

**LICENSING COMMITTEE: 5 August 2008**

**Report of the Chief Strategic Planning and Environment Officer**

**GAMBLING COMMISSION CONSULTATION ON SPLIT PREMISES AND  
PRIMARY GAMBLING ACTIVITY.**

**1. Background**

- 1.1 Following concerns expressed by licensing authorities on the problems regarding the assessment of applications for the division of licensed premises in June 2008 the Gambling Commission issued a consultation document on the issue.
- 1.2 The report provides details of the consultation document and requests approval of a formal response to the consultation document.

**2. Details.**

- 2.1 Gambling operators have been approaching licensing authorities proposing that existing premises should be subdivided in two or more separate premises. Such subdivisions would enable the operator to provide a greater number of higher payout B3 or B4 gaming machines which are restricted to four in each premises.
- 2.2 The Commission's current guidance to local authorities sets out its interpretation of how premises should be defined and also the principles that licensing authorities should apply in carrying out their functions under the Act. The guidance has however been unclear and many licensing authorities have requested advice or help on the question of what amounts to a single premises to which the various machine entitlements attach. It has also become evident that there is widespread uncertainty amongst licensing authorities as to whether a premises licence implicitly requires the activity it authorises to be the primary activity or whether the machines to which the premises licence gives an entitlement can themselves constitute the primary activity.
- 2.3 As a result of the concerns the Gambling Commission wishes to strengthen the advice they give to licensing authorities. In June 2008 they issued a consultation document providing details of their interpretation of the law and making recommendations on suitable amendments. A copy of the consultation document is attached as Appendix A. Responses to the consultation document are required by 8 September 2008.

2.4 The consultation document invites comments on proposed revisions to the second edition of the Guidance to Licensing Authorities (the Guidance) and the Licence Conditions and Codes of Practice (the LCCP) relating to:

- the meaning of a single ‘premises’ in the context of the Gambling Act 2005 (the Act); and
- the need for holders of different categories of premises licences to ensure that the gambling activity appropriate to the licence type is actually offered as the *primary activity* at those premises; and not simply as an adjunct to, or sometimes wholly replaced by, the making available of gaming machines as permitted by virtue of the licence.

2.5 In the consultation document the Commission makes its views on the issues clear.

- It considers that the Act implicitly requires that premises licensed to provide betting, bingo or casino gambling should provide the specified gambling activity as the primary activity with any machine entitlement as an ancillary activity. It is their opinion that customers should be able to tell the type of premises that they are in and that the primary purpose of the gambling operator is understood by customers. The Commission also considers that it is undesirable in terms of minimising the risk of problem gambling, for betting, bingo or casino premises to offer only or predominantly gaming machines.
- While the definition of premises in the Act is ostensibly unrestricted, in the context of premises licences and the entitlement to machines (which varies with the type of premises licence), it takes the view that the Act clearly envisages premises that are distinct entities and recognisable as such. If this were not the case, the different machine entitlement provisions would be meaningless. The policy intention built into the Act is to restrict the number of high value machines per premises.
- The Commission makes it clear that it considers that some operators are adopting an approach to the meaning of ‘premises’ which departs from common sense with a view to encouraging local authorities to grant more than one licence for adjoining ‘units’ and thereby increase the number of high value machines available in what is, in reality a single premises.

2.6 The authority has dealt with enquiries for sub-division in line with the views expressed in the consultation document and so far this view has not been challenged through the courts. The improved guidance, which has been called for by many licensing authorities, is to be welcomed. Details of the questions posed in the consultation document together with draft responses are contained in Appendix B. Members of the Committee are requested to approve the responses for submission to the Gambling Commission.

**3. Achievability**

This report contains no equality personnel or property implications.

**4. Legal Implications**

- 4.1 Before issuing any guidance to local authorities under Section 25 of the Gambling Act 2005 the Gambling Commission are required to consult with, amongst others, representatives of local authorities. That is what the present exercise is about.

Once the Guidance is finalised and issued local authorities are required by law to have regard to it.

**5. Financial Implications.**

- 5.1 The licensing service is required to be self financing with all expenditure being met from fees and charges which are reviewed annually. There are no financial implications arising directly from this report.

**6. Recommendation**

- 6.1 That the responses to the Gambling Commission consultation document detailed in Appendix B be approved for submission to the Commission.

**SEAN HANNABY**

**30 June 2008**

**CHIEF STRATEGIC PLANNING AND ENVIRONMENT OFFICER**

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers: None

# GAMBLING COMMISSION

## **Split premises and primary gambling activity**

**Consultation document, June 2008**

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# 1 Introduction

- 1.1 This document invites comments on proposed revisions to the second edition of the Guidance to Licensing Authorities (the Guidance) and the Licence Conditions and Codes of Practice (the LCCP) relating to:
- the meaning of a single 'premises' in the context of the Gambling Act 2005 (the Act) and
  - the need for holders of different categories of premises licences to ensure that the gambling activity appropriate to the licence type is actually offered as the *primary activity* at those premises; and not simply as an adjunct to, or sometimes wholly replaced by, the making available of gaming machines as permitted by virtue of the licence.
- 1.2 The proposed revisions to the Guidance are in response to the Gambling Commission's (the Commission's) own concern that the statutory provisions are not being properly interpreted as well as the calls from local licensing authorities, operators and others to provide more extensive guidance in the light of differences which have emerged in the handling of licensing applications.
- 1.3 The Commission is committed to full and open consultation. **This consultation runs until 8 September 2008. However we would appreciate earlier responses to this consultation, to assist us in introducing any changes to LCCP by 1 October 2008.**
- 1.4 The proposed revisions do not represent a change in Commission policy but are intended to clarify and elaborate on our position as set out in the Guidance. They are also intended to reiterate our opinion that the provision of gaming machines should be ancillary to the primary purpose of the relevant licence. As noted in paragraph 1.26 of the Guidance, interpretation of the legislation is ultimately for the courts. Meanwhile, in the absence of decided cases, the proposed elaboration of the Guidance, which local licensing authorities are required to take into account, is intended to assist, but not replace, local licensing authorities' own application of the legislation to any given case.
- 1.5 The Guidance remains the document that licensing authorities should refer to when discharging their functions under the Act. The Commission will give appropriate notice if and when any further clarification of the Guidance is made as a result of this consultation.
- 1.6 The Commission does not normally make representations in respect of or give specific advice on individual premises licence applications unless we have something to say about the previous conduct of the operator. This is because premises licensing is primarily a matter for licensing authorities taking account of our codes of practice, our statutory guidance, local licensing policy and the three licensing objectives. Licensing authorities are better placed to reflect local circumstances and have extensive experience in the licensing of premises.
- 1.7 The Commission is not resourced to monitor how individual licensing authorities use their licensing powers, nor would it be appropriate for it to do so. But if there is continuing uncertainty or wide variation in the way local licensing authorities interpret our guidance and the legislation, there might be merit in the Commission either making representations in respect of a particular licence application or applying for a review by the licensing authority of a particular premises licence so as to enable the issues of wider application to be determined, if necessary on appeal. This would help to establish whether the approach adopted by the Commission to the interpretation of the legislation is correct. **We would be interested in views on that option.**
- 1.8 The Commission aims for the minimum degree of regulation consistent with pursuit of its functions, but is also considering whether it might be beneficial to introduce a greater degree of clarity through additional licence conditions or through Department of Culture Media and Sport (DCMS) and Scottish Minister regulations.

The Commission therefore also invites views on whether it should seek to reinforce the interpretation of the meaning of ‘premises’ and of the need for the licensed activity to take place as the primary activity which the Commission considers to be implicit in the Act and associated regulations. This interpretation could be made more explicit and bolstered by:

- introducing operating licence conditions (either generally, or individually following a licence review) which would ensure that the licensed activity is provided in each premises as the primary activity and/or as a longer term option
- asking DCMS and Scottish Ministers to introduce revised or additional mandatory and/or default conditions for premises licences.

**1.9** Draft licence conditions are set out below at paragraph 1.8 and possible revisions to the regulations discussed at paragraph 2.6. **Any revisions to the regulations would need to be subject to separate consultation by DCMS and Scottish Ministers and require the approval of both Houses of Parliament and the Scottish Parliament, but preliminary views would nonetheless help the Commission decide what actions it should take or recommend.**

**1.10** Finally the Commission is aware that a number of operators have been granted two or more premises licences for what we would regard as one set of premises, or in circumstances where it is clear that the provision of category B gaming machines is the primary purpose for obtaining a licence. We are also aware that some operators were granted betting office licences under previous legislation intending (and in some cases being required to undertake) not to offer facilities for betting other than by means of fixed odds betting terminals (FOBTs). But, of course, under the Act FOBTs have become gaming machines. We are considering what we may need to do in such circumstances to ensure that the provision of gambling facilities is compliant with the new legislation. In particular, we think it important that separate premises can be recognised as such and have appropriate supervision and access arrangements and that customers are provided with sufficient facilities to undertake the activity for which the licence was granted as the principal activity. Depending on the exact circumstances and whether or not additional operating or premises licence conditions are introduced, the options available to the Commission might include:

- inviting licensing authorities to consider with operators how they can bring their premises into compliance, with a view to reviewing those that do not comply
- inviting licensing authorities to review specific premises licences which do not comply with our interpretation of the Act and regulations and the Guidance, or
- reviewing an individual operating licence (for failure to provide gambling facilities in accordance with statutory provisions) with a view to imposing specific conditions, or even, if the circumstances warrant, suspending or revoking the licence.

Licensing authorities will not be required to review premises licences when the authority is content that the premises meet the requirements of the Act, the mandatory premises licences conditions and are genuinely separate.

**Views are invited upon each of these options.**

## Consultation questions

Q1. The Commission does not normally make representations on premises licences unless we have concerns about an operator’s prior behaviour. What criteria should the Gambling Commission apply in determining whether to make a representation on a premises licence application or request a review of a specific premises?

- Q2. Depending on the exact circumstances and whether or not additional operating or premises licence conditions are introduced, should the Commission consider:
- inviting licensing authorities to consider with operators how they can bring their premises into compliance, with a view to reviewing those that do not comply
  - inviting licensing authorities to review specific premises licences which do not comply with our interpretation of the Act and regulations and the Guidance or
  - reviewing an individual operating licence (for failure to provide gambling facilities in accordance with statutory provisions) with a view to imposing specific conditions, or even, if the circumstances warrant, suspending or revoking the licence?
- Q3. Should the Commission's interpretation of the Act be made more explicit and bolstered by:
- introducing operating licence conditions (generally, or individually) which ensure that the primary licensed activity is provided in each premises and/or
  - asking DCMS and Scottish Ministers to introduce revised regulations on mandatory and default conditions on premises licences?

## 2 The definition of premises

2.1 While the definition of premises in the Act is ostensibly unrestricted, in the context of premises licences and the entitlement to machines (which varies with the type of premises licence), the Commission takes the view that the Act clearly envisages premises that are distinct entities and recognisable as such. If this were not the case, the different machine entitlement provisions would be meaningless. The policy intention built into the Act is to restrict the number of high value machines per premises. It appears to the Commission that some operators are adopting an approach to the meaning of 'premises' which departs from common sense with a view to encouraging local authorities to grant more than one licence for adjoining 'units' and thereby increase the number of high value machines available in what is, in reality (and, we believe, in law) a single premises.

2.2 The Commission's purposive interpretation of what is implicit in the structure of the Act is reinforced by the access restrictions in the mandatory and default licence conditions which address the government's concern, as set out in the explanatory memorandum<sup>1</sup>, that there might be artificial or sham divisions of what would normally be regarded as a single premises.

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<sup>1</sup> Restrictions on access between different types of gambling premises are set down in regulations, through the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007 (SI 2007/1409) and the Gambling Act 2005 (Mandatory and Default Conditions) (Scotland) Regulations 2007 (SSI 2007/266). The Department for Culture, Media and Sport's document 'Explanatory Memorandum to the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007' discusses the policy restricting access between certain gambling premises. Paragraph 7.6 of this document reads:

'The Act provides that...a single premises may not have more than one premises licence authorising a type of gambling activity. There were concerns that some unscrupulous operators might seek to circumvent this by artificially subdividing their premises and securing separate premises licences for its composite parts, which would undermine the different categories of premises licence created by the Act... we wanted to ensure that operators do not circumvent the rules governing the maximum number of gaming machines of Category B and above permitted in different premises. And finally, we were determined to ensure that all gambling premises have publicly accessible entrances, and are not developed in the backrooms of other commercial premises. The department decided to address these concerns by proposing conditions which restricted the access between different types of gambling premises.'



**2.3** The Commission considers that a common sense approach to the definition of premises is appropriate, whilst recognising fully that it will be for local authorities to determine the issue upon the facts of each individual case. It should be possible for members of the public to recognise individual premises and be able to distinguish between premises co-located in a single building. **We are therefore interested in finding out how licensing authorities, operators and other interested parties do in practice define or recognise a single premises as identified on the deposited plan.**

**2.4** The current mandatory and default premises licence conditions support the concept of separate premises by preventing direct access between certain classes of licensed premises. For example there cannot be direct access between two adult gaming centres. However, the Commission has been asked by a number of stakeholders what 'direct access' means. For instance, we have been told about examples where the operator has 'de-licensed' a very small area within the footprint of a building, so that customers can take one step into an unlicensed area (to which there is no independent access from the street) and then another step into a different licensed premises. Assuming for these purposes that the two licensed areas are separate 'premises' (which the Commission doubts) we consider this to amount to direct access from the one 'premises' to the other.

**2.5** There are at present no statutory requirements for fixed or opaque barriers between premises. While the absence of such barriers may be appropriate in certain establishments (e.g. seaside piers to maintain a traditional atmosphere), in other areas, it may not. Licensing authorities can require fixed or opaque barriers between premises if they consider this appropriate. In some cases where they have not done so, the lack of fixed barriers has resulted in it being very difficult to determine where one premises ends and another begins, so apparently creating in practice a composite 'premises' with the multiple allocation of gaming machines arising by virtue of the number of premises licences granted. Arguably the existence of local discretion in a wholly new regime, applied by a large number of licensing authorities, without the benefit of clear and positive guidance from the Commission has led to unacceptably wide and doubtful interpretations of what is required to delineate separate premises. **The Commission would welcome comments on this and on whether the Commission should, as it is considering, ask DCMS and Scottish Ministers to consider introducing further mandatory and default premises licence conditions. However it should be noted that any revisions to the regulations would need to be subject to separate consultation by DCMS and Scottish Ministers and require the approval of both Houses of Parliament and the Scottish Parliament.**

**2.6** The Commission is therefore considering whether requirements such as the following could usefully bolster the current Mandatory and Default Premises Licence Conditions:

- a ban on direct access between bingo premises (bringing this type of premises into line with other premises entitled to have high value machines);
- requiring barriers of a minimum specification (e.g. height, width, length, and opacity) to delineate premises;
- requiring that no premises may be configured so that they can only be accessed through another licensed premises (except on tracks and possibly places such as piers and holiday parks) or a premises with a gaming machine permit of any type; and/or
- requiring that a minimum number of fixed player positions are made available in bingo and converted casino premises.

**The Commission would welcome views on how such measures could be formulated as robust regulations.**

**2.7** Licensed FECs will need to be distinct and identifiable as separate premises in common with other premises licence types. However we do not propose to make any changes in relation to access between FECs as we are not aware of any concerns relating to access between premises.

## Consultation questions

- Q4. What factors do licensing authorities take into account in determining whether a plan represents a separate set of premises? What factors should they take into account?
- Q5. Is further clarification needed on what is meant by direct access and how might we do this?
- Q6. Should the Commission recommend further Regulations in respect of mandatory and/or default licence conditions, how such principles could be formulated as regulations, and if so should they contain the following:
- introducing a ban on direct access between bingo premises (bringing this type of premises into line with other premises entitled to have high value machines) and/or
  - requiring barriers of a minimum specification (e.g. height, width, length and opaqueness) to delineate premises and/or
  - requiring that no premises should be accessible only through another licensed premises and/or
  - setting a minimum unlicensed area between licensed premises and/or
  - requiring that a minimum number of player positions are made available in bingo and casino premises.

## 3 Primary purpose

- 3.1 The Commission is aware that some operators (in particular existing AGC operators) may be considering applying for operating licences, or have been given operating licences, even though they do not intend to provide the primary activity the relevant type of licence authorises on their premises. Such operators may be applying for betting or bingo operating and premises licences under the Act because they believe that this will allow them to take advantage of the gaming machine entitlements which accrue from such licences. In other cases operators have continued under the premises licence with such arrangements which were permitted or even required under their previous permit or licence.
- 3.2 Whilst the Commission recognises that ultimately it is for the Courts to decide how statutes should be interpreted, the Commission considers that such arrangements are not permissible given the framework provided by the Act. In the Commission's opinion an operator must to some degree at least provide the activity specifically authorised by their operating and premises licences, before they are able to take advantage of any additional entitlement, such as that to make a limited number of gaming machines available for use on their premises. In important respects the Act treats the making available of gaming machines differently to the provision of mainstream facilities for betting, gaming and lotteries. Notably, there are two types of operating licence specifically designed to authorise the provision of gaming machines alone or as the principal activity in premises: the gaming machine general operating licence for adult gaming centres and the gaming machine general operating licence for family entertainment centres. Each of these operating licenses has a corresponding premises licence. Those licences specifically authorise the licence holder to make only gaming machines available for use, albeit the Act permits other (ancillary) gambling activities may take place in such premises. All this leads the Commission to the conclusion that in the case of casino, bingo and betting premises the principal activity authorised by the licence must be offered to some degree at least in order to justify the permitted provision of gaming machines.

**3.3** For example, the Commission considers that in a betting, bingo or casino premises, the betting, bingo or casino gaming must constitute the primary activity and not be ancillary to, or even wholly superseded by, the gaming machines which it is permissible to make available for use by virtue of the relevant betting, bingo or casino licence. What constitutes primary or ancillary activity lies at the heart of the matter and is a question of fact and degree to be determined by the licensing authority in each case. However, the Commission thinks that individual licensing authorities would welcome clearer guidance on the subject. It therefore suggests that the following could provide indicators of the primary activity (it is emphasised that not all would need to be present in a particular case, nor do they preclude other indicators, but the combination of those that are present might help the licensing authority determine whether the activity is the primary one in any individual case):

**In all premises**

- the relative ratio of the spaces available to members of the public allocated to the primary activity to those allocated to other gambling activities
- the information provided to customers about how the gambling facilities work and the extent to which the primary activity is promoted on the premises and by way of external advertising (eg newspapers, flyers, posters, signage and on the internet)
- the use proportionately expected or made of the different facilities.

**In the case of bingo**

- the number of dedicated seating positions for those playing bingo, having regard to the overall size of the premises
- the regularity and frequency that bingo is or is intended to be played on the premises, as compared with the periods when the premises is open
- whether revenue from bingo does/will generally exceed £2000 per week (the threshold over which clubs require a bingo licence)
- whether there will be
  - live calling of main stage bingo available to the premises
  - a permanent area for ticket/card sales
  - bingo played whenever sessions are advertised
  - display of mainstage prize board information
  - a mechanism to stop a game to claim a win.

**In the case of betting**

- the existence of a bet placing capacity (and where solely by terminal, whether there are more betting terminals than gaming machines)
- information available on details of events (e.g. races, competitions, likelihood of things occurring etc.) including the results of all such events, on which bets can be made
- gross yield from betting compared to that derived/likely to be derived from gaming machines
- ability to pay out winning bets on the premises
- the extent to which machines are/will be in use when betting is not provided.

**In the case of converted casinos (those first licensed under the Gaming Act 1968)**

- space/positions allocated to casino gaming
- number of tables/seating positions (are there at least as many playing positions as there are gaming machines?)
- the extent to which live tables are/will be made available on demand whenever the club is open
- presence of such monitoring and security equipment as would normally be expected in casino premises.

It should be noted that for the regional, large and small casinos, the Act ties the gaming machine entitlement in such casinos to the numbers of gaming tables and a licensing authority must work to those standards.

- 3.4** To ensure that licensing authorities are aware of the Commission's views on the statutory 'primary purpose' requirements we propose to add paragraphs to the Guidance to Licensing Authorities on this matter. These are included in **Annex A**.
- 3.5** As indicated above (see paragraph 3.2) the Commission considers that the Act implicitly requires that premises licensed to provide betting, bingo or casino gambling should provide the specified gambling activity as the primary activity with any machine entitlement as an ancillary activity. It is our opinion that customers should be able to tell the type of premises that they are in and that the primary purpose of the gambling operator is understood by customers. The Commission also considers that it is undesirable in terms of minimising the risk of problem gambling, for betting, bingo or casino premises to offer only or predominantly gaming machines. As such we are considering whether we should underpin the statutory provisions by the imposition of a general condition on converted casino, bingo and betting operating licences explicitly to prevent the use of such premises for the provision of gaming machines as the principal or only activity. This would clarify the position while not adding anything to the regulatory burden. **Annex B** sets out the proposed licence conditions which could be attached to casino, betting or bingo operating licences to ensure that operators do not rely on high stake machine gaming without an appropriate level of casino gaming, bingo or betting being made available to customers.
- 3.6** Where operators are not currently providing the primary activity under their operating licence, the Commission is considering whether it is appropriate to add conditions that limit the availability of gaming machines, and that where no live gaming is available, gaming machines do not dominate the premises. The Commission may need to apply specific licence conditions to different categories of operating licence and will discuss with operators the customer groups targeted. A number of new licence conditions could apply and these are set out in **Annex B**. Some of these options may be more appropriate for premises licences and we would like your views on this.
- 3.7** The Commission is also considering whether to recommend to the Secretary of State that further Regulations should be made under section 240 of the Act to control the circumstances in which gaming machines are made available for use. These could explicitly constrain the use of gaming machines in relation to times when the primary activity is available. We are also considering whether some of the features of premises set out in paragraph 3.3 should be embedded in Regulations setting out mandatory and default licence conditions, although we recognise that this would reduce flexibility for both operators and licensing authorities. The introduction of additional regulations will be a lengthy process requiring consultation by DCMS and Scottish Government and will require approval by both Houses of Parliament and the Scottish Parliament.

### Consultation questions

- Q7. Do you agree with the Commission's interpretation of the requirements in the legislation and the need for the primary activity? If not, why not?
- Q8. Are the indicators of primary purpose appropriate; should others be added?
- Q9. What criteria should the Commission apply if it were to attach additional operating licence conditions to prevent gaming machines being provided alone or as the primary activity in a premises with a converted casino, bingo or betting premises licence?
- Q10. What views do you have on the possible need for additional regulations?

## 4 The current guidance

- 4.1 The Commission's current Guidance sets out our interpretation of how premises should be defined and also the principles that licensing authorities should apply in carrying out their functions under the Act. As discussed above, we have not changed our view but the widely different interpretations of our Guidance and the many requests for advice or help in determining applications suggest that we need to expand our guidance on the question of what amounts to a single premises to which the various machine entitlements attach. In addition, it has also become evident that there is widespread uncertainty amongst licensing authorities as to whether a premises licence implicitly requires the activity it authorises to be the primary activity or whether the machines to which the premises licence gives an entitlement can themselves constitute the primary activity.
- 4.2 The published Guidance remains the document that licensing authorities should refer to when discharging their functions under the Act. The Commission will give appropriate notice if and when any further clarification of the Guidance is made as a result of this consultation.
- 4.3 The Commission therefore proposes to revise its Guidance along the lines discussed in sections 2 and 3 above to clarify and elaborate on our views. The proposed revised Guidance is attached at **Annex A**, with the proposed changes marked on the text.
- 4.4 We have set out some of the features that could be expected to be found in each type of licensed premises and also clarified the guidance so that it is clear that the number of gaming machines is a maximum per premises and that machine allowances from two or more premises cannot be consolidated in a single premises.
- 4.5 We further wish to make it clear that the absence of a response by the Commission to a notice of application for, or variation of, a premises licence, or an indication that it is not intended to make any representation, should not be taken to mean that the Commission supports, sanctions or approves of the proposed premises licences. Normally the Commission only comments if there are matters relating to the operator's suitability which we wish the licensing authority to take into account. We have proposed a change to Part 8 of the Guidance to reflect this.

### Consultation question

Q11. If the proposed revisions to the Guidance to Licensing Authorities do not provide sufficient or appropriate guidance on primary purpose and individual premises, what further or different guidance is necessary?

## 5 Consultation responses

- 5.1 Responses to the questions raised in this consultation document and any other comments should reach the Commission by Monday 8 September 2008. However earlier responses to this consultation would be appreciated, to assist in taking them into account in, and be able to introduce any changes to, the revised LCCP which is subject to a separate consultation. The Commission is committed to full and open consultation. We will hold a workshop during the consultation period to allow discussion on the proposals outlined in this paper. If you are interested in attending the workshop please contact the Commission via the consultation email address below. As we do not consider that the changes will have any regulatory impact we have not produced an Impact Assessment.

- 5.2** We would prefer to receive your comments by email. Please send them to [consultation@gamblingcommission.gov.uk](mailto:consultation@gamblingcommission.gov.uk). If you would prefer to post your comments please send them to:  
Consultation Co-ordinator, Gambling Commission  
Fourth Floor, Victoria Square House, Victoria Square  
Birmingham B2 4BP
- 5.3** When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make clear who that organisation represents. If responding as an individual, please mention your own interest.
- 5.4** Please note that responses may be made public or published in a summary of responses to the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
- 5.5** Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000 (FOIA). The Commission's policy on release of information is available on request or by reference to our website at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk). The Commission will treat information marked confidential accordingly and will only disclose that information to people outside the Commission where it is necessary to do so in order to carry out the Commission's functions or where the Commission is required by law to disclose the information. As a public authority the Commission must comply with the requirements of FOIA and must consider requests for information made under the FOIA on a case-by-case basis. Therefore when providing information, if you think that certain information may be exempt from disclosure under FOIA, please annotate the response accordingly so that we may take your comments into account.
- 5.6** All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments or agencies, local authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to do so.
- 5.7** Following the end of the consultation the Commission will prepare a summary of responses, which it will publish along with its revised Guidance and revisions to LCCP in October 2008.

**Gambling Commission June 2008**

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The Gambling Commission regulates gambling in the public interest. It does so by keeping crime out of gambling, by ensuring that gambling is conducted fairly and openly, and by protecting children and vulnerable people from being harmed or exploited by gambling. The Commission also provides independent advice to government on gambling in Britain.

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)

Copies of this document are available in alternative formats on request.

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**CON 08/3**

## ANNEX A - Proposed changes to Guidance to Licensing Authorities

In this section we have set out the changes to the Guidance to Licensing Authorities (2nd Edition). The new or existing status of the headings or paragraphs is indicated in square brackets after each section and the number is as it will be if the revisions go ahead as indicated.

### Primary purpose **[new heading]**

**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 centres (for category B3, C and D machines); and
- (e) family entertainment centres (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.)

**[existing paragraph]**

**7.6** By distinguishing between premises types the Act makes clear that the main activity of the premises should be that described. Thus in a bingo premises the main activity should be bingo, with the gaming machines as an ancillary attraction to the premises. This principle also applies to converted casino and betting premises licences. 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 a premises to be licensed for more than one of the above activities. **[new paragraph]**

**7.7** Licensing authorities should consider the following indicators in determining all premises licences:

- can the customer readily tell what sort of premises he/she is in e.g. can they distinguish a betting shop from a bingo premises or an AGC?
- the space allocated to the primary activity relative to that allocated to other gambling activities e.g. machine gaming?
- is appropriate information provided to customers about how the gambling facilities work, and is it readily accessible?
- is the primary activity clearly promoted on the premises and by way of external advertising (e.g. newspapers, flyers, posters, signage, on the internet)?
- is the primary activity more popular than the ancillary facilities?

In the case of converted casino premises licensing authorities should consider the following indicators:

- the space and/or dedicated positions allocated to table gaming (which can be casino games, e.g. roulette automated or otherwise or card rooms)
- where a casino predominantly provides fully automated roulette, the ratio of seats at roulette to gaming machines
- are live tables made available on demand whenever the casino is open.

It should be noted that for the regional, large and small casinos the Act ties the gaming machine entitlement in such casinos to the numbers of gaming tables and a licensing authority must work to those standards.

In the case of bingo licensing authorities should consider the following indicators;

- is the number of dedicated seating positions for those playing bingo proportionate to the overall size of the premises;
- is bingo played regularly on the premises, as compared with the periods when the premises is open;

- if the revenue from bingo does not/will not generally exceed £2000 per week a bingo premises licence may not be needed as a club or pub operating below this threshold can play under exempt gaming regulations
- will the main features of bingo be available in premises such as:
  - live calling of main stage bingo available to the premises (this may be through a feed or a person in the club);
  - a permanent area for ticket/card sales;
  - bingo played whenever sessions are advertised;
  - display of mainstage prize board information;
  - a mechanism to stop a game to claim a win;

In the case of betting premises licensing authorities should consider the following indicators;

- is there a bet placing capacity (and where solely by terminal, are there more betting terminals than gaming machines);
- is information available on details of events (e.g. races, competitions, likelihood of things occurring etc.) including the results of all such events, on which bets can be made;
- can customers receive pay outs on winning bets on the premises;
- the proportion of the gross gaming yield in the premises derived from betting rather than gaming machines;
- is the primary activity on the premises betting, which may be indicated by the relative popularity of the gaming machines. **[new paragraph]**

**7.8** Please see Part 16 of this guidance for more information about gaming machine categories. **[existing paragraph]**

**7.9** New casino premises licenses issued under the Act will fall into one of three categories:  
 (a) regional casino premises licence;  
 (b) large casino premises licence; or  
 (c) small casino premises licence. **[existing paragraph]**

**7.10** These are subject to separate regulations, involving a two stage application process. These regulations are yet to be laid and this guidance will be updated in due course. **[existing paragraph]**

**7.11** In addition, there will be a fourth category of casinos that will be permitted through transitional arrangements under Schedule 18 of the Act. This category will consist of casinos that are already permitted under the old legislation (Gaming Act 1968) when the Gambling Act comes into force. Most of these casinos will fall below the new size thresholds. Such casinos may operate as card clubs without offering casino games. **[existing paragraph. Last sentence is new]**

**7.12** Please see Part 17 of this guidance for more information about the definitions of casinos and licensing of those premises. **[existing paragraph]**

## **Meaning of Premises [existing heading]**

**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 a pleasure park, track, or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place.



However, licensing authorities should pay particular attention if there are issues about subdivisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed. **[existing paragraph – previously paragraph 7.11]**

- 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. **[existing paragraph– previously paragraph 7.12]**
- 7.15** In determining applications the licensing authority may wish to consider whether someone without detailed knowledge of the licence conditions would consider the different premises as truly separate and individual. We recognise that different configurations may be appropriate under different circumstances but the crux of the matter is whether the proposed premises are genuinely individual premises that merit their own machine entitlements or are, in fact, a single premises that is only entitled to, for example, four category B machines in total. **[new paragraph]**
- 7.16** The Act sets out that the type and number of higher stake gaming machines allowable in a 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 D, a bingo licence allows for up to four B3 category machines and an unlimited number of category C and D machines. With the exception of AGCs and FECs, premises are not to be exclusively for gaming machines but must provide the gaming facilities listed on the premises licence type e.g. betting on real or virtual events in a betting premises and main stage bingo in a bingo premises. **[new paragraph]**
- 7.17** With the exceptions of bingo clubs, tracks on race-days and licensed family entertainment centres, children are not 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 developments. **[existing paragraph]**
- 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 that they are not permitted to be 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 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 that 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 and sufficient floor space and seating (where appropriate) should be available for them to do this comfortably. **[existing paragraph with new third bullet point]**

- 7.19** In determining whether two or more premises are truly separate, the licensing authority should be aware of factors to assist them in making their decision. These may include:
- Do the premises have different postal addresses?
  - Do the premises have a separate registration for business rates?
  - 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 machine entitlement for the premises may not be aggregated and more than the permitted number of machines placed in any one of the licensed premises, i.e. each premises is only entitled to have the number of machines set out in the Act. **[new paragraph]**
- 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 hall on week days and a betting shop at weekends. **[existing paragraph]**

**[The rest of this section of the document is renumbered as appropriate]**

## **Responsible Authorities and interested parties - representations (part 8)**

- 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. **[existing paragraph with last sentence moved to next paragraph]**
- 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 will normally only comment on an application of which it has notice if it wishes the licensing authority to be aware of some aspect relating to the operator. If no response is heard from the Commission, licensing authorities should not assume we have any view (whether supportive or otherwise) on the merits of the premises licence application. Exceptionally the Commission may, from time to time, make representations on specific applications in particular if we consider that would be helpful in clarifying or resolving points of uncertainty, for example in relation to an application that raises new issues. **[first sentence is existing the rest of the paragraph is new]**

**[The rest of this section of the document is renumbered as appropriate]**

## **Review of premises licence by licensing authority (part 10)**

- 10.4** In relation to particular premises, the licensing authority may review any matter connected to 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. **[new paragraph]**
- 10.5** The formal review would normally be at the end of a process of ensuring compliance by the operator. If licensing authorities are concerned that a premises operator is not meeting the requirements of their licence they may require that the premises are so configured that they meet the mandatory and default premises licence conditions to remove the need for a formal review. If the operator does not meet the requirements then, after a formal review the licensing authority may impose additional conditions or revoke the licence. **[new paragraph]**

[The rest of this section of the document is renumbered as appropriate]

## Casinos (part 17)

- 17.4 Licensing authorities will need to satisfy themselves that in converted casino premises:
- space and/or dedicated positions are allocated to casino gaming (to include at least one of table games, non-equal chance gaming and card rooms)
  - in the case of casinos with predominantly fully automated roulette, there would be at least as many seats at the table as there were gaming machines
  - live tables should be made available on demand whenever the club is open. **[new paragraph]**

It should be noted that for the regional, large and small casinos the Act ties the gaming machine entitlement in such casinos to the numbers of gaming tables and a licensing authority must work to those standards.

[The rest of this section of the document is renumbered as appropriate]

## Bingo (part 18)

- 18.4 Licensing authorities will need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. This will be 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. **[new paragraph]**
- 18.5 A single licensed bingo premises is entitled to provide a maximum of four gaming machines in categories B3 or B4, and an unlimited number of category C and D gaming machines. These gaming machines must remain within the licensed area covered by the premises licence. In the unusual circumstances that an existing bingo premises covered by one premises licence applies to vary the licence to acquire additional bingo premises licences so that the area that was the subject of the original licence will be 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 made by genuinely splitting a premises in two adjacent to each other, it is not permissible to locate eight category B3 gaming machines in one of the premises (with none in the other one), as the gaming machine entitlement for that premises would be exceeded. **[new paragraph]**

[The rest of this section of the document is renumbered as appropriate]

## Betting (part 19)

- 19.16 In the Commission's view, it is not permissible for an operator to provide four category B2 gaming machines on the premises but not to offer any facilities for betting on the premises. 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 facilities for betting it should not be making gaming machines available on the premises in question. **[new paragraph]**

- 19.17** 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 a core element of the gambling facilities being offered to customers in such premises. **[new paragraph]**
- 19.18** Betting may be provided by way of betting terminals or over a counter (face to face). By 'betting terminals' we mean machines that only permit the customer to place bets on future live events (e.g. a horse race or a football game). If a machine allows betting on virtual events it becomes a gaming machine. This is set out in section 235 of the Act. Bets taken over the counter may be bets on real or virtual events. **[new paragraph]**

**[The rest of this section of the document is renumbered as appropriate]**

## **Adult Gaming Centres (part 21)**

- 21.4** Section 172(1) of the Act provides that the holder of an adult gaming centre premises licence may make available for use up to four category B machines; any number of category C machines; and any number of category D machines. Regulations specify that the category B machines should be restricted to sub-category B3 and B4 machines. **[new paragraph]**
- 21.5** Where the operator of an existing AGC premises licence applies to vary the licence and acquire additional AGC premises licences so that the area 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 AGC premises have been made adjacent to each other by genuinely splitting a single premises, it is not permissible to locate eight category B3 gaming machines in one of the premises (with none in the other one), as the gaming machine entitlement for that premises would be exceeded. **[new paragraph]**

**[The rest of this section of the document is renumbered as appropriate]**

## **ANNEX B - Proposed new licence conditions**

### **Draft licence conditions in respect of primary purpose**

#### **Non-remote general betting and betting intermediary operating licences**

- 1.1** Facilities for betting on real or virtual events must be available on any premises for which the licensee holds a premises licence at all times when gaming machines are made available for use, and must be sufficient in range and capacity to ensure that betting constitutes the primary activity on the premises. To this end licensees must ensure that gaming machines are only made available for use when facilities for betting are available for customers to use for that purpose.
- 1.2** Facilities for betting must include information that enables the customer to access details of all events on which bets can be made, to be able to place those bets and obtain a record of the terms on which they are accepted, to obtain details of the outcome of the events, to calculate (or be informed of the effects of) the outcome of their bets and to be paid or credited with any winnings.
- 1.3** Where licensees provide facilities for betting only by means of machines which are designed or adapted for use to bet on future real events only ('betting terminals'), the licensee must ensure that the number of gaming machines which are made available for use in reliance on a betting premises licence is not greater than the number of betting terminals.
- 1.4** If equipment which can be set to operate either as a betting terminal or as a gaming machine is made available, the operator must ensure that no more than four pieces of such equipment are set to operate as gaming machines at any one time and customers wishing to make a bet must have a mechanism made available to them for making that bet.

#### **Non-remote bingo operating licences**

- 1.5** Gaming machines may be made available for use only on those days when bingo is to be played.

#### **Non-remote converted casino operating licences**

- 1.6** Casino operators must at all times make table games (which could include equal chance gaming) available for use by customers on demand. When a casino predominantly offers fully automated casino games, there must be at least as many separate player positions made available as there are gaming machines made available for use. Operators must ensure that there is sufficient monitoring and security equipment.

## Appendix B - Consultation Questions – June 2008

### Split Premises and Primary Gambling Activity

Q1. The Commission does not normally make representations on premises licences unless we have concerns about an operator's prior behaviour. What criteria should the Gambling Commission apply in determining whether to make a representation on a premises licence application or request a review of a specific premises?

A1. The Commission should always make representations on any application made which it considers would not be in the interests of the licensing objectives. A review of a specific premises licence should be sought were the Commission believes the premises is not acting in accordance with the licensing objectives and discussions with the operator have failed to remedy the situation.

Q2. Depending on the exact circumstances and whether or not additional operating or premises licence conditions are introduced, should the Commission consider:

- inviting licensing authorities to consider with operators how they can bring their premises into compliance, with a view to reviewing those that do not comply
- inviting licensing authorities to review specific premises licences which do not comply with our interpretation of the Act and regulations and the Guidance or
- reviewing an individual operating licence (for failure to provide gambling facilities in accordance with statutory provisions) with a view to imposing specific conditions, or even, if the circumstances warrant, suspending or revoking the licence?

A2. The Commission should request a review of specific premises licences which are not complying with the Commission's interpretation of the Act, Regulations and Guidance.

Q3. Should the Commission's interpretation of the Act be made more explicit and bolstered by:

- introducing operating licence conditions (generally, or individually) which ensure that the primary licensed activity is provided in each premises and/or
- asking DCMS and Scottish Ministers to introduce revised regulations on mandatory and default conditions on premises licences?

A3. Yes.

Q4. What factors do licensing authorities take into account in determining whether a plan represents a separate set of premises? What factors should they take into account?

A4. The definition of premises is in two parts it can be either land with building on it or a building or part of a building. A building is generally a place with walls and roof and this is the definition which Cardiff Council generally uses in dealing with a premises licence in respect of a building or part of a building. In general the

approach adopted by this authority is that to be licensable a building must have walls and a roof with a least one entranceway. Subdivisions are permissible but can not therefore divide the premises into different establishments.

Q5. Is further clarification needed on what is meant by direct access and how might we do this?

A5. I think the current guidance encourages the establishment of dead space lobby arrangements. It would be simpler to require that direct access should require at least one entrance through which it is possible to access the place without travelling through any other gambling licensed premises.

Q6. Should the Commission recommend further Regulations in respect of mandatory and/or default licence conditions, how such principles could be formulated as regulations, and if so should they contain the following:

- introducing a ban on direct access between bingo premises (bringing this type of premises into line with other premises entitled to have high value machines) and/or
- requiring barriers of a minimum specification (e.g. height, width, length and opaqueness) to delineate premises and/or
- requiring that no premises should be accessible only through another licensed premises and/or
- setting a minimum unlicensed area between licensed premises and/or
- requiring that a minimum number of player positions are made available in bingo and casino premises.

A6. Agree with the principles as formulated. However in respect of barriers these should only be used in exceptional cases as a means of delineating premises, a wall is an adequate indication of separate premises.

Q7. Do you agree with the Commission's interpretation of the requirements in the legislation and the need for the primary activity? If not, why not?

A7. Agree.

Q8. Are the indicators of primary purpose appropriate; should others be added?

A8. They are appropriate.

Q9. What criteria should the Commission apply if it were to attach additional operating licence conditions to prevent gaming machines being provided alone or as the primary activity in a premises with a converted casino, bingo or betting premises licence?

A9. Facilities for the primary activity should be available at any time when gaming machines are made available. The conditions laid out in Annexe B would be satisfactory.

Q10. What views do you have on the possible need for additional regulations?

A10. While the proposed conditions would be beneficial frequent changes of regulation are undesirable and at this stage it would be better to introduce a general condition.

Q11. If the proposed revisions to the Guidance to Licensing Authorities do not provide sufficient or appropriate guidance on primary purpose and individual premises, what further or different guidance is necessary?

A11. The revisions to the guidance described in Annexe A are appropriate. Section 77 should be amended to make clear that the factors identified should be used not just to determine a premises licence application but as grounds for review. Section 7.11 should be amended to make clear that the Gambling Act 2005 is now in force.