

Controlling where gaming machines may be played

Amendments to *Licence conditions and codes of practice*
(LCCP) and *Guidance to licensing authorities*

Responses
July 2016

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1 Introduction

1.1 In November 2015, the Gambling Commission (the Commission) published for consultation proposals concerned with controlling where gaming machines may be played.

1.2 The Commission's business plan, published in May 2016, sets out under the strategic objective of *raising standards across all gambling sectors* our intention to 'publish new *Licence conditions and code of practice* (LCCP) requirements relating to the siting of machines in appropriate licensed environments.' This sets out the Commission's conclusions following that consultation.

1.3 It is important at the outset to re-emphasise the scope of the consultation. As set out in the consultation and echoed during our subsequent stakeholder engagement, the objectives, proposals and this response are concerned with ensuring the risks to the licensing objectives posed by higher stake and prize gaming machines are mitigated. That is achieved by maintaining the integrity of the existing regulatory framework which controls how and where gaming machines may be played. By titling the consultation '*Controlling where gaming machines may be played*' we recognise there may have been some stakeholders who believed the Commission was seeking to alter that regulatory framework for example by changing individual sector's machine entitlements. To be clear, the Commission is seeking to control where gaming machines are played in accordance with the existing framework. The power to amend machine entitlements, categorisation and characteristics is reserved for the Secretary of State in accordance with sections 172 and 236 of the Gambling Act 2005 (the Act). Therefore those matters are outside the scope of this consultation.

1.4 The push for higher category machines that has arisen from the existing framework of entitlements is undoubtedly the principal reason that has required the Commission to undertake extensive and sustained activity in this area since 2007. But this consultation did not put forward proposals or seek views on the effectiveness or otherwise of the current framework.

1.5 A number of respondents to the consultation and people who attended workshops during the consultation period queried why the Commission was holding the consultation at all and called for evidence of the risks to the licensing objectives. The latter point is covered in more depth in the *Background* section below. The reasons for holding the consultation can be summarised as follows:

- to restate the strict control of gaming machines under the Act, whereby entitlements vary dependent on the type of premises licence held
- to respond to the calls from industry and licensing authorities for greater clarity on the Commission's objectives, requirements and approach to licensing and compliance
- to propose proportionate and effective controls for the Commission and licensing authorities to use where appropriate.

1.6 Many respondents also called for a clearer explanation of how compliance with any new provisions would be assessed due to concerns about the potential for subjective judgements creating uncertainty or impeding genuine innovation. To address these concerns, we have accompanied the new provisions with an explanation of the approach to be adopted by the Commission and revised the guidance issued to licensing authorities.

1.7 The Commission's intention in replacing existing requirements with the new provisions is to reduce the regulatory burden that may arise from an approach built around more general requirements. By avoiding a 'one size fits all approach' the Commission and licensing authorities should be able to focus their attention on the minority of operators whose approach requires additional scrutiny to ensure they are operating within the existing framework and thereby minimising any risk to the licensing objectives. Where further feedback or best practice is identified from particular cases or issues we will continue to work with operators and/or trade associations to discuss how best to provide additional advice for different sectors.

2 Background

The consultation

- 2.1** The consultation was published on 30 November 2015, with a planned consultation period of 12 weeks. However, following a request from industry representatives the deadline for responses was extended to 21 March 2016. We received a total of 38 formal written responses. We have provided a list of the non-confidential respondents to the consultation in Annex B and the responses are available in full on our website.
- 2.2** We received written responses from the following categories of respondents:
- Licensed operator – 15
 - Trade association – 8
 - Licensing authority – 5
 - Professional services providers – 4
 - Charity or support group – 2
 - Campaign group – 1
 - Other - 3

In addition to the written responses, we have taken account of contributions made during a series of stakeholder meetings between December and March 2016, and a workshop held on 19 January 2016 with industry representatives.

Regulatory framework and responsibilities

- 2.3** The Act and associated regulations set out a comprehensive framework for controlling gaming machines. By linking different machine entitlements to different types of premises, the framework seeks to ensure the number and power (in terms of stakes, prizes and speed of play) of machines is proportionate to the nature of the premises. The nature of the premises can be determined by reference to a combination of factors including the named activity it is authorised to be used for, whether children are allowed in and the levels of regulation to which they are subject. For such a framework to have any meaningful effect it must be possible for regulatory authorities and consumers to distinguish between different gambling premises. A summary of this framework can be found at **Annex A**.
- 2.4** Within the framework, regulatory responsibility for gaming machines is shared between the Department for Culture, Media and Sport (DCMS), the Gambling Commission and licensing authorities broadly as follows:
- **DCMS** – is responsible for primary legislation, and through regulation sets stakes and prize levels, the number and location of machines and the circumstances in which gaming machines are made available for use.
 - **Gambling Commission** – sets technical standards, and machines testing framework as well as licence conditions or social responsibility requirements about the manner in which facilities for gambling are provided under an operating licence, has a statutory role to advise the Government on gambling matters.
 - **Licensing authorities** – have discretion to regulate local provision of gambling and the Act gives them powers to do so. This includes powers to grant, refuse and attach conditions to new premises licences, and to review existing premises licences and attach conditions or revoke.
- 2.5** Some respondents to the consultation suggested a more appropriate means of addressing any perceived risks associated with the implementation of the existing framework should be addressed by DCMS as opposed to the Commission, with some going as far as suggesting the framework and principles which underpin it are no longer fit for purpose or relevant given changing consumer demands since its inception.

- 2.6** As stated in the introduction, amendments to the machine regulatory framework can be implemented by the Secretary of State through secondary legislation. More fundamental change, for example to the distinctions enshrined in the Act between different types of gambling premises or indeed remote and non-remote activity, would require changes to primary legislation. What the Commission is seeking to achieve from this consultation is that unless and until such time as any changes are made to the legal framework, gaming machines are only made available for use in accordance with the existing framework.
- 2.7** The proposals set out in the consultation are, in our view, consistent with the Commission's responsibility to regulate the manner in which facilities for gambling are offered. This view is based on an assessment of the powers provided to the Commission under the Act as commented upon in *Luxury Leisure v Gambling Commission* (GA/2013/0001) in which Judge Warren stated:

“Reading the statute, as a whole, it seems to me that it is open to the Commission to attach conditions concerning what I might call the atmosphere in which facilities, including gaming machines, are made available.”

- 2.8** The Commission has also been clear both prior to and during the consultation that if its existing powers proved insufficient to adequately maintain the distinctions between different gambling premises (and the related machine entitlements) then it would use its role as a statutory advisor to the Government to make clear that additional regulations are required to protect the public from the risk of harm associated with gaming machines.

Evidence of risk to licensing objectives

- 2.9** A recurring theme in a number of respondents' contributions to the consultation was the suggestion that the Commission had failed to present evidence of risk to the licensing objectives as justification for the consultation or any amendments to LCCP. In accordance with our statement of principles we do not consider an approach to regulation predicated entirely on reacting to risk once it has manifested itself in harm would maintain public confidence in what remains a comparatively permissive gambling regime. The entire basis of the Commission's approach to licensing gambling is based on an evaluation of future risk and the proportionality of measures applied to avert it.
- 2.10** The assessment of risk underpinning the consultation can be broken down into two inter-related categories.
- Firstly, the regulatory framework established under the Act is designed to protect the licensing objectives. Where gaming machines are made available for use in circumstances which are not in keeping with that framework it is reasonable to conclude the licensing objectives are placed at greater risk. Failure by the Commission to ensure the regulatory framework is applied consistently would therefore conflict with our statutory duty to promote the licensing objectives.
 - Secondly, the Commission has amassed a wealth of regulatory data from its casework undertaken since the introduction of the current Licence Condition 16, which has since May 2009 sought to maintain the integrity of the regulatory framework. Since that time the Commission has engaged with over 75 operators as a result of complaints from consumers, other licensed operators and licensing authorities regarding compliance with Licence Condition 16. Through compliance activity, analysis of regulatory data, licence reviews and in three cases through litigation, the Commission can now rely upon considerable experience and evidence from previous casework to weigh up the effectiveness of the existing LCCP provisions. We are also alert to the likelihood of further operator models emerging which legitimately or otherwise may impact upon the integrity of the regulatory framework.

2.11 The Commission has shared publically our intention to review the existing Licence Conditions and Codes of Practice and associated guidance to licensing authorities in order to ensure the regulatory framework governing the availability of gaming machines remains effective. Having considered the outcome of regulatory casework and emerging business models we have concluded that 'primary gambling activity' as a concept is open to misunderstanding and is insufficiently robust to enable effective enforcement both legally and operationally.

Implementation of amendments to LCCP

2.12 This month, we are publishing responses to a number of consultations. These include:

- Controlling where gaming machines may be played
- Placing digital adverts responsibly
- High turnover bingo operators and multi-operator self-exclusion requirements.

2.13 The amendments set out in this response will come into effect later in 2016. In the summer, we will publish on our website the revised consolidated LCCP, which will incorporate all the changes from the consultations conducted this year. All of the changes will come into force in the autumn.

3 Controlling where gaming machines may be played

Overall approach

- 3.1** Feedback from stakeholder meetings and included in a number of written consultation responses suggest the approach to licensing and compliance to be adopted for the new provisions has not been fully understood. Our proposals have been interpreted by a number of industry representatives as amounting to an intent on behalf of the Commission and licensing authorities to micro-manage the manner in which all facilities for gambling are offered. Recurring concerns have been shared around the wording of provisions and the risk of subjective judgements which may have a disproportionate impact on longstanding business models or those that are seeking to legitimately innovate in response to changing consumer preferences.
- 3.2** The central dilemma the Commission has wrestled with, in seeking to maintain the machine regulatory framework, is to strike a balance between an approach which is overly prescriptive and imposes 'one size fits all' general requirements, against lighter touch more general requirements supplemented where necessary with prescriptive conditions in specific cases. Either approach would have to be built around a clear restatement of the outcomes being sought which is covered in the section below.
- 3.3** Whilst we can see strengths and weaknesses in both approaches, the Commission favours the latter. By setting out the outcomes we are seeking to achieve and the general provisions aimed at achieving those, our current assessment is that these revised arrangements are unlikely to impose any additional regulatory burden on the majority of operators. These measures represent a replacement of existing LCCP requirements and an update to our approach rather than additional requirements. In compliance terms, activity will be targeted at those operators for whom questions exist around their operating model. It is reasonable to assume that in most cases where long established business models have not prompted previous Commission engagement then the manner in which they are making gaming machines available for use is likely to be in accordance with the regulatory framework.
- 3.4** In the small number of cases where concerns do exist with a particular or proposed business model then further engagement and regulatory activity can be focused on that specific operator or premises rather than a sector as a whole.
- 3.5** Our two stage approach is explained in more depth under the sections on our licensing and compliance approach. In summary, the new provisions will provide general requirements on all non-remote bingo, betting and casino operators. Avoiding prescription leaves provisions open to some degree of interpretation but the risk arising from that approach is offset by the fact any concerns based on a subjective assessment of a business model at stage one, can be distilled into specific and measurable steps to provide assurance at stage two. This approach ensures the regulatory framework controlling gaming machines is maintained without applying disproportionately intrusive general requirements.

Policy objectives

- 3.6** A key learning point from the casework relating to existing LCCP requirements has been the need to provide licensees and licensing authorities with a clear statement of the outcomes the regulatory requirements are seeking to achieve. In the consultation we referred to these as the 'policy objectives'. We consider these objectives are consistent with the Commission's statutory duty to promote the licensing objectives. Stating the desired outcomes upfront mitigates against the risk of evolving interpretations being applied as sectors develop further. In the event of any future disputed interpretation of the requirements a clear understanding of what outcomes were being sought at the time of drafting should assist all parties.

- 3.7** Given the importance of these policy objectives, we invited views on them in addition to the provisions proposed to deliver them. The policy objectives were as follows:
- **with very few low risk exceptions, non-remote gambling should be confined to dedicated gambling premises**
 - **the distinctions between different types of licensed gambling premises are maintained**
 - **gambling activities are supervised appropriately**
 - **within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity or the operating licence.**

Consultation question

Q1. Do you agree or disagree in whole or in part with the above policy objectives? Please give your reasons as appropriate.

Respondents' views

- 3.8** The majority of respondents agreed with the policy objectives or agreed if accompanied with clarifications on the subjective nature of some of the terminology. These concerns were a running theme in answer to a number of consultation questions with a request for the clearer explanation of our overall approach shared at stakeholder meetings to be included in our responses. In addition respondents requested assurance that a literal interpretation of the final objective would not be applied by the Commission or licensing authorities as meaning gaming machines could only be offered intermittently, for example when live casino table games are being played, or a game of bingo is actually in progress.
- 3.9** A number of respondents queried the caveat included in the first objective '*with very few low risk exceptions*'. Concern was expressed that the Commission may be seeking to classify particular sectors or business models as 'low risk' thereby amending existing machine entitlements.
- 3.10** Some industry respondents and representations made on their behalf by others suggested that maintaining distinctions between different types of gambling premises or remote and non-remote gambling are increasingly irrelevant to consumers. In addition some questioned the legal basis for the Commission's interpretation of the framework controlling gaming machines as being one which provides gradually increasing entitlements, with others recognising this description but commenting on its inappropriateness and impact on innovation.

The Commission's position

It is important for all relevant parties to understand what outcomes the regulatory requirements are seeking to achieve. The Commission considers it a sensible approach to communicate these objectives at the outset. Subject to the clarifications below regarding interpretation, the Commission is satisfied that the policy objectives draw out the key elements of the regulatory framework controlling gaming machines and if consistently delivered will minimise the risk they pose to the licensing objectives.

With very few low risk exceptions, non-remote gambling should be confined to dedicated gambling premises

In line with the framework created by Parts 5 and 8 of the Act, non-remote gambling should be confined to dedicated gambling premises. The caveat included in the first policy objective ('with very few low risk exceptions') is simply an acknowledgement that some low level gambling is available in premises which are not subject to an authorisation under section 150 (eg exempt gaming in alcohol licensed premises and members clubs). The Commission is not seeking to amend or apply any additional criteria to the existing regulatory framework which controls the numbers, categories or location of gaming machines.

By stipulating 'dedicated gambling premises' the Commission is reiterating its view that the main purpose of gambling licensed premises should be the provision of facilities for gambling. The current regulatory framework prescribes that Category B gaming machines which can be characterised as 'harder' forms of gambling due to the combination of higher staking and event frequency should not be made available in ambient locations. Category B gaming machines are currently confined to venues for which consumers attend for the purpose of gambling or for whom the prospect of such gambling facilities being available can be reasonably expected.

The distinctions between different types of licensed gambling premises are maintained

Maintaining the distinction between types of gambling premises is essential within a regulatory framework which seeks to control machine gambling by authorising different machine entitlements to different types of licensed gambling premises. A failure to do so would render such controls meaningless. Restricting Category B machines to an environment and 'atmosphere' (to use the word of the First-Tier Tribunal in *Luxury Leisure v Gambling Commission*) deemed appropriate for that form of gambling both signals and controls the risks to the licensing objectives associated with gaming machines.

Gambling activities are supervised appropriately

For operators to effectively minimise the risk to the licensing objectives their gambling premises pose, appropriate supervision of the gambling facilities is central. Without appropriate supervision operators would be unable, for instance, to prevent underage access, identify and act upon indicators of gambling related harm or prevent their facilities being used for or in connection with crime.

The use of the word 'appropriately' recognises that the arrangements for supervision will differ depending on factors including but not limited to the size, layout and profile of premises, business levels and the manner in which facilities are offered for instance anonymously or through membership/account based play. Any assessment of the appropriateness of an operator's supervision arrangements would take into account all relevant factors including the operator's own risk assessment and evidence of the effectiveness of their controls.

Within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity or the operating licence

The final objective is concerned with preventing the use of a non-remote licence simply to allow category B machines to be made available. Such an approach by an operator would run contrary to the basis of the regulatory framework.

'In combination with' does not mean at all times and we have addressed this concern with minor amendments to the related provisions aimed at achieving this objective. However, as our experience of previous casework has shown there will be some operators who seek to push the boundaries of this concept by offering either no or the minimum level of named facilities they believe is sufficient to be able to offer Category B gaming machines.

The Commission is therefore seeking to strike a balance between prescribing what ‘in combination with’ will mean across a whole sector, conscious of the issues that would cause, versus avoiding operations designed to circumvent the regulatory framework which controls the numbers, categories and location of gaming machines.

Operators should be able to evidence how they have taken account of these policy objectives when assessing their compliance with the provisions which seek to achieve them. In circumstances where the Commission or licensing authorities are not satisfied this is the case then more prescriptive specific conditions can be agreed or imposed on that particular operator or premises licence.

‘Primary gambling activity’

- 3.11** As set out in the introduction, two of the key drivers behind the consultation were to ensure the controls available to address risk to the licensing objectives were effective, and to provide greater clarity on the Commission’s objectives, requirements and approach to licensing and compliance.
- 3.12** In the consultation, we proposed the removal of the existing regulatory requirements in this area – Licence condition 16 and Ordinary code provision 9 – collectively known as the ‘primary gambling activity’ provisions.

Consultation question

- Q2.** Do you agree or disagree with the Commission removing earlier requirements, guidance and advice relating to ‘primary gambling activity’ from the LCCP, GLA and other related materials?

Respondents’ views

- 3.13** A clear majority of respondents supported the removal of the existing requirements and material related to ‘primary gambling activity’. Reasons for supporting the removal varied significantly. Some agreed that it was sensible to update existing requirements with a more concise and user friendly set of provisions. Others suggested that ‘primary gambling activity’ as a concept was ill-conceived and impossible to enforce and consequently had never been accepted by the industry. Others repeated previous assertions that Licence condition 16 was unlawful.
- 3.14** This view was not shared by all industry respondents with some responses from the casino and betting sectors expressing concern that the investment and commercial decisions made to date to comply with the LCCP, and the value derived from the precedent and guidance built up since its introduction in 2009 would now be lost.
- 3.15** A small number of respondents opposed the withdrawal of ‘primary gambling activity’, suggesting the concept should instead be strengthened for instance by adopting a strict objective assessment of which activity in a given premises was in fact dominant by reference to the gross gambling yield derived from the named licensed activity versus gaming machines.
- 3.16** One respondent expressed the valid concern that in no longer relying upon material from previous consultations in respect of ‘primary gambling activity’ the basis for the Commission’s position in respect of split premises would also be lost.

The Commission's position

Having considered the outcome of regulatory casework and emerging business models we have concluded that 'primary gambling activity' as a concept is open to misunderstanding and is insufficiently robust to enable effective enforcement both legally and operationally.

We consider the greater clarity requested by industry, co-regulators and other stakeholders will be best provided by no longer making available or relying upon material and guidance related to 'primary gambling activity.'

The Commission will remove Licence condition 16, Ordinary code provision 9 and related Guidance to Licensing Authorities and replace them with revised LCCP provisions and guidance. We will also remove and no longer rely upon a number of documents and materials used to support the 'primary gambling activity' provisions since their introduction.

This decision reflects our previously stated position that the existing LCCP provisions are no longer sufficiently effective to ensure the Commission and licensing authorities are able to take proportionate steps to maintain the integrity of the regulatory framework which controls the numbers, categories and location of gaming machines. As a result we consider the protection that framework affords to the licensing objectives is placed at risk.

The new provisions to be implemented build upon the experience and evidence we have collected since the 'primary gambling activity' requirements were introduced and therefore do not, as some respondents have noted, represent a significant deviation from the underlying intention of previous provisions. Rather, they are an updated approach designed to address risks as they manifest themselves now and in the foreseeable future rather than those evident in 2008.

The Commission notes the concern regarding split premises but is satisfied our position is adequately reflected in Part 7 of our *Guidance to licensing authorities*.

Social responsibility code provisions

3.17 The Commission proposed a new social responsibility code provision to ensure that facilities for gambling are provided in a manner that protects children and other vulnerable persons from being harmed or exploited and also ensures that gambling is offered in a fair and open way. Both these licensing objectives are potentially at risk in situations where it is not sufficiently clear to a member of the public what type of gambling premises they are entering, or indeed that they are entering a gambling premises at all. In addition we suggested that for an operator to make gaming machines available they must do so in combination with the named non-remote activity for which the premises is licensed and also in a manner which provides for appropriate supervision.

3.18 The consultation explained that the Commission considered it more appropriate to make additions to the code of practice issued under section 24 of the Act instead of amending or introducing new licence conditions. The introduction of a social responsibility code provision would mean its application would fall within the principles to be applied by licensing authorities in exercising their functions. This proposed approach took account of the declaration agreed by all parties to the judicial review brought by *Newham Council v Thames Magistrates Court* regarding the effect of section 153 of the Act¹.

¹ "The effect of Section 153 of the Gambling Act 2005 is to require a local Licensing Authority carrying out its functions – including considering applications for Premises Licences – to have regard to any code of practice under Section 24 and any guidance document under Section 25 issued by the Gambling Commission, including the provisions of that code and the principles contained in that guidance. In the present drafting of the code of practice and the guidance document one provision of the code and one principle contained in the guidance to which a local Licensing Authority must have regard is that of primary gambling activity".

- 3.19** The provisions were drafted with the intention of striking a balance between being overly prescriptive and removing the flexibility for operators to achieve the desired outcomes in an innovative fashion and the risk of ongoing uncertainty and inconsistency, resulting in gaming machines being made available in a manner which poses additional risk to the licensing objectives.

Consultation questions

- Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?
- Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?
- Q5. What impact do you consider the proposed provisions will have on the affected sectors and are they sufficient to deliver the Commission's underlying policy objectives?

Respondents' views

- 3.20** The majority of industry respondents expressed concern with what they considered to be part of a growing trend of the Commission introducing social responsibility code provisions without providing evidence of harm to the licensing objectives or for issues unrelated to social responsibility. Those who provided an alternative solution considered if the Commission was to proceed, the use of ordinary code provisions would be more appropriate whilst others felt the control of machine gambling was the sole preserve of primary or secondary legislation.
- 3.21** Some respondents suggested the draft provisions were non-contentious as they reflected what responsible operators should be doing already. They did however consider there was value in setting out requirements that must be complied with.
- 3.22** We received conflicting views in respect of the proposed drafting. The dominant concern expressed related to the subjective nature of the social responsibility code allowing for wide interpretations, which in turn could lead to micro-management of businesses by the Commission or licensing authorities. Others considered the requirements either over prescriptive or not strong enough in addressing particular risks for instance associated with machines in betting premises or particular types of adult gaming centres, despite the latter falling outside the scope of this consultation. Whilst some felt the drafting would create additional uncertainty, others considered them clear, concise and in keeping with the stated policy intentions.
- 3.23** Sector specific concerns were raised by industry representatives predominantly in relation to the sector they operated within, but also about the perceived failure to appropriately address risks posed by competing sectors. The casino sector raised a very specific point, challenging the Commission's interpretation of the legislation, that where a casino offered only automated gaming this meant that there was no non-remote gaming and therefore no authorisation to offer gaming machines. This would affect the 'electric casino' model which has not previously been subject to regulatory challenge. 'Electric casinos' may be second casino premises at a single location, typically smaller than the adjacent 'live casino' but in some cases are standalone premises.
- 3.24** Respondents associated with the bingo sector repeated concerns expressed about the policy objectives that the reference to 'in combination with' within the provisions would be interpreted by authorities as meaning 'at the same time as' and suggested a minor amendment to clarify this point within the provisions. Bingo respondents also questioned the Commission's position in respect of supervision of premises and the appropriateness or otherwise of CCTV for this purpose.

Despite the assertion from the principal trade association that no bingo premises would currently rely solely on CCTV for supervision, respondents expressed concern at the justification for what they considered to be a hardening of the Commission's position and the impact this could have on operations. One respondent flagged the need for instance to comply with workplace health and safety regulations related to smoking areas.

- 3.25** Of those opposed to the new provisions as drafted, some questioned whether the new provisions were consistent with section 84 of the Act whilst others flagged the potential for legal challenge.

The Commission's position

With minor amendment for the purposes of clarification, the Commission will introduce new social responsibility code provisions to replace the current LCCP requirements on primary gambling activity. These changes will allow the Commission and Licensing Authorities to take proportionate steps to maintain the integrity of the regulatory framework which controls the numbers, categories and location of gaming machines. That framework minimises the risk to the licensing objectives which gaming machines present.

'Primary gambling activity'

Given the volume of casework the Commission has had to undertake since 2009 to attempt to maintain the integrity of the existing regulatory framework controlling gaming machines, we do not consider it a credible regulatory response to remove the 'primary gambling activity' provisions without any replacement.

Social responsibility code provision

The use of social responsibility code provisions to achieve the desired outcomes serves a dual purpose. Firstly, it unambiguously aligns these requirements with the licensing objectives; in particular the aim to protect vulnerable persons from being harmed or exploited from gambling by protecting vulnerable gamblers from being exposed to categories of gaming machines that the surrounding environment is not intended to provide. Secondly, a social responsibility code provision as an enforcement lever benefits from its status as a statutory condition of an operating licence, and as a code of practice has to be taken into account by a licensing authority when regulating local gambling provision via the premises licence.

The Commission does not consider the new requirements conflict with the spirit or wording of section 84 of the Act. In our view section 84 does not prevent the Commission influencing premises licensing through its code of practice functions. The Commission is not seeking to condition the place where licensable activities may be offered. We are highlighting the important role the Commission and licensing authorities play in ensuring category B gaming machines are only made available in accordance with the regulatory framework.

It is important to consider the new social responsibility code provisions alongside the outcomes they are constructed to achieve and the two-stage approach to be adopted by the Commission which will be reflected in the Guidance to Licensing Authorities. The central concern of respondents and attendees at the consultation workshop was the risk of wide interpretations of what can be considered subjective requirements. To alleviate these concerns the Commission has set out the outcomes it is seeking to achieve and also stated that specific issues with a particular gambling premises or operator will be addressed with that operator directly rather than by imposing prescriptive sector wide requirements. This is consistent with an outcomes based regulatory regime which provides operators with the flexibility to evolve their businesses, whilst ensuring regulatory authorities retain the ability to react to novel or contentious operating models which may be inconsistent with the licensing objectives.

The industry's efforts to react to changing consumer demands and commercial pressures mean products, services and methods of delivery are subject to constant development and revision. To ensure provisions are sufficiently flexible they must entail a degree of judgement. This is not unique to this area of gambling regulation. The existing LCCP is largely positioned around placing responsibility for achieving particular outcomes with operators. Operators are asked to evidence how they will be or are delivering such outcomes to regulatory authorities either proactively when seeking a licence or reactively in response to compliance assessments.

The Commission agrees that operators should not have to fear the imposition of arbitrary final determinations and possible sanctions based on a single narrow view of what can be considered 'substantive facilities' or 'appropriate supervision' across the entire industry or sub-sector. That is why a two-stage approach to enforcing these regulations is considered the most proportionate way of delivering the policy outcomes whilst not unduly impacting upon the vast majority of compliant operators. In a particular case, where it is provisionally considered the non-remote facilities are not 'substantive' and consequently the desired outcomes are not being achieved, the Commission or licensing authority can use existing regulatory powers or agree more descriptive specific conditions for a particular business (or premises) to ensure they are operating in a manner which ensures the gambling facilities are being offered in a manner consistent with the licensing objectives.

'Substantive facilities'

The Commission is satisfied that the general requirement for there to be 'substantive' non-remote facilities in a betting, bingo or casino premises is an essential marker against the tokenism we have seen adopted by a minority of operators previously in pursuit of additional machine entitlements. The new requirements balance the need to restate the general control of gaming machines whilst avoiding prescribing how each and every business should operate at an aggregate level. We have made a small amendment to the first part of the new provision to reflect the assurances provided in respect of the policy objectives. We are not requiring machines to be switched on and off in accordance with the minute by minute status of the named non-remote activities.

'Appropriate supervision'

In a similar vein to the use of 'substantive' the Commission has retained the wording of the requirement for 'appropriate supervision'. What constitutes appropriate supervision will depend on individual circumstances. As a starting point a responsible operator is best placed to identify the risks to the licensing objectives their chosen business model presents and the measures required to reasonably mitigate the associated risk. Where the Commission or licensing authorities consider those steps are not sufficient to mitigate the risks, such as the safety of customers, early identification of and response to signs of risk, and prevention of underage access then again more specific and prescriptive conditions can be agreed that address the risk posed by that particular premises.

Additional conditions either agreed or imposed would by their nature be specific to the circumstances of a particular operating model. However, in the area of supervision these may include conditions relating to the layout of the premises, line of sight to gambling facilities, staffing levels or use of CCTV. To some operators an approach along these lines will not be new with a number of licensing authorities and operators already engaging in such dialogue as part of existing premises licence application processes. The recent introduction of local area risk assessments should also mean that operators will have already addressed premises specific risks in advance of the introduction of these measures.

Bingo

Because children and young people are permitted to enter bingo premises, those premises are subject to a mandatory condition on their premises licences mitigating the risk of harm arising from underage access to gaming machines. The condition specifies controls bingo operators must implement to prevent under 18s accessing any area where category B or C gaming machines are available.

As part of that condition bingo operators are required to supervise those areas at all times. Supervision in the context of the premises condition is defined as through one or more persons whose responsibilities include preventing underage access to the area or CCTV which is monitored by one or more persons for the same purpose.

In the new social responsibility code provision the requirement for *'appropriate supervision of those facilities by staff at all times'* goes beyond the relatively narrow scope of the bingo premises licence condition. Underage access is undoubtedly a key risk that would materialise where gambling facilities are not appropriately supervised. But we are equally concerned in respect of both machine gambling and the named licensed activity that operators are able to identify and react to risks associated with behavior or patterns of play which may indicate a player experiencing harm or indeed suspicious activity through the use of their gambling facilities.

In keeping with our approach to tackle particular concerns via targeted engagement, and where necessary additional specific conditions, we are not making sweeping judgements on the established customs and practice of any one sector. There are a variety of means by which in the first instance an operator can satisfy themselves of the appropriateness or otherwise of their supervision arrangements. Equally the Commission or licensing authorities can undertake compliance activities or investigate reported incidents and make assessments on the effectiveness of an operator's arrangements.

Casinos

The Commission has carefully considered the legal arguments put forward during this consultation and we recognised the legal position is not clear cut. We therefore intend to adopt the position that an electric casino, where there is no live gaming but there is fully automated gaming on the premises (that is, an automated wheel is present and so all aspects of the gaming transaction have taken place on the premises), should be treated as non-remote gambling and as a result it will be acceptable for gaming machines to be made available (subject to the other parts of the code of practice provision being met). However in an electric casino where all the gaming is derived from real games of chance taking place on another premises, in reliance on a full remote casino licence, the provision of gaming machines will not be permitted. On a case by case basis, if the Commission is not satisfied that the environment and the range and scale of gambling on offer made the premises recognisably a casino, this would be addressed by imposing specific conditions.

The Commission has not adopted the suggestion that the words 'non-remote' be removed from the proposed drafting of the code, which would serve to widen things too far. However the wider interpretation of non-remote described above means that the majority of electric casinos will be compliant with the code as drafted.

Function, internal and external presentation

The Commission is not seeking to impose a single format or model of what a particular type of gambling premises should look and function like. The wider public may have stereotypical views of what a betting, bingo or casino premises would consist of and given the vast majority of premises within these sectors share certain core characteristics it is difficult for the industry to dispute that these facilities are not provided in response to consumer expectations. However this is not to suggest that all gambling premises must necessarily adhere to those expectations either now or in future. The Commission's concern is that for a regulatory framework which seeks to control different machine entitlements by reference to the premises type to have any effect, it must be possible to distinguish between types of gambling premises or in fact whether a particular location is a dedicated gambling premises at all.

The final part of the new provision is therefore concerned with ensuring distinctions between types of gambling premises are maintained. This element has been amended to embed the evaluative and outcome based nature of the provision.

By including a reasonable expectation that a customer would recognise, for example, a casino as a casino, it avoids compliance being achieved by adherence to the minimal standards, with an operator seeking to tick the box of 'informing a customer' through the smallest possible degree of signage for example.

Our efforts to enforce this element will follow the process outlined above with particular identified issues addressed through case specific conditions. Critics of this approach have suggested it is of little relevance to a customer what type of premises they consider they are entering or indeed whether there is any evidence to suggest confusion exists, and if it does, such confusion would fall out with the purpose of the fair and open objective which is concerned with the fair conduct of gambling games or activities themselves. We disagree. A gambling premises should as far as reasonably possible be presented and function in a manner which can be recognised by a customer so that they can make a deliberate choice whether to enter and participate in the named gambling activities provided or the related category of gaming machines considered appropriate for that gambling environment. The function of the premises should also ensure that the sum of gambling activity is not ancillary to some other non-gambling purpose. The alternative would be to reverse the public policy position that gaming machines require tight control and opportunities for ambient gambling are to be kept to a minimum.

The two-stage approach to delivering compliance with this measure should ensure adequate safeguards are available for operators to either satisfy the Commission and licensing authorities that their approach delivers the desired outcomes, or where necessary they can appeal any disproportionate conditions which are proposed.

Social responsibility code provision 9.1.1 Gaming machines in gambling premises - betting

Non-remote general betting operating licences, except where betting is offered under a 2005 Act casino premises licence

- 1 Gaming machines may be made available for use in licensed betting premises only ~~when~~ **where** there are also substantive facilities for non-remote betting, provided in reliance on this licence, available in the premises.
- 2 Facilities for gambling must only be offered in a manner which provides for appropriate supervision of those facilities by staff at all times.
- 3 Licensees must ensure that the function along with the internal and/or external presentation of the premises **are such that a customer can reasonably be expected to recognise** ~~informs a customer that~~ that it is a premises licensed for the purposes of providing betting facilities.

Social responsibility code provision 9.1.2 Gaming machines in gambling premises - bingo

Non-remote bingo operating licences

- 1 Gaming machines may be made available for use in licensed bingo premises only ~~when~~ **where** there are also substantive facilities for non-remote bingo, provided in reliance on this licence, available in the premises.
- 2 Facilities for gambling must only be offered in a manner which provides for appropriate supervision of those facilities by staff at all times.

- 3 Licensees must ensure that the function along with the internal and/or external presentation of the premises **are such that a customer can reasonably be expected to recognise** ~~informs a customer that~~ that it is a premises licensed for the purposes of providing bingo facilities.

Social responsibility code provision 9.1.3 Gaming machines in gambling premises - casino

Non-remote casino operating licences, except 2005 Act casino operating licences

- 1 Gaming machines may be made available for use in licensed casino premises only ~~when~~ **where** there are also substantive facilities for non-remote casino games and/or games of equal chance, provided in reliance on this licence, available in the premises.
- 2 Facilities for gambling must only be offered in a manner which provides for appropriate supervision of those facilities by staff at all times.
- 3 Licensees must ensure that the function along with the internal and/or external presentation of the premises **are such that a customer can reasonably be expected to recognise** ~~that informs a customer that~~ that it is a premises licensed for the purposes of providing facilities for casino games and/or games of equal chance.

Actual use of named activity

- 3.26 The proposed social responsibility code provisions require operators to make available substantive facilities for the named gambling activity, with 'substantive' given its ordinary English meaning.² The proposals did not explicitly seek to quantify what 'substantive' would mean in all circumstances as we wanted to avoid an inflexible one size fits all approach.
- 3.27 Most business models are unlikely to prompt the Commission or licensing authorities to question whether substantive non-remote facilities of the named activity are available, it will be evident from the operation and performance of the business. Our experience of casework demonstrates some operators however will require closer assessment. In such instances where there is disagreement on the extent or genuineness of the facilities available, reference to objective metrics around usage levels is a simple and determinative regulatory option.
- 3.28 A scenario where reference to the use made of the facilities may prove informative would be where an operator configured their premises in a manner which offered the named non-remote facilities but in a manner designed to prevent or limit their use by customers. Whilst seemingly counterintuitive for a business to deliberately make available facilities in a manner unlikely to attract custom the Commission has large swathes of data from different businesses in which revenue from gaming machines consistently represent in excess of 95% of total gross gambling yield.
- 3.29 In the consultation document the Commission acknowledged that it is ultimately consumer choice which dictates the relative use of gaming machines and the named activity. We invited the views of respondents on two related questions on whether and in what form the Commission may consider the use made of the named non-remote facilities.

² Substantive - 'having a firm basis in reality and so important, meaningful, or considerable'

Consultation questions

- Q6(i). What are your views in relation to the Commission considering the use made of the named non-remote facilities as an indicator of whether gaming machines are being provided in combination with the named activity in a substantive manner?
- Q6(ii). If appropriate, should the Commission include reference to the use made of the non-remote named facilities on a case by case basis via specific conditions, or in a more general sense via one of the two alternatives below?
- Social responsibility code provision
 - Ordinary code provision

Respondents' views

- 3.30** Not all respondents chose to respond on these points. Of those who did the principal concern expressed was that reference to the actual use made of facilities resembled a demand test. The use of facilities would vary over time, and operators should not be punished for the free choices of their customers.
- 3.31** Others considered that the Commission should not seek to identify indicators of any sort, and should instead accept existence of any level of provision as compliant. The alternative in their view would be a situation where operators would be left unable to defend themselves against allegations of not providing substantive facilities.
- 3.32** A minority of respondents favoured consideration of actual use as a means of determining whether facilities were substantive. Among this group some favoured a test of which activity is dominant through a straight comparison of relative gross gambling yields to determine whether machine provision is primary or ancillary.
- 3.33** In answer to the question of where the Commission should reference an assessment of actual use there was an equal split in respondent's views between nowhere, as such an assessment is inappropriate, and through the use of specific conditions in particular cases. A small number of respondents favoured inclusion within the headline social responsibility code provision and fewer still felt this was an assessment best undertaken by licensing authorities on a premises by premises basis.

The Commission's position

The use made of facilities is a relevant consideration when assessing whether the facilities available are substantive but would only be used in conjunction with other factors.

Consumer choice ultimately dictates the relative use of gaming machines and the named non-remote activity within a particular gambling premises. Our approach is not therefore concerned with a judgement of which activity is dominant. However we recognise that an approach which relies solely on the existence of non-remote facilities may lead to situations where an operator can simply frank or validate their entitlement to higher stake and prize gaming machines without achieving the outcomes we have set out in this area.

The Commission will continue to take account of businesses or premises which appear to be outliers in terms of the use made of their named non-remote activity. By way of example a betting premises which takes little or no betting business legitimately warrants an assessment of whether this is as a result of competition, consumer choice, seasonal changes or in fact because the betting facilities offered are not substantive.

We have considered, and rejected, a system of upfront metrics around usage levels. This is consistent with our approach of not wishing to apply one size fits all requirements. Where there is a need to assure ourselves that substantive facilities are available the Commission may use the second stage of its two stage approach to test usage of the non-remote named facilities over a defined retrospective period. This would likely complement other specific conditions agreed to assist an operator put beyond doubt their compliance with the general requirements.

Compliance approach

- 3.34** The Commission recognises that some stakeholders may consider the new requirements do not go far enough in terms of providing the basis for a binary assessment of compliance against a single one size fits all provision. In part this is an understandable by-product of the decision by the Commission to avoid a situation experienced previously where operators were able to successfully challenge the Commission's approach on the grounds of uncertainty. That uncertainty to a large extent was caused by the previous approach which sought to enforce general requirements to a range of scenarios. We recognise that an important element of delivering the intended outcomes is for requirements to be clearly stated alongside an explanation on how they will be enforced. This will ensure they are robust, but do not give rise to some of the concerns expressed during the consultation period around consistency, proportionality and fairness.
- 3.35** As a consequence of deciding against a one size fits all condition the Commission will adopt a two stage approach to delivering the policy outcomes below:
- **with very few low risk exceptions, non-remote gambling should be confined to dedicated gambling premises**
 - **the distinctions between different types of licensed gambling premises are maintained**
 - **gambling activities are supervised appropriately**
 - **within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity of the operating licence.**
- 3.36** Where the Commission or a licensing authority has concerns that an operating model has not taken sufficient account of the general requirements to deliver the above outcomes, than we believe the most effective and proportionate means of dealing with that would be through the agreement or imposition of specific conditions relating to that particular business.
- 3.37** The Commission is satisfied that this approach will not result in a loss of effective control. We recognise a two-stage approach with less prescriptive requirements at a headline level supplemented where necessary with specific tailored conditions will impact upon the timeliness with which issues are resolved. The Commission has however considered the likely caseload arising from existing licensees and is satisfied this will not result in sustained risk to the licensing objectives. Nor do we consider the Commission or licensing authorities are likely to be overwhelmed by complex case-by-case resolutions. The Commission has set out in unambiguous terms the outcomes to be achieved and can use its powers to impose specific conditions in a manner which will allow for time-bound assessment of compliance which will either provide the necessary assurance or determine that enforcement action is justified.
- 3.38** It is not possible or productive at this stage to provide an exhaustive list of the range and form of specific conditions. By their nature such conditions will be tailored to address the concerns arising from particular circumstances. However by way of example it is likely that we would where necessary apply a greater deal of prescription in relation to the supervision of gambling facilities in circumstances where there was evidence or justifiable concern on precautionary grounds that existing arrangements were not sufficient to mitigate the risk of underage access or gambling related harm.

In previous casework a risk along these lines has been apparent in businesses which have operated two adjacent premises but relied upon shared staffing arrangements in a bid to minimise operating costs.

- 3.39** In similar terms a gambling premises which is presented internally and/or externally and functions to all intents and purposes as a pub or pool hall for example, with the exception of a small gaming machine zone, may well require more prescriptive conditions in order to ensure it can be reasonably expected that a customer would recognise that it is a premises licensed for the purposes of providing facilities for gambling.
- 3.40** In settling on this approach we believe operators and applicants will be afforded a far greater degree of certainty when choosing whether or not to deploy novel or innovative business models. In cases where operators have a genuine desire to deliver the outcomes it is likely additional specific conditions can be agreed between them and the relevant regulatory authority. Conversely where there is a disputed assessment of compliance the two stage approach offers operators the opportunity to prove they can deliver the outcomes over a prescribed period rather than facing potentially costly and time consuming single stage enforcement activity.

Licensing approach

- 3.41** From a resource and risk management perspective any issues which may prevent delivery of the intended outcomes would ideally be identified and addressed at application stage. That is why we highlighted the relevant excerpts from our Statement of Principles for Licensing and Regulation within the consultation document.
- 3.42** The purpose of highlighting these licensing principles was to emphasise the importance we place on the provision of a comprehensive and clear business plan. In exercising our functions under the Act, we are under a duty to pursue, and wherever appropriate to have regard to, the licensing objectives, and aim to permit gambling in so far as we think it is reasonably consistent with pursuit of the licensing objectives.
- 3.43** The Commission flagged its intention as part of that licensing process, to incorporate the two stage approach outlined above in respect of compliance. The determination of an application for an operating licence would include consideration of the nature of the proposed business model, and where we do not consider it reasonably consistent with the licensing objectives, because it is not sufficiently clear how the above outcomes will be delivered, such applications would be referred for determination by a regulatory panel.

Consultation question

- Q7. Do you agree with the proposed approach, where judged necessary, to draw out key elements of an applicant's business plan and use specific licence conditions to ensure they reflect the future use of the operating licence?

Respondents' views

- 3.44** Again there were diverse views expressed in response to the question of whether the Commission or licensing authorities should consider attaching specific conditions in cases where they had concerns that a proposed business model would deliver the policy outcomes intended. Whilst most respondents wholly agreed with this approach some caveated this with the need for appropriate guidance to licensing authorities to ensure it was understood this would only be necessary in exceptional circumstances.

- 3.45** Others disagreed with the proposals stating they would amount to wholly inappropriate micro-management on the part of the Commission/local authority and would lead to an increase in the number of contested licence applications. In particular, they felt it is not a role for the regulators to evaluate and assess commercial business plans. They argue that the proposal seeks to increase the level of restrictions placed on licensees beyond that ever envisaged by the legislation.
- 3.46** A small number of respondents considered sight of a business plan would be a reasonable approach but felt specific conditions should only be attached once evidence of a revealed risk had been found, rather than at the application determination stage.

The Commission's position

Where the Commission or licensing authorities have concerns that a proposed operating model has not taken sufficient account of the social responsibility code provision and therefore the desired outcomes may not be delivered, appropriate assurances will be required prior to determining the application.

We only anticipate this second stage would be required in those cases which include novel or contentious elements which give rise to concerns about the licensing objectives. All other applications will continue to be determined in the usual fashion and timeframes. In relevant cases, the additional stage would likely consist of extracting and conditioning particular elements of the applicant's business plan or agreeing and attaching other conditions which address specific risks or concerns.

We do not accept the suggestion that consideration of an applicant's planned use of a licence via their business or operational plan is not a pertinent consideration in determining whether the grant of that licence would be consistent with the licensing objectives. Without evaluating and assessing a business plan, the Commission would be unable to fulfil its licensing function.

This approach should not result in micro-management of businesses by the Commission or licensing authorities. Conditioning elements included within an operator's business plan should be uncontroversial if that is in fact the intended use of the licence. As we are proposing a compliance approach which may require an extended period of time to assess compliance against more specific conditions, it is important that robust licensing procedures are in place to prevent where possible an operator obtaining a licence and then simply implementing alternative arrangements which the Commission would not have been satisfied with if disclosed. This scenario will be rare as we acknowledge most applicants will submit applications in an honest, frank and cooperative fashion.

All licensing applications consist of an assessment of future risk and the effectiveness of controls proposed by the applicant to mitigate it. The strict control of gaming machines is implemented because of the inherent risk to the licensing objectives they pose. We do not believe an approach which awaits for harm to materialise through failure to deliver the desired outcomes is likely to maintain public confidence in gambling regulation. We consider that regulatory or licensing panels are capable of identifying risk and proposing proportionate specific conditions to allay concerns about a business model.

Where applicants believe that authorities are misusing their powers by seeking to attach disproportionate conditions to their licences the remedy is appeal. Any additional regulatory imposition should be able to be justified by reference to the desired outcomes which underpins this area of regulation. Contrary to the concerns expressed we consider this two-stage approach affords applicants the clarity they have previously requested whilst giving the Commission and licensing authorities a far more effective and targeted means of holding operators to account. It also opens a credible and risk based alternative to drawn out licence applications which can be costly and result in refusal.

Guidance to licensing authorities

- 3.47** The regulatory framework which controls where gaming machines may be played places co-regulatory responsibility on both the Commission and licensing authorities. A licensing authority's role to regulate the provision of gambling facilities at individual premises is financed through the annual premises licences fees and other permissions such as premises permits.
- 3.48** Licensing authorities have the power to adopt the two stage approach outlined above when carrying out its licensing or compliance functions. The introduction of a social responsibility code provision to replace the previous licence condition, means it must explicitly be taken into account by a licensing authority when regulating local gambling provision via the premises licence.
- 3.49** To ensure licensing authorities have the information they need to make effective decisions the Commission has a statutory duty to issue guidance on the manner in which local authorities are to exercise their functions under the Act. Our guidance does not seek to impose certainty as to the outcome of individual decisions. Each licensing authority is different and will have its own views and priorities about how it wishes to manage gambling facilities in its own locality.
- 3.50** To assist in the effective delivery of the policy outcomes and ensure the regulatory framework which controls gaming machines is maintained the consultation proposed removing the old guidance in respect of 'primary gambling activity' and replacing it with updated guidance designed to ensure licensing authorities were able to monitor and enforce compliance along broadly similar lines to that mapped out for the Commission at operating licence level.

Consultation questions

- Q8. Do you have any views or comments on the proposed guidance to licensing authorities?
- Q9. Is there any additional guidance that would assist licensing authorities to apply appropriate licensing decisions relating to the availability of gaming machines in licensed premises?

Respondents' views

- 3.51** This element of the consultation did not attract the same volume of responses as earlier questions. Of those who did respond there was support for the guidance as drafted but also concern that it was insufficiently clear which could risk capturing business models for which it is not intended and which pose no additional risk to the licensing objectives.
- 3.52** Those respondents who had already opposed the policy objectives and LCCP provisions applied similar arguments against the related guidance. In particular some considered the guidance as drafted represented the Commission's own view rather than an accurate legal interpretation of the Act.
- 3.53** A number of responses and concerns voiced at the consultation workshop from industry representatives centred on the concern that licensing authorities would use the new provisions and guidance to make disproportionate decisions, and approaches around the country would be inconsistent. Some operators expressed the view that licensing authorities should not request additional details of how premises are intended to be operated and first and foremost should apply the 'aim to permit' principle.
- 3.54** Of those licensing authorities who responded one considered more fundamental changes to the primary legislation was the best means of addressing risks associated with gaming machines. Others agreed with the guidance or offered no comment whilst a small number said it would benefit from additional case examples.

The Commission's position

Given the important role licensing authorities can play in delivering the outcomes sought via the new provisions we will be replacing the existing guidance to licensing authorities with new guidance setting out clearly the policy objectives, LCCP requirements and the two-stage approach to licensing and compliance.

The argument against empowering licensing authorities to fulfil their role in managing local gambling provision and ensuring effective control of gaming machines is in our view an argument for local risk to be ignored or decisions regarding local risk being deferred to the national regulator. This would run contrary to the responsibilities set out within the Act.

Rather, the Act contemplates co-regulation between the Commission and licensing authorities. When considering the operator's corporate approach to gambling provision, the Commission may consider it appropriate to intervene through its operating licence powers. In other cases, it may consider that it is more appropriate to leave the matter for consideration to licensing authorities exercising premises licence powers.

Local regulation means that the same operation may well get a grant with no conditions in location A, or with conditions in location B and a refusal in location C. The certainty is that the system works against a set of national and local principles, not that there will always be the same result. Adopting a two stage approach should reduce the number of premises applications subject to immediate rejection for concerns relating to gaming machines as licensing authorities will be able to take interim steps short of rejection in order to allow an operator to demonstrate that the manner in which they plan to make gaming machines available for use poses no additional risk to the licensing objectives.

For the same reasons as we rejected the assertion that the Commission should not request all relevant information to determine an application for an operating licence, we do not accept that a licensing authority should be fettered in its request for relevant information needed to allow it to make the most effective regulatory determinations.

The "aim to permit" provision in section 153 of the Act is not a presumption of grant. It is an aim which applies when but only when the statutory principles as set out have been applied and are considered to be satisfied. Thus, where there is a breach of guidance, a code of practice or a statement of policy, there is no aim to permit.

Based on the feedback received we have revisited the draft guidance and reformulated it to ensure it more clearly conveys the key points of the regulatory approach which the Commission considers is best placed to deliver the desired outcomes. The guidance cannot however anticipate every set of circumstances that may arise and, as long as it is understood and taken into account, licensing authorities may depart from it where they consider the specifics of particular case make it right to do so. Given the approach we have outlined is one which is deliberately flexible with general requirements for all, supplemented by specific requirements on a case by case basis, then we consider for individual premises, licensing authorities are best placed to make proportionate and legally defensible decisions.

In addition to the new statutory guidance the Commission will keep this area of regulation under review and will continue to engage with industry and licensing authorities to share best practice approaches alongside case studies and our assessment of whether there are particular emerging risks which impact upon the outcomes we are seeking to deliver.

Guidance to licensing authorities

Controlling where gaming machines may be played – casino

- 17.55** The following policy objectives summarise the key elements that underpin the approach to controlling where gaming machines may be played.
- With very few low risk exceptions, non-remote gambling should be confined to dedicated gambling premises
 - The distinctions between different types of licensed gambling premises are maintained
 - Gambling activities are supervised appropriately
 - Within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity of the operating licence.
- 17.56** The Act and associated regulations set out a comprehensive regulatory framework for controlling gaming machines. By linking different machine entitlements to different types of premises, the framework seeks to ensure the number and power (in terms of stakes, prizes and speed of play) of machines is proportionate to the premises. For such a framework to have any meaningful effect it must be possible for regulatory authorities and consumers to distinguish between different gambling premises.
- 17.57** The LCCP requires that gaming machines are only made available in combination with the named non-remote activity of the operating licence. So, unless a casino premises operator offers substantive facilities for non-remote casino games and/or games of equal chance it should not make gaming machines available for use on the premises in question. To contain the unavoidable risk to the licensing objectives associated with gaming machines, premises which offer machines must be appropriately supervised.
- 17.58** The current regulatory framework prescribes that Category B gaming machines may only be made available in licensed gambling premises and not in locations which may prompt more ambient gambling such as pubs. Maintaining distinctions between different gambling venues allows individuals to make a deliberate choice whether to enter that particular gambling environment. In carrying out their functions under the Act licensing authorities should satisfy themselves that a premises applying for or licensed as a casino is operating or will operate in a manner which a customer would reasonably be expected to recognise as a premises licensed for the purposes of providing facilities for casino games and/or games of equal chance.
- 17.59** Licensing authorities are not being asked to impose a 'one size fits all' view of how a casino should look and function. Rather they are ensuring that a premises licensed for the purposes of providing facilities for casino and/or games of equal chance is operating as such and is not merely a vehicle to offer higher stake and prize gaming machines.
- 17.60** In exercising its functions under the Act a licensing authority should take account of the relevant code of practice on 'controlling where gaming machines may be played'. It is specifically obliged to do so when exercising functions under section 153 of the Act. In circumstances where a licensing authority considers an existing premises is not compliant with these general requirements they should contact the Commission at the earliest opportunity.
- 17.61** Both the Commission and licensing authorities have the power to attach specific conditions to operating or premises licences in circumstances where additional assurance is required. The Commission favours the approach of general conditions for all supplemented by operator specific conditions in cases where novel or contentious operating models are used which include the provision of gaming machines. This is to deliver the policy objectives above and ensure the risk to the licensing objectives is minimised.

17.62 In the Commission's view the above approach would ideally be adopted at licensing stage. Licensing authorities should ensure that they request all the information required from an applicant for a new premises or for a variation to an existing premises in order to satisfy themselves as to the matters set out at s153 of the Act. This includes the codes of practice and this Guidance. The approach of adding case specific conditions can equally be deployed in respect of an existing unit where concerns arise or when changes are made to the operating model.

Guidance to licensing authorities

Controlling where gaming machines may be played – bingo

- 18.24** The following policy objectives summarise the key elements that underpin the approach to controlling where gaming machines may be played.
- With very few low risk exceptions, non-remote gambling should be confined to dedicated gambling premises
 - The distinctions between different types of licensed gambling premises are maintained
 - Gambling activities are supervised appropriately
 - Within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity of the operating licence.
- 18.25** The Act and associated regulations set out a comprehensive regulatory framework for controlling gaming machines. By linking different machine entitlements to different types of premises, the framework seeks to ensure the number and power (in terms of stakes, prizes and speed of play) of machines is proportionate to the premises. For such a framework to have any meaningful effect it must be possible for regulatory authorities and consumers to distinguish between different gambling premises.
- 18.26** The LCCP requires that gaming machines are only made available in combination with the named non-remote activity of the operating licence. So, unless a bingo premises operator offers substantive facilities for non-remote bingo it should not make gaming machines available for use on the premises in question. To contain the unavoidable risk to the licensing objectives associated with gaming machines, premises which offer machines must be appropriately supervised.
- 18.27** The current regulatory framework prescribes that Category B gaming machines may only be made available in licensed gambling premises and not in locations which may prompt more ambient gambling such as pubs. Maintaining distinctions between different gambling venues allows individuals to make a deliberate choice whether to enter that particular gambling environment. In carrying out their functions under the Act licensing authorities should satisfy themselves that a premises applying for or licensed for bingo is operating or will operate in a manner which a customer would reasonably be expected to recognise as a premises licensed for the purposes of providing facilities for bingo.
- 18.28** Licensing authorities are not being asked to impose a 'one size fits all' view of how a bingo premises should look and function. Rather they are ensuring that a premises licensed for the purposes of providing facilities for bingo is operating as such and is not merely a vehicle to offer higher stake and prize gaming machines.
- 18.29** In exercising its functions under the Act a licensing authority should take account of the relevant code of practice on 'controlling where gaming machines may be played'. It is specifically obliged to do so when exercising functions under section 153 of the Act. In circumstances where a licensing authority considers an existing premises is not compliant with these general requirements they should contact the Commission at the earliest opportunity.

- 18.30** Both the Commission and licensing authorities have the power to attach specific conditions to operating or premises licences in circumstances where additional assurance is required. The Commission favours the approach of general conditions for all supplemented by operator specific conditions in cases where novel or contentious operating models are used which include the provision of gaming machines. This is to deliver the policy objectives above and ensure the risk to the licensing objectives is minimised.
- 18.31** In the Commission's view the above approach would ideally be adopted at licensing stage. Licensing authorities should ensure that they request all the information required from an applicant for a new premises or for a variation to an existing premises in order to satisfy themselves as to the matters set out at s153 of the Act. This includes the codes of practice and this Guidance. The approach of adding case specific conditions can equally be deployed in respect of an existing unit where concerns arise or when changes are made to the operating model.

Guidance to licensing authorities

Controlling where gaming machines may be played – betting

- 19.21** The following policy objectives summarise the key elements that underpin the approach to controlling where gaming machines may be played.
- With very few low risk exceptions, non-remote gambling should be confined to dedicated gambling premises
 - The distinctions between different types of licensed gambling premises are maintained
 - Gambling activities are supervised appropriately
 - Within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity of the operating licence.
- 19.22** The Act and associated regulations set out a comprehensive regulatory framework for controlling gaming machines. By linking different machine entitlements to different types of premises, the framework seeks to ensure the number and power (in terms of stakes, prizes and speed of play) of machines is proportionate to the premises. For such a framework to have any meaningful effect it must be possible for regulatory authorities and consumers to distinguish between different gambling premises.
- 19.23** The LCCP requires that gaming machines are only made available in combination with the named non-remote activity of the operating licence. So, unless a betting premises operator offers substantive facilities for non-remote betting it should not make gaming machines available for use on the premises in question. To contain the unavoidable risk to the licensing objectives associated with gaming machines, premises which offer machines must be appropriately supervised.
- 19.24** The current regulatory framework prescribes that Category B gaming machines may only be made available in licensed gambling premises and not in locations which may prompt more ambient gambling such as pubs. Maintaining distinctions between different gambling venues allows individuals to make a deliberate choice whether to enter that particular gambling environment. In carrying out their functions under the Act licensing authorities should satisfy themselves that a premises applying for or licensed for betting is operating or will operate in a manner which a customer would reasonably be expected to recognise as a premises licensed for the purposes of providing facilities for betting.
- 19.25** Licensing authorities are not being asked to impose a 'one size fits all' view of how a betting premises should look and function. Rather they are ensuring that a premises licensed for the purposes of providing facilities for betting is operating as such and is not merely a vehicle to offer higher stake and prize gaming machines.

- 19.26** In exercising its functions under the Act a licensing authority should take account of the relevant code of practice on 'controlling where gaming machines may be played'. It is specifically obliged to do so when exercising functions under section 153 of the Act. In circumstances where a licensing authority considers an existing premises is not compliant with these general requirements they should contact the Commission at the earliest opportunity.
- 19.27** Both the Commission and licensing authorities have the power to attach specific conditions to operating or premises licences in circumstances where additional assurance is required. The Commission favours the approach of general conditions for all supplemented by operator specific conditions in cases where novel or contentious operating models are used which include the provision of gaming machines. This is to deliver the policy objectives above and ensure the risk to the licensing objectives is minimised.
- 19.28** In the Commission's view the above approach would ideally be adopted at licensing stage. Licensing authorities should ensure that they request all the information required from an applicant for a new premises or for a variation to an existing premises in order to satisfy themselves as to the matters set out at s153 of the Act. This includes the codes of practice and this Guidance. The approach in adding case specific conditions can equally be deployed in respect of an existing unit where concerns arise or when changes are made to the operating model.

Annex A Summary of regulatory framework

The Gambling Commission

The Commission licenses and regulates all commercial gambling within Great Britain, including the National Lottery, with the exception of spread betting, which is regulated by the Financial Conduct Authority (FCA). Section 20 of the Act established the Commission as the national regulatory body for gambling.

Our functions under the Act include:

- licensing operators and individuals
- monitoring compliance with licence conditions and the law
- investigation and enforcement, both in relation to licensed operators and illegal (unlicensed) gambling
- providing advice to central and local government on the incidence, manner, effects and regulation of gambling.

The Commission has a statutory duty to aim to permit gambling provided that it is reasonably consistent with the licensing objectives. Our approach to the regulation of gaming machines has been developed with that duty in mind.

The licensing system

A gambling business must hold a relevant operating licence under Part 5 of the Act. The types of operating licence are set out in section 65(2) of the Act:

- 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 licence
- a gambling software operating licence
- a lottery operating licence.

A person holding an operating licence, and providing facilities within the terms of that licence, will not commit the offence of unlawful provision of facilities for gambling.

An operating licence for each kind of activity can authorise the provision of facilities physically located on premises (non-remote gambling) or for the provision of those facilities by means of remote communication (remote gambling).

An operating licence for non-remote provision authorises the operator to provide their gambling business through gambling facilities on premises. However, before being able to use any particular premises in any particular area, the holder of an operating licence will also need an authorisation under the Act to use such premises for gambling. This is a premises licence issued under Part 8 of the Act. The licensing authority cannot grant a premises licence until the relevant operating licence is issued: section 163(2). The Act created specific premises licences which authorise:

- the operation of a casino (a casino premises licence)
- the provision of facilities for the playing of bingo (a bingo premises licence)
- making Category B gaming machines available for use (an adult gaming centre premises licence)
- making Category C gaming machines available for use (a family entertainment centre premises licence)
- the provision of facilities for betting (a betting premises licence).

The provision of gaming machines

The provision of gaming machines is strictly controlled by the Act. An operator who provides a gaming machine without a relevant *operating licence* commits a criminal offence: section 242. In parallel, a person who uses premises to make gaming machines available for use without a relevant *premises licence* is committing a criminal offence: section 37.

A summary of the current framework governing the provision of gaming machines in betting, bingo, adult gaming centre premises and pubs, including the entitlements and key characteristics is detailed in Table 1 below. Table 2 summarises the machine entitlements available to casinos.

Table 1: Gaming machine entitlements betting, bingo, AGC and pubs

Category of machine	Max stake/prize	Betting premises (other than track)	Bingo premises ³	Adult gaming centres ⁴	Pubs
B2	£100/£500	Up to 4 machines	n/a	n/a	n/a
B3	£2/£500		20% of total machines on premises	20% of total machines on premises	n/a
B4	£1/£250				
C	£1/£100		Unlimited	Unlimited	Up to 2 machines ⁵

Table 2: Gaming machine entitlements casinos

Category of machine	Max stake/prize	Large casino	Small casino	Pre-2005 Act casino
B1	£5/£10,000, progressive linked jackpot £20,000	Up to 150 machines subject to machine/table ratio 5:1	Up to 80 machines subject to machine/table ratio 2:1	Up to 20 machines (or any number of cat C and D machines instead).
B2	£100/£500			
B3	£2/£500			
B4	£1/£250			
C	£1/£100			

It is fundamental to the control of machine gambling under the Act that particular categories of machines may only be provided in particular numbers and in particular types of premises.

By linking the availability of gaming machines to the type of the premises they are located in, a graduated regulatory framework has been created by the Act. At the lowest tier are unlicensed family entertainment centres and pubs. They are subject to minimal regulation (a simple permit from or notification to the licensing authority) but offer very limited facilities for gambling.

³ Bingo premises licences granted before 13 July 2011 may provide either eight category B machines (restricted to sub-category B3 or B4) or 20% of the total machines on the premises, whichever is greater.

⁴ AGC premises licences granted before 13 July 2011 may provide either four category B machines (restricted to sub-category B3 or B4) or 20% of the total machines on the premises, whichever is greater.

⁵ Additional Cat C and or Cat D machines may be provided as specified by gaming machine permit granted by the local licensing authority.

Bingo, adult gaming centres and betting premises in turn offer gambling activity of increasing 'hardness' and are consequently subject to increasing levels of regulation. Casinos remain the gambling environment with the 'hardest' forms of gambling with unlimited stake and prize table gaming and gaming machines with the highest stake and prize limits available in Great Britain.

Section 172(11) of the Act confers powers on the Secretary of State to amend the number and/or category of machines authorised by a specified kind of premises licence.

Annex B List of respondents to the consultation

A total of 38 formal written responses were received during the consultation period. A list of non-confidential respondents is set out below and the full responses are available on the Commission's website.

Association of British Bookmakers
Association of Directors of Public Health
Association of Licensed Multiple Retailers
BACTA
Campaign for Fairer Gambling
Carlton Bingo Ltd
Castle Leisure Ltd
Churchill Leisure Ltd
Church of England
City of Edinburgh Licensing Board
Eversheds LLP (on behalf of Genting Casinos)
Fraser Brown
Free Enterprise Group
Gala Coral Group
Gala Leisure
Gambling Business Group
Gravesham Borough Council
Greene King
Hippodrome Casino
Law Society of Scotland
London Borough of Enfield
London Borough of Newham
Medway Council
Moto Hospitality Ltd
National Casino Forum
Novomatic UK
Opera House Casino
Praesepe Plc
Quaker Action on Alcohol and Drugs
Racecourse Promoters Association
Rank Group Plc
Robert Good Consultancy
Roger Etchells & Co.
Talarius
The Bingo Association
Triangle Amusements

Additional input was received from the Interel Group (on behalf of the British Association of Leisure Parks, Piers and Attractions), and from the Institute of Licensing. These responses were provided outside of the structured consultation response format, but all due consideration was given in the drafting of this response.

Keeping gambling fair and safe for all

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