

GAMBLING COMMISSION

Controlling where gaming machines may be played

**Consultation
November 2015**

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1 Introduction

- 1.1** This consultation document sets out proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission (the Commission). It also sets out proposed amendments to the Commission's statutory Guidance to licensing authorities (GLA).
- 1.2** The proposed amendments in this consultation will be of particular interest to:
- operators of betting premises
 - operators of bingo premises
 - operators of casino premises
 - licensing authorities
 - bodies or individuals with an interest in the regulation of gambling.
- 1.3** Following this consultation, and taking into account the responses received, we expect to introduce new and amended licence conditions and code of practice provisions. The new/amended provisions are expected to come into force in 2016. Any amendments to GLA will come into effect at the same time.
- 1.4** In exercising its functions under the Gambling Act 2005 (the Act) the Commission must aim to pursue the licensing objectives of:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
 - ensuring that gambling is conducted in a fair and open way
 - protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 1.5** The Commission has a duty to aim to permit gambling in so far as it thinks it is reasonably consistent with the licensing objectives. We also have a duty to provide advice to the Secretary of State about the incidence of gambling, the manner in which gambling is carried on, the effects of gambling and the regulation of gambling. We have licensing, compliance and enforcement powers to ensure the provision of commercial gambling is in keeping with the regulatory framework and is consistent with the licensing objectives.
- 1.6** Our position on whether or not to allow Category B gaming machines in premises other than betting, bingo and casino premises, and the associated risks, is set out in the background section. We flagged our intention to revisit this area as part of the consultation on [Strengthening Social Responsibility](#).
- 1.7** In exploring how these risks to the licensing objectives can be minimised, we have considered a range of options. These include consideration of the powers available to the Commission, licensing authorities and the Secretary of State. We consider that the measures we propose in this consultation are proportionate to the possible risks to the licensing objectives.
- 1.8** We have also continued our discussions with the Department for Culture, Media and Sport (DCMS), who have indicated their agreement for the position that distinctions between different types of licensed gambling premises should be maintained to allow for the strict control of the provision of category B gaming machines. If that cannot be achieved under the current regulatory framework, we are likely to advise Government that additional regulations under sections 78, 167 or 172 are needed to control the circumstances under which gaming machines are made available for use.
- 1.9** Responses are sought to this consultation by **22 February 2016**. Further details on how to respond and where to find the response template are included at the end of this document.

2 Background

The Gambling Commission

- 2.1** 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.
- 2.2** 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.
- 2.3** 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

- 2.4** 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.

- 2.5** 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).
- 2.6** 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

2.7 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.

2.8 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 ¹	Adult gaming centres ²	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 ³

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			

2.9 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.

2.10 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.

¹ 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.

² 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.

³ 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.

- 2.11** The subjects of machine characteristics and availability have been and continue to be the source of significant debate in relation to their economic and social impact. 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. Consequently this consultation is concerned solely with the effective maintenance of the framework governing the control of where gaming machines may be played, as currently implemented.

Policy objectives

- 2.12** Based on the principles outlined in the Report of the Gambling Review Body, July 2001 (the Budd Report), adopted by the Government and reflected in the Act the Commission's principal objectives underpinning this consultation are to ensure that:
- **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.**
- 2.13** To achieve the above objectives it is important that betting, bingo and casino premises are in appearance and function distinctive premises to be used for those specific gambling activities. The sum of gambling activity should not be ancillary to something else. So, for example, the Commission would regard it as wholly unacceptable for a pub to have a premises license for bingo, or a nightclub to contain a casino.
- 2.14** Our approach is consistent with the principles DCMS set out in its policy regarding ancillary activities within gambling premises. DCMS described the approach in the following terms:

Ancillary activities

*The Government's view is that the primary purpose of gambling licensed premises should be the provision of facilities for gambling. Any non-gambling activities that take place in gambling licensed premises should be ancillary to the gambling facilities offered. To achieve this, the Department proposed a number of conditions restricting the **ancillary activities** which might take place in premises which offer gambling facilities. These include the consumption of alcohol, the provision of refreshments and other hospitality, such as, the sale of newspapers in betting premises other than tracks.⁴*

- 2.15** For the regulatory framework governing licensed gambling premises to work, it is important that customers are aware of the type of gambling premises they are attending, so that they can make a deliberate choice whether to enter. The nature of a particular gambling activity and consequently the controls applied to it underpin the different ancillary machine entitlements available to operators. Again the imposition of this graduated approach would be significantly undermined if it was not possible for the Commission, licensing authorities and customers to distinguish between different gambling premises.

⁴ Explanatory memorandum The Gambling Act 2005 (mandatory and default conditions) (England and Wales) Regulations 2007

- 2.16** In developing our regulatory approach to gaming machines, the Commission has built on the graduated framework in the Act in a way that pursues the licensing objectives; in particular the second and third objectives contained in section 1 of the Act. The Commission considers the way in which, and environment in which, gambling opportunities are presented and advertised can impact on its fairness and openness. The third objective relates to the protection of children and the vulnerable, who may attend gambling premises, from being harmed by gambling.
- 2.17** For the regulatory framework to be effective, we consider that higher stake and prize gaming machines should only be provided in combination with the named non-remote activity. This would ensure that particular numbers and categories of gaming machines will only be made available within distinct gambling premises in line with Table 1 and Table 2 above.
- 2.18** By maintaining the distinctions between different types of licensed gambling we can ensure that regulatory requirements remain proportionate to the risks posed in that particular premises type, for instance in relation to supervision of the gambling facilities.
- 2.19** As a result of the differences in the categories and number of gaming machines which can be placed in different type of premises, some businesses from both within the licensed gambling industry and other leisure sectors have sought to devise ways of making more and / or different categories of gaming machine available in their premises. An immediate example of this emerged as the Act came into force, when a number of operators split existing gambling premises in order to increase the number or category of machines that they could make available at that location.
- 2.20** In response to these developments, and to prevent the regulatory framework which seeks to minimise gambling related harm being circumvented, the Commission consulted upon and introduced a licence condition on ‘primary gambling activity’⁵, accompanying ordinary code provisions⁶ and issued guidance on both split premises and primary gambling activity for licensing authorities. These licence conditions and codes of practice have, with minor amendment, formed the basis for our communications, licensing and compliance activity and, in a small number of cases, enforcement activity over the past six years. We have also worked with licensing authorities to help them exercise their functions under section 153 of the Act.
- 2.21** Whilst the existing licence conditions and codes of practice and the GLA have largely achieved the objective of maintaining the distinctions between different types of gambling premises, they have presented difficulties in specific cases. We recognise that some of our communications and advice issued may not have delivered sufficient clarity for licensees, potential applicants and licensing authorities. We also recognise that the existing licence conditions and codes of practice, the advice and guidance we have issued to explain them and their suitability as the basis of enforcement action were found by the First-Tier Tribunal in *Luxury Leisure v Gambling Commission* (GA/2013/0001) not to be achieving the Commission’s objectives.
- 2.22** In its decision in *Luxury Leisure*, the First-Tier Tribunal acknowledged what the Commission was seeking to achieve and the powers at its disposal to do that. The First-Tier Tribunal also found that the atmosphere in which gambling facilities are provided is relevant to the exercise of the Commission’s functions, but nevertheless concluded that the Commission’s interpretation of the conditions could not be sustained on the facts of that specific case.

⁵ Licence Condition 16 Supplement 4 of LCCP, May 2009

⁶ Ordinary Code Provision 9 Supplement 4 of LCCP, May 2009

2.23 The Commission considers that the current licence conditions and codes of practice need to be revised in order to ensure that the underlying policy objectives which seek to minimise gambling related harm are achieved. We have therefore prepared a collection of regulatory proposals aimed at ensuring the above principles are embedded consistently across the gambling industry and we are now in a position to share these with stakeholders and interested parties and invite feedback.

3 Controlling where gaming machines may be played

- 3.1 The underlying policy objectives the Commission is seeking to achieve to minimise gambling related harm are set out below and form the rationale behind the proposals which the Commission is now inviting views on. If accepted, any new requirement is intended to come into force in 2016.

Consultation question

Policy objectives

- **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.**

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

‘Primary gambling activity’

- 3.2 In order to draw a definitive line under all previous related consultations, regulations and any associated guidance or advice, the Commission is proposing to remove the following provisions and no longer rely upon or make available the accompanying materials. Whilst this review builds on our experience of regulating the industry to date, we consider it will be more productive to take the explanation and proposals in this document as the starting point and not to confuse matters by revisiting previous interpretations or requirements.

LCCP - February 2015 (updated April 2015)

- Licence Condition 16 – Primary gambling activity
- Ordinary code provision 9 - Primary gambling activity

Accompanying material

- The split premises and primary gambling activity consultation, and responses document, June 2008/October 2008
- The primary gambling activity proposals consultation paper and responses, October 2008/January 2009

Guidance to licensing authorities 5th edition

- Paragraphs 17. 55 – 17. 57
- Paragraphs 18. 24 – 18. 26
- Paragraphs 19. 21 – 19. 25

Accompanying material

- Advice note on indicators of betting as Primary Gambling Activity, November 2011
- Advice note on Indicators of Betting as Primary Gambling Activity, October 2013
- Licensing Authority bulletin (August 2012) Special edition – Primary gambling activity

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?

Social responsibility code provisions

- 3.3** The Commission proposes 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 the gambling is offered in a fair and open way. We consider that 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 consider that for an operator to benefit from the ancillary machine entitlement available in particular types of gambling premises they must do so in combination with the non-remote activity for which they are licensed and also in a manner which provides for appropriate supervision. To that end, we propose the following sector specific provisions:

New proposed social responsibility code provisions 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 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 external presentation of the premises informs a customer that it is a premises licensed for the purposes of providing betting facilities.

- 3.4** The third strand of the proposed provision is intended to ensure a customer is aware of the type of premises which is being operated. Externally this would principally be through the manner in which it is promoted for example by its external design, styling and signage. Having taken the decision to enter the premises the internal function should be that of a premises licensed for the specific named activity such as bingo in a bingo premises.

New proposed social responsibility code provisions Gaming machines in gambling premises - bingo

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

- 1 Gaming machines may be made available for use in licensed bingo premises only when 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 external presentation of the premises informs a customer that it is a premises licensed for the purposes of providing facilities for bingo.

Bingo

- 3.5 We recognise that bingo premises are already subject to a mandatory premises licence condition regarding the supervision of areas that contain category B or C gaming machines. The condition requires those areas to be adequately supervised to ensure that children and young people are not able to access the areas or the machines contained within them⁷.
- 3.6 The new proposed social responsibility code provision goes further than the premises licence condition, as it is intended to cover broader social responsibility risks such as interacting with customers where there are concerns that their behaviour may indicate problem gambling. Our emerging view is that 'appropriate supervision' along these broader lines cannot be achieved solely through the use of closed circuit television (CCTV) as envisaged in the premises licence condition. Furthermore, sole reliance on CCTV would suggest that the bingo premises would not be staffed at all times. In such circumstances, the question would arise regarding whether facilities for non-remote bingo are being offered in reliance on the non-remote bingo operating licence. The Commission is however willing to consider alternative views and take into account evidence regarding the effectiveness of existing operating models.

New proposed social responsibility code provisions Gaming machines in gambling premises - casino

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

- 1 Gaming machines may be made available for use in licensed casino premises only when 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 external presentation of the premises informs a customer that it is a premises licensed for the purposes of providing facilities for casino games and/or games of equal chance.

Casino

- 3.7 At present, the fully and semi-automated forms of casino gaming, which are typically offered as an alternative to play at a live table in a casino, are also offered in a number of smaller casinos which do not offer any live non-remote gaming. Gaming accessed by means of remote communication is defined in the Act as remote gambling, and where the live tables and the terminals connected to them are in the same premises this is permitted by the operator holding an ancillary remote licence in addition to their non-remote operating licence.

⁷ The Gambling Act 2005 (Mandatory and Default conditions) (England and Wales) Regulations 2007

- 3.8** In casinos where terminal-based gaming is the only gaming that is offered, whether that connects to a fully automated wheel on the premises (permitted by an ancillary remote licence) or to a live or automated wheel on other premises (requiring a full remote licence), all the gaming activity on the premises is remote gambling. For the reasons set out in paragraph 2. 5 above, this means that such casinos have no entitlement to offer gaming machines. This is because although in every case the operator holds a non-remote casino operating licence, they are only providing facilities for gambling under their remote licence (whether ancillary or full). A remote licence does not confer any right to offer gaming machines.
- 3.9** We recognise that enforcing the proposed new social responsibility code provision would mean that a number of casinos that are currently operating would need to change their business model, whether by introducing non-remote gambling on the premises or by removing the gaming machines currently made available. Consideration may be given to transitional arrangements being made, to allow a period for such casinos to become compliant by a later date than that proposed for general implementation of the changes.

Code of practice

- 3.10** We consider it more appropriate to make additions to the code of practice issued under section 24 of the Act instead of introducing new licence conditions. The introduction of a social responsibility code provision will mean its application will fall within the principles to be applied by licensing authorities in exercising their functions. This approach is in keeping with the declaration agreed by all parties to the judicial review brought by *Newham Council v Thames Magistrates Court* in respect of the effect of section 153 of the Act⁸.
- 3.11** The proposed social responsibility code provisions require operators to make ‘available’ substantive facilities for the named gambling activity, with ‘substantive’ being defined using its ordinary English meaning. We are not currently seeking to quantify the extent or proportion of the offer for example by including an explicit reference to the use made of the named facilities. This recognises the potential for misrepresentation of the purpose of the requirements by, for instance, suggesting that we are placing a requirement on operators to compel consumers to use their betting, bingo or casino facilities. There is a careful balance to be struck on the one hand in allowing operators to genuinely innovate whilst still bringing to life the policy objectives, and on the other, guarding against those for whom the named non-remote facilities provide no more than a ‘token presence’.⁹
- 3.12** We are aware from past experience that consideration of the use made of the named activity has been important in circumstances where operators have sought to frank or validate a machine entitlement by simply providing the various facilities of the named activity to give the appearance of a bingo, casino or betting premises.
- 3.13** Consumer choice ultimately dictates the relative use of gaming machines and the named activity within a particular gambling premises and therefore the proposed provisions are not concerned with a judgement on which activity is dominant. What would concern the Commission is if, despite the principles we have set out above and the rationale behind them, operators contrive to merely give the appearance of an environment which the Secretary of State considers appropriate for the provision of category B gaming machines.

⁸ “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”.

⁹ Decision Notice GA/2013/001 *Luxury Leisure Ltd v The Gambling Commission*

3.14 Judge Warren stated in his *Luxury Leisure* decision: *“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 various facilities, including gaming machines, are made available.”*¹⁰ Whilst we consider that reference to the use made of the named non-remote facilities in a gambling premises remains a reasonable consideration in any assessment of the manner and ‘atmosphere’ in which gaming machines are made available, we recognise that inclusion of such a factor within a general social responsibility code provision may be problematic. We acknowledge that individual operators need sufficient certainty based on their business circumstances and a one size fits all approach is unlikely to achieve that. We are seeking to balance the risk of impeding legitimate business models with the need to ensure the regulatory framework is applied and the Commission’s policy objectives are delivered consistently. We are therefore inviting the views of respondents on the Commission’s preferred approach which would be in cases where it is judged necessary to refer to the use made of the non-remote facilities, to do this via the imposition of specific conditions rather than include any reference in the proposed general provisions. We are providing respondents with the opportunity to submit views and evidence on why the alternatives, either including within the social responsibility code provision or in a separate ordinary code provision would be more effective.

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 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**
- 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

¹⁰ Decision Notice GA/2013/001 *Luxury Leisure Ltd v The Gambling Commission*

Business plans and applications for licences

- 3.15** The Commission sets out the approach to licensing in our *Statement of Principles for Licensing and Regulation, March 2015*. The statement includes the following principles:
- *The Commission expects applicants for licences to provide the Commission with all the information it needs in order to determine whether or not they are suitable to hold a licence.*
 - *The Commission expects that licence applications will be complete and accurate at the point they are submitted to the Commission. It follows that, whilst applicants may be permitted to make minor changes to their proposals, the Commission will not permit applicants to make material changes to their application during the process. Material changes to an application are likely to result in an applicant being invited to withdraw their application and submit a new application, accompanied by the appropriate fee, or it may result in an application being refused.*
 - *The Commission will seek to determine licence applications within a reasonable period of time.*
 - *Whilst the Commission will provide assistance to licence applicants, to help them through the application process, the responsibility for providing information rests with applicants. The Commission will treat repeated delays in providing information as a strong contra-indicator of suitability to hold a licence.*
- 3.16** In considering an application for an operating licence, we place great importance on the provision of a comprehensive and honest 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 objectives¹¹.
- 3.17** The assessment of an applicant will include consideration of the nature of the proposed business model, and where we do not consider it is reasonably consistent with the licensing objectives it is likely such applications will be referred for determination by the regulatory panel.
- 3.18** In line with the above principles and approach, we propose to make greater use of our power under section 77 of the Act to draw out key elements of a proposed business plan and ensure their delivery by means of licence condition. This approach would be used in circumstances where reassurance is required that a proposed business model is consistent with the licensing objectives and has taken account of the policy objectives set out above. Such an approach will benefit applicants in evidencing their commitment to the delivery of the licensing objectives and the policy objectives, whilst also providing the Commission with an effective means of exercising its functions under the Act and holding licensees to account.
- 3.19** It is equally important that licensing authorities are able to make similar assessments on the basis of information provided by applicants for premises licences. In order to apply the principles set out in section 153 of the Act, licensing authorities will need to assess all appropriate information when considering an application for a bingo, betting or casino premises licence. This is recognised within the 5th edition of the Guidance to licensing authorities which states

'To reflect the breadth of licensing authority discretion, they are entitled to request such information from operators as they may require to make effective licensing decisions. The Act requires that an application must be accompanied by a minimum level of information (detailed in Part 7 of this Guidance).

¹¹ Section 22 Gambling Act 2005

In the Commission's view, however, this does not preclude reasonable requests from licensing authorities for additional information to satisfy themselves that their licensing decision is reasonably consistent with the licensing objectives and the Commission's codes. That information may include, for example, a suitable business plan or the operator's own assessment of risk to the licensing objectives locally.¹²

- 3.20** Given the above existing guidance we do not consider there is a need for any further additions or amendments to the Guidance to licensing authorities in relation to business plans.

Consultation questions

- 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?

Commission's compliance approach

- 3.21** In addition to furthering the licensing objectives, we recognise from our work in this area that for regulations to be both robust and credible, they need to be understood and more importantly applied in a consistent and fair manner.
- 3.22** Assessing compliance with a new general social responsibility code provision, will be aided in the first instance by the submission of accurate business plans at application as described above. However the Commission and licensing authorities will also need to satisfy themselves that existing licensees are providing facilities for gambling in accordance with the regulatory framework, in a manner consistent with the licensing objectives and having taken account of the policy objectives set out in this consultation.
- 3.23** In cases where the Commission has concerns, for instance because any or all of the policy objectives outlined above have not been suitably addressed in a particular operator's business model, we will adopt a similar approach by using our powers to attach additional specific conditions to operating licences following a regulatory review under section 116 of the Act. Licensing authorities have similar powers under section 169 of the Act to attach specific conditions to premises licences where appropriate.
- 3.24** We do not propose to use this consultation to set out in detail the form such specific operating licence conditions would take. By their nature they will be tailored to address the specific concerns arising from a particular business model. However by way of example it is likely that we would seek to apply a greater deal of prescription in relation to the supervision of gambling facilities, the function and/or the presentation of the premises as necessary and proportionate to deliver the policy objectives. We have also explained our considerations of what role the actual use made of the named non-remote facilities may play in any assessment of the gambling environment and invited responses on this question (Q6).
- 3.25** By adopting this approach we have taken account of the feedback received previously and our experience of case work arising from the application of licence condition 16. This two-stage approach with general provisions for all supported by specific conditions where required, should provide a far greater degree of certainty for individual operators who may be deploying novel or innovative business models.

¹² Para 1.29 Guidance to licensing authorities 5th Edition

3.26 In addition, we consider the enhanced role that licensing authorities will take under these proposals mitigates the risk posed by an existing licensee trialling new concepts or opening an exceptional premises without sufficient scrutiny of their plans.

Guidance to licensing authorities

- 3.27** As referenced above, licensing authorities have a crucial role to play in the regulation of gambling at a local level. They are financed to do so by means of annual premises licence fees and other permissions such as premises permits.
- 3.28** As with the Commission, whilst exercising their functions licensing authorities shall aim to permit gambling. They are required to do so in ways which are:
- a) in accordance with any relevant code of practice under section 24
 - b) in accordance with any relevant guidance issued by the Commission under section 25
 - c) reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b))
 - d) in accordance with the statement published by the authority under section 349 (subject to paragraphs (a) to (c)).¹³
- 3.29** As the 5th edition of the Guidance to licensing authorities makes clear, when licensing authorities receive a new application or a variation to an existing premises, they are able to require information from operators, which may include a business plan, until such time as they can satisfy themselves that parts (a) – (d) above are met.
- 3.30** We consider it essential that the proposed changes to the code provisions are adequately reflected in revisions to the relevant sections of the Guidance to licensing authorities. We are therefore proposing replacing the existing material in the Guidance to licensing authorities as set out at paragraph 3. 2 and adding the following sector specific guidance. (Note paragraph numbers relate to the relevant sections of the 5th edition of the Guidance to licensing authorities).

New proposed Guidance to licensing authorities Gaming machines in gambling premises - Casino

- 17.55** It is not permissible for an operator to make gaming machines available for use in a premises, which is licensed for non-remote casino games and/or games of equal chance but not to offer facilities for non-remote casino games and/or games of equal chance. A non-remote casino operating licence authorises its holder to 'operate a casino' (s. 65(2)(a) of the Act). Likewise, a casino premises licence authorises premises to be used for 'the operation of a casino' (s.150(1)(a) of the Act). The ability to make gaming machines of category B, C or D, available is an additional authorisation conferred upon the holder of a casino premises licence (s.172(3-5) of the Act); it is not a free standing right to make gaming machines available for use. This is also reflected in s. 68(5) of the Act which states a non-remote casino operating licence allows for one or more category A to D gaming machines to be made available for use. It follows that unless a casino premises operator offers 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.
- 17.56** In the Commission's view it is important, in relation to the licensing objective of protecting vulnerable persons from being harmed or exploited by gambling, that gaming machines are only made available in combination with the named non-remote activity of the operating licence. In addition, to ensure gambling remains fair and open the appearance and function of a casino premises should be that of a premises licensed for that activity.

¹³ S153 Gambling Act 2005

Customers should be made aware they are entering a casino premises so that they can make a deliberate choice whether to enter a gambling environment. Furthermore, the function of the premises should ensure the sum of gambling activity is not ancillary to some other non-gambling purpose.

- 17.57** 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.
- 17.58** Should a licensing authority receive an application to vary a premises licence for a casino in order to extend the opening hours, the authority should satisfy itself that the reason for the application is in line with the requirements of the operating licence conditions and the codes of practice.
- 17.59** In the event that a licensing authority receives an application for a new premises or variation to an existing premises which gives cause for concern as to compliance with this aspect of licence conditions and codes of practice it should contact the Commission at the earliest opportunity.

New proposed Guidance to licensing authorities Gaming machines in gambling premises - bingo

- 18.24** It is not permissible for an operator to make gaming machines available for use in a premises, which is licensed for non-remote bingo but not to offer facilities for non-remote bingo. A non-remote bingo operating licence authorises its holder to 'provide facilities for playing bingo' (s.65(2)(b) of the Act). Likewise, a bingo premises licence authorises premises to be used for 'the provision of facilities for the playing of bingo...' (s.150(1)(b) of the Act). The ability to make gaming machines of category B (limited to sub category B3 or B4), C or D, available is an additional authorisation conferred upon the holder of a bingo premises licence (s.172(7) of the Act); it is not a free standing right to make gaming machines available for use. This is also reflected in s.68(5) of the Act which states a non-remote bingo operating licence allows for one or more category A to D gaming machines to be made available for use. It follows that unless a bingo premises operator offers facilities for non-remote bingo it should not be making gaming machines available for use on the premises in question.
- 18.25** In the Commission's view it is important, in relation to the licensing objective of protecting vulnerable persons from being harmed or exploited by gambling, that gaming machines are only made available in combination with the named non-remote activity of the operating licence. In addition, to ensure gambling remains fair and open the appearance and function of a bingo premises should be that of a premises licensed for that activity. Customers should be made aware they are entering a bingo premises so that they can make a deliberate choice whether to enter a gambling environment. Furthermore, the function of the premises should ensure the sum of gambling activity is not ancillary to some other non-gambling purpose.
- 18.26** 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.
- 18.27** Should a licensing authority receive an application to vary a premises licence for bingo in order to extend the opening hours, the authority should satisfy itself that the reason for the application is in line with the requirements of the operating licence conditions and the codes of practice.

18.28 In the event that a licensing authority receives an application for a new premises or variation to an existing premises which gives cause for concern as to compliance with this aspect of licence conditions and codes of practice it should contact the Commission at the earliest opportunity.

New proposed Guidance to licensing authorities Gaming machines in gambling premises - betting

19.21 It is not permissible for an operator to make gaming machines available for use in a premises which is licensed for non-remote betting but not to offer facilities for non-remote betting. A non-remote betting operating licence authorises its holder to 'provide facilities for betting' (s. 65(2)(c) of the Act). Likewise, a betting premises licence authorises premises to be used for 'the provision of facilities for betting...' (s. 150(1)(e) of the Act). The ability to make up to four gaming machines, within categories B, C or D, available is an additional authorisation conferred upon the holder of a betting premises licence (s. 172(8) of the Act); it is not a free standing right to make gaming machines available for use. This is also reflected in s. 68(5) of the Act which states a non-remote betting operating licence allows for one or more category A to D gaming machines to be made available for use. It follows that unless a betting premises operator offers facilities for non-remote betting it should not be making gaming machines available for use on the premises in question.

19.22 In the Commission's view it is important, in relation to the licensing objective of protecting vulnerable persons from being harmed or exploited by gambling, that gaming machines are only made available in combination with the named non-remote activity of the operating licence. In addition, to ensure gambling remains fair and open the appearance and function of a betting premises should be that of a premises licensed for that activity. Customers should be made fully aware they are entering a betting premises so that they can make a deliberate choice whether to enter a gambling environment. Furthermore, the function of the premises should ensure the sum of gambling activity is not ancillary to any other non-gambling purpose.

19.23 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.

19.24 Should a licensing authority receive an application to vary a premises licence for betting in order to extend the opening hours, the authority should satisfy itself that the reason for the application is in line with the requirements of the operating licence conditions and the codes of practice.

19.25 In the event that a licensing authority receives an application for a new premises or variation to an existing premises which gives cause for concern as to compliance with this aspect of licence conditions and codes of practice it should contact the Commission at the earliest opportunity.

Consultation question

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?

4 How to respond to this consultation

- 4.1** The Commission is committed to full and open consultation and would welcome comments on any aspect of this document. A response template will be available on our website. The Commission would prefer respondents to complete the response template provided and send it by email to: consultation@gamblingcommission.gov.uk
- 4.2** Alternatively, responses can be sent by post to:
Consultation
Gambling Commission
Victoria Square House
Victoria Square
Birmingham
B2 4BP
- deadline extended to 21 March 2016**
- 4.3** The deadline for responses to this consultation is **22 February 2016**. Respondents are of course welcome to comment on any or all of the areas addressed by this consultation.
- 4.4** When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding as an individual, please mention your own interest.
- 4.5** Please note that responses may be made public or published in a summary of responses to the consultation unless you state clearly that you wish your response and/or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
- 4.6** Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000 (FOIA). The Commission's policy on release of information is available on request or by reference to our website at www.gamblingcommission.gov.uk. The Commission will treat information marked confidential accordingly and will only disclose that information to people outside the Commission where it is necessary to do so in order to carry out the Commission's functions or where the Commission is required by law to disclose the information. As a public authority the Commission must comply with the requirements of FOIA and must consider requests for information made under the Act on a case-by-case basis. Therefore when providing information, if you think that certain information may be exempt from disclosure under FOIA, please annotate the response accordingly so that we may take your comments into account.
- 4.7** All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments or agencies, licensing authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to.

Keeping gambling fair and safe for all

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