local authorities that are regulated by the Commission and require operating licences
- exempt lotteries:  
there are four types of exempt lottery that are expressly permitted under Schedule 11 of the Act, including the small society lottery.

**34.3** The National Lottery is not regulated by the Commission, but continues to be regulated by the National Lottery Commission (NLC). However the NLC has been co-located with the Commission since January 2012 and the Public Bodies Bill includes legislation to merge the two Commissions..

### Definition of lottery

**34.4** Licensing authorities need to have an understanding of how a lottery is defined. In essence a lottery is an arrangement that satisfies all of the criteria contained within the statutory description of either a simple lottery or a complex lottery, under section 14 of the Act.

**34.5** An arrangement is a simple lottery if:

- persons are required to pay to participate
- one or more prizes are allocated to one or more members of a class
- the prizes are allocated by a process which relies wholly on chance.

**34.6** An arrangement is a complex lottery if:

- persons are required to pay to participate
- one or more prizes are allocated to one or more members of a class
- the prizes are allocated by a series of processes
- the first of those processes relies wholly on chance.

### Definition of society

**34.7** Licensing authorities should define 'society' as the society, or any separate branch of such a society, on whose behalf a lottery is to be promoted, and need to understand the purposes for which a society has been established in ensuring that it is a non-commercial organisation. Section 19 of the Act defines a society as such if it is established and conducted:

- for charitable purposes<sup>94</sup>
- for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity
- for any other non-commercial purpose other than that of private gain.

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<sup>94</sup> As defined by section 2 of the Charities Act 2006

**34.8** It is inherent in this definition that the society must have been established for one of the permitted purposes, and that the proceeds of any lottery must be devoted to those purposes. It is not permissible to establish a society whose sole purpose is to facilitate lotteries – it must have some other purpose.

## Local authority lotteries

**34.9** Local authorities are themselves entitled to operate their own lotteries, but may only do so if licensed by the Commission. Authorities must commit a minimum of 20% of the proceeds from such lotteries for a purpose for which they have power to incur expenditure, and must also adhere to the other relevant provisions in the Act. They may also need to hold a remote gambling operating licence, in the event that they wish to sell lottery tickets via electronic or other remote technological methods such as over the telephone, email or via the internet.

**34.10** This document will not focus in detail on this type of lottery, but local authorities wishing to operate their own lotteries can, in the first instance, find relevant information on the Commission's website.

## Application and registration process for small society lotteries

**34.11** When licensing authorities are approached by societies who want to register with them to operate lotteries, they will need to refer to the Act's definition of a small society lottery, which falls into two distinct areas:

- society status – the society in question must be 'non-commercial'
- lottery size – the total value of tickets to be put on sale per single lottery must be £20,000 or less, or the aggregate value of tickets to be put on sale for all their lotteries in a calendar year must not exceed £250,000. If the operator plans to exceed either of these values then they may need to be licensed with the Commission to operate large lotteries instead.

**34.12** The Commission has published a series of advisory documents, which licensing authorities may wish to refer applicants or potential applicants to enable them to establish which type of lottery they plan to operate. *Promoting society and local authority lotteries* provides information for those seeking to run small and large society lotteries and local authority lotteries. *Organising small lotteries* provides advice on exempt lotteries that do not require a licence or registration. The Commission has also published a leaflet for fundraisers, to help them identify what types of lottery they can run. All documents are available on the Commission's website.

**34.13** The promoting society of a small society lottery must, throughout the period during which the lottery is promoted, be registered with a licensing authority. Parts four and five of Schedule 11 of the Act set out the requirements on both societies and licensing authorities with respect to the registration of small society lotteries.

**34.14** The licensing authority with which a small society lottery is required to register must be in the area where their principal office is located. If a licensing authority believes that a society's principal office is situated in another area, it should inform the society and the other authority as soon as possible.

**34.15** Applications for small society lottery registrations must be in the form prescribed by the Secretary of State and be accompanied by both the required registration fee and all necessary documents required by the licensing authority to assess the application accordingly.

**34.16** Licensing authorities may wish to ask new applicants for a copy of their terms and conditions and their constitution to establish that they are a non-commercial society. They

may also choose to require applicants to provide a declaration, stating that they represent a bona-fide non-commercial society.

- 34.17** The Commission has been made aware that some small society lotteries may be avoiding applying for a society lottery operating licence from the Commission by obtaining two or more registrations with the same or different local authorities.
- 34.18** As set out previously, the Act states that a society lottery is a large lottery if the arrangements for it are such that its proceeds may exceed £20,000, or if the aggregate proceeds in a calendar year exceed £250,000.
- 34.19** In cases where a society has separate branches with different aims and objectives, it is acceptable for them to hold more than one licence or registration. However, in cases where a society holds more than one registration and the aims and objectives of those societies are the same, this may constitute a breach of the threshold limits for small society lotteries set out in Schedule 11, Part 4 of the Act.
- 34.20** Local authorities are advised that in a case where a society applies for more than one registration, care should be taken to ensure that the applicant societies have separate and different aims and objectives. Where a society applies for more than one registration, the aims and objectives of the applicant societies are the same and the combined proceeds are likely to exceed the threshold limits for small society lotteries, the applicant should be advised to apply to the Commission for a society lottery operating licence, instead of obtaining society lottery registrations with the local authority.
- 34.21** Local authorities may also wish to carry out checks at the time the annual fee is paid to renew the registration, to ensure that a society does not hold a duplicate registration with them or another local authority where the aims and objectives of the societies are the same. If that is the case and the combined proceeds exceed or are likely to exceed the threshold limits for small society lotteries, the society should be advised to apply to the Commission for a society lottery operating licence. The local authority should also notify the Commission.
- 34.22** Licensing authorities may delegate the registration of small societies to licensing officers, subject to each authority's own specific process of delegations.
- 34.23** Licensing authorities are required by paragraph 44 of Schedule 11 of the Act to record details of the society on a register. While it does not have to be a public register, the Commission recommends that licensing authorities make the register available to the public on request.
- 34.24** Once the application for registration has been accepted and entered on the local register, the licensing authority must then notify both the applicant and the Commission of this registration as soon as practicable (again as required by paragraph 44 of Schedule 11 of the Act). The Commission would prefer to receive this information electronically via email to [info@gamblingcommission.gov.uk](mailto:info@gamblingcommission.gov.uk), although licensing authorities may also forward this information by post.
- 34.25** Registrations run for an unlimited period, unless the registration is cancelled. If a licensing authority cancels the registration of a society they are required by paragraph 53 of Schedule 11 of the Act to notify the Commission.

## **Refusal of an application**

- 34.26** Paragraphs 47 and 48 of Schedule 11 of the Act set out the grounds for licensing authorities to refuse a small society lottery registration application. In summary, licensing authorities may propose to refuse an application for any of the following reasons:



- **An operating licence held by the applicant for registration has been revoked or an application for an operating licence made by the applicant for registration has been refused, within the past five years.** The Commission will be able to advise the details of people and organisations that have been refused an operating licence or have had an operating licence revoked in the past five years. Licensing authorities should consult the Commission as part of their consideration process.
- **The society in question cannot be deemed non-commercial.** Under previous regimes, licensing authorities often required applicants to provide a statement with their application form declaring that they represented a bona-fide non-commercial society, and identifying how the purpose of the society could be established. The Commission considers that a similar approach remains appropriate. However, licensing authorities should also consider whether such a declaration is sufficient in the particular circumstances of each case or whether there are additional determining factors, such as an unusual or novel purpose of the society, which may suggest that further enquiry is needed.
- **A person who will or may be connected with the promotion of the lottery has been convicted of a relevant offence<sup>95</sup>.** Under previous regimes, licensing authorities often required applicants to provide a statement alongside their application form declaring that they had no relevant convictions that would prevent them from running lotteries. The authority could then verify the accuracy of the statement with the police. The Commission considers that this scenario remains appropriate.
- **Information provided in or with the application for registration is found to be false or misleading.**

**34.27** A licensing authority may only refuse an application for registration after the society has had the opportunity to make representations. These can be taken at a formal hearing or via correspondence. Licensing authorities should inform the society of the reasons why it is minded to refuse registration and provide it with at least an outline of the evidence on which it has reached that preliminary conclusion – in order to enable representations to be made. Representations and objections that may result after such a decision should be handled in accordance with local procedures, and in the same way that the authority would handle representations relating to other licensing matters. The Commission considers that, as a matter of good practice, licensing authorities should set out, perhaps on their website, the principles they will apply in such circumstances.

## Revocation of a small society's registered status

**34.28** A licensing authority may determine to revoke the registration of a society if it thinks that they would have had to, or would be entitled to, refuse an application for registration if it were being made at that time. Revocations cannot take place unless the society has been given an opportunity to make representations at a hearing or via correspondence. In preparation for this, licensing authorities should inform the society of the reasons why it is minded to revoke the registration and provide them with the terms of the evidence on which it has reached that preliminary conclusion. Representations that may result after such a decision should be handled in accordance with local procedures, and in the same way that the authority would handle representations relating to other licensing matters.

## Appeals

**34.29** Following the conclusion of any hearings and receipt of representations, paragraph 51 of

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<sup>95</sup> Relevant offences are listed at Schedule 7 of the Act

Schedule 11 of the Act then requires the authority to notify the applicant or the society as soon as possible if their registration is still to be revoked, or if their application for registration has still been rejected.

- 34.30** The applicant or society may decide to make an appeal against the decision, and has 21 days following receipt of the notice of the decision to lodge an appeal, which must be made directly to the local magistrates' court if in England or Wales, or the sheriff's court in Scotland.
- 34.31** The magistrates' court or sheriff may accordingly choose to affirm the decision of the licensing authority, reverse the decision, or make any other order.

## Licensing authority guidance

- 34.32** The Commission recommends that licensing authorities consider producing their own guidance for organisations and individuals seeking to operate small society lotteries, to be made available through mediums such as websites and hard copies. The Commission's *Promoting society and local authority lotteries*<sup>96</sup> may provide a useful starting point for licensing authorities that wish to develop such local guidance. Suggested content includes:
- the forms and documentation needed for registration (as prescribed by regulations)
  - the information that societies will need to keep concerning the management and operation of the lottery (to enable it to meet the Act's requirements stipulated by paragraph 39 of Schedule 11)
  - the forms and documentation needed for returns following a lottery draw
  - details of fees due and when they should be paid (as prescribed by regulations)
  - the criteria and evidence that the authority will use when determining whether to register a society or revoke a registration.

## Administration and returns

- 34.33** As the purpose of permitted lotteries is to raise money for non-commercial causes, the Act requires that a minimum proportion of the money raised by the lottery is channelled to the goals of the society that promoted the lottery. If a small society lottery does not comply with these limits it will be in breach of the Act's provisions, and consequently be liable to prosecution.
- 34.34** The limits placed on small society lotteries are as follows:
- at least 20% of the lottery proceeds must be applied to the purposes of the society (Schedule 11, paragraph 33)
  - no single prize may be worth more than £25,000 (Schedule 11, paragraph 34)
  - rollovers between lotteries are only permitted where every lottery affected is also a small society lottery promoted by the same society, and the maximum single prize is £25,000 (Schedule 11, paragraph 35)
  - every ticket in the lottery must cost the same and the society must take payment for the ticket fee before entry into the draw is allowed (Schedule 11, paragraph 37).
- 34.35** Paragraph 39 of Schedule 11 in the Act sets out the information that the promoting society of a small society lottery must send as returns to the licensing authority with which it is registered, following each lottery held. This information allows licensing authorities to assess, in particular, whether financial limits are being adhered to and to ensure that any money raised is applied for the proper purpose. The information that must be submitted is as follows:
- the arrangements for the lottery – specifically the date on which tickets were

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<sup>96</sup> Copies can be downloaded from the Commission's website at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

available for sale or supply, the dates of any draw and the value of prizes, including any donated prizes and any rollover

- the total proceeds of the lottery
- the amounts deducted by the promoters of the lottery in providing prizes, including prizes in accordance with any rollovers
- the amounts deducted by the promoters of the lottery in respect of costs incurred in organising the lottery
- the amount applied to the purpose for which the promoting society is conducted (this must be at least 20% of the proceeds)
- whether any expenses incurred in connection with the lottery were not paid for by deduction from the proceeds, and, if so, the amount of expenses and the sources from which they were paid.

**34.36** Paragraph 39 of Schedule 11 in the Act also requires that returns must:

- be sent to the licensing authority no later than three months after the date of the lottery draw, or in the case of 'instant lotteries' (scratch cards) within three months of the last date on which tickets were on sale
- be signed (electronic signatures are acceptable if the return is sent electronically) by two members of the society, who must be aged eighteen or older, are appointed for the purpose in writing by the society or, if it has one, its governing body, and be accompanied by a copy of their letter or letters of appointment.

**34.37** The Commission may inspect a society's returns, although it will not routinely do so. As such licensing authorities are required to retain returns for a minimum period of three years from the date of the lottery draw. They should also make them available for inspection by the general public for a minimum period of 18 months following the date of the lottery draw. Licensing authorities should ensure that information regarding the location of statements (in effect on websites, in council offices etc), when they can be viewed, and the cost of obtaining copies, is made available to the public.

**34.38** Licensing authorities should allow for returns to be sent to them both electronically and manually. The Commission recommends that each licensing authority should make details concerning the form of returns required available through appropriate media, such as licensing authority websites and leaflets.

**34.39** Where societies run more than one lottery in a calendar year, licensing authorities must monitor the cumulative totals of returns to ensure that societies do not breach the annual monetary limit of £250,000 on ticket values.

**34.40** Licensing authorities must notify the Commission if returns reveal that a society's lotteries have exceeded the values permissible for small society lotteries, and such notifications should be copied to the society in question. The Commission will contact the society to determine if they are going to apply for a lottery operator's licence, thereby enabling them to run large society lotteries lawfully, and will inform the licensing authority of the outcome of its exchanges with the society.

**34.41** Licensing authorities will also need to be aware of the status of external lottery managers, when monitoring returns. They are an individual, a firm or a company appointed by a society to manage a lottery or lotteries on behalf of the society, and are generally consultants that take their fees from the expenses of the lottery. A maximum of 80% of a lottery's proceeds may be attributed to expenses and prizes, and managers' fees must be included within this total.

## **External lottery managers' licence status**

**34.42** External lottery managers are required to hold a lottery operator's licence issued by the Commission to manage any lottery, including small society lotteries registered with a licensing authority.

- 34.43** However, individuals or firms can and do provide services to a society or local authority lottery without assuming the role of an external lottery manager. When determining whether a third party is a 'service provider' only, or has assumed the role of external lottery manager, the degree of management undertaken by both the promoter and the sub-contractor will be crucial factors. Key indicators will include:
- who decides how the lottery scheme will operate
  - who appoints and manages any sub-contractors
  - the banking arrangements for handling the proceeds of the lottery
  - who sells the tickets and pays the prizes
  - who controls promotional aspects of the lottery.
- 34.44** Societies employing an unlicensed external lottery manager commit an offence, and they will need to satisfy themselves that any external lottery manager they employ holds an external lottery operator's licence issued by the Commission. This can be achieved by consulting the publicly-accessible register of operating licences held on the Commission's website, at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk). Licensing authorities should advise societies planning to use, or already using, an external lottery manager that they should do this, and may also wish to verify that it has been done.
- 34.44** Licensing authorities can refer those seeking further information on external lottery managers to the Commission's website or its publication *Promoting society and local authority lotteries*.<sup>97</sup>
- 34.45** The Commission has also published a quick guide about ELMs for licensing authorities called *Society lotteries, external lottery managers and service providers*. This is available from the Commission's website.

## Lottery tickets

- 34.46** Lotteries may involve the issuing of physical or virtual tickets to participants (a virtual ticket being non-physical, for example in the form of an email or text message). All tickets must state:
- the name of the promoting society
  - the price of the ticket (which must be the same for all tickets)
  - the name and address of the member of the society who is designated as having responsibility at the society for promoting small lotteries, or (if there is one) the external lottery manager
  - the date of the draw, or information which enables the date to be determined.
- The requirement to provide this information can be satisfied by providing an opportunity for the participant to retain the message electronically or print it.
- 34.47** The Commission recommends that licensing authorities require all registered small society lottery operators to maintain written records of any unsold and returned tickets for a period of one year from the date of the lottery draw. The licensing authority is permitted to inspect the records of the lottery for any purpose related to the lottery.
- 34.48** The Act requires that lottery tickets may only be sold by persons that are aged 16 or over to persons that are aged 16 or over.
- 34.49** With regards to where small society lottery tickets may be sold, the Commission recommends that licensing authorities should apply the following criteria to all small society lottery operators:

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<sup>97</sup> Available from the Commission's website: [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

- tickets should not be sold in a street, where street includes any bridge, road, lane, footway, subway, square, court or passage (including passages through enclosed premises such as shopping malls)
- tickets may, however, be sold in a street from a kiosk, in a shop or door to door.

This approach is consistent with the operating licence conditions imposed upon operators of large lotteries and local authority lotteries.

## Prizes

**34.50** Prizes awarded in small society lotteries can be either cash or non-monetary. Licensing authorities need to be aware that the value of prizes declared on returns must not exceed the limits on prizes set out by the Act – in effect that combined with any expenses incurred with the running of the lottery, such as managers’ fees, they must not comprise more than 80% of the total proceeds of the lottery. Donated prizes would not be counted as part of this 80% (as no money would be withdrawn from the proceeds to cover their purchase) but are still subject to the limit on a single maximum prize of £25,000 and should be declared on the return following the lottery draw.

**34.51** The Commission recommends that licensing authorities should advise small society lottery operators to check with local police if they wish to award items containing alcohol as prizes. This is in order to ensure that licensing law is not breached.

## Compliance and enforcement of small society lotteries

**34.52** For information about compliance and enforcement of small society lotteries see part 36 of this Guidance.

## Specific offences in relation to lotteries

**34.53** The Act sets out a number of offences that apply to lotteries, as follows:

Section of the Act	Offence
s. 258	Promoting a non-exempt lottery without a licence
s. 259	Facilitating a non-exempt lottery without a licence
s. 260	Misusing the profits of a lottery
s. 261	Misusing the profits of an exempt lottery
s. 262	Purporting to operate a small society lottery when not registered, or failing to make the required, or making false or misleading, returns in respect of such lotteries
s. 326	Without reasonable excuse, obstructing or failing to co-operate with an authorised person exercising his/her powers
s. 342	Without reasonable excuse, giving false or misleading information to the Commission or a licensing authority

- 34.54** If a society running small lotteries fails to comply with any of the conditions of running such lotteries specified in Part 4 of Schedule 11 of the Act, it will be operating in an illegal manner, irrespective of whether it is registered with a licensing authority or not. Under these circumstances small society lottery operators may face prosecution by the Commission, a licensing authority, or the police. The lead organisation for initiating prosecutions will vary depending upon the specific circumstances of the case, but it is expected that licensing authorities will investigate offences in respect of small society lotteries. If necessary the local compliance manager can be asked for advice but the Commission is unlikely to investigate a case unless it has national or regional significance.
- 34.55** Licensing authorities in Scotland should refer cases where there has been a breach of the Act to the police for investigation, in line with Crown Office and Procurator Fiscal Service<sup>98</sup> guidance on reporting practices for non-police agencies.

## Social responsibility

- 34.56** Participation in a lottery is a form of gambling, and as such licensing authorities must be aware that the societies they register are required to conduct their lotteries in a socially responsible manner and in accordance with the Act.
- 34.57** As the minimum age for participation in a lottery is 16, societies are required to implement effective procedures to minimise the risk of lottery tickets being sold to children, including procedures for:
- checking the age of potentially underage purchasers of lottery tickets
  - taking action where there are unlawful attempts to purchase tickets.
- 34.58** Licensing authorities may wish to refer to the Commission's *Promoting society and local authority lotteries* document for further information regarding social responsibility requirements for lottery operators.

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<sup>98</sup> Refer to website: [www.crownoffice.gov.uk](http://www.crownoffice.gov.uk)



## Part 35: Chain gift schemes

- 35.1** Section 43 of the Act makes it an offence to invite others to join a chain gift scheme or to participate knowingly in the promotion or administration of a scheme. A person found guilty of the offence could be liable to a fine or imprisonment. This offence was added to the Gambling Act following widespread concern about schemes such as ‘Women Empowering Women’. These schemes have most of the relevant features of pyramid selling schemes, but escape the ban on them because they do not involve the sale of any product.
- 35.2** The Commission is aware that the Office of Fair Trading (OFT) and local authority trading standards officers have considerable relevant experience of dealing with chain gift schemes and are well placed to deal with schemes that arise from time to time. The Commission will keep its role in tackling chain gift schemes, where there is a gambling issue related to the scheme, under review so that if more concerted action is required centrally it can liaise with other bodies to determine what action may be taken.
- 35.3** The chain gifting offence is part of a suite of consumer protections set out in the Consumer Protection from Unfair Trading Regulations 2008<sup>99</sup>. The main element of consumer protection against these schemes is publicity to prevent people becoming involved in them. Local authorities may wish to use their websites and other publicity tools to educate consumers against participation in such schemes.
- 35.4** If licensing authorities are contacted by members of the public regarding schemes of this nature, they should in the first instance refer to their trading standards department, or the OFT, as they are likely to have relevant experience of dealing with chain gift schemes, lottery-style scams and similar arrangements.

### Street collectors selling game cards

- 35.5** Licensing authorities may also be aware of street sellers in their areas approaching the public to sell them game cards, often saying that the cards are being sold to raise money for good causes. If such cards require an element of skill on the part of the player, such as completing a tiebreak question, they may be genuinely distinguishable from a lottery.
- 35.6** It will be unlikely that the product being sold is a legal lottery. This is because societies running large lotteries are not permitted (by virtue of a condition on their operating licence) to sell lottery tickets in the street, and those running small lotteries are recommended (through this Guidance document) to have a similar restriction imposed upon them by the local authority that registers them.
- 35.7** The Commission has no comment on products that aren’t classed as gambling under the Act, but advises authorities with concerns over street sales of such products to contact the trading standards department at the local authority covering the area where sales are being made. They will be able to advise on whether what is being sold amounts to a gambling product, and agree on the best course of action, which may include relying on relevant legislation such as street trading regulations.

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<sup>99</sup> The Consumer Protection from Unfair Trading Regulations 2008 is available from [www.opsi.gov.uk/si/si2008/draft/ukdsi\\_9780110811574\\_en\\_1](http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110811574_en_1)

## Part 36: Compliance and enforcement

### Underlying principles

- 36.1** For the purposes of this document regulatory action would include informal or formal warnings and licence reviews, issue of simple cautions (warnings) or, in England and Wales only, the prosecution of an offence under the Act. The main objective of the compliance process will be to ensure compliance with the three licensing objectives, including, in particular, compliance with the general licensing conditions (including mandatory and default conditions), specific licence conditions and any applicable codes of practice. Enforcement can be defined as the criminal or regulatory investigation process and any consequent laying of criminal charges or imposition of a regulatory sanction.
- 36.2** The approach we propose is similar to the approach adopted by most licensing authorities in relation to liquor or other licensing; that is a risk-based approach where the main determinant is the risk posed to the three licensing objectives, as follows:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
  - ensuring that gambling is conducted in a fair and open way
  - protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 36.3** Both the Commission and licensing authorities must have regard to the three licensing objectives. However, whilst the Commission generally concentrates on enforcement and compliance relating to the way in which gambling is provided, with a particular focus on regional and national matters, licensing authorities are expected to concentrate more on issues relating to the premises themselves and local instances of illegality and non compliance. In addition licensing authorities are responsible for issuing premises licences, permits, dealing with temporary permissions and the registration of societies running small lotteries.
- 36.4** The Commission, licensing authorities and the police are all parties to the inspection and enforcement regime created by the Act, and it is important to the effectiveness of this regime that information is readily exchanged and efforts are coordinated. Section 350 and Schedule 6 of the Act establish the principles by which information should be managed between all parties.
- 36.5** The Commission and licensing authorities will need, during compliance and enforcement activity, to ensure that they act in a proportionate manner reflecting the impact of any breach and the consequences of the breach. The Regulators Compliance Code (the Compliance Code)<sup>100</sup> is a central part of the Government's better regulation agenda. The Commission and licensing authorities must have regard to the Compliance Code and adopt a risk-based, proportionate and targeted approach to regulatory inspection and enforcement.

### **Principles for determining whether it is the Commission or the licensing authority who should act**

- 36.6** It is up to gambling operators, in the first instance, to ensure that their business is compliant with the licences held, including the conditions set out on the face of the Act, in regulations, generic conditions applying to a class of licence or any conditions specific to the operator. The operator should be able to demonstrate to the regulator that their business is compliant.

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<sup>100</sup> The Regulators Compliance Code is available at <http://www.bis.gov.uk/>

- 36.7** The Commission will provide licensing authorities with generic guidance and advice on the steps they should take and approaches they could adopt in dealing with non-compliance. This may take the form of this Guidance or any further guidance, general advice or FAQs published on the Commission's website.
- 36.8** Licensing authorities are responsible for monitoring compliance with the licences (and permits) that they have issued as well as instances of local illegality. Similarly the Commission is responsible for monitoring the licences that it issues. Where an operator has not demonstrated compliance with the licences the relevant agency will be responsible for taking action against the licence holder. In specific circumstances on a case by case basis the Commission will lead on matters which would normally be best handled by a licensing authority in order to establish principle and precedent and provide operators with a clear understand of where we regard the bounds of the permissible to lie. Examples have included applications for premises and club gambling permits.
- 36.9** The Commission, licensing authorities, the police and other agencies who act as co-regulators under the Act have a duty to pursue the licensing objectives and ensure they are not put at risk..
- 36.10** Licensing authorities are best-placed to monitor and ensure compliance with the Act at a local level. For example, they are generally in the best position to proceed against individual unlicensed premises, although the Commission will be keen to consider compliance activity against operators who have a large regional or national presence. The Commission and licensing authorities should work together to identify and investigate organised or persistent illegal activity.
- 36.11** The Commission will deal with national operators where their action impacts on more than one premises or where the appropriate sanctions rest with the Commission. The Commission will generally lead on matters relating to businesses with a regional or national presence.
- 36.12** The provision of facilities for non-remote gambling requires a premises, therefore the first offence is a breach of section 37 of the Act, which is the prime responsibility of the licensing authority. Under most circumstances the licensing authority will take the lead.
- 36.13** The Commission and licensing authorities should exchange information on non-compliance with licences and permits to ensure that any action taken is coordinated.

### **Risk-based assessments**

- 36.14** The Commission is pursuing a risk-based approach to compliance and enforcement, as set out in its document *Compliance and Enforcement Policy Statement* the latest version of which can be found on the Commission's website.. The basis of the approach is to assess when and where to take action depending on the assessment of how likely it is that the licence conditions or codes of practice may be breached, and with what impact.
- 36.15** Many licensing authorities already pursue a risk-based approach towards other areas of licensable activity, such as alcohol and taxi licensing.
- 36.16** As a starting point for developing their local risk-based approach, licensing authorities should undertake a review of existing records and risk assessments. These may include police reports relating to gambling premises, records that the authority may have in relation to alcohol licences, and information held by trading standards and/or environmental health colleagues. This exercise should inform a proposed pattern of visits to premises, planned in connection with the authority's other functions or when reacting to complaints. After any visit undertaken, a licensing authority should review their risk assessments with a view to informing their criteria for undertaking a premises inspection. Complaints, information and intelligence received by the licensing authority relating to gambling premises will also inform the general risk ratings of premises.

## Permits

- 36.17** The Act introduced a range of permits for providing gambling facilities, which are granted and issued by licensing authorities. Permits regulate gambling and the use of gaming machines for non-licensed premises, and generally apply where the stakes and prizes involved in the gambling are very low (with certain exceptions), or gambling is not the main function of the premises (except in the case of family entertainment centre gaming machine permits). The Commission has no specific powers to take action over the misuse of permits other than the general power of prosecution of illegal gambling.
- 36.18** Codes of Practice on the location and operation of gaming machines are issued by the Commission under section 24 of the Act but compliance with them is a condition of several of the permits that are granted by licensing authorities. Therefore monitoring of compliance with the Codes will fall to licensing authorities as they have the power to withdraw the permit if the Codes are breached. Similarly, if the Commission's Code of Practice is not followed in the case of gaming machines on alcohol licensed premises, licensing authorities have the power to withdraw the automatic entitlement to two machines.
- 36.19** Licensing authorities are responsible under section 282 of the Act for receiving notifications from owners of alcohol-licensed premises when they intend to exercise their automatic entitlement to two gaming machines in each premises.
- 36.20** Licensing authorities may grant or reject an application for a permit, but may not attach conditions to it other than limiting the number of machines in limited cases. However, holders of club gaming permits, club gaming machine permits or alcohol-licensed premises permits must abide by the Commission's codes of practice on the location and operation of gaming machines (issued under section 24 of the Act), and licensing authorities may take into account matters set out in the relevant paragraphs of Schedules 10 to 14 of the Act. Permit holders are not normally required to also hold an operating licence, but in all cases a permit cannot be granted for a premises which has already been issued with a valid premises licence.
- 36.21** Licensing authorities in England and Wales have the power to prosecute if a gaming machine is made available for use in contravention of section 242 of the Act. Licensing authorities in Scotland should refer intentions to prosecute to the Procurator Fiscal.

## Small society lotteries

- 36.22** Licensing authorities will be responsible for ensuring that the provisions of Schedule 11 of the Act in respect of all exempt lotteries are adhered to, with reference to the societies registered with them to operate small lotteries.
- 36.23** The Act gives licensing authorities in England and Wales the power to prosecute offences relating to the promotion and facilitation of non-exempt lotteries, misusing the proceeds of a lottery and breaching the conditions of a small society lottery.
- 36.24** The Commission recommends that licensing authorities pursue a risk based approach towards their enforcement responsibilities for small society lotteries.
- 36.25** Licensing authorities are advised to consider a number of key factors in determining the risk status of small society lottery operators. The Commission considers that the following criteria would be likely to affect the risk status of an operator:
- submission of late returns (returns must be submitted no later than three months after the date on which the lottery draw was held)
  - submission of incomplete or incorrect returns
  - breaches of the limits for small society lotteries

**36.26** Licensing authorities might also consider compiling a list of scenarios that would give reason to investigate the particular circumstances of a society running small society lotteries and feed this into their regime. These scenarios could include:

- making a late return of a statement
- making no returns at all within a year of registration
- failure to pay the annual fee as it becomes due
- reports of sales of lottery tickets to persons under the age of sixteen
- reports of sales of lottery tickets by persons under the age of sixteen
- reports of societies running lotteries without holding registration
- indications that the society has breached permissible limits
- reports of misappropriation of funds.

### **Temporary use and occasional use permissions**

**36.27** The Commission has no specific powers in relation to temporary permissions for gambling. It is the function of licensing authorities to record applications for temporary permissions to provide gambling facilities in the form of temporary and occasional use notices.

### **Premises licences**

**36.28** Premises licences are issued by licensing authorities to regulate where gambling takes place, and to ensure that the premises are suitable for gambling. To be granted a premises licence the applicant must hold a valid operating licence issued by the Commission (except for track premises licences where the licence holder may not be the actual provider of betting facilities), and the premises licence holder must comply with the Act. A register of those holding an operating licence is available on the Commission's website

**36.29** The inter-relationship between the operating licences issued by the Commission and premises licences issued by licensing authorities and the respective roles of the enforcement agencies (the Commission, licensing authorities and the police) forms the basis of the rest of this section.

### **Premises licence compliance**

**36.30** While enforcement is the regulatory or criminal investigation process which may result in either the imposition of a regulatory sanction or the laying of criminal charges, the compliance process involves gambling operators, individuals working in the industry at all levels, licensing authorities and the Commission. It is aimed at ensuring compliance with all aspects of regulation (the licensing objectives, licence conditions and codes of practice).

**36.31** This must be primarily a collaborative process, and the effectiveness of the regulatory regime for the gambling industry depends on the establishment and maintenance of an open, cooperative and effective relationship between operators, individuals, licensing authorities and the Commission.

**36.32** The primary responsibility for compliance by any organisation subject to regulation lies with that organisation's senior management, and not the regulator. It is the Commission's role, through the operating and personal licence regime, to ensure that senior management have adequate systems and controls in place to ensure that their business does not pose a regulatory risk, that they are aware of their responsibilities and are carrying them out effectively. The incentive for operators is that better compliance results in less regulatory intervention.

### **Inspection visits**

**36.33** Premises licences granted by licensing authorities authorise the provision of facilities for casinos, bingo, betting (including on tracks), adult gaming centres and family entertainment centres.



- 36.34** Premises licences may only be issued to people with a relevant gambling operating licence issued by the Commission, although as mentioned previously this may not be the case for tracks (where the occupier of the track who gets the premises licence need not be the person who actually offers the facilities for gambling).
- 36.35** In addition to the mandatory and default conditions attached to premises licences, licensing authorities are entitled to attach local conditions provided they are proportionate and relate to the upholding of the licensing objectives. Part 9 of this Guidance suggests types of conditions that might be applicable. In undertaking inspection activity, licensing authorities should seek to ensure that all relevant conditions attached to a particular premises licence are being complied with and are not at risk of breach.
- 36.36** The Commission has a legitimate interest in what happens in premises as the operating licence conditions require that the businesses' policies developed centrally are translated into practice at the point of interaction with the customer. To this end, the Commission's compliance regime contains elements of random and programmed premises inspections based on the risks to the operating licence conditions, codes of practice and the licensing objectives. The Commission's local compliance managers will attempt to coordinate such work in order to prevent unnecessary duplication of effort.
- 36.37** The Act gives licensing authorities, the Commission and the police parallel powers of inspection in respect to premises. In theory a premises licence holder could be subject to inspections from both the Commission and the issuing licensing authority as part of their risk-based compliance programme, and as such the potential for over-regulation exists. The Commission attempts to ensure, that there is no duplication with the relevant bodies visiting the same premises within a short space of time apparently to check the same or similar issues. This can and should be done through regular liaison and cooperation between local Commission compliance managers and licensing authorities.
- 36.38** This document has already identified that licensing authorities are used to operating in a risk-based environment and that they should adopt a risk-based approach when determining the frequency at which gambling premises are to be inspected. It is open to an authority to visit all of the premises in their area, particularly when considering applications, as this will enable them to risk rate premises. Licensing authorities will receive complaints and observations about premises and these should also be factored into decisions on when to visit specific premises. They may also have a random element in their inspection programme. This combined approach will enable each licensing authority to develop a range of options dependent on the risk assessment model that they adopt.
- 36.39** The Commission recommends that licensing authorities consider the outcomes of the Department for Business Enterprise and Regulatory Reform's (BERR) (now Department of Business, Innovation and Skills (BIS)) retail enforcement pilot study. The study seeks to co-ordinate the activities of local authority officers (including those employed in a licensing function) that may visit gambling premises for a range of regulatory reasons, for example in relation to an alcohol licence, health and safety regulation or in response to reports of noise nuisance.
- 36.40** The Commission will undertake visits to premises in accordance with its risk model to ensure compliance with the relevant operating licence, for example to ensure that the policy and procedures adopted by licence holders are translated into appropriate transactions with customers. Most Commission inspections will be programmed, and the local licensing authority will normally be invited to offer any observations it has on the specific premises in advance of visits. If appropriate the Commission will undertake joint visits with licensing authorities.

## **Information**

- 36.41** Licensing authorities should provide advice to all those who make enquiries to them, about



the legal responsibilities involved in providing premises or holding permits for gambling, whether or not they currently hold a licence or a permit.

- 36.42** Enquiries relating to operating or personal licences should be handled by consulting the Commission's website, or referring such enquiries directly to the Commission.
- 36.43** Further details on the Commission's approach to compliance can be found in the document *Compliance and Enforcement Policy Statement* available through the Commission's website.

## **Test purchasing and age verification**

- 36.44** Test purchasing is one method by which the Commission may, in England and Wales, measure the compliance of licensed operators, or groups of licensed operators, with aspects of the Gambling Act.
- 36.44** Local authorities are most familiar with the methodology in relation to the sale of age restricted products.
- 36.46** As noted above (paragraph 36.6) in the first instance it is up to operators to ensure they are compliant with the Act and the associated regulations. The Commission's approach in relation to test purchasing in general and age verification in particular is set out in our Advice Note<sup>101</sup>.
- 36.47** The Commission encourages operators to manage the business risk associated with both underage access to premises and permitting a young person to gamble. Where an operator takes measures to do this, such as commissioning a third party to test the effectiveness of their policies and procedures, and where the results of the tests are shared with us, we are less inclined to conduct our own test purchasing.
- 36.48** Local authorities, whether acting as a licensing authority or otherwise, should in the first instance consult with operators whose premises they plan to test purchase to discover what programmes they may have in place to manage the business risk and take these into account in planning a test purchase exercise. To do otherwise would not be compliant with the Hampton principles. This approach is analogous to what is sometimes called 'earned recognition'.
- 36.49** Local authorities should also consult with the Commission before planning such exercises in order to ensure that there is no conflict between any ongoing investigation or enforcement activity related to either the premises or the operator that we have initiated and the test purchase operation.
- 36.50** However, local authorities will have in place democratically determined priorities and resource allocations as well as the ability to respond to complaints and intelligence related to specific premises. As a result, irrespective of the actions of an operator on their overall estate, test purchasing may be deemed to be an appropriate course of action.
- 36.51** In December 2011 the Department for Business, Innovation and Skills published the government response to a consultation - 'Transforming Regulatory Enforcement'. The paper announced the Department's intention to legislate to extend the primary authority scheme to include age related sales in gambling.

## **Enforcement**

### **Regulatory sanctions**

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<sup>101</sup> Approach to test purchasing – England and Wales only May 2011, available on the Commission website [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

- 36.52** If a premises licence or permit holder is found to be at risk of breaching, or is actually in breach of: a premises licence condition; a code of practice, compliance with which is a condition attached to a permit; or otherwise committing an offence under the Act, then licensing authorities may take enforcement action against that licence or permit holder. Such enforcement action may take the form of regulatory action, ranging from informal action through to prosecuting an offence under the Act.
- 36.53** Informal actions that could be taken include giving oral and written advice, or issuing oral and written warnings. Formal actions that could be taken include conducting interviews under PACE (Police And Criminal Evidence) (or common law in Scotland), reviewing a premises licence, issuing simple cautions and initiating prosecutions. In Scotland, the licensing board will refer the question of interview to the police in the first instance and the decision to initiate a prosecution will be taken by the procurator fiscal.
- 36.54** If the matter relates to a premises licence, then it may be that the particular circumstances give rise to the possibility of breaching the conditions of both a premises and an operating licence. In such circumstances the Commission will generally take action against the operator (which might include prosecution but would normally be regulatory action) following discussion with the licensing authority, against the operator. However there may be occasions where a licensing authority is better placed to take the lead, particularly where there is a breach of a premises licence condition that is confined to one authority area and is a particular priority for that area, or where the risk of, or impact of, any operating licence breach is isolated rather than systemic. The licensing authority may also be best placed to take the lead if there are additional specific matters that it also wants to take action on that fall outside the scope of the Act's licensing objectives, such as health and safety concerns.
- 36.55** Licensing authorities will also take the lead if there is a possibility of a breach or an actual breach of a permit, as the Commission does not have powers to undertake enforcement action relating to permits, besides the general power to prosecute illegal gambling.
- 36.56** Section 197 of the Act requires licensing authorities to inform the Commission when a review into a premises licence is initiated, either as a result of a complaint from another party or if initiated by the licensing authority itself. The Commission will therefore be able to provide an input into any premises licence review and as such requires to be informed of the output of such reviews, as there may be wider implications towards the status of the operating licence.
- 36.57** Where considered appropriate and necessary, cases that involve offences other than gambling offences should be referred to the appropriate external enforcement agency (for example the police, Advertising Standards Authority, Trading Standards etc), but the Commission will need to be aware of the breach.
- 36.58** The Commission has established criteria by which it will determine which agency should take the lead on enforcement matters relating to breaches connected to premises licences, permits and temporary use notices, and recommends that licensing authorities should pursue a similar approach. The criteria are as follows:
- The powers available under the Act:  
only licensing authorities can undertake administrative action (suspensions, revocations) in relation to premises licences and permits
  - The nature of the breach or risk of breach:  
if it involves permits, temporary permissions or breaches of premises licences conditions with essentially local impacts the local licensing authority should normally deal with them
  - The seriousness of the breach or risk of breach:  
where a breach appears to be widespread or stemming from systemic failures on the part of the operator, then the Commission will generally take action. The Commission will also generally take action if the offence is high impact, if there is

nationwide deterrence value of enforcement action or if the case will establish a precedent. As noted above the Commission will be notified if a licensing authority starts to review a premises licence and so will have the opportunity to comment and contribute to the review

- The geographical impact of the breach:  
if there is a regional element to the breach, for example a number of pubs in a particular city are offering a similar type of unlicensed gambling, it may be appropriate for licensing authorities to co-ordinate their activity locally and to liaise with the Commission on the regulatory action to be taken
- The frequency of the breach, or risk of breach:  
a 'one off' event may be best dealt with by a licensing authority, whereas repeat offences, or offences in several premises owned by the holder of an operating licence suggesting systemic breaches of licence conditions, should generally be dealt with by the Commission. Also whether the breach has a seasonal and therefore temporary impact
- The enforcement action that is available:  
for example whether a fine would be a suitable enforcement outcome.

**36.59** Generally, if a licensing authority discovers a breach of a premises licence condition or permit in the course of other regulatory activity, it is expected that it will deal with the case. However, when formal enforcement action in relation to suspected breaches of a premises licence is to be taken by a licensing authority, it should inform the Commission that it is taking such action. This enables the Commission to comment on the proposed course of action if it considers it necessary to do so. It will be for the Commission to respond promptly to the notification of the intention to take action, and it is not expected that licensing authorities will wait for agreement from the Commission before taking action.

**36.60** If the Commission is preparing a case against an operator and would prefer the local licensing authority not to act, the Commission will advise the authority accordingly of this, and will inform it of the reasons for this request.

## **Prosecutions**

**36.61** The Act gives licensing authorities (in England and Wales), the police and the Commission the power to prosecute (among other offences) the offence of using premises for gambling without the requisite permissions. In exceptional circumstances, such as repeated deliberate breaches of premises licence conditions, licensed operators or permit holders may be prosecuted without any prior regulatory action (warnings, suspension or revocation of licence or removal of permit etc). Most prosecutions will be against those illegally providing gambling without a licence or permit.

**36.62** In Scotland, licensing authorities are not able to institute criminal proceedings themselves, but are to refer cases where there has been a breach of the Act to the Procurator Fiscal.

**36.63** Normally the Commission or the licensing authority would decide when to involve the police, rather than the police initiating any action. The Commission considers that examples of scenarios where the police should be involved include:

- when non-gambling offences are discovered, for example large-scale theft or other serious crime which extends beyond the reach of licence conditions
- assistance with Commission investigations, for example enquiries into other criminal activity.

**36.64** There is a distinction between those who conduct gambling operations under a licence or permits but breach the conditions of their licence or permit, and those who seek to profit from providing facilities for gambling without a licence. While both situations result in unlawful gambling, the latter situation is generally considered by the Commission to be more serious.

## **Illegal gambling**

- 36.65** The Commission views the prevention of illegal gambling as an enforcement priority. Combating illegal gambling is of significant benefit to the licensed community as the provision of illegal unregulated gambling impacts upon the reputation of the industry as a whole. The persistent and widespread existence of illegal gambling also reduces the incentive on operators to be correctly licensed. Those engaged in illegal gambling should expect to be subject to the criminal investigation and prosecution process.
- 36.66** The Commission will generally take the lead in prosecuting the offence of providing facilities for gambling where it is committed in the context of illegal gambling which appears organised and has a potentially national or regional impact, or where there are deliberate, reckless or significant breaches by a licensed operator.
- 36.67** The expectation is that licensing authorities will take prosecutions against those providing or facilitating illegal gambling in effect gambling without a licence or permit, where the criminality is contained in one premises.
- 36.68** The annual premises licence fee is set to cover the costs of compliance and enforcement work undertaken by licensing authorities, including the cost of dealing with illegal gambling in a licensing authority's area.
- 36.69** The issue of illegal or illegally-sited machines is complex and will need a co-ordinated approach. Licensing officers should contact their local compliance manager in the first instance to agree an approach.

## **Breaches of licences**

- 36.70** For the licensed industry there are a range of compliance and regulatory tools to ensure that licence holders remain compliant. Enforcement is a highly effective method of ensuring regulatory compliance and deterring regulatory breaches. Therefore the Commission will undertake enforcement cases against those licensed operators and individuals who fall below the required regulatory standard or who fail to take effective remedial action to correct regulatory failings. In serious cases this will mean regulatory or criminal proceedings that may ultimately result in loss of the licence and therefore expulsion from the industry.
- 36.71** Before commencing criminal proceedings against a licensed operator or his employee without a prior premises licence review (by virtue of which the Commission would be notified), licensing authorities should consult the Commission, as it may be that there have also been related breaches connected to operating and/or personal licences held by the operator, or breaches at premises in other parts of the country.
- 36.72** If a particular breach is committed by a large national or regional operator, which may have wider implications for the gambling industry as a whole, then the Commission may wish to take primacy. However under such circumstances the Commission will liaise with licensing authorities to establish who should take the lead on a case by case basis.
- 36.73** In exceptional circumstances, where a licensing authority considers that enforcement action is justified and would normally take primacy, but feels it does not have sufficient investigatory powers or resources to deal with a relevant breach of the Act, it should refer the matter to the Commission to consider whether or not it can either assist the authority by providing resources/expertise or assuming primacy in the investigation and potential prosecution. The authority should contact their local compliance manager in the first instance.
- 36.74** In the course of an investigation into a breach of licence conditions or codes of practice, a licensing authority may find that other non-gambling offences are being committed on the premises, for example drugs offences or handling of stolen goods. Under these

circumstances a multi-agency approach involving the police and the Commission is essential.

**36.75** Appendix D sets out a summary of offences under the Gambling Act 2005.

## Appendix A: Summary of machine provisions by premises

Premises type	Machine category						
	A	B1	B2	B3	B4	C	D
<b>Large casino</b> (machine/table ratio of 5-1 up to maximum)		Maximum of 150 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 150 (subject to machine/table ratio)					
<b>Small casino</b> (machine/table ratio of 2-1 up to maximum)		Maximum of 80 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 80 (subject to machine/table ratio)					
<b>Pre-2005 Act casino</b> (no machine/table ratio)		Maximum of 20 machines categories B to D (except B3A machines), or any number of C or D machines instead					
<b>Betting premises and tracks occupied by pool betting</b>		Maximum of 4 machines categories B2 to D (except B3A machines)					
<b>Bingo premises</b>				Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4**		No limit on category C or D machines	
<b>Adult gaming centre</b>				Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4**		No limit on category C or D machines	
<b>Family entertainment centre</b> (with premises licence)						No limit on category C or D machines	
<b>Family entertainment centre</b> (with permit)						No limit on category D machines	
<b>Clubs or miners' welfare institute</b> (with permits)				Maximum of 3 machines in categories B3A or B4 to D*			
<b>Qualifying alcohol-licensed premises</b>						1 or 2 machines of category C or D automatic upon notification	
<b>Qualifying alcohol-licensed premises</b> (with gaming machine permit)					Number of category C-D machines as specified on permit		
<b>Travelling fair</b>					No limit on category D machines		



\* It should be noted that members' clubs and miners' welfare institutes are entitled to site a total of three machines in categories B3A to D but only one B3A machine can be sited as part of this entitlement. Commercial clubs are entitled to a total of three machines in categories B4 to D.

\*\* Adult gaming centre and bingo premises are entitled to make available a number of Category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises. Premises in existence before 13 July 2011 are entitled to make available four (adult gaming centre premises) or eight (bingo premises) category B gaming machines, or 20% of the total number of gaming machines, whichever is the greater. Adult gaming centre premises and bingo premises licences granted on or after 13 July 2011 but before 1 April 2014 are entitled to a maximum of four or eight category B gaming machines or 20% of the total number of gaming machines, whichever is the greater; from 1 April 2014 these premises will be entitled to 20% of the total number of gaming machines only. But not B3A machines.

## Appendix B: Summary of gaming machine categories and entitlements

Category of machine			Maximum stake (from July 2011)	Maximum prize (from July 2011)
A	No category A gaming machines are currently permitted			
B1			£2	£4,000
B2			£100 (in multiples of £10)	£500
B3A			£1	£500
B3			£2	£500
B4			£1	£250
C			£1	£70
D - non-money prize (other than a crane grab machine or a coin pusher or penny falls machine)			30p	£8
D – non-money prize (crane grab machine)			£1	£50
D -money prize (other than a coin pusher or penny falls machine)			10p	£5
D - combined money and non-money prize (other than a coin pusher or penny falls machine)			10p	£8 (of which no more than £5 may be a money prize)
D - combined money and non-money prize (coin pusher or penny falls machine)			10p	£15 (of which no more than £8 may be a money prize)

## Appendix C: Summary of gaming entitlements for clubs and alcohol-licensed premises

	Members' club or MW institute with club gaming permit	Bridge or whist club	Members' club or commercial club with club machine permit	Members' club, commercial club or MW institute without a club gaming permit or club machine permit	Pubs and other alcohol-licensed premises
<b>Equal chance gaming</b>	Yes	Bridge and/or Whist <b>only</b>	Yes	Yes	Yes
<b>Limits on stakes</b>	No limit	No limit	<b>Poker</b> £1000 per week £250 per day £10 per person per game <b>Other gaming</b> No limit	<b>Poker</b> £1000 per week £250 per day £10 per person per game <b>Other gaming</b> No limit	<b>Poker</b> £100 per premises per day <b>Other gaming</b> £5 per person per game <b>Cribbage &amp; dominoes</b> No limit
<b>Limits on prizes</b>	No limit	No limit	<b>Poker</b> £250 per game <b>Other gaming</b> No limit	<b>Poker</b> £250 per game <b>Other gaming</b> No limit	<b>Poker</b> £100 per game <b>Other gaming</b> No limit
<b>Maximum participation fees – per person per day</b>	<b>Bridge and/or whist*</b> £20 <b>Other gaming</b> £3	£18 (without club gaming permit) £20 (with club gaming permit)	<b>Bridge and/or whist*</b> £18 <b>Other gaming</b> £3 (commercial club) £1 (members' club)	<b>Bridge and/or whist*</b> £18 <b>Other gaming</b> £1	None permitted
<b>Bankers or unequal chance gaming</b>	Pontoon <i>Chemin de Fer</i>	None permitted	None permitted	None permitted	None permitted
<b>Limits on bingo</b>	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence.	No bingo permitted	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence.	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence.	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence.

\* On a day when no other facilities for gaming are provided

# Appendix D: Summary of offences under the Gambling Act 2005

## General offences regarding the provision of gambling facilities

Providing gambling facilities in Great Britain without a relevant licence, permit, notice, or exemption included under the Act.	<b>Section 33</b>
Using premises to provide gambling facilities from, or causing them to be provided, without a relevant licence, permit, notice or exemption under the Act.	<b>Section 37</b>

## Offence regarding cheating at gambling

Cheating, attempting to cheat, or assisting another person to cheat at gambling.	<b>Section 42</b>
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## Offences committed towards or by under-18s

<p>Inviting, causing or permitting a child (under 16) or young person (16 – 17) to gamble, with the exception of:</p> <ul style="list-style-type: none"> <li>• private / non-commercial gaming and betting</li> <li>• participating in lotteries</li> <li>• participating in football pools</li> <li>• using a category D gaming machine</li> <li>• participating in equal chance gaming at premises subject of a prize gaming permit or an FEC premises licence</li> <li>• participating in prize gaming at a fair or an unlicensed FEC</li> </ul> <p>This offence includes intentional distribution of advertising to under-18s where the intent is to encourage gambling.</p> <p>It is also an offence on the part of a young person to gamble with the exception of situations listed above.</p>	<p><b>Section 46</b></p> <p><b>Section 48</b></p>
<p>Inviting or permitting a child or young person to enter:</p> <ul style="list-style-type: none"> <li>• a casino</li> <li>• a betting premises (except for betting areas of horse and greyhound tracks on race days)</li> <li>• an adult gaming centre</li> <li>• areas of a family entertainment centre where category C gaming machines are situated.</li> </ul> <p>This offence is committed at all times when the premises listed above are being used in reliance on the premises licence.</p> <p>It is also an offence on the part of a young person to enter the premises listed above.</p>	<p><b>Section 47</b></p> <p><b>Section 49</b></p>
<p>Young person providing facilities for gambling, with the exception of:</p> <ul style="list-style-type: none"> <li>• private / non-commercial gaming and betting</li> <li>• a lottery</li> <li>• football pools</li> <li>• prize gaming at a travelling fair.</li> </ul>	<p><b>Section 50</b></p>

Employing a child or young person to provide gambling facilities, with the exception of providing the following facilities: <ul style="list-style-type: none"> <li>• private / non-commercial gaming and betting</li> <li>• prize gaming at a travelling fair.</li> </ul>	<b>Section 51</b>
Employing a child to provide facilities in connection with: <ul style="list-style-type: none"> <li>• a lottery</li> <li>• football pools.</li> </ul>	<b>Section 52</b>
Employing a child for any purposes when bingo is provided or gambling provided in accordance with a club gaming permit or club machine permit.	<b>Section 53</b>
Employing a child or young person to perform any function connected to a gaming machine.  It is also an offence on the part of a young person if they are employed in such a role.	<b>Section 54</b>
Employing a child or young person in a casino, an adult gaming centre, or at a betting premises, unless it is at a time when no activity is being carried on in reliance on the premises licence.  It is also an offence on the part of a young person if they are employed in such a role.	<b>Section 55</b>
Inviting, causing or permitting a child to take part in football pools or a lottery with the exception of: <ul style="list-style-type: none"> <li>• an incidental non-commercial lottery</li> <li>• a private lottery</li> <li>• part of the National Lottery.</li> </ul>	<b>Sections 56 and 57</b>
Failure to comply with an operating licence condition to return stake to a child or young person.	<b>Section 58</b>

## Offences connected to operating licences

Failure to comply with an operating licence condition to return stake to a child or young person.	<b>Section 58</b>
Failing without reasonable excuse to notify the Commission of change in circumstances.	<b>Section 101</b>
Licensee failing without reasonable excuse to produce their operating licence when requested by a police officer or enforcement officer.	<b>Section 108</b>
Licensee failing to notify the Commission without reasonable excuse and as soon as reasonably practicable about conviction of an offence.	<b>Section 109</b>
Licensee failing to notify the court upon conviction of a relevant offence that they are an operating licence holder.	<b>Section 109</b>
Licensee failing without reasonable excuse to produce records for the Commission relating to operating licensed activities or information about licensed activities.	<b>Section 122</b>
Operating licence holder fails without reasonable excuse to produce the authorisation they have given to someone to accept bets on their behalf, when asked to do so by a police officer or enforcement officer.  This offence can also apply to the person that has been authorised to accept bets.	<b>Section 316</b>

## Offences connected to personal licences

Failure without reasonable excuse to produce a personal licence to a police officer or enforcement officer.	<b>Section 134</b>
Licensee failing to notify the Commission as soon as reasonably practicable about a conviction of offence.	<b>Section 138</b>
Licensee failing to act within the terms and conditions of their licence.	<b>Section 139</b>

## General offences connected to all premises licences

Licensee failing without reasonable excuse to keep premises licence on premises and make available for inspection to a police officer, enforcement officer or authorised person.	<b>Section 185</b>
Licensee failing to notify without reasonable excuse the licensing authority about change of residential address or other details on the licence.	<b>Section 186</b>

## Offences connected to temporary use notices

Failure of premises licence holder to without reasonable excuse prominently display or make available their temporary use notice to a police officer, customs and excise officer, enforcement officer or licensing authority officer.	<b>Section 229</b>
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## Offences connected to gaming machines

Making a gaming machine available for use without a relevant licence or permit, or in contravention of regulations made under section 240 of the Act (SI No 2007/2319).	<b>Section 242</b>
Manufacturing, supplying, installing, adapting, maintaining, or repairing a gaming machine without a suitable operating licence, unless: <ul style="list-style-type: none"><li>the gaming machine is scrap with no commercial value</li><li>the gaming machine is incidental to the sale/letting of previously-licensed property.</li></ul>	<b>Section 243</b>
Supplying, installing, adapting, maintaining or repairing a gaming machine (or part of) without complying with regulations made under section 241 of the Act (SI: No. 2007/2320), unless: <ul style="list-style-type: none"><li>the gaming machine is scrap with no commercial value</li><li>the gaming machine is incidental to the sale/letting of previously-licensed property.</li></ul>	<b>Section 243</b>
Supplying, installing or making available for use a gaming machine allowing payment by credit card.	<b>Section 245</b>

## Offences connected to lotteries

The offences listed here do not apply to lotteries or products forming part of the National Lottery, as the Act does not regulate the National Lottery. Police enquiries regarding offences connected to the National Lottery should be directed to the National Lottery Commission.

Promoting a non-exempt lottery without a suitable operating licence or on behalf of someone with a suitable operating licence.	<b>Section 258</b>
Facilitating a non-exempt lottery without holding a suitable operating licence (where facilitating includes functions such as advertising and printing tickets and promotional materials).	<b>Section 259</b>



Misusing profits from a lottery, ie using them or causing them to be used for purposes other than the advertised purpose of the lottery.	<b>Section 260</b>
Misusing profits from an incidental non-commercial lottery, a private society lottery, or a small society lottery.	<b>Section 261</b>
A non-commercial society promoting a lottery without being registered with a licensing authority, or failing to provide the licensing authority with returns (or providing false returns) following a small society lottery.	<b>Section 262</b>

### Offence connected to bingo played in clubs and institutes

Failing without reasonable excuse to inform the Commission of periods of high turnover bingo if the club or institute does not hold an operating licence (high turnover bingo being where the stakes or prizes of all games of bingo played in a seven day period exceed £2,000).	<b>Section 275</b>
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### Offence connected to use of proceeds from gaming at non-commercial events

Using the profits (or permitting them to be used) from non-commercial prize gaming or equal chance gaming for a purpose other than that specified as the fund-raising purpose of the gaming.	<b>Section 301</b>
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### Offence connected to casino premises licences

Failure on the part of the casino premises licence holder to produce upon demand (by a police officer or enforcement officer) the authorisation they have given to someone to provide bingo or betting facilities at the casino in question.  This offence can also be committed by the individual or organisation authorised by the casino premises licence holder if they fail to produce the authorisation.	<b>Section 316</b>
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### Offence of obstructing or failing to co-operate during an inspection

Obstructing or failing to cooperate without reasonable excuse with a police officer, enforcement officer or authorised person carrying out inspection activity under Part 15 of the Act.	<b>Section 326</b>
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### Offence of providing false or misleading information

Providing false or misleading information to the Commission or a licensing authority regarding any provision of the Act.	<b>Section 342</b>
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### Offences connected to advertising of gambling facilities

Contravention of any regulations relating to gambling advertising. (nb the Secretary of State for Culture, Media and Sport has chosen not to exercise their reserve powers to make such secondary legislation at this time).	<b>Section 328</b>
Knowingly advertising unlawful gambling without reasonable belief otherwise.	<b>Section 330</b>
Advertising foreign gambling facilities other than lotteries (in accordance with regulations SI: 2007/2329).	<b>Section 331</b>

## Offence of failing to comply with a forfeiture order

Failure to comply with a court's forfeiture order to surrender named materials to a police officer, or co-operate with steps to comply with the order.	<b>Section 345</b>
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## Offence connected to unlicensed family entertainment centres

Occupier of premises failing without reasonable excuse to produce their family entertainment centre gaming machine permit for a police officer, enforcement officer or authorised officer.	<b>Schedule 10(20)</b>
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## Offences connected to club gaming and club machine permits

Failing without reasonable excuse to produce a club gaming permit or club machine permit for a police officer or enforcement officer.	<b>Schedule 12(13)</b>
Failure without reasonable excuse to have club gaming or club machine permits varied by the licensing authority as soon as practicable upon a change of circumstances.	<b>Schedule 12(15)</b>

## Offence connected to alcohol licensed premises gaming machine permits

Failure without reasonable excuse to produce a licensed premises gaming machine permit upon the request of a police officer, enforcement officer or authorised person.	<b>Schedule 13(10)</b>
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## Offence connected to prize gaming permits

Failure without reasonable excuse to produce a prize gaming permit upon the request of a police officer, enforcement officer or authorised person.	<b>Schedule 14(20)</b>
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## Offence connected to gambling software

Manufacturing, supplying, installing or adapting gambling software without holding a relevant operating licence.	<b>Section 41</b>
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## Offence connected to chain-gift schemes

Inviting another person to join chain-gift schemes or participating in the promotion of chain-gift schemes.	<b>Section 43</b>
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## Annex E: Summary of statutory application forms and notices

### List of prescribed forms

#### Application

Application for a premises licence under the Gambling Act 2005 (standard form)  
Application for a premises licence under the Gambling Act 2005 (vessel)  
Notice of application for a premises licence under the Gambling Act 2005 (to be published)  
Notice of application for a premises licence (Form A) (for responsible authorities)  
Notice of application for a premises licence (Form B) (for responsible authorities)  
Summary of the Terms and Conditions of a premises licence  
Premises licence  
Notice of a grant of an application for a premises licence  
Annex A - form to accompany notice of grant (conditions to be attached)  
Annex B – form to accompany notice of grant (conditions to be excluded)  
Annex C – form to accompany notice of grant (representations)  
Notice of rejection of an application for a premises licence

#### Variation

Application to vary a premises licence under the Gambling Act 2005  
Notice of Application to vary a premises licence under the Gambling Act 2005 (to be published)  
Notice of Application to vary a premises licence (Form A) (for responsible authorities)  
Notice of Application to vary a premises licence (Form B) (for responsible authorities)  
Notice of grant of an application to vary a premises licence  
Annex A - form to accompany notice of grant (conditions to be attached)  
Annex B – form to accompany notice of grant (conditions to be excluded)  
Annex C – form to accompany notice of grant (representations)  
Notice of rejection of an application to vary a premises licence

#### Review

Application for a review of a premises licence under the Gambling Act 2005  
Notice of application for a review of a premises licence under the Gambling Act 2005  
Notice of application for a review of a premises licence (to the premises licence holder and responsible authorities)  
Notice of intention to hold a review of a premises licence under the Gambling Act 2005  
Notice of intention to hold a review of a premises licence (to the premises licence holder)  
Notice of the decision on a review of a premises licence

#### Provisional

Application for a provisional statement under the Gambling Act 2005 (standard form)  
Notice of application for a provisional statement under the Gambling Act 2005  
Application for a provisional statement under the Gambling Act 2005 (vessel)  
Notice of application for a provisional statement (Form A) (for responsible authorities)  
Notice of application for a provisional statement (Form B) (for responsible authorities)  
Provisional statement

Notice of grant of an application for a provisional statement  
Annex A - form to accompany notice of grant (conditions to be attached)  
Annex B – form to accompany notice of grant (conditions to be excluded)  
Annex C – form to accompany notice of grant (representations)  
Notice of rejection of an application for a provisional statement

### **Transfer**

Application to transfer a premises licence under the Gambling Act 2005  
Notice of application to transfer a premises licence (Form A ) (for responsible authorities)  
Notice of application to transfer a premises licence (Form B ) (for responsible authorities)  
Summary of terms and conditions of a premise licence  
Premises Licence  
Notice of grant of an application to transfer a premises licence  
Annex A - form to accompany notice of grant (conditions to be attached)  
Annex B – form to accompany notice of grant (conditions to be excluded)  
Annex C – form to accompany notice of grant (representations)  
Notice of rejection of an application to transfer a premises licence

### **Reinstatement**

Application for the reinstatement of a premises licence under the Gambling Act 2005  
Notice of application of the reinstatement of a premises licence (Form A)  
Notice of application of the reinstatement of a premises licence (Form B)  
Summary of terms and conditions of a premise licence  
Premises Licence  
Notice of grant of an application for the reinstatement of a premises licence  
Annex A - form to accompany notice of grant (conditions to be attached)  
Annex B – form to accompany notice of grant (conditions to be excluded)  
Annex C – form to accompany notice of grant (representations)  
Notice of the rejection of an application for the reinstatement of a premises licence

### **Temporary Use Notices**

Gambling Act 2005 – Temporary Use Notice (for premises other than vessels)  
Gambling Act 2005 – Temporary Use Notice (vessel)  
Counter Notice (given in response to a temporary use notice)

### **Permits /lottery**

Application Form for Club Gaming Permit or Club Machine Permit  
Registration of Small Society Lotteries (Application form for registration of non commercial society)  
Club Gaming Permit  
Club Machine Permit  
Prize Gaming Permit  
Family Entertainment Centre Gaming Machine Permit  
Licensed Premises Gaming Machine Permit

## Keeping gambling fair and safe for all

For further information or to register your interest in the Commission please visit our website at:  
**[www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)**

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