

Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
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- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by **Monday 22 February, 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Mark Lees, Licensing Manager

Organisation:

Gravesham Borough Council

Email address:

mark.lees@gravesham.gov.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|---|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | ✓ | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

N/A

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.

Agree in full.

‘Primary gambling activity’

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?

Agree. Removing earlier requirements, guidance and advice relating to ‘primary gambling activity’ from the LCCP, GLA and other related materials will help to avoid confusion.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

The use of SR code provisions are welcomed due to the requirement to comply with them.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

The proposed wording for each appears to be sufficiently clear to promote the licensing objectives without being so prescriptive as to be excessively burdensome. There may however be some room for interpretation of what constitutes ‘*substantive* facilities’ and ‘*appropriate* supervision.’

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

It is not considered that the proposed provisions would require any more than what should reasonably be expected of responsible operators anyway. As mentioned in the response to Q4, any variations in the wording of the proposed SR code provisions to make them less ambiguous would be welcomed, but it is acknowledged there would be a risk of being overly prescriptive and that striking a balance is difficult.

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?

This seems wholly appropriate.

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

Because of the mandatory nature of SR codes, there is less room for manoeuvre, compared to Ordinary codes, which should assist in meeting the policy objectives and ensuring the promotion of the objectives.

The use of specific case by case conditions would undoubtedly be even more beneficial in meeting the policy objectives and ensuring compliance at each premises.

Business plans and applications for licences

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?

Yes.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

We are supportive of the proposed guidance.

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?

None.

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Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

John Richards

Organisation:

Free Enterprise Group

Email address:

John@Free-Enterprise.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | x | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
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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.

Disagree. There are many places suitable for Cat. D Amusement with Prizes machines, that may possibly be excluded. There should be equal opportunity for all premises.

‘Primary gambling activity’

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?

Neither way.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We feel they are “way over the top” for most circumstances

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

See above:-

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

Will have a detrimental effect, so are not appropriate

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?

No comment

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

Neither.

Business plans and applications for licences

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?

Disagree as really not relevant to an application.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

The guidance to LA is often quite biased in favour of the Gambling Commission and often does not represent the law as it stands, especially as the Gambling Commission is always saying that it can NOT give guidance as it does not make decisions, only a Court of Law can.!

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?

As long as the category of machines meets the premises, there should be no restrictions other than enshrined in law.

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Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|---------------------------------|
| Name: | Mike Watret |
| Organisation: | Carlton Bingo Ltd |
| Email address: | mwatret@carltonclubs.com |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | X | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
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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.

In general Carlton agree with the Commissions approach here but believe there needs to be more clarity and transparency with regards to how the question is being posed. For example, what is a “low risk exception?” We believe that bingo is “low risk.” Further, we believe that the Commission’s subjective view that FECs are low risk is not necessarily true given the availability of machine games, albeit at low stake and prizes, where children are in the vicinity. Similarly, the reference made to “increasing hardness” regarding machine games/type bundles bingo in with betting shops which is simply not a true representation. Carlton welcome the attempt to clear up some of the current confusion in relation to type of premises and main premises activity

‘Primary gambling activity’

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?

Carlton are in agreement with this proposal

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

Although the Commission are proposing changes to strengthen social responsibility, Carlton believe that this could be accomplished through an ordinary code provision change in place of introduction or change to a social responsibility provision.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

In relation to draft code provision for bingo:

1. Can the Commission clarify what they mean by the word “substantive” – this is subjective and open to dispute. The general premise behind the provision makes sense but needs to be defined more clearly.
2. In bingo, gambling facilities are currently only offered with staff supervision – eg door monitoring / membership checks. Does this provision suggest that all aspects of gambling at all times require supervision? If a club has 3 machines areas and 2 separate bingo playing areas, is there a requirement to supervise with staff at all times. Smaller businesses cannot cope with this level of staff supervision and, in some respects, bingo may be seen as being discriminated against in relation to other types of industry operation where the footprint of buildings is generally a lot smaller.

3. Section 3.6 indicates that CCTV cannot be used to supervise gaming – clubs with external gaming options as part of a smoking area for customers are legally prevented from supervising with staff. Is the Commission suggesting bingo contravenes current government workplace legislation to facilitate this. The phrase “appropriate supervision” needs to be more clearly defined.
4. Carlton are unsure about the meaning or relevance of section 3.14? Is this reinforcing previous sections?

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**

Carlton believe that bingo is a low risk gambling environment and do not think that the Commission is taking a risk based approach here but is reacting (rightly in our view) to recent ‘stretching’ of primary use by other parts of the gaming industry and media/government focus on social issues related to FOBT’s. As a direct example, can the Commission demonstrate any evidence that bingo clubs are not currently supervised appropriately? If not, then the introduction of a code provision here is not necessary.

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?

Some clarity is required with regards to this as Carlton are not too sure what is meant by this question?

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

Again – not too sure about the meaning within Q6 (1) – our preference for managing any future change in this area would be through an ordinary code provision

Business plans and applications for licences

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?

No issues here

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

In general, Carlton believes that local licensing authorities are best placed (local knowledge wise) to make decisions with Commission guidance if required. The industry needs to ensure it avoids any geographically subjective interpretation of legislation and imposition of operating license conditions. Pre 2005 legislation had widely different approaches from local licensing authorities which led to “unfair” differences between clubs – Birmingham and Glasgow would be two good examples, the latter specifically in relation to gaming machines.

In our recent experience (application for personal licenses, direction on formation of local risk assessments etc), there is a varying approach by different councils who all operate in different ways. This simply leads to big inconsistencies.

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?

No comment

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Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

VICTOR HEAL

Organisation:

CHURCHILL LEISURE LTD.

Email address:

victorheal@hotmail.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|-------------------------------------|--------------------------------|--------------------------|
| Licensed operator | <input checked="" type="checkbox"/> | Professional services provider | <input type="checkbox"/> |
| Trade association | <input type="checkbox"/> | Campaigning or political group | <input type="checkbox"/> |
| National government body | <input type="checkbox"/> | Charity or support group | <input type="checkbox"/> |
| Local government body | <input type="checkbox"/> | Academic institution | <input type="checkbox"/> |
| Other (please specify) | | | |

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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.

GENERALLY AGREE BUT CONCERNED THAT CAT. B2 MACHINES ARE NO LONGER ANCILLARY BUT PRIMARY IN THE CASE OF BINGO HALLS AND BETTING SHOPS.

'Primary gambling activity'

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?

DISAGREE - ADVICE APPEARS TO BE PROPOSED FOR REMOVAL AS IT IS GENERALLY IGNORED BY NATIONAL OPERATORS.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

THE AIM APPEARS TO BE SELF ENFORCEMENT BY OPERATORS INDEPENDENTS WILL COMPLY BUT NATIONAL OPERATORS ARE UNLIKELY TO HAVE THE SAME HIGH STANDARDS IN RELATION TO RESPONSIBLE GAMBLING.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

DRAFT SHOULD ACKNOWLEDGE THAT LOCAL/INDEPENDENT OPERATORS KNOW THEIR CLIENTS AND ARE MORE LIKELY TO ENCOURAGE RESPONSIBLE GAMBLING AND SELF EXCLUSION WHERE APPROPRIATE.

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

IMPACT WILL NOT BE SIGNIFICANT,
EASE OF ACCESS TO CAT-B2 MACHINES IN OTHER THAN
AGC'S NEEDS TO BE ADDRESSED.

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?

THE COMMISSION NEEDS TO ENSURE THAT MACHINES ARE
A SECONDARY/ANCILLARY SOURCE OF INCOME, CURRENT
SITUATION ENCOURAGES A "BACK DOOR" APPROACH.

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

SPECIFIC CONDITIONS.
THESE ARE NEEDED IN PREMISES SITED AT MOTORWAY
SERVICES.

Business plans and applications for licences

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?

YES.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

DECISIONS SHOULD BE BASED ON NATIONAL LEGISLATION AND
GUIDANCE - SUBJECT TO LOCAL PLANNING REQUIREMENTS.

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?

KNOWLEDGE OF LOCAL AREAS.
LIMIT ON NUMBER OF MACHINES IN ONE SHOPPING AREA
ESPECIALLY WHERE THERE ARE MORE THAN ONE BETTING SHOP.

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Nicholas.fraser@edinburgh.gov.uk

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|--------------------------|----------|--------------------------------|--|
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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.

The Edinburgh Licensing Board agrees with the terms of the policy objectives as set out above. The Board remains mindful of the requirement to aim to permit the use of premises for gambling, but having regard to the terms of the licensing objectives, policy, guidance and the Codes of Practice.

‘Primary gambling activity’

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?

The Board notes the Commission’s intention, and agrees that it is preferable to aim for a clear, understandable and consistent approach in the guidance materials provided. The provision of clear guidance and advice on “primary gambling activity” is welcomed.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

The Board notes the proposal to use the social responsibility code provisions relating to betting, bingo and casino premises in addition to existing provisions. With regard to the terms of existing mandatory conditions regarding supervision of activity in licensed premises, the Board has, to date, had no particular adverse issues brought to its attention in connection with these types of premises within the Board’s area.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

The Board agrees that the terms of the proposed provisions appear reasonable.

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**

As referred to in the answer to Q3 above, the Board has not been made aware of particular issues affecting the operation of these types of licensed premises within its area. Within the current context of the licensing objectives, existing codes, guidance and conditions of licences, etc, premises licence holders should be well aware of the obligations imposed upon them.

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?

The Board has no specific views on this matter at this time.

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

The Board has no specific views to offer on this matter at this time, beyond what is set out above.

Business plans and applications for licences

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?

The Board recognises the issuing of operating licences to be a matter for the Commission, and offers no views in response to this question.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

The Board recognises the need for guidance to be maintained and kept up to date with developing situations, and welcomes clear and consistent guidance in support of its specific area of work in terms of the Gambling Act 2005. The current version of the guidance was published in September 2015, resulting in work being conducted by Boards to finalise their policy statements in light of that edition. The Board offers the view that care should be taken in

the timing of any further significant changes to the guidance, with perhaps more time allowed for existing guidance to “bed in”.

The Board notes the suggestion in the guidance that the Board should contact the Gambling Commission at the earliest opportunity in the event that applications relating to Casino, Bingo or Betting premises licences give “cause for concern as to compliance”, offering the comment that applications require to be notified to the Gambling Commission in any event as a Responsible Authority.

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?

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Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
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- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by ~~Monday 22 February, 2016~~ **deadline extended to 21 March 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|--|
| Name: | Rulan Chatrath |
| Organisation: | Association of Directors of Public Health |
| Email address: | rulan.chatrath@adph.org.uk |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|--|--------------------------------|----------|
| Licensed operator | | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | X |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

AGREE in part. All non remote gambling activity should be restricted to licensed premises to protect the public from the rise in gambling addiction. People in lower income strata are more likely to come across gambling machines in non-licensed premises. These are not low risk for developing financial problems.

‘Primary gambling activity’

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?

Yes it makes the system clearer

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We agree social responsibility code provisions are important but these should be tougher. The requirement especially that gambling machines may only be available when significant non-remote facilities are also available is welcomed

We also agree that it is helpful for licensing authorities to be able to consider these provisions (paras 3.10 and 3.11)

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

Explicit reference to measures to prevent children gambling should be made and we believe the holder of the licence should be required to police this effectively and properly in order to make social responsibility work

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**

While these measures will have some impact, we feel the supervision needs to be tighter and the social responsibility code needs to go further to protect children

The social responsibility clause, and breach of it, should be capable of being interpreted clearly and allow licensing authorities to grant or remove licenses

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?

A code of practice should be developed so that non-remote facilities must be genuinely significant rather than merely incidental to the premises

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

There should be the ability to place specific conditions on premises

Business plans and applications for licences

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?

Yes

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

Guidance should enable them to grant, refuse or rescind licenses based on the operator's business plan, their bona fide view of how they will meet social responsibility and their track record of operating within the spirit of the guidance and code. The authority should be able to penalise previous breaches.

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?

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Controlling where gaming machines may be played

Consultation – November 2015

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Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|--|
| Name: | Simon Thomas |
| Organisation: | Hippodrome Casino |
| Email address: | Simon.thomas@hippodromecasino.com |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|-------------------------------------|--------------------------------|--------------------------|
| Licensed operator | <input checked="" type="checkbox"/> | Professional services provider | <input type="checkbox"/> |
| Trade association | <input type="checkbox"/> | Campaigning or political group | <input type="checkbox"/> |
| National government body | <input type="checkbox"/> | Charity or support group | <input type="checkbox"/> |
| Local government body | <input type="checkbox"/> | Academic institution | <input type="checkbox"/> |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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- **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.

I agree with the principles. I agree with the distinctions of different types of premises, the graduated regulatory framework and need for appropriate supervision, and gaming machines only being made available in combination with the named non remote activity.

However I am at a loss as to why the consultation refers to 'Bingo, adult gaming centre and betting premises in turn offer gambling activity of increasing hardness subject to increasing levels of regulation'. All are ambient high street gambling premises with similar regulation and supervision and so should offer, on the Commissions guidelines, similar levels of gambling hardness. If anything, the contrived nature of the betting shops with their very low levels of supervision, especially at the early and later parts of the day when there is no real betting activity, which has led to single manning and staff not allowed to interact with customers for their own safety. On this basis they should have softer gambling machines than more highly supervised premises like Bingo halls and AGCs, and materially softer than in a real casino, not harder.

2.10 also says that casinos have gaming machines with the 'highest stake and prize limits' this is correct on prize limits, but incorrect on stake limits. Casinos and Betting shops can both have B2 machines and so the highest staking limits, though in practice there are less than 200 B2 machines in Casinos and over 34,000 B2s in betting shops, so in practice betting shops have the highest staking gaming machines. This again is inconsistent with the guidelines expressed in the consultations with increasing hardness being associated with increased supervision as Casinos have materially better supervision than betting shops.

2.16/17/18 also refer to the graduated framework, protection of the young and vulnerable and required supervision. Again the B2 machines in betting shops are without the graduated framework, are undersupervised and causing harm to the young and vulnerable and it would be welcome as well as using this consultation to 'stop another FOBT situation' (Matthew Hill on the Green King application) to address the one that is existing.

'Primary gambling activity'

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?

Yes, provided there is intent to learn from previous mistakes and address clear current issues with contrived gambling activity, in particular contrived betting to justify offering casino plus gaming machines in numbers and over long hours on the high street in betting shops. The current guidance was abused by the bookies. I trust the revised guidance will be an improvement on it.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

The principle is fine, but a betting shop gives the impression it is a betting shop and not a high street casino duping customers into a false sense of security. If a betting shop is to have casino level gambling, or even harder gambling than in a casino with roulette games 4 times faster, then it should say so on the outside so no one is misled. Equally it should have casino level control,

supervision and taxation.

Equally when contrived/unrealistic betting activity is present, then gaming machines should be stopped. E.g. the fact it is possible to bet on an event of no interest and no one betting on it, is hardly justification to having casino plus gaming machines in large numbers available for easy access on the high street at long hours with low supervision.

3.6 refers to Bingo and the need to interact with customers when their behaviour may indicate possible problem gaming. Given in the text above the Commission seems to rate Bingo below betting in gaming hardness, if this is appropriate for bingo, then it should be more than appropriate for betting. However it is not mentioned and yet single manning, rules that staff cannot leave their cage, inadequate staff numbers or training etc, combined with the materially harder casino plus gaming in betting shops on B2 machines means it is inconsistent, unless they can interact by say text message or email and if so can the Commission confirm that is appropriate for all sectors?

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

No problem with the principle, provided the intent is to deliver on the graduated framework detailed in the text. It is interesting to note that there are no regulatory concerns about the 'electric casinos' and yet they are going to suffer in the collateral damage caused by not dealing with B2 machines day one or anytime after, and the resultant impact on the gaming sector.

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**

I think they will fail to deliver on the Commission's objectives. Betting shops will continue to pretend to be betting shops when offering casino plus gaming, with inadequate supervision and the young and vulnerable will continue to be exploited

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?

Generally this is fine, but betting shops are an outrageous anomaly with soft betting and hard casino plus gambling machines. I feel the provisions should be tightened up else they will continue to be abused by betting shops. Ultimately the only solution is to reduce the stake on the B2s to something commensurate with a betting shop environment, like the £1 stake jackpot machines envisaged under Budd, that are now £2 stake B3 machines.

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

Consistency is key, so better by code, with specific conditions being reserved for extreme

situations.

Business plans and applications for licences

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?

Yes. In particular on the real use of a betting shop. It is inconceivable new applications are there to provide yet more betting on the high street. They are there to provide more casino plus gambling. Equally the commission should be able to review a license if the business plan was seen to be a sham in hindsight

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

The guidance does not reflect the reality of betting shops. They offer casino plus gambling. If this continues to be condoned, then clarity should be given, betting shops should be called casinos and should be regulated and controlled as such with materially higher levels of supervision, regulation and taxation. Otherwise B2 machines should be cut back to something appropriate for the high street.

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?

They should be encouraged to reduce hours of betting shops to the real betting hours, not just to operate as casinos, and to reduce numbers of betting shops to an appropriate number for betting, not betting plus Casino plus gambling.

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Controlling where gaming machines may be played

Consultation – November 2015

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Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|-----------------------------------|
| Name: | Robert Capener |
| Organisation: | Talarius Ltd |
| Email address: | rob.capener@tattagroup.com |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|-------------------------------------|--------------------------------|--------------------------|
| Licensed operator | <input checked="" type="checkbox"/> | Professional services provider | <input type="checkbox"/> |
| Trade association | <input type="checkbox"/> | Campaigning or political group | <input type="checkbox"/> |
| National government body | <input type="checkbox"/> | Charity or support group | <input type="checkbox"/> |
| Local government body | <input type="checkbox"/> | Academic institution | <input type="checkbox"/> |
| Other (please specify) | AGC Operator | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

First Point – Yes agree

Second Point – Agree in part, there must be a level playing field for sectors to be able to fairly compete on the high street, for instance LBO's are allowed a B2 machine with higher stake and prize, AGC's are not however the age control processes that both sectors work within are the same, however to further clarify our stance we are not saying we wish to have a B2 machine in its current format of stake and prize, however if reduced to a more reasonable level as our primary gambling activity is machines if the level in stake were inline within reasonable levels we would want the option to operate.

Third Point – Totally agree all operators must have robust processes for managing the gaming activities within their licence areas and through effective Induction and training of all venue colleagues, this can also be aided by technology.

Fourth Point – Clearly as a pure AGC operator we would welcome this approach as an AGC operator as primary purpose should always be available as the primary activity as dictated by the premises licence, however in practical terms how would this be implemented.

'Primary gambling activity'

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?

It would appear sensible to remove all previous versions of guidance and update to a new current live version, however as part of this consultation document the GC have not articulated how this will be written into the updated LCCP?.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

As a pure AGC operator we would have limited views on this approach, However the bigger concern would be the fact the Commission are making these changes under the SR codes, rather than through the Ordinary codes, Does this leave the door wide open for further unregulated changes.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

As per Q3 this redrafting would not currently affect our business model, however stringent consultations with all stakeholders should take place.

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**

First Point – Keeping gambling with dedicated premises helps protect the vulnerable.

Second Point – Help direct the customer to their preferred entertainment venue.

Third Point – Refer to point 1.

Fourth Point – Refer to question 1, point 4.

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?

Unsure how the GC would manage the process of gaming machines being made available only when the key gambling activity as dictated by the premises licence is being adhered to, the primary activity must be made available above secondary activity.

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

Making these changes under Ordinary code provision would appear the appropriate route to take.

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?

It would appear to be a sensible approach for the GC to review business plans and business models to ensure the primary gambling activity is at the heart of the daily operation of the operators, however it's the Local Authorities responsibility to issue the actual premises licences from where the gambling operation will take place. The GC should give clear guidance to the LA's.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

Understand the meaning of the rewording, the guidance issued by the GC to LA's should be clear and concise and not open to misinterpretation as previous experience has shown.

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?

N/A

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Consultation – November 2015

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Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|-------------------------------------|
| Name: | Alison Poulson |
| Organisation: | Medway Council |
| Email address: | alison.poulson@medway.gov.uk |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | X | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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.

Agree in principal

'Primary gambling activity'

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?

Agree – as long as new guidance and advice clarifies the primary gambling activity criteria and clearly outlines what local authorities and the trade needs to consider and take into account in making a determination. The provision of reference materials to previous advice and clarification by the Courts and Commission would be welcome.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We are unsure if the social responsibility code provisions go far enough to deliver the policy objectives. We understand that one size does not fit all but would welcome more definitive definitions particular for each type of gambling premises.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

We would recommend that the code explains

(a) what are the low risk exceptions in connection with non-remote gambling - can this be explained

(b) agree that distinctions are clear on the entitlements for each type of gambling premises and that they will be maintained

(c) we would like to see further clarification on what is appropriate supervision and for this to be outlined in more detail for the risks related to the type of gambling premises

(d) we would prefer this was byway of condition rather than the social responsibility code.

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

We believe the interpretation by certain gambling premises, for example, Betting Shops will be the assumption that one member of staff and CCTV is appropriate and adequate supervision. Therefore this may not deliver the underlying policy objectives.

We raise the concerns that staff should be separated between primary activity and ancillary gambling i.e. gaming machines entitlements. Normal practice is that there is generally only one member of staff taking bets at the counter and they are not in a position to sufficiently supervise gaming machines. We would recommend that supervision be expanded from 'appropriate' to include if gaming machines entitlements are being used further staff member(s) will solely be responsible for the supervision of gaming machines along with any other measures to prevent crime and disorder i.e. CCTV.

We also raise the concerns that supervision should include static, random checks at each machine and direct interaction with customers (rather than staff behind counters and CCTV monitors which we feel don't generally give a full view to enable adequate supervision).

We have concerns that B2 gaming machines are currently being used without any supervision. We have witnessed people queuing for machines and it is clear from listening to staff at such shops that customers are becoming more aggressive and damaging machines. These incidents generally appear to go unreported, staff training is an important factor which may also be expanded within the social responsibilities. We would also recommend that on certain premises due to the number of machines and size of premises they may require security staff supervision.

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?

We think that this is a good idea in considering whether gaming machines are being provided. However, should this not be a condition on the Premises Licence that gaming machines are only to be available with the named non-remote activity authorised by the operating licence.

Licensing Authorities are not always aware of premises with a remote or non-remote activity operator licence. The applications only require the operator licence number to be displayed on the licence not the type of operator licence. If the premises are not allowed gaming machines should it not be made clear for local authorities by having a condition to enforce on the licence.

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

As these are on a case by case basis we think this would be better controlled by specific conditions rather than a social responsibility code provision.

Business plans and applications for licences

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?

Agree in principal

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

No, the proposed changes appear to be adequately reflected in the proposed changes to the guidance.

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?

More information on appropriate supervision relating to the availability of gaming machines in certain types of premises would be helpful.

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Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
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- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by ~~Monday 22 February, 2016~~ **deadline extended to 21 March 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|------------------------------------|
| Name: | Robert Good |
| Organisation: | Robert Good Consultancy |
| Email address: | robertgood@blueyonder.co.uk |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|--|--------------------------------|----------|
| Licensed operator | | Professional services provider | x |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

I do not take issue with the first three policy objectives.

With the final point, whilst I fully understand the Commission is seeking to avoid 'slot sheds' or premises that do not otherwise provide the core licensed activity, I take issue with any perception that the 'non-remote activity' must include live versions of the relevant gaming in order for it to meet the objective. These proposals would essentially outlaw existing casinos, primarily in the provinces, whose level of business does not justify live gaming, often in the morning and afternoon periods. In many cases a legitimate business has been built up, in accordance with the current rules, allowing electronic versions of table games, touchbet roulette (TBRs), to be used in combination with gaming machines. It could be argued that TBRs do actually constitute 'live' gaming as they are specifically allowed for within the legislation and are simply electronic versions of table games. Proper supervision is provided within the casino environment and to remove this facility would have a serious effect on viability of the premises concerned. 'Live' gaming is provided at other times of the day and evening/night.

Other operators have developed 'electronic casinos' that have operated without regulatory concern and fully within the existing LCCP conditions relating to primary purpose since 2009.

I accept the Commission's fourth policy objective is seeking to avoid specific types of licence being obtained solely to provide the category and number of machines that come with it (but with no real intention of offering the primary purpose). However, it would be of concern if the Commission applied an overzealous interpretation of the words "in combination" if that were to restrict perfectly legitimate businesses (new or existing) from offering non-remote gaming in entirely electronic form for part or all of their opening hours.

In summary, therefore, I support the four objectives only on the proviso that they do not impede on current or future development of legitimate, part or full-time electronic venues and that the Commission steps back from its mistaken belief that machine allocation is dependent on the presence of 'live' gaming in casinos.

‘Primary gambling activity’

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?

No, I do not agree if, by taking this approach, the Commission now proposes to 'move the goalposts' in relation to legitimate gambling facilities built to comply with the current LCCP requirements.

It cannot be ignored that the Commission conducted two full, public consultations in 2008/9 that led to the current LCCP condition being imposed. These require more electronic terminals than machines in premises that are partly or fully automated. The casino industry has invested

heavily in the necessary technology to achieve compliance and it would be wrong to change these requirements.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

I believe the Commission needs to be very careful in this area and not add or amend social responsibility code provisions unless there is clear evidence of harm, or potential harm, that needs to be addressed. The Commission should not use this powerful tool based only on speculation and supposition and, in doing so, otherwise risk by-passing the legislative process.

It is clear that the motivation behind the current consultation is to address the various legal cases in which the Commission has recently been involved. Notably, a case relating to a leading pub chain seeking to obtain a bingo operating licence (and thus the ability to offer Category B3 machines adjacent to their pubs). In seeking to restrict such concepts, the Commission now wishes to impose new controls that will impact on existing businesses across a variety of sectors. No additional evidence of harm has been reported or demonstrated in these businesses, so it is questionable whether the Commission should be using social responsibility code provisions to achieve its ends.

The Commission has since won their appeal so, to an extent, the bingo/pub problem has gone away. The Commission may therefore wish to consider whether additional code provisions can be justified. In either event, the Commission should now carefully consider the impact that its proposals will have on existing, legitimate businesses rather than base the proposals entirely on the theoretical risks it was otherwise seeking to curtail elsewhere.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

Colleagues who attended the industry workshop held to discuss this consultation noted that all sectors consider the wording to be ambiguous. Notably, use of the term '*substantive facilities*' to determine whether or not a premises is meeting its primary purpose. This term is likely to cause confusion and be open to different interpretations across different local licensing authorities.

We can understand that the Commission want premises where the emphasis is on the core gaming facilities relating to the licence, rather than machines. They also want the external appearance of such premises to make that purpose very clear and have adequate supervision within them. Non-remote casinos are entitled to install gaming machines alongside 'casino gaming', whether that be in electronic form or live, and all currently comply with this requirement. In effect there are now a range of casino facilities across the country providing excellent choice for the customer.

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**

As mentioned in Q1, the impact of the proposals on the casino industry (notably part-time and full-time electronic casinos) would be dramatic if the proposals in sections 3.8 and 3.9 were enforced.

As detailed in Q1, I have concerns that part and fully automated casino premises might be unjustly restricted from developing new technologies if interpretation were to suggest that live gaming must always be required in some form.

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?

I do not object to the notion that a casino should provide casino games, bingo clubs should provide bingo games etc. However, it should be noted that such premises (when legitimately operating for the purposes for which they are licensed) are not just about the games.

A casino, for example, usually includes a bar, restaurant, live entertainment, lounges, private hire rooms etc. all of which combine to make a modern premises built around gaming. That gaming comes in both table and electronic form, with a proportionately small number of gaming machines (20) permitted.

I accept that it is not an easy task to create conditions that will prevent sham premises whilst not also restricting legitimate existing premises or stifling future innovation. I agree that the external design of a premises should make it clear what the core licenced purpose is (e.g. a bingo club, casino, betting shop etc.) so people know what they are entering. Having entered, there then seems to be little justification for specifying the exact nature or breakdown of facilities within it, whether live or electronic. Choice is important to the public. Proper supervision is always provided in casinos in accordance with LCCP.

The Commission should not, therefore, set criteria that clings to the traditional notion of how a premises should look and risking new, innovative ideas possibly being restricted as a result. The Commission must identify real risk when reviewing a format if they wish to restrict it, but otherwise allow premises to operate with the facilities permitted by the Gambling Act and the premises licence (which includes machines).

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

It would certainly seem more appropriate to handle this on a case by case basis. There is a case to say that this would largely come down to the local authority doing so for individual premises rather than via an operating licence. However, it would certainly allow the Commission to address its individual concerns about specific formats without other businesses becoming unnecessarily caught in the crossfire.

Business plans and applications for licences

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?

It would be more appropriate to deal with any concerns that the Commission may have about an individual operation specifically and not seek to address them with generic conditions. Assessing the business plan would be a logical approach when assessing a new Operating Licence application.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

No comment.

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?

No comment.

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Controlling where gaming machines may be played

Consultation – November 2015

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Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Richard Wade

Organisation:

The Rank Group Plc

Email address:

richard.wade@rank.com

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | X | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

We fully support the first three policy objectives.

In relation to the fourth objective, whilst we fully understand that the Commission is seeking to avoid premises which offer gaming machines but do not otherwise provide the core licensed activity, we do not agree with the Commission's assertion that the "non-remote activity" must include live versions (as opposed to automated versions) of the relevant gaming in order for it to meet the objective.

As you are aware, we have held useful discussions with the Commission to voice our concerns, notably with regard to the proposals detailed in sections 3.7 to 3.9 of the Consultation. These proposals would essentially render unlawful certain existing electronic casinos that have operated fully in compliance with the Act and the existing LCCP conditions for a number of years without giving rise to any apparent regulatory concerns.

As you are also aware, we, together with Genting Casinos, have provided the Commission with a legal opinion from Stephen Walsh QC which challenge the legal interpretation offered by the Commission in this regard.

We believe the legal opinion demonstrates that a casino is entitled to a gaming machine allowance without being required to provide live (as opposed to automated) gaming. We will not repeat the legal arguments here save to say that section 7(4)(b) of the Act specifically allows for all of the non-remote facilities in a casino to be provided in a fully automated form.

Whilst understanding the Commission's concern, the proposed objective should not restrict legitimate gaming businesses from offering non-remote gaming in entirely electronic form.

The Gambling Act was designed to be future proof, and regardless of whether an electronic gaming format is applied in a casino, bingo club or betting office, there is no reason why it should be treated any differently to the equivalent live formats, giving the rapid development of technology in this area.

We would however fully support the fourth objective with removal of the words 'non-remote' such that this objective does not then impede the current or future development of legitimate electronic venues.

'Primary gambling activity'

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?

We disagree with the removal of these requirements, guidance and advice, as we believe the current regulatory frame work has achieved the desired aim of meeting the licensing objectives.

We would not wish to see ignored the fact that the Commission conducted two full public consultations in 2008 and 2009 that led to the current LCCP conditions being drafted. In fully automated premise these require more electronic terminals to be available than machines. In reliance on these conditions, the casino industry has made significant investment in approximately fifteen 'electronic' (fully automated) casino premises. These now represent approximately 10% of the total number of casinos.

In many instances an electronic casino has been developed where market conditions would not support a traditional offering and in the face of the potential for an otherwise dormant licence to be reviewed for non-use, potentially leading to its permanent loss (as no new converted casino licences can be granted).

Notwithstanding that an electronic casino may exclusively offer fully automated gaming, we have not received any indication that any customer has been unaware of or misled as to the type of gambling premises they are choosing to enter. It should be noted in this regard that the electronic product provided is of an identical kind to that found in traditional casinos where "live" gaming is also provided.

We do not believe therefore that any risk to the licensing objectives has been demonstrated in relation to a fully automated casino as compared to a traditional casino and that the current regulatory requirements therefore remain proportionate to the risks posed.

If risk is perceived in relation to other types of premises, we suggest the Commission could seek to refine the existing requirements rather than replace them altogether.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We fully support the current social responsibility code provisions in upholding the licensing objectives.

We believe the Commission should be cautious not to alter these unless there is clear evidence of harm, or potential harm, as otherwise this could conflict with the Commission's aim to permit compliant gambling.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

Yes. The stated aim was to provide operators with sufficient certainty as to how the regulatory framework would be applied. We submit that it was clear from the industry workshop held to discuss this Consultation that all sectors consider the proposed wording to be ambiguous. In particular use of the term "*substantive facilities*" is likely to cause confusion and be open to varying interpretations across different local licensing authorities. The Commission refers to the

“ordinary English meaning” of the term, but dictionary definitions ranges from “*actual or real existence; not imaginary or illusory*” to “*a considerable amount or quantity*”.

We fully understand and support that the Commission wants premises where the core gaming facilities are legitimate rather than sham, that the external appearance of such premises make their purpose very clear and that they have adequate supervision within them. We believe, however, that the proposed drafting is vague and open to an interpretation by local authorities that is quite different to the Commission’s aims and which may adversely impact on perfectly legitimate premises or new gambling concepts. For example, it could suggest to some local authorities that, regardless of how many machines are present, there must also be a very large (even disproportionate) amount of non-remote gambling facilities available, far more than the “at least one more terminal than machines” approach currently required by the LCCP.

For example, the wording of the proposed bingo and casino LCCP conditions gives the impression that machines can only be provided at times when non-remote facilities are also provided. The Commission has since indicated that this is not their intention, and that it is permissible, for example, for a bingo club to operate its machines at times when main stage bingo is not also being offered (e.g. in the morning). This clarification is useful, but shows that the drafting is important to avoid any risk of misinterpretation by local authorities.

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**

As detailed in our reply to Q2, the impact of the proposals on the casino industry (notably electronic casinos) would be not inconsiderable if the proposals in sections 3.8 and 3.9 were enforced.

Additionally, as detailed in our reply to Q1, we do have concerns that fully automated premises (be that casinos or bingo clubs) might be unjustly restricted from developing new technologies if interpretation were to suggest that live gaming must always be required in some form.

In response to the legal opinion submitted, we sincerely hope that the Commission will withdraw its wider contention (in 3.8) that such premises must offer live gaming in order to operate any machines at all.

Further, as detailed in our reply to Q4, we see the potential for widely varying interpretation of the provisions by local licensing authorities, leading to uncertainty in investment decisions by operators which would impinge on the Commission’s aim of permitting compliant gambling.

We consider it vital that the Commission’s advice to local authorities is very clear and precise in explaining what principles should be applied.

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?

We accept that it is not an easy task to create conditions that will prevent sham premises whilst not also restricting legitimate existing premises or stifling future innovation. We agree that the external design of a premises should make it clear what the core licenced purpose is (e.g. a bingo club, casino, betting shop etc) so people know what they are entering. But having done so, there then seems to be little justification for specifying the exact nature or breakdown of facilities within it, whether live or electronic.

For example, the Commission has suggest that people might expect to see a roulette wheel in a casino so this would help demonstrate that it is such a premises. Similarly, main stage bingo might, to some people's eyes, indicate that a premises is a bingo club.

However, it would be inappropriate to rely on "old technology" as a means to define how a 21st century casino or bingo club should look or feel. Electronic bingo in particular is gathering speed and popularity and it cannot be assumed that, in a few short years, "live" games (i.e. with human involvement in calling numbers or using paper books to play) will not become secondary to electronic formats. In our interval "Cashline" games, for example, the numbers have long been called electronically. Main stage bingo involves numbers generated by an RNG, and electronic tablets increasingly allow customers to play without a paper bingo card. It is fair to say that a fully automated bingo club would not look or feel like a traditional proposition, but would be no less a bingo club as a result.

We would suggest that the Commission should avoid setting criteria that clings to the traditional notion of how a premises should look and risking the restriction of new, innovative ideas as a result. The Commission must identify real risk when reviewing a format if they wish to restrict it, but otherwise allow premises to operate with the facilities permitted by the Gambling Act and the premises licence (which includes machines).

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

It would seem more appropriate to handle this on a case by case basis via specific conditions with clear guidance given to local licensing authorities.

Business plans and applications for licences

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?

As per the reply to Q6, it would be more appropriate to deal with any concerns that the Commission may have about an individual operation specifically and not seek to address them with generic conditions. Assessing the business plan would be a logical approach when assessing a new Operating Licence application.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

The proposed advice refers to S172 (3-5) of the Gambling Act defining an additional authority for casinos to offer machines, claiming that it is therefore “*not a free standing right*”. As per the legal opinion submitted, we suggest that this is not the correct interpretation of the Act where converted casino licences are concerned, so the advice given to local licensing authorities should reflect this.

However, it should be stressed that we do not propose to offer casinos with no gaming facilities other than machines (even though converted casinos could, in theory, do so within the Act). We are simply contesting that fully automated terminals ARE non-remote gambling facilities. Again, the advice to local authorities should clearly reflect this position as set out in legal opinion provided.

A similar argument applies in 18.24 for bingo premises, where fully automated bingo products are provided. They too are non-remote gambling facilities and the advice should reflect that.

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?

As per the previous replies, only to make sure that the drafting is not ambiguous.

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Controlling where gaming machines may be played

Consultation – November 2015

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Fiona Falle

Organisation:

Moto Hospitality Ltd

Email address:

Fiona.falle@moto-way.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|---|--------------------------------|--|
| Licensed operator | * | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

As a general point with regard to Moto's submission of a response to this consultation, the implication of 1.2 of the Introduction to the Consultation is that this is not of particular interest to operators of gaming machines in AGCs and only operators of gaming machines in betting, bingo and casino premises are referred to. However, paragraph 2.10 specifically refers to AGCs and the need for increased regulation for these types of premises, and 2.11 states that "the consultation is concerned solely with the effective maintenance of the framework governing the control of where gaming machines may be played..." This statement in itself appears to broaden the scope of the consultation beyond its title "Controlling where gaming machines may be played". Therefore despite the fact that Moto's machines are contained within designated AGCs and this consultation appears not to be directly relevant to the Moto's business, we have responded where we feel concerned that the introduction of new code may in fact have some impact on our business, or may set a precedent for future introduction of new code along the same lines.

Policy Objectives: As Moto's gaming machines are contained only in dedicated AGCs, we do not consider there to be any issues concerning whether or not they are dedicated gambling premises or distinguished from other types of gambling premises. In addition Moto does not have casino, bingo or betting premises so the last objective is not relevant to us. The only objective on which Moto might have a view is "Gambling activities are supervised appropriately". We agree with this objective but would be concerned if it were to be used to change the current position on the understanding of what constitutes appropriate supervision.

'Primary gambling activity'

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?

Although not directly relevant to Moto's business, we do not disagree with its removal.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

As the new social responsibility code provisions apply only to betting, bingo and casino premises they do not apply to the AGC premises operated by Moto. We are however concerned about the Commission's emerging view on the definition of "appropriate supervision" and that this cannot be achieved solely through the use of CCTV. What is not clear is if this view is limited to bingo, betting and casino premises or all premises where machines are available. Is this point solely related to the assurance that non-remote bingo and betting is available and hence the requirement for staffing?

We would be concerned if this type of provision were to be interpreted by Local Authorities to mean that dedicated staff are required to man a premises. Moto has found that the combination of its CCTV system and non-dedicated staff is very effective.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

Although not directly relevant to Moto, we would be concerned about the inclusion of the words “by staff” after “supervision of those facilities”, if this were to be wording that might be adopted in further new social responsibility code provisions which do apply to AGC operators. As per Q3 above we think the inclusion of the wording “by staff at all times” is to ensure that non-remote bingo and betting is available but this could be misinterpreted by Local Authorities.

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**

We would be concerned that the wording could be interpreted by some Licensing officers as requiring more stringent supervision than perhaps is intended or necessary.

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?

No comment – not relevant to Moto

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

No comment – not relevant to Moto

Business plans and applications for licences

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?

We believe that the current process is sufficient and adding specific licence conditions should not be necessary. The licensing authorities can discuss specific issues while reviewing

business plans together with the new risk assessment process which is now in place, and to add licence conditions introduces just more regulation without evidence of any benefit. If there were any specific concerns, the Commission and licensing authorities are able in any case to attach conditions after a review.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

No comment – not relevant to Moto's business.

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?

In our opinion the current system works well and we would have no further guidance to add which we think would be appropriate.

- 1.6** Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
- 1.7** 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.
- 1.8** All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments or agencies, local authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to do so.

Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
- 1.2** The templates leaves space for responses to all the questions asked in the consultation. However, we understand that respondents to the consultation may wish to answer only those questions which are relevant for their business, organisation or interests.
- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by **Monday 21st March, 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Byron Evans

Organisation:

Praesepe plc

Email address:

ByronEvans@praesepeplc.com

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|-------------------------------------|--------------------------------|--------------------------|
| Licensed operator | <input checked="" type="checkbox"/> | Professional services provider | <input type="checkbox"/> |
| Trade association | <input type="checkbox"/> | Campaigning or political group | <input type="checkbox"/> |
| National government body | <input type="checkbox"/> | Charity or support group | <input type="checkbox"/> |
| Local government body | <input type="checkbox"/> | Academic institution | <input type="checkbox"/> |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

| |
|--|
| |
|--|

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.

In the opening section of the consultation document, under the headings: “*The provision of gaming machines*”; and “*Policy objectives*”, the Commission, so we are advised, misconstrues **the Gambling Act 2005** (“the Act”) and relies on bogus logic in order to justify action it wishes to take as then set out in the consultation. It also distorts the judicial findings of NJ Warren in **Luxury Leisure Ltd v The Gambling Commission (GA/2013/0001)** (“the Luxury Leisure case”) in its endeavour to change the law rather than to regulate within it.

Specifically, per paragraph 2.10 etc. of the consultation document, the Commission makes much of the suggested “*graduated regulatory framework*”. For instance, it asserts: “*Bingo, adult gaming centres and betting premises in turn offer gambling activity of increasing hardness.*”

This oversimplifies and distorts the picture not least because, Parliament having decided not to adopt the principle of “one-stop gaming” sponsored by Peter Dean, the Act’s classification of gambling premises simply reflected the UK’s historic trading patterns. But it did so in a deliberately permissive way, subject to the principles embodied in the licensing objectives.

Thus, although casinos remain the only premises at which B1 gaming machines and table games can be accessed, they are now essentially as accessible to adults as are AGC’s, Bingo and Betting premises. Constraints on entry are driven by concerns about money laundering rather than “harm to the vulnerable”. Accordingly, the idea that the basic classifications are intended to be either rigid or resistant to new trading formats (as appears to be the Commission’s preferred interpretation) has no basis in the legislation.

Likewise, there is no logic in the Commission’s suggestion of a distinction between, say, Betting and AGC premises based on the “hardness” of the gambling permitted, there. Such a distinction finds no basis in the licensing objectives because both types of venue share similar locational characteristics (being high-street based); they attract both regular and transient custom; and, most importantly, there is no difference in terms of the controls on entry. Plainly, the Act cannot be construed as discriminating between their respective adult customers (e.g. on the basis that a higher proportion of women use AGC’s than they do Betting premises) and it is a matter of record that the legislature considered AGC’s to be just as a suitable for B2 gaming machines as Betting premises. Whatever restrictions are applied to the permitted levels of stakes and prizes for B2 machines, the failure of the Commission to advise the Secretary of State that AGC’s should enjoy parity with Betting premises is shameful.

The point is that while the Act differentiates between different premises by virtue of the type of licence granted in respect of them, it does not gradate them for the reasons or in the restrictive manner suggested by the Commission. The issue is whether particular premises, or their prospective operators, are granted a particular license not whether the particular establishment, or its modus operandi, falls within some fixed idea of “normality” envisaged by the Commission. From the license granted, then flows the applicable machine entitlement.

In the *Luxury Leisure* case, the Commission erred in classifying *Luxury Leisure*'s alleged failure to operate its Betting premises in substantially the same way as those of a mainstream "bookie" as a breach of its operating licence. There, the judge found: "*They [Luxury Leisure] point, in my view fairly, to the difficulty of a small operator matching the facilities offered by the big chains who, in practice, have their own private TV channels supplying information to their shops. The question is have they done enough to meet Condition 16 [of the LCCP]?*"

Hence, someone operating, say, pubs (e.g. *Greene King*) or AGC's (e.g. *Luxury Leisure*) has every right to apply for, say, a bingo or betting operating and premises licence and, if both are granted, to operate the premises in question with the permitted type and number of machines, subject to Condition 16 and the Ordinary Code provisions of the LCCP.

The *Luxury Leisure* case further explains the way those provisions are to be interpreted, viz: that they require the *existence* not the *dominance* of the "primary gambling activity", and the Upper Tribunal's decision in ***Gambling Commission v Greene King 2016 UKUT 0050 (AAC)*** ("the *Greene King* case") does not challenge that element of the decision in the *Luxury Leisure* case.

Whether the requisite operating and premises licenses are granted in a given case will depend on a range of factors. All the *Greene King* case establishes is what might have been regarded as statements of the obvious: (1) there *are* areas where the jurisdiction of licensing authorities may overlap with that of the Commission; and (2) conflict with the licensing objectives (in *Greene King*'s case, the risk that those gambling in *Greene King*'s pubs might be over-affected by drinking alcohol) *may* justify the refusal of an operating license. Of course, whether such a concern would justify such a refusal or the imposition of a condition would be a matter of evidence.

The only defensible gradation of gambling premises in terms of their suitability to provide particular types of machines should be based on the licensing objectives. That approach is at the heart of the *Greene King* case and, in effect, the *Luxury Leisure* decision. As the Court found in ***Gibraltar Betting and Gaming Association Ltd v Secretary of State for Culture Media and Sport [2014] EWHC 3236 (Admin)*** and ***[2015] 1 CMLR 28*** ("the *Gibraltar* case"), while detailed studies and equivalent evidence need not underpin every assessment of risk, the approach must still be essentially evidence-based. If the Commission does not have evidence in the form of detailed studies etc., it must still have some evidential basis for assuming risk and it must act so as to be "*consistent and systematic*". Otherwise, its position would surely be irrational. In any event, as the Commission itself accepts and, indeed, proclaims, its decisions should be firmly evidence-based with constraints being applied only where they are necessary, proportionate and targeted.

It follows that the origin of most of the Commission's stated "policy objectives" is unclear, although the third is uncontroversial and we agree with it. As for the others:

- The objective that "*With very few low risk exceptions, non-remote gambling should be confined to dedicated gambling premises*" has no basis in the Act, per se. It was intended and deliberately drafted to be permissive of gambling. Accordingly, the issues determining whether particular premises (whether or not "dedicated to gambling") should receive a licence or permit under the Act are and should remain constrained by the legislation and orders made under it. There is no need for the Commission to try to add to or "clarify" the law with ever more prescriptive provisions in the LCCP. The *Greene King* case enforces that approach (see above) confirming that the Commission *may* refuse an operating license on the basis that the prospective "*operating model cannot be delivered consistently with the licensing objectives*", provided its approach is "*consistent and systematic*". In that case, Levenson J identified the Commission's concern as the provision of "*high or higher stakes gambling to those whose better judgment might be affected by alcohol*". We support that concern and assume that the Commission's "*consistent and systematic*" approach would necessarily lead, say, to the refusal of an operating license to a holiday-park operator whose business model might envisage bingo (other than prize bingo) or gaming machines (other than the limited availability of machines in liquor licensed premises) in a

concert hall or bar area.

- We do not agree that a “policy objective” to maintain the “*distinctions between different types of licensed gambling premises*” is lawful, per se. Neither the Act, nor the Luxury Leisure case, provides any basis for that approach.
- Likewise, we do not accept the legality of a “policy objective” that “*Within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity of the operating licence*”. As the industry has long argued, the Commission’s espousal of “primary gambling activity” is misconceived and has no foundation in the Act. In essence, the law is the law. If the Commission disagrees with it, its duty is to advise the Secretary of State to change it. It is not for the Commission to rewrite the law or to misconstrue it.

Most importantly, the Commission neither asserts the existence of, less still does it produce any evidence to justify the “policy objectives”, questioned above. No doubt, it is the absence of such evidence that tempts the Commission to inappropriately dress-up its “objectives” as flowing from the Act. That approach appears flawed and needlessly antagonistic.

‘Primary gambling activity’

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?

Yes, but the following points are apposite:

1. Existing Condition 16 includes the following articulation adjusted respectively for Betting, Bingo and Casinos: “*Gaming machines may be made available for use in [Betting, Bingo and Casino premises] only on those days when sufficient facilities for playing [what the Commission would class as the “primary gambling activity] are also available for use*”. Accordingly, the proposed, substantive (though not exact) repetition of that articulation in a Social Responsibility Code provision (breach of which would carry a potential criminal sanction just as would breach of a condition) is, in itself, of no significance;
2. If, as appears to be the case, the Commission’s real objective in removing Condition 16 and Ordinary Code provision 9 is to circumvent the Luxury Leisure case, that would amount to an abuse of its powers;
3. For the reasons explained, the Commission’s “*starting point*”, assuming by that is meant the above-discussed “*policy objectives*”, is inappropriate;
4. Subject to points 1 and 2, above, the position is otherwise adequately dealt with by the Act and statutory orders made under it. Accordingly, no harm will flow from abandoning Condition 16, Ordinary Code provision 9 and the related parts of the Guidance to Licensing Authorities provided the Commission does not try to re-write the law by other means.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

Three points:

- Social responsibility code provisions should not be used other than to encourage “social responsibility”;
- Such provisions amount to restrictions to which the full vigour of the Regulator’s Code applies. No provision should therefore be introduced or maintained unless it is: necessary, taking an evidence-based approach; targeted; and proportionate;
- As all but the third “*policy objectives*” are based on a misreading of the legislation, it would be perverse to use social responsibility code provisions to pursue them unless there is real evidence of the harm the Commission asserts. As the Commission points to no such

evidence, its absence is to be assumed.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

Yes and to assist in doing so it is helpful to set out, as we do at the end of this answer to Q4, the provisions that are to be replaced. From these, it is apparent that the Commission no longer believes it necessary to require that:

- In the case of Bingo: *"In cases where bingo is exclusively offered by means of electronic bingo terminals or bingo machines, there must be more individual player positions made available for bingo than there are gaming machines made available for use"*;
- In the case of Betting: *"Such facilities for betting must include the provision of information that enables the customer to access details of the events on which bets can be made and to be able to place those bets, obtain details of the outcome of the events, calculate the outcome of their bets and be paid or credited with any winnings"; and*
- In the case of casinos: *"When a casino exclusively offers fully automated casino games, there must be more individual player positions made available for these games than there are gaming machines made available for use"*.

The abandonment of those criteria is welcomed, although we note the Commission's view that a casino offering *"exclusively ...fully automated casino games"* cannot, in any event, provide gaming machines. We also note the Commission's intention to abandon additional, automatic criteria imposed through an Ordinary Code provision, instead relying on its views as expressed in paragraph 3.14 of the consultation¹.

Unfortunately, the Commission's approach to the availability of machines in the particular class of premises is either an unwarranted attempt to circumvent the decision in the *Luxury Leisure* case or it represents a denial of the ratio of the Judge's decision, there, viz: Condition 16, in providing that *"Gaming machines may be made available for use in [Betting, Bingo and Casino premises] only on those days when sufficient facilities for playing [what the Commission would class as the "primary gambling activity] are also available for use"* involves a reference to the *"existence"* not the *"dominance"* of the so called *"primary gambling activity"*.

As drafted and interpreted by the Court, Condition 16 also acknowledges, for instance, that it has always been acceptable for machines to be played in Bingo premises when bingo is not, at the moment of machine play, available. In other words, the law and the wording of Condition 16 reflects acceptable practice: in Bingo premises, the availability of bingo *"exists"* but need not be *"dominant"*, especially at all times the premises are open.

While the new suggested wording refers to *"substantive"* rather than *"sufficient"* facilities, the use of substantially similar words in a social responsibility code provision instead of a condition will not affect their proper interpretation. That being so and in the interests of both certainty (given that the Court has already opined on the correct interpretation of the principle) and the good sense of not, without very good reason, changing wording that everyone now understands, we suggest that the relevant Condition 16 articulation is continued in the proposed, new provision (see below).

However, we support the Commission's wish to avoid a *"one size fits all approach."* In so far as strictly necessary, the imposition of particular conditions on a particular operating (or premises) license is a better option. In our view, there is no need to refer to the issue in an Ordinary Code provision.

¹ "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.' Whilst we consider that reference to the use made of the named non-remote facilities in a gambling premises

We set out immediately below our suggested amendments (shown in red) to the Commission's proposed wording. As explained above, we suggest continuity with Condition 16 in respect of the first paragraph of each provision; that while we see no reason for the second paragraph, we take no strong objection to it; and that we consider the third paragraph in each case to be unnecessary. In that latter regard, bear in mind that the issue only affects adults because access to the machines in question will always be restricted to them and that prescribing how such premises are presented to the public is surely a level of micro-management that even the Commission would wish to avoid in the absence of hard evidence of a serious problem (and we note that the Commission does not suggest that any such evidence exists):

"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 at times when there are sufficient facilities for non-remote betting provided in reliance on this licence~~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.~~

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 on those days when sufficient facilities for playing bingo are also available for use~~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.~~

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 on those days when sufficient facilities for playing casino games and/or games of equal chance are also available for use~~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.~~

Existing Provisions:

“16 Primary gambling activity 16.1 Primary gambling activity

Licence condition 16.1.1 Primary gambling activity - 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 on those days when sufficient facilities for playing bingo are also available for use.

2 In cases where bingo is exclusively offered by means of electronic bingo terminals or bingo machines, there must be more individual player positions made available for bingo than there are gaming machines made available for use.

Licence condition 16.1.2 Primary gambling activity - 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 on those days when sufficient facilities for playing casino games and/or games of equal chance are also available for use.

2 When a casino exclusively offers fully automated casino games, there must be more individual player positions made available for these games than there are gaming machines made available for use.

Licence condition 16.1.3 Primary gambling activity - betting Non-remote general betting 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 at times when there are sufficient facilities for non-remote betting provided in reliance on this licence.

2 Such facilities for betting must include the provision of information that enables the customer to access details of the events on which bets can be made and to be able to place those bets, obtain details of the outcome of the events, calculate the outcome of their bets and be paid or credited with any winnings.

Ordinary Code Provision 9 Primary gambling activity 9.1 Primary gambling activity

Ordinary code provision 9.1.1 Primary gambling activity – bingo, betting and casino Non-remote general betting, bingo and casino operating licences, except where facilities are offered under a 2005 Act casino premises licence

1 In order to demonstrate that sufficient facilities for the primary gambling activity for which an operating licence has been issued are being made available in each licensed premises, licensees should have regard to the following general factors:

a ratio of the space available to customers allocated to the primary gambling activity, to that allocated to other gambling activities

b the extent to which the primary gambling activity is promoted on the premises and by way of

external advertising compared to other gambling activities

c the use, either expected or actual, to be made of the different gambling facilities.

Ordinary code provision 9.1.2 Primary gambling activity - bingo Non-remote bingo licences, except where bingo is offered under a 2005 Act casino premises licence

1 Licensees should also have regard to the following additional sector specific factors:

a the frequency and extent that bingo is, or is intended to be played on the premises, compared with the periods when the premises are open

b whether there is:

i capacity on the premises for the generation of main stage bingo numbers

ii a facility to sell tickets or cards for bingo games on the premises

iii bingo available to be played whenever sessions are advertised

iv display of prize board information

v a means of stopping a game to claim a win.

2 Not all the factors here and in ordinary code **9.1.1** would need to be present in a particular case, nor do they preclude others, but the combination of those factors that are present should be sufficient to indicate that the activity is the primary one in any given premises.

Ordinary code provision 9.1.3 Primary gambling activity - casino Non-remote casino operating licences, except 2005 Act casino operating licences

1 Licensees should also have regard to the following additional sector specific factor: **a** the proportion of the gaming day for which live tables are, or will, be made available on demand.

2 Not all the factors here and in ordinary code **9.1.1** above would need to be present in a particular case, nor do they preclude others, but the combination of those factors that are present should be sufficient to indicate that the activity is the primary one in any given premises. .

Ordinary code provision 9.1.4 Primary gambling activity - betting Non-remote general betting licences, except where betting is offered under a 2005 Act casino premises licence

1 Licensees should also have regard to the following additional sector specific factor: **a** the range and frequency of events on which bets can be made.

2 Not all the factors set out here and in ordinary code **9.1.1** above would need to be present in a particular case, nor do they preclude others, but the combination of those factors that are present should be sufficient to indicate that the activity is the primary one in any given premises”.

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**

See our answer to Q1 – we do not believe the suggested “*policy objectives*” are apposite and note the Commission presents no evidence to justify their imposition. Accordingly, their use as a basis for yet more regulation will lead to conflict between the Commission and the Industry. That would be unfortunate and counter-productive. The Commission must surely acknowledge that it should work with rather than needlessly antagonise the Industry it regulates.

Otherwise, fiddling with wording that, with the Court’s assistance, the Industry has come to understand is pointless and would lead to confusion (paragraph 1 of each provision). Adding unnecessary further controls amounting to more micro-management will do nothing to address but would more likely impede successful pursuit of the licensing objectives (Paragraph 3 of each provision).

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?

We strongly suggest that the Commission follows the guidance set out in the Luxury Leisure case and avoids “*indicators*” which would only produce the sort of dispute that the Commission invited, to no good purpose, in that case.

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

We believe that the Commission should: (1) view each case on its merits; (2) restrict itself to applying the law as it stands rather than as the Commission would like it to be; (3) in that latter vein, recognise that, per the Luxury Leisure case, it is the *existence* not the *dominance* of the so called primary gambling activity that matters (if at all); and (4) ensure that in all its regulatory dealings, it should strictly apply the principles of the Regulator’s Code to which, ostensibly, it is committed.

In other words, if, in the case of a specific proposal, there is material evidence of a risk to the licensing objectives, the Act and its supporting statutory instruments equip the Commission and/or Licensing Authorities with all the tools required to address it.

Business plans and applications for licences

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?

The Commission has always been able to ask to see a business plan but it is a requirement that should be deployed with care. First, operators are best placed to make the commercial decisions on which a business plan is based – the Commission should not second-guess that judgment. Second, known, experienced operators proposing something substantially similar to that for which the Commission knows them should not have to present another business plan. Third, expecting Licensing Authorities to examine such plans would produce wild variances and inconsistencies between one area of the Country and another, depending on the vigilance and aptitude of the particular authority. It would also slow down the application process and would be likely to transgress the proper line between the jurisdiction of the Commission and that of Licensing Authorities (notwithstanding the Greene King case).

At paragraph 3.22, the Commission opines: “*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". That cannot be taken to mean that a business plan is an essential prerequisite to an application. Whether an operator will operate lawfully and in a way consistent with the licensing objectives will be mainly down to his knowledge of the law; his operating standards; and, in particular, the way he controls his premises. These matters will likely form little or no part of his business plan.

The paragraph continues: *"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"*. This implies that the "policy objectives" are apposite – as explained above, that is a flawed assumption and its pursuit will surely lead to the Courts.

As emphasised above, the use of conditions should always be tested against the requirements and principles of the Regulator's Code.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

Unfortunately, the Commission's suggested guidance to Licensing Authorities is again based on a misconstruction of the Act. The law, per se, cannot be correctly interpreted to mean, for instance in the case of Bingo premises: *"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"*.

It was the Commission's effective acceptance of the Industry's view on this topic that led it to introduce Condition 16 as an alternative regulatory option were it to have lost an Industry challenge on the underlying legal issue. But in doing so, it departed from its original proposal as the Judge carefully explained in the *Luxury Leisure* case (see Appendix One to his decision). As he there said: *"This, in my view, mark[ed] a shift to the new condition dealing with existence rather than dominance"*.

The Judge did not make a finding on the underlying legal point, rather confirming: *"When the Gambling Act came into force, there was a widely held view² that it was permissible to obtain a premises licence with the intention of using the premises only for making FBOTs [sic] available. Indeed, the licence for Clayton Street was obtained from the Licensing Justices on the basis of an undertaking that the only gambling activity would be FBOTs. Some still hold that view. The Commission, after some deliberation, has taken the opposite view and now attaches a standard condition, known as Condition 16, to operating licences"*.

The point is that the Industry did not judicially challenge the Commission's erroneous view on the underlying legal point because Condition 16, as ultimately introduced, was sufficiently flexible to make the exercise otiose. If the Commission advises Licensing Authorities as proposed, the Industry may well be obliged to pursue the challenge that the Commission wisely avoided by means of Condition 16.

We therefore urge the Commission to phrase any advice to Licensing Authorities by reference to the new proposed Social Responsibility Code provision rather than in terms of a bald and erroneous interpretation of the Act.

The proposed advice is also too strident in asserting that, for instance and again in the *Bingo*

² A view unreservedly taken by the Commission itself through its senior officer, Tom Cavanagh and accepted by all licensing authorities asked to consider it. NB. The Judge in the *Luxury Leisure* case criticised the Commission for turning down *Luxury Leisure's* offer to exchange *Leading Counsel's* opinions on the matter.

context, *“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”*. Again, that is legally wrong and unnecessarily antagonistic. The same objective could be achieved by reference to the new proposed SRC provision.

Similarly, the statement that: *“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”* does not begin to bear scrutiny. Why, for instance, are the “vulnerable” uniquely at risk playing machines in bingo premises when they can play them in, say, an AGC? The answer, in each case, concerns control and supervision – it has nothing to do with so called “primary gambling activity”.

We have already made the point that for the Commission to seek to micro-manage how premises are presented lacks any evidential justification in terms of the licensing objectives. Accordingly, we also suggest the deletion of the following draft advice: *“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”*.

It is tempting to suggest whole-scale amendment to the draft advice but we consider that the better approach would be for the Commission to reflect on the responses to this consultation in terms of the LCCP and only then to consult on the consequent changes that may be necessary to the Guidance to Licensing Authorities. Drafting guidance on LCCP provisions that are themselves un-finalized is fraught with difficulty.

It seems to us that in adopting its present approach, the Commission is needlessly re-opening a confrontation with the Industry that it sensibly avoided when “primary gambling activity” was first an issue.

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?

No.

1.6 Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation’s IT system.

1.7 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.

- 1.8** All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments or agencies, local authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to do so.

Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
- 1.2** The templates leaves space for responses to all the questions asked in the consultation. However, we understand that respondents to the consultation may wish to answer only those questions which are relevant for their business, organisation or interests.
- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by ~~Monday 22 February, 2016~~ **deadline extended to 21 March 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Jason Lockwood

Organisation:

Greene King

Email address:

jasonlockwood@greeneking.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|-------------------------|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | Pub retailer and brewer | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

| |
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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.

Greene King believes that the GC is consulting about proposals which are:

- Contrary to the letter and the spirit of the Gambling Commission Act
- A significant extension of regulation beyond current provision in the Act, without justifying why you consider this necessary

Greene King therefore urges the Commission to withdraw this formal consultation and associated proposals.

Greene King is a pub retailer and brewer, founded in 1799 and headquartered in Bury St. Edmunds, Suffolk. It currently employs 42,000 people across its main trading divisions: Pub Company, Pub Partners and Brewing & Brands. Greene King operates over 3,000 pubs, restaurants and hotels across England, Wales and Scotland.

Over 90% of our estate includes some form of gaming machine. In many pubs, struggling to keep afloat in these difficult economic conditions, these machines help to drive incremental footfall and are a vital revenue stream.

While we are pleased to have the opportunity to respond to this consultation, we are concerned that the overall consultation reads more like a statement of intent rather than a genuine attempt by the Gambling Commission (GC) to consult with stakeholders. A good example of this can be seen in paragraph 2.12 and 2.13. In paragraph 2.12 a new list of policy objectives is introduced. We are asked in response to this question if we agree or disagree with this list. However, paragraph 2.13 goes on to discuss how to achieve these objectives.

We are concerned that the GC is extending regulation via the LCCP without providing any evidence of risk being produced as to why these changes are required.

We are also concerned that the GC is attempting to legislate 'by the back door'. We note that S26 of the Gaming Act 2005 (GA) states that the GC has a duty to advise the Secretary of State 'on such other occasions as the Commission thinks appropriate'. We urge the GC to bring their stated objectives and evidence for embarking on this consultation to the Secretary of State and to withdraw this consultation. This will mean any change in legislation is given proper consideration and scrutiny by parliament.

Paragraph 2.13 as a whole illustrates our concerns very well as well as our concern that this is a statement of intent rather than a genuine consultation: -

To achieve these policy 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.

No evidence is supplied to why the GC is taking this position. The mixing of alcohol and gambling is well established; it is very common for bingo and casino premises to also have an alcohol premises licence. The GA contemplates premises with alcohol licences being licenced for bingo. The GC appears to have arrived at a policy decision contrary to where the GA points and without producing evidence of any risks.

In our view it is extremely important that customers entering a premises licenced for the provision of gambling are made aware of this fact. This can be achieved quite simply by using notices and marketing appropriately. In the consultation document the way gambling opportunities are presented is entwined with fairness and openness. The licencing objective to ensure that gambling is fair and open is firmly aimed at games. This was one of the arguments put forward to the First Tier Tribunal and withdrawn when queried by the judge. To use it again in these circumstances when it didn't stand up to legal scrutiny is not in our opinion appropriate.

The question must be asked what does a premises licenced for bingo appear and function like? Bingo has evolved over time. Older commercial bingo clubs may have the appearance of a cinema, some bingo premises are purpose built and outside town or city centres and many observers would comment they look like a retail shop. Others were once Adult Gaming Centres or even converted pubs. Function within commercial bingo is also very different. Many devote large areas to food and drink sales, while bingo is played in different formats such as paper and electronic. Will the Gambling Commission provide a comprehensive list of how a bingo licenced premises should appear and function that operators must adhere to? Will this be the subject of a separate consultation? Who will decide whether a licenced bingo premises appears and functions like bingo as this must be a subjective judgement? This proposal is ill thought through and restricts competition and innovation.

It is also worth noting section 84 of the Gaming Act:

Premises

- (1) An operating licence—
 - (a) may not include a condition (whether attached by virtue of section 75, 77 or 78)—
 - (i) requiring that the licensed activities be carried on at a specified place or class of place,
 - (ii) preventing the licensed activities from being carried on at a specified place or class of place, or
 - (iii) specifying premises on which the licensed activities may be carried on, but
 - (b) may include a condition about—
 - (i) the number of sets of premises on which the licensed activities may be carried on;
 - (ii) the number of persons for whom facilities may be provided on any premises where the licensed activities are carried on.
- (2) An operating licence of any kind may authorise activities carried on in more than one place.

Clearly the GC is attempting to stop pubs offering commercial bingo despite the law being clear that classes of premises should not be discriminated against in this way.

We urge the GC to withdraw this consultation and to work with the industry to form a consultation document which allows for a full and comprehensive consultation process rather than an apparent 'fait accompli'.

The GA couldn't be clearer as to the criteria required before non-remote gambling can legally take place. In our view the GC as national regulator should be guided at all times by the GA in the first instance.

The GA also couldn't be clearer as to distinctions between different types of gambling premises. This consultation though gives the appearance of trying to blur the lines between gambling premises licences and alcohol premises licences. Despite the GA allowing premises licenced for alcohol to apply for gambling licences (the GA contemplates a premises with an alcohol licence applying for bingo licence) the GC appears to be trying to use this consultation to prevent this from happening.

It is unlikely that anyone would argue that gambling activities shouldn't be appropriately supervised. Of course this position depends on the meaning of 'appropriate supervision'. The consultation appears to be arguing that CCTV isn't an adequate tool for supervision but presents no evidence to suggest why this would be. The Commission should either publish the evidence it has or withdraw this from the consultation. Forcing responsible businesses to change their operating model without evidence is neither appropriate nor proportionate.

We agree machines should only be made available in conjunction with the non-remote activity named on the operating licence. Of course there then needs to be a judgement call made in terms of degree of offering. If a casino has one gaming table and 20 gaming machines does this comply? To avoid including a number of prescriptive rules which weren't ever envisaged when the GA was written we suggest that, provided there is the ability to gamble on the activity named on the licence, then machines can be made available.

'Primary gambling activity'

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?

Primary gambling activity does not appear in the GA. The GC appears to have taken an Explanatory Memorandum from DCMS and placed undue weight upon this. We agree all references to primary gambling activity should be removed and not replaced with new text.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

Using social responsibility code provisions in this context is not appropriate or proportionate.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

The current LCCP is already overburdened having being continually strengthened causing businesses increased red tape without making any difference to the low levels of problem gambling there are within the UK.

Many parts of the drafting are unclear as to the expectation and actual meaning of the codes.

A good example would be the reliance on the phrase 'substantive facilities for non-remote bingo'. Without guidance to what this means it become subjective and leaves livelihoods at the mercy of the interpretation of GC Officers.

We have similar concerns with the phrase ‘appropriate supervision’ and ‘the internal presentation of the premises informs the customer that it is a premises licensed for the purposes of providing bingo.’

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**

These statements are based on the principles outlined in the Budd report. Much of the Budd report did not make it to statute. We question if a report from 15 years ago is a sound basis for the GC to base these principles on given how customer expectations and particularly technology have moved on.

Gambling takes place in many different types of premises that aren’t dedicated gambling premises. Customers carry mobile phones with the ability to place unlimited bets. The national lottery and scratchcards are available in multitudes of shops. There are many bingo premises where gambling is not the main activity. There are also fairs, clubs and pubs where gambling is available.

If this consultation goes through as proposed then a number of legitimate responsible businesses may have to close or face the constant threat of closure as they will be at the mercy of a regulator and unevidenced opinion.

This will be bad for investment, is likely to mean jobs are lost or not created and likely to mean taxation is lost or future potential tax streams are lost.

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?

The consultation document states ‘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 would like to point out that the law is very clear that B3 Gaming Machines are **only** allowed in premises licenced for these activities. If a premises which has an alcohol licence applies for a bingo licence and it is granted it by definition become a premises licenced for bingo and must adhere to all of the regulation and customer protection pertaining to operating bingo.

A judgement call then has to made on ‘substantive’. We therefore strongly suggest this phrase is removed and that emphasis should instead be placed on offering the non-remote gambling activity specified in some form. This would give businesses, Local Authorities, customers and even GC Officers clarity of what should be on offer and reduces red tape.

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

Business needs certainty to make investment decisions. If this is implemented as proposed then GC writes the law, judges guilt and then decides the penalty. This cannot be appropriate or proportionate.

Any consultation should aim to provide a clear set of guidance. We fear this consultation will lead to a lack of investment as the GC won't provide an opinion, if innovation is invested in then the GC may decide to use specific conditions to prevent the innovation despite it complying with all laws.

Business plans and applications for licences

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?

We do not agree with this approach.

An operating licence allows the holder to apply for premises licences. It is very likely that an operator will want to run different business models in different premises. Judging the businesses model therefore is neither reasonable nor appropriate and usurps the role of the Local Authority.

We also question what evidence will be used when evaluating a business model. We fear judgements will be based on the GC Officers unevidenced opinion.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

LAs are being asked to ensure 'the sum of gambling activity is not ancillary to some other non-gambling purpose' This is plainly wrongheaded and captures many legitimate responsible businesses. A good example would be a licenced bingo premises within a holiday camp which clearly would not comply with this and yet have provided gambling facilities for many years, without leading to a rise in problem gambling.

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?

The guidance to the LAs should be very clear that there are two areas they should consider:

1. If there plans to offer the gambling activity named on the licence application.
2. If there plans to ensure that customers entering the premises know this is a premises licensed for that gambling activity be that by appropriate signage, marketing or other means.

- 1.6** Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
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Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
- 1.2** The templates leaves space for responses to all the questions asked in the consultation. However, we understand that respondents to the consultation may wish to answer only those questions which are relevant for their business, organisation or interests.
- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by **Monday 22 February, 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

**Derek Webb, Adrian Parkinson and
Matt Zarb-Cousin**

Organisation:

Campaign for Fairer Gambling

Email address:

info@fairergambling.org

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|--|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

| |
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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.

In the introduction to this consultation, the Commission reaffirms its support and that of DCMS for maintaining “distinctions between different types of licensed gambling premises” and that the purpose of this is to allow for the “strict control of the provision of category B gaming machines”.

The policy objectives of dedicated gambling premises which distinguish between different types of gambling with appropriate supervision, is sound policy. However, there is a blatant anomaly in the provision of category B machines within the existing regulatory framework that the Commission again seeks to ignore - B2 or Fixed Odds Betting Terminals (FOBTS) in betting shops.

Referring to the principles outlined in the Report of the Gambling Review Body (Budd Report 2001) and inferring that in conjunction with the 2005 Act, the Commission’s use of these principles as the basis to “underpin” this consultation must mean that the provision of category B2 gaming machines against a betting premise licence should also be reconsidered as part of this consultation.

Budd was quite clear on the appropriate location for high stake gaming machines, despite, at the time of writing the report, category B2 machines not existing in the form that’s recognised today. The bookmakers, in conjunction with a company that is now SG Gaming, were at that time developing what were originally termed FOBTs and, as the Budd report was published in July 2001, it was just five months later in the December that betting shops launched electronic roulette on their FOBTs with **unlimited stakes and prizes**.

Although the Commission maintains the distinction between different types of gambling and the premises on which gambling may take place, it fails to differentiate between “hardness” in types of gaming machines and the appropriate gambling premises for each type of gaming machine. The sector that provides a pure gaming machine offering, Adult Gaming Centres (AGCs), is precluded from offering B2 machines, whilst casinos – a sector that can offer B2 machines and, under the ethos of the Budd report, is the environment most suited to B2 machines – opts to limit offering them. There are 34,552 located in betting shops and just 173 in casinos. Meanwhile, bookmakers continue to offer B2 machines in what is becoming the longest probationary period in history.

‘Primary gambling activity’

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?

Considering the mess that the Commission has made of “primary gambling activity” in relation to betting shops, it is understandable that the Commission should now seek to “draw a line” under it.

The Commission notes: *“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.”*

When a customer enters an AGC, they are aware they are entering a pure machine gaming premises. Likewise, when a customer enters a casino, it is clear they are entering gambling premises offering casino content. Yet the anomaly of casino content on B2 gaming machines means customers entering a licensed betting shop will be offered two very different opportunities to gamble – betting (ambient, soft gambling) and electronic casino games (hard gambling). Those electronic casino games will also be offered at higher stakes, prizes and speed of play than is available on machine play in AGCs.

Reliance on the dictionary definition of “substantive” when describing the facilities available in licensed betting premises will ensure the continued failure of the Commission in the area of primary gambling activity. It is logical and rational to determine primary activity based on yield contribution, in which case, the bookmakers’ primary activity today, as it has been for the last decade, is B2 gaming machines and not betting – which is the “substantive” interpretation of a betting premise licence.

The 93 Local Authorities that supported Newham’s submission, and the 97 Local Authorities that supported the Local Government Association’s resubmission under the Sustainable Communities Act would disagree with the removal of Licence Condition 16 (Primary Gambling Activity) and the Guidance to Local Authorities contained within this that is relevant to betting shops, which have historically breached this guidance. Disregarding this advice will weaken Local Authority licensing of betting premises and risk operators again attempting to open betting premises simply to offer four more B2 machines.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

The Commission states: *“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.**”*

Betting shops offer inadequate supervision when compared to all other gambling sectors. They operate lone staffing of premises as standard practise and there are many instances of failures in social responsibility that the Commission is already aware of, particularly linked to the provision of B2 gaming machines.

The other sector represented alongside betting shops on the high street and in town centres is that of AGCs whose primary purpose is machine gambling including high prize B3 slot machines which the commission often wrongly conflates with B2. However, AGCs do not operate lone staffing nor do they have to call Police out as frequently as betting shops as Commission statistics clearly show.

Casinos offer the hardest form of gambling and the highest prize gaming machines (B1) and provide the highest levels of supervision. Very few casinos offer B2 machines in comparison to the bookmakers and as with AGCs, have a much lower ratio of Police callouts per premises.

| | Incidents Jan - Dec 2014 | Active Premises as at 31.12.14 | Avg incidents per premise |
|--------------------------------|---|---|--|
| Betting | 11,232 | 8,980 | 1.25 |
| Casino | 72 | 147 | 0.49 |
| Adult Gaming Centre | 299 | 1,584 | 0.19 |
| Bingo | 79 | 674 | 0.12 |
| Family Entertainment Centre | 29 | 342 | 0.08 |
| Grand Total | 11,711 | 11,727 | 1.00 |

Despite B2/FOBT machines not being available at the time of Budd, when looking at the issue of machine locations and allowance, the report argued: *“that in the strictly regulated environment of a casino, slot machines with unlimited stakes and prizes should be permitted”*. Betting shops, it was proposed, should be allowed up to four Jackpot (now B3) machines. Absolutely no consideration was given to allowing higher stake and prize machines in betting shops above the then limit on Jackpot machines of 50 pence per spin.

Therefore, the anomaly of £100 per spin casino gaming machines in betting shops (following their illegal introduction by bookmakers) has never been consulted on and the failure of the Commission to address this, continues today under this consultation.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

The Commission risks encouraging unscrupulous operators to challenge the interpretation of the proposed social responsibility code provisions. Rather than rely on indisputable yield data that shows primary activity, the Commission prefers to rely on dictionary definitions that are guaranteed to be interpreted in ways that suit operators and consequently undermine the licensing objectives.

This consultation is clearly orientated towards addressing some non-gambling sectors' desire to provide machine gambling or gambling per se and is another missed opportunity to address historical failures around the provision of B2 gaming machines in betting shops.

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**

The Commission continues to disregard the danger posed by B2s in betting shops and these proposals again ignore the anomaly in the gambling hierarchy that they have created. In 2001, Budd argued against a submission from the Better Regulation Task Force (BRTF) that made the case for “self-regulation”, saying: *“some forms of gambling can particularly encourage repetitive play to the point at which the punter may suspend rational judgement and display all the signs of addiction, with subsequent financial and psychological harm. Evidence from countries where there has been considerable deregulation does suggest that the extent of problem gambling can grow significantly. So we are not proposing the degree of deregulation seen in some parts of the world. That means inevitably that we are limiting the freedom of individuals who could safely participate in such forms of gambling”*.

These proposed changes ignore the anomaly of the highest stake gaming machines being made available in a gambling environment that Budd perceived as inappropriate for high stake machine gaming.

Under this consultation the Commission again pays no regard to the lack of supervision provided in betting premises when compared to all other gambling premises and ignores that betting shops now beam in international racing late at night, with little commercial value, just to keep shops open for B2s. When these are taken into consideration alongside the Responsible Gambling Trust research conclusions that B2 staking levels reach their highest in the later hours of betting shop trading, it is clear that this consultation seeks to ignore any issues relating to B2s and the betting sector.

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?

It is abundantly clear that the Commission has made a mess of primary gambling activity in respect of betting shops and the provision of B2s and is now seeking to try and “bury” the issue. “Substantive facilities” clears the way for those seeking to provide B2s under the guise of a betting shop, to do so and for existing operators it is a green light to continue opening or relocating shops based on increasing B2 yield rather than the core business of betting. This represents a “substantive” failure by the Commission.

Bookmakers recently committed to remove all POS from window displays relating to B2. A strange move on their part if, as they say, the machines do not cause harm. However, the proposed SR code provision 3 implies that bookmakers must now inform customers of the availability on their premises of all types of gambling offered. Is the Commission over ruling the bookmakers’ apparently “socially responsible” decision and asking them to reinstate B2 window marketing?

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

The use made of the non-remote facilities can only be measured and compared to the use made of ancillary gaming machines either through turnover (activity) or yield (total losses). As the Commission refuses to use these measures as a determinant for primary activity and therefore the “use made of the facilities”, it looks like the Commission is embarking on more guesswork and so neither provision will produce clear definition of use being made of the facilities.

Business plans and applications for licences

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?

This is a marginal move in the right direction, however those elements drawn out in the licensing stage must then be revisited on annual review. Again though, the measure of the business plan proposals can only be achieved if Licensing Authorities are given access to yield breakdown and are empowered to take action if there is clear and deliberate deviation from the original business plan for which the license was considered.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

Many Local Authorities themselves question the guidance given by the Commission, which has fuelled support for the Sustainable Communities Act proposal. This consultation and the proposals within, will prolong the view that the Commission is not fit for purpose.

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?

Licensing Authorities should be able to insist on two staff or more in premises where B2s are in operation. Licensing Authorities should also be empowered to require all crime on premises to be reported.

- 1.6** Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
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Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
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Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
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Name:

Tracy Damestani

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- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | X | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

We do not take issue with the first three policy objectives.

With the final point, whilst we fully understand that the Commission is seeking to avoid “slot sheds” or premises that do not otherwise provide the core licensed activity, our members take issue with any perception that the “non-remote activity” must include live versions of the relevant gaming in order for it to meet the objective. We have held discussions with the Commission to voice our concerns, notably in regards to the proposals detailed in sections 3.7 to 3.9. These proposals would essentially outlaw existing electronic casinos that have operated without regulatory concern and fully within the existing LCCP conditions relating to primary purpose in place since 2009.

Two of our members have jointly provided the Commission with a legal opinion from Stephen Walsh QC that contests the legal interpretation offered by the Commission in support of their position. Specifically in relation to fully electronic casinos (i.e. where the non-remote gaming facilities are providing in the form of fully automated electronic gaming terminals). The current LCCP condition simply requires that there be more electronic terminals than gaming machines if a premises is fully automated.

We believe that the legal opinion confirms beyond doubt that consultation point 3.8 is wrong in law to now contest that such casinos are not entitled to any gaming machine allowance unless there is live gaming present. We will not repeat all the compelling legal arguments here. It is hoped that the Commission will instead accept that it has wrongly interpreted the law. We believe it is clear and unequivocal in stating that machine numbers for converted casino licences are an entitlement of a premises licence not dependent on specific facilities otherwise being provided. In particular, section 7(4)(b) of the Act specifically allows for all the non-remote facilities in a casino to be provided in a fully automated form.

We accept that the Commission’s fourth policy objective is seeking to avoid specific types of licence being obtained solely to provide the category and number of machines that come with it (but with no real intention of offering the primary purpose). However, it would be of concern if the Commission applied an overzealous interpretation of the words “in combination” if that were to restrict perfectly legitimate businesses (new or existing) from offering non-remote gaming in entirely electronic form.

The Gambling Act was designed to be future proof, and regardless of whether an electronic gaming format is applied in a casino, bingo club or betting office, there is no reason why it should be treated any differently to the equivalent live formats, giving the rapid development of technology in this area.

In summary, therefore, we support the four objectives only on the proviso that they do not impede on current or future development of legitimate, electronic venues and that the Commission steps back from its mistaken believe that machine allocation is dependent on the presence of live gaming.

‘Primary gambling activity’

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?

No, we do not agree if, by taking this approach, the Commission now proposes to “move the goalposts” in relation to legitimate gambling facilities built to comply with the current LCCP requirements.

It cannot simply be ignored that the Commission conducted two full, public consultations in 2008/9 that led to the current LCCP condition being imposed. These require more electronic terminals than machines in fully automated premises. Since then, the casino industry has invested in around fifteen, legitimate electronic casino premises, mostly adjacent to other casinos. In fact, they represent around 10% of the casino industry and are primarily to utilise dormant premises licences. *(NB - Given the unique requirements for converted casinos under the Gambling Act, there is no facility to apply for new licences. All dormant licences (e.g. where a casino has closed) must therefore be kept “alive” in premises where the licensee has a right to occupy, or will otherwise be lost forever if surrendered).*

This has involved considerable investment being made in compliance with the LCCP condition, as written. Each is a legitimate, fully automated casino. There is no risk that anyone entering would be unaware or misled as to the purpose. Nor is the electronic product provided anything less than legitimate non-remote gaming of an identical kind to that found in casinos where “live” gaming is also provided.

The Commission cannot now simply disregard the existing LCCP conditions so as “not to confuse matters”. The Commission should accept that these legitimate premises have a business model based on compliance with the existing conditions. The Commission should not force these long established premises to dramatically change their business model (and more than likely be forced to close) when there is no evidence whatsoever that their adherence to the existing LCCP conditions has been the source of harm or additional risk to the licensing objectives.

The Commission wishes to prevent the type of premises that recently caused them concern in the courts (i.e. bingo in public houses). However, in doing so, it should not essentially outlaw legitimate, long established, fully licensed gambling premises that become caught in the cross fire.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We believe the Commission needs to be very careful in this area and not add or amend social responsibility code provisions unless there is clear evidence of harm - or potential harm - that needs to be addressed. The Commission should not use this powerful tool based only on speculation and supposition and, in doing so, otherwise risk by-passing the legislative process.

It is clear that the motivation behind the current consultation is to address the various legal cases in which the Commission has recently been involved. Notably, a case relating to a leading pub chain seeking to obtain a bingo operating licence (and thus the ability to offer Category B3 machines adjacent to their pubs). In seeking to restrict such concepts, the

Commission now wishes to impose new controls that will impact on existing businesses across a variety of sectors. No additional evidence of harm has been reported or demonstrated in these businesses, so it is questionable whether the Commission should be using social responsibility code provisions to achieve its ends.

The Commission has since won their appeal so, to an extent, the bingo/pub problem has gone away. The Commission may therefore wish to consider whether additional code provisions can be justified. In either event, the Commission should now carefully consider the impact that its proposals will have on existing, legitimate businesses rather than base the proposals entirely on the theoretical risks it was otherwise seeking to curtail elsewhere.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

It was clear from the industry workshop held to discuss this consultation that all sectors consider the wording to be ambiguous. Notably, use of the term “*substantive facilities*” to determine whether or not a premises is meeting its primary purpose. This term is likely to cause confusion and be open to extreme interpretations across different local licensing authorities. The “ordinary English meaning” given in leading dictionaries ranges from “*having a firm basis, important, meaningful or considerable*” to “*a considerable amount or quantity*”.

The common word there is “considerable” – which itself can be defined as “significant” or “extensive”. The condition does not refer to a substantive proportion of facilities being non-remote, only that there are substantive / considerable / significant / extensive facilities. This could suggest to some local authorities that, regardless of how many machines are present, there must be a very large (even disproportionate) amount of non-remote gambling facilities, far more than the “at least one more terminal than machines” approach currently required by the LCCP.

We can understand that the Commission want premises where the emphasis is on the core gaming facilities relating to the licence, rather than machines. They also want the external appearance of such premises to make that purpose very clear and have adequate supervision within them. In doing so, the Commission should not use vague wording that is open to misinterpretation by local authorities and might then adversely impact on perfectly legitimate premises or new gambling concepts.

For example, the wording of the proposed bingo and casino LCCP conditions gives the impression that machines can only be provided at times when non-remote facilities are also provided. Some provincial casinos operate in ‘electronic mode’ during quiet periods of the day, usually in the morning and afternoon, these venues would be unable to justify staffing tables during these regular quiet periods.

The Commission has since indicated that this is not their intention, and that it is permissible, for example, for a casino to operate its machines at times when table games may not also be offered.

This clarification is useful, and emphasises that the correct wording is important to avoid any risk of misinterpretation by local authorities.

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**

As mentioned in Q1, the impact of the proposals on the casino industry (notably electronic casinos) would be dramatic if the proposals in sections 3.8 and 3.9 were enforced. Again, we sincerely hope that the Commission will take on board the legal opinion from Stephen Walsh QC that two of our members have provided. We believe that this very clearly proves the Commission's interpretation of the law to be incorrect with regard to remote and ancillary remote licences when applied to fully automated premises.

As detailed in Q1, we do have concerns that fully automated casino premises might be unjustly restricted from developing new technologies if interpretation were to suggest that live gaming must always be required in some form. In response to the legal opinion submitted, we sincerely hope that the Commission will withdraw its wider contention (in 3.8) that such premises must offer live gaming in order to operate any machines at all. If not, then the debate is an entirely different one to that confined to the first three of these policy objectives. Our response is therefore based on the assumption that the Commission will now accept that electronic casinos CAN operate machines if only fully automated versions of non-remote gaming are provided.

If so, the debate can therefore be brought back to the core issues about primary purposes. It will then depend on how the proposals are interpreted by local authorities and local Gambling Commission Compliance Officers.

There is no "one size fits all" wording that can prevent machines from appearing in, what the Commission consider to be, inappropriate venues whilst also allowing legitimate operators to develop fully automated premises. We therefore sympathise with the Commission's attempts to provide flexibility in using words like "substantive". However, reassurances are none the less required to ensure that it is made very clear exactly what this means in practice.

It may be that the Commission's advice to local authorities is the best vehicle to explain in more detail exactly what principles should be followed and to address any unintended consequences caused by too vague wording. We hope that the Commission similarly wishes to prevent any misunderstandings that result in an over rigid interpretation of their intent.

The danger is, however, that over strict interpretations do occur if the wording is not 100% clear, especially after those originally involved in the process are no longer employed. Even the Commission has shown itself to be susceptible to this risk. As previously mentioned, section 3.8 of the consultation now interprets the concept of Ancillary Remote licences in a way that was never intended by the Commission transition team when these licences were conceived 10 years ago. These licences were introduced simply as a means to accommodate electronic gaming within the definition of remote communications, given in Section 6 of the Act. Ten years on, the Commission is wrongly interpreting their existence to require removal of gaming machines from electronic casinos and to consider electronic gaming terminals as full remote gambling facilities.

We would not, therefore, wish to see the proposed LCCP conditions go forward with vague or ambiguous wording simply because "we all know what it means in practice" at the time of introduction. As time goes on, the conditions will inevitably be interpreted in a variety of different ways by local authorities so clarity of purpose and intent is vital.

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?

We do not object to the notion that a casino should provide casino games, bingo clubs should provide bingo games etc. However, it should be noted that such premises (when legitimately operating for the purposes for which they are licensed) are not just about the games.

A casino, for example, usually includes a bar, restaurant, live entertainment, lounges, private hire rooms etc all of which combine to make a modern premises built around gaming. That gaming comes in both table and electronic form, with a proportionately small number of gaming machines (20) permitted.

We accept that it is not an easy task to create conditions that will prevent sham premises whilst not also restricting legitimate existing premises or stifling future innovation. We agree that the external design of a premises should make it clear what the core licenced purpose is (e.g. a bingo club, casino, betting shop etc) so people know what they are entering. But having done so, there then seems to be little justification for specifying the exact nature or breakdown of facilities within it, whether live or electronic.

For example, the Commission has suggested that people might expect to see a roulette wheel in a casino so this would help demonstrate that it is such a premises.

However, it would be wrong to rely on “old technology” as a means to define how a 21st century casino should look or feel. Electronic gaming is gathering speed and popularity and it cannot be assumed that, in a few short years, “live” games (i.e. with human involvement) will not become secondary to electronic formats. It is fair to say that a fully automated casino does not look or feel like a traditional proposition, but is no less a casino as a result.

The Commission should not, therefore, set criteria that clings to the traditional notion of how a premises should look and risking new, innovative ideas possibly being restricted as a result. The Commission must identify real risk when reviewing a format if they wish to restrict it, but otherwise allow premises to operate with the facilities permitted by the Gambling Act and the premises licence (which includes machines).

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

It would certainly seem more appropriate to handle this on a case by case basis. There is a case to say that this would largely come down to the local authority doing so for individual premises rather than via an operating licence. However, it would certainly allow the Commission to address its individual concerns about specific formats without other businesses becoming unnecessarily caught in the crossfire.

Business plans and applications for licences

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?

As per Q6, it would be more appropriate to deal with any concerns that the Commission may have about an individual operation specifically and not seek to address them with generic conditions. Assessing the business plan would be a logical approach when assessing a new Operating Licence application.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

The proposed advice refers to an additional authority for casinos to offer machines being defined by S172 (3-5) and that it is therefore *"not a free standing right"*. This is not strictly true, as the Act refers only to Small and Large casinos, not converted licences, which are covered by the transitional order. In any event, the Commission justifies its argument that a premises licence is granted "to operate a casino" when a casino is defined in Section 7 and makes clear (7)(4)(b) that this applies *"whether an arrangement is provided wholly or partly by means of remote communication"*. The legal opinion we have provided shows that the Commission's interpretation of the law is therefore incorrect so the advice to LA's given in 17.56 of the consultation should reflect that.

However, it should be noted that we do not propose to offer casinos with nothing other than machines (even though converted casinos could, in theory, do so within the Act). The industry is simply contesting that fully automated terminals ARE non-remote gambling facilities. Again, the advice to local authorities should clearly reflect that position and the legal opinion provided.

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?

Only to make sure that wording is not ambiguous as per earlier answers.

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Controlling where gaming machines may be played

Consultation – November 2015

- 1.1 This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
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Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Organisation:

Email address:

| |
|----------------------------------|
| CAROLINE O'GRADY |
| TRIANGLE AMUSEMENTS LTD |
| TRIANGLEAMUSEMENTS@BTCONNECT.COM |

- 1.4 If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|-------------------------------------|--------------------------------|--------------------------|
| Licensed operator | <input checked="" type="checkbox"/> | Professional services provider | <input type="checkbox"/> |
| Trade association | <input type="checkbox"/> | Campaigning or political group | <input type="checkbox"/> |
| National government body | <input type="checkbox"/> | Charity or support group | <input type="checkbox"/> |
| Local government body | <input type="checkbox"/> | Academic institution | <input type="checkbox"/> |
| Other (please specify) | | | |

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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.

AGREE : FOR SUPERVISION AND COMPLIANCE PURPOSES

'Primary gambling activity'

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?

AGREE

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

WE AGREE WITH THE OBJECTIVES TO MINIMISE RISK.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

NO

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

YES: WE THINK THESE ARE SUFFICIENT

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

SOCIAL RESPONSIBILITY CODE PROVISION.

Business plans and applications for licences

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?

YES

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

NO

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?

NO

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John.white@bacta.org.uk

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| | | | |
|--------------------------|---|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | x | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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Policy objectives

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

We agree with the first bullet.

Generally speaking we agree that the distinction between different types of gambling premises be maintained and this is effectively achieved through appropriate premises licenses. However, it is important to recognise that innovation can be stifled by an overly strict delineation of boundaries. It is for this very reason that there is an entitlement to machine gaming of different kinds in different types of gambling premises. We would add further that it is important to ensure that broadly speaking that the different types of gambling premises are treated in a broadly similar way when broadly operating within the same market. It is anomalous to say the least that high street bookmakers and AGCs, which both by law cannot permit entry to the premises by persons under the age of 18, are treated differently in relation to the machines they can offer the same customer base. The Commission is well aware of bacta's position on Category B2 machines. This question illustrates further why a substantial reduction in the stake on these machines is necessary.

We fundamentally agree with the third bullet but again it is not for the Commission to be overly prescriptive as to what this should look like. Both human and technological resources can be and are deployed to supervise premises according to levels of risk to the licensing objectives. This will vary across and within sectors.

We agree with the fourth bullet point.

We would point out, as we do in response also to question 3 later, that the Commission as an evidence-led regulator has not provided evidence to support the changes proposed in this consultation. We believe that despite our answers to the consultation questions that the Commission has sufficient powers to address the concerns it articulates in the consultation document.

'Primary gambling activity'

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?

If the Gambling Commission is as it intends to issue fresh advice, requirements and guidance it would make sense to remove previous iterations if for no other reasons than clarity. However we remain unclear as to what the new version of these documents would look like in detail. Will there be further rounds of consultation on these once that has been determined? There should!

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We are distinctly uncomfortable with the use of the SR Code to effectively restate and extend the statutory obligations of operators to achieve the licensing objectives.

The consultation states that the objectives are at risk if a member of the public is unclear as the nature of the premises they are entering. As was admitted at the consultation meeting with the industry on 19th January 2016 the Commission admitted there was no evidence that the public was in anyway being misled or indeed that this had led to risk to the licensing objectives. Therefore, specifying that the gambling premises must have 'substantive facilities' (a dangerously imprecise term) that they must be appropriately supervised (which they would have to be anyway to meet existing LCCP requirements) and insisting that the function and internal and external presentation must comply with an undefined notion of what that type of gambling premises must look like is, in our view, wholly otiose and inappropriate for an SR Code provision. Should the Commission feel it necessary to offer guidance on the look and feel of particular premises that should be in an Ordinary Code provision if any where. An OR Code provision allows the Commission and operators to discuss constructively whether any new development falls within or without the settled view of a particular premise or proposed premise.

If the Commission has concerns that a particular premise is seeking to portray itself as something that it is not in order to obtain an entitlement to Category B machines then that surely is ultimately a matter for the courts in the event that the issue cannot be resolved using the existing and extensive powers of the Commission.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

See above.

As a point of principle the Commission should not seek to change the intentions of Parliament by exercising the powers available to it in a way that fundamentally alters the law as interpreted by the Courts from time to time. We feel the use of the SR Code to effectively introduce a definition of primary purpose, does just that. Whether one agrees with the outcome of the process or not it is for legislators to make the law and the courts to provide clarity through their rulings. It is not for Regulators with the greatest of respect, to seek to achieve things it felt the law should have said. If the Regulator feels that strongly about the matter it should lobby Parliament to change the law.

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

Given bacta represents amongst others AGC and FEC operators it would be inappropriate for us to comment in detail by way of response to this question.

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?

We fail to see how the Commission can determine whether the principal gambling facility is in use or not. The variation in demand for that use and indeed the secondary machine use is volatile and difficult to predict. It therefore seems to us that the Commission should consider imposition of a licence condition only after there is evidence that the manner in which and presentation of the specific gambling to which the licence relates, is conducted (or not conducted) in a way that is not consistent with that type of gambling. This would allow the Commission to refer back to Ordinary Code guidance on what constitutes substantive facilities.

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

We believe if necessary only an Ordinary Code approach would work.

Business plans and applications for licences

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?

We do not believe that this is necessary. Should the Commission have concerns about an applicant's business plan this should be discussed with the applicant and appropriate reassurance sought and provided at that time. It is unnecessary to then place a condition on the licence to repeat the undertakings or changes that have been made to the application to reassure the Commission.

All businesses are different with different ways of doing things. The Commission and indeed licensing authorities are asked to make judgements in discharging their duties when considering applications. It is easier to accommodate any concerns about the many and different business plans that applicants have at the time. Thereafter trying to devise concrete licensing conditions to reflect changes already agreed is simply adding to the regulatory burden with no evidence being provided by the Commission that it will improve the current position.

The Commission and Licensing Authorities have the power under section 116 and 169 respectively to attach conditions after a review. This seems to us to be the most sensible and effective way to address concerns. Post granting of an application the Commission and Licensing

Authorities can gather evidence as to whether the business is fulfilling any undertakings it may have given in its business plan.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

See above.

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?

We believe the current position is sufficiently clear but would suggest that this is something only licensing authorities can answer.

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Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
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- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by ~~Monday 22 February, 2016~~ **deadline extended to 21 March 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Roger Etchells

Organisation:

**Roger Etchells & Co
The Old Bank
Kilwardby Street
Ashby de la Zouch
LE65 2FR**

Email address:

roger@rogeretchells.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|--|--------------------------------|----------|
| Licensed operator | | Professional services provider | X |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

1.5 If you are responding as an individual, please indicate your own interest:

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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.

Agree subject to comments below

‘Primary gambling activity’

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?

Yes – but I am concerned that the outcome of this consultation will be no clearer. The use of the term ‘substantive facilities’ is imprecise and, I suspect, will be interpreted no differently from ‘primary gambling activity’.

Further, what does the ‘external presentation’ requirement mean? It is unclear but could require operators to put the word ‘Bingo’ or ‘betting’ on their fascia sign. That is an unnecessary requirement and is contrary to the way most operators trade (for example Ladbrokes/Corals etc do not have ‘Betting Premises’ on their fascia sign) but this would allow the Commission or local authority to oblige them to state that on their signage. This is a throwback to the 1960s.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

Although apparently in more detail the actual wording proposed is vague and capable of interpretation in all manner of different ways

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**

My concerns are

1. There is no significant evidence that there is a need to impose conditions as envisaged. The invitation to do so will be taken up with local authorities dictating, in effect, how premises are to be run; a matter wholly outside their experience and knowledge.
2. This is an invitation to GC licensing officers and local authorities to impose conditions on the type/number/location of machines contrary to the regime envisaged in the Act and initial regulations. The GC should have no control over this as the issues that arise relate to particular premises and their location which the Commission would be unaware of at the time the application for an operating is made.
3. The applicant should have control over this and its external presentation/signage – the local authority/GC has powers should a particular operator in a particular location cause problems.
4. Although conditions imposed can be challenged by appeal the encouragement to impose them will generate more litigation and more uncertainty – a feature of the local authority run regime for dealing with permits under section 34 of the previous act in relation to what are now AGCs. Renewing that uncertainty would be a retrograde step.

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?

This is simply 'primary gambling activity' by another name. That approach has completely failed even though it was applied to smaller operators. It was not even applied to the larger betting operators. It is an expression which is equally subjective and imprecise. Putting oneself in the place of an operator how could you possibly establish otherwise against an allegation that the bingo activity (for example) was not 'substantive'? What defence does the operator have? The expression is meaningless and unhelpful.

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

No – see above

Business plans and applications for licences

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?

Yes, in general terms I agree to draw out key elements of an applicant's business plan but I am concerned that the Commission may involve itself in matters about which it has no expertise and may be too prescriptive. The use of new licence conditions is wholly unnecessary and unduly prescriptive.

The commission should not involve itself in issues of supervision and presentation of particular premises at the application stage especially as the operating licence gives authority to run a number of premises probably in very different locations, of different sizes and layouts etc. Matters of staffing etc are for the operator having regard to the premises and their location, size etc and (possibly) local authority.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

Whether deliberate or otherwise the effect of the proposed GLA will be to stifle innovation in the form of new formats and arrangements. One of the main reasons for the introduction of the Act whose predecessors (in terms of legislation) were thought to be too prescriptive was to enable innovation. In effect it is saying (for example) that bingo premises are what we say they are and there will be no opportunity for innovation.

Given the very obvious demise of bingo over the last 10 years or so it needs new formats. The format whereby it is played in the afternoon and evening in premises housing several hundred people is increasingly outdated. These conditions/guidance support that model and will stifle the introduction of new formats more likely to be of interest to the public.

Bingo can only be played in bingo premises during specific times as set out in The Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007 which sets out the permitted hours for bingo as default conditions as follows:-

- 1. Subject to paragraph 2, no facilities for gambling shall be provided on the premises between the hours of midnight and 9am.*
- 2. The condition in paragraph 1 shall not apply to making gaming machines available for use.*

It was clearly intended/expected that gaming machines could/would be played at times other than when bingo was being played.

The proposals could be used to require bingo premises to close at midnight thereby frustrating the clear intent of the default conditions and contrary to the aims set out in the 'Explanatory Note' to the Regulations which says:-

'The aim was to establish industry norms while giving the operators the flexibility to apply to extend their hours, and the licensing authorities the flexibility to extend or reduce the default hours.'

It was clearly envisaged that machines could be operated at other times than when bingo was not being played in bingo premises. This Guidance is inconsistent with the clear purpose and effect of the original regulations insofar as it appears to seek to prevent machine play when bingo is not being played in bingo premises.

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?

-
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Controlling where gaming machines may be played

Consultation – November 2015

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Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|--|
| Name: | Hayley Jane Lee |
| Organisation: | Gala Leisure |
| Email address: | Hayley.jane.lee@galaleisure.com |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|-------------------------------------|--------------------------------|--------------------------|
| Licensed operator | <input checked="" type="checkbox"/> | Professional services provider | <input type="checkbox"/> |
| Trade association | <input type="checkbox"/> | Campaigning or political group | <input type="checkbox"/> |
| National government body | <input type="checkbox"/> | Charity or support group | <input type="checkbox"/> |
| Local government body | <input type="checkbox"/> | Academic institution | <input type="checkbox"/> |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

Dedicated Gambling Premises

We would expect to find non-remote gambling facilities in premises which are licensed for non-remote gambling and we would be cautious about use of the term “dedicated gambling premises” without some indication as how it is defined in this context.

Distinctions Between Premises

As the external presentation of our clubs to the public makes it quite clear to someone entering our premises, that they are entering a Gala Bingo club, we do not see this as a problem. We do however feel the Commission should consider that future developments within the gambling industry could see gambling premises which offer a variety of gambling activities, but would only show a distinction between types of gambling available, once the customer had entered the premises, e.g. at present consumers can go into a supermarket and purchase alcohol and scratch cards / lottery tickets, and be directed to these by distinctive internal signposting.

Appropriate Supervision

As regards appropriate supervision, again we are cautious about the term “appropriate” and feel the subjective nature of this term does not enable us to answer the point fully.

Were the term to be included as it stands, it is highly probable that it would be subject to a range of interpretations, which would be extremely counter-productive.

We consider supervision to be implicit in the nature of a gambling product. There can be tensions between players and between players and operators, which we have to be in a position to resolve.

We absolutely require gambling supervision to be **effective**, from both social responsibility (SR) and security perspectives. Failure to supervise gambling activities effectively could possibly lead to increases in both these areas. These are not problems we would welcome as most of our internal processes are based on minimising SR and security risks.

Machines Availability

As it is currently worded, this statement raises the spectre of no machine play being permitted if the non-remote activity is not taking place at the same time.

At the meeting attended by the Bingo Association on 18th January 2016, assurance was given that this is not what was intended and that the objective was to prevent the use of a non-remote licence simply to allow category B machines to be offered. We were given to understand that a revised document would be issued, however as this has not been forthcoming, we can only respond to the document in its current form and as such this objective as outlined within the consultation, is something with which we strongly disagree.

‘Primary gambling activity’

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?

We recognise the need for rationalisation of the current materials, and the provision of a more concise and user-friendly set of requirements, guidance and advice.

However we would only welcome a replacement, if it was produced following workshop discussions involving key sector specialists from within the industry, **prior** to any consultation.

We do not feel it is appropriate that such guidance is driven by a perceived need to address short term objectives.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We do not consider the use of social responsibility codes to be appropriate, as this appears to us to be a misuse of said codes and that gaming machine regulation should be used to regulate gaming machines.

We are permitted to play bingo under the Act. We are permitted to offer machine play under the Act. The Act makes no reference to a need for any relationship or dependencies between the times these two activities can be offered.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

We would recommend that thought be given to the following terms:-

“substantive facilities”

“available in the premises”

“appropriate supervision”

The vagueness and subjective nature of these terms do nothing to indicate what is meant by them and are in fact counter-productive as they serve only to raise (possibly unfounded) concerns regarding what is intended.

The comments in the consultation do not reflect the situation in our clubs. We could not envisage a situation whereby our bingo premises would not be staffed at all times whilst there were customers in the building and the rationale behind this proposal seems to ignore the wider issues of safety, security and customer satisfaction.

CCTV is just one of several tools available to us to keep our premises and customers safe and there are a range of more sophisticated technologies currently available which could complement

or even replace CCTV. We have concerns that an over-prescriptive social responsibility code could jeopardise the introduction of more effective controls in the future, resulting in lower levels of protection rather than more.

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**
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It is difficult to consider any particular impact as the proposed provisions are not clear and are dependent on (GC) interpretation

If we apply our understanding of what is written, to our operation at Gala, we conclude that the proposed provisions would have little impact, however a different interpretation may find differently.

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?

We are concerned that once again the wording, "*substantive*", obscures what is intended and prevents us forming a clear view.

The guidelines to be given to Licensing Officers in how "*substantive*" must be defined, should have been shared as part of the consultation. Without such guidelines we anticipate a wide range of interpretations across the gambling industry.

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

This would depend on what was being proposed and possibly the sector, the product and the risks.

We would welcome more clarity on what was being proposed, particularly with the impact of any failure to comply with social responsibility codes.

Business plans and applications for licences

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?

We do not agree with the proposed approach as we feel it has not been fully thought through.

We are concerned that the proposed approach would restrict operators from innovation, i.e. were a new product to become available, which impacted on an operator's business plan, would this require a variation of the licence as one of the conditions on which the licence was issued had changed?

If a licence is granted based on a particular business plan, would any changes to that business plan have to be referred to the GC before they could be introduced?

The above comments ignore the vagueness of some of the wording of the proposal, e.g. "where considered necessary" and "key elements". Both are subjective terms where the wrong interpretation could result in a failure to understand what is actually intended.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

We would suggest the proposed guidelines are reviewed and the reference to category A machines removed as these are not permitted under the Act.

Paragraph 18.24. To paraphrase, this it states that you cannot offer machines in a bingo club unless you actually play bingo. Based on this interpretation this is how we have always operated.

Paragraph 18.25. States that the provision of machines within a non-remote gambling environment has a less harmful effect on problem gamblers than in an environment where there is no non-remote gambling.

As regards the appearance of the premises, we see no benefit in offering bingo, where we could not make potential customers aware that bingo is being offered and we are confident that customers who visit us are well aware of the facilities we have on offer.

It is difficult to see how LAs would check "the sum of the gambling activity etc." without a considerable amount of effort, firstly to agree what is to be measured and secondly how it is to be measured.

Without any guidance in this area, there would be interpretation by licensing authorities and as such would lead to inconsistencies across the sector.

The hazards of such inconsistencies are recognised across the regulatory compliance sector, Fire, Health & Safety, Food Hygiene etc., and as a result, national operators have to work with primary authorities in areas such as to enable a consistent, compliant approach to be adopted.

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?

We feel that the existing guidance to local authorities is sufficient.

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Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|-------------------------------------|
| Name: | Rebecca Shaw |
| Organisation: | Opera House Casino |
| Email address: | Rebecca.shaw@operahousecasino.co.uk |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|-------------------------------------|--------------------------------|--------------------------|
| Licensed operator | <input checked="" type="checkbox"/> | Professional services provider | <input type="checkbox"/> |
| Trade association | <input type="checkbox"/> | Campaigning or political group | <input type="checkbox"/> |
| National government body | <input type="checkbox"/> | Charity or support group | <input type="checkbox"/> |
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| Other (please specify) | | | |

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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.

We fully agree with the first 3 points.

We believe the 4th point needs further clarification to avoid a situation whereby the non-remote activity must be offered at all times that the gaming machines are available. As a small provincial casino we offer our facilities based on local demand, as I'm sure will other casinos, bingo and betting premises. It wouldn't be commercially viable to offer our gaming tables for 100% of the time that the gaming machines are available, and the point above leaves a vacancy for it to be interpreted this way. We believe that the non-remote activity should be offered the majority of the time e.g. over 50%.

'Primary gambling activity'

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?

We disagree that these should be removed as they help define what should be offered. Although again further clarification as to "the proportion of the gaming day for which live tables are, or will be made available" should put a timeframe as to the availability of the primary gambling activity. Again we would suggest this to be the majority of the time available e.g. over 50%.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We agree this is a good way to deliver the objectives.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

We object to the word "substantive" as there are multiple definitions of this word and would suggest it is replaced by either "majority" or by a set figure e.g. +50%

We don't believe that games of equal chance should be equated with non-remote casino games as a facility to then allow gaming machines.

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**

Casinos would benefit from other gambling premises continuing to be restricted on the types of machines available for play. A casino is a secure, adult only venue that upholds the licensing objectives. If other venues were able to offer the higher stake/payout (B1) machines then it couldn't be guaranteed that they were as easily supervised.

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?

If Gaming machines are only allowed by virtue of the non-remote facility being offered then it is therefore reasonable to assess the proportion of time that each is available. Again, the word substantive isn't definitive enough and we would prefer the word majority (or +50%)

They shouldn't be linked to a set number of machines per table though, as for a business it makes more sense to be led by customer demand.

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

A case by case basis would give the options for facilities to be led more by customer demand than rules which wouldn't take into account the geographical area of the business. Although this could create more work for the Commission it could be included within the specific licensing conditions for each business.

Business plans and applications for licences

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?

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

Again as per our response in Q4 we don't believe that games of equal chance should be equated with non-remote casino games as a facility to then allow gaming machines. And again, we believe that a timeframe should be put on the amount of time that non-remote casino games should be made in relation to the time the gaming machines are available. It would be unsuitable for gaming machines to be offered for more than half of the time that the primary activity is available. The primary activity should be offered for at least 50% of the gaming day.

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| 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? |
| | |

1.6 Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.

1.7 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.

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Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
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- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by ~~Monday 22 February, 2016~~ **deadline extended to 21 March 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|---|
| Name: | Elizabeth Speed |
| Organisation: | Novomatic UK |
| Email address: | elizabethspeed@luxuryleisure.co.uk |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | x | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

1. The fundamental policy objectives of the Commission's activities should be that it exercises its functions in accordance with section 22 of the Gambling Act 2005 ("the Act") – namely to aim to pursue and where appropriate have regard to the Licensing Objectives (as set out in s1 of the Act) and to aim to permit gambling insofar as it is reasonably consistent with pursuit of the Licensing Objectives.
2. These basic objectives, enshrined in the Act, are frequently overlooked by the Commission in favour of a more complicated approach. Using them as a guide, the Act would be more capable of evolving and adapting to the changing climate of consumer demands and technology, than it appears to be. The Commission instead proposes different objectives, based on thinking that may arguably have been relevant in 2001, but is less so today. The exception is the reference to appropriate supervision – but this is already encapsulated in the existing Licensing Objectives. Adopting a more complicated approach in the way suggested would increase the pressure placed on the Act itself, as it strives to maintain its relevance and also on operators, as compliance becomes more (and unnecessarily) complicated and onerous, without a balancing benefit to consumers.
3. The Commission confirmed at its workshop, in January 2016, that the proposals in relation to premises distinctions are not based on any suggestion (let alone evidence) of confusion or complaint on the part of consumers, or on any challenge to the Licensing Objectives. As such, we do not agree that these proposed policy objectives are appropriate or necessary. In publishing its Information Note of March 2016, the Commission confirms that it is "an evidence-led regulator" and that it has made changes to the portfolios and accountabilities of senior management "to ensure sufficient focus on analysis and evidence". The Gambling Commission's proposed distinctions between adult-only premises, which are not based on evidence, do not accord this stated approach. The distinctions are even less relevant given that customers can quite lawfully access online gambling with unlimited stakes and prizes, via their personal phones, when they are in any licensed non remote gambling premises (or anywhere else). Again, the suggestion that consumers are somehow confused between the different types of premises is not borne out by any evidence that we have seen. The focus on this point is disproportionate to the size and impact of any issue.
4. The Response to Consultation form does not provide a space for providing other feedback – accordingly we have inserted the following comments in this section:

We had hoped from the Commission Workshop in January 2016 that we would receive some feedback from the Commission on a number of points before the consultation closes. None has been received. It would plainly be inappropriate for the Commission to change the draft SR provisions contained in the consultation document without further consultation. Our response is based on the Consultation document alone and if further proposals are to be considered, they too must be consulted upon in the usual way.

‘Primary gambling activity’

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?

The Commission’s concept of Primary Activity/Primary Use had no foundation in law and Condition 16 was flawed from the outset. Accordingly, we do not object to its removal. However, we note the intention to revoke the documents relating to the “2008 Split Premises and Primary Gambling Activity” consultation. It is not clear how those parts dealing with split premises will be dealt with in revoking those relating to primary activity.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We are very concerned at the continued and increasing tendency on the part of the Commission to seek to legislate through the LCCP. This is inappropriate. The Commission notes in the Introduction to the Consultation (para 1.8) that if the changes it seeks cannot be made through the LCCP, it will advise the DCMS to introduce additional regulations. With respect, that would be the appropriate path for the Commission to take should it wish to see the changes suggested. Matters of such fundamental importance should not be dealt with through a regime (the LCCP) intended for issues of social responsibility and, with respect, it was not the intention of legislators that they should be. The legislative process should not be usurped in the way proposed.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

1. Please see our response to Q3 above. We do not think the use of SR provisions is an appropriate way to attempt to introduce changes of the nature proposed.
2. We do not consider that the proposed use of “substantive facilities” instead of the current “sufficient facilities”, (proposed SR point 1), will provide the clarity required. It was due to the lack of clarity provided by Condition 16 that the “Indicators” (which the Commission now proposes to drop), were introduced in the first place.
3. The proposed code for bingo includes provisions for supervision (proposed SR point 2). As the consultation document accepts, supervision of adult areas in bingo premises is already addressed in one of the key Statutory Instruments relating to non-remote gambling. The current proposal is, in effect, to seek to amend/augment this piece of legislation, not through the legislative process, but by way of the LCCP. That would be inappropriate - changes such as these must be considered through the usual channels and not in a way that would risk usurping that process. We also note that, although the Consultation document refers to the Commission’s “emerging view” in relation to CCTV, no evidence has been provided to licensees to allow them to assess that view.
4. The proposed code provisions (proposed SR point 3) refer to the “internal and external presentation” of premises. This is a vague concept and, in any event, the focus is inappropriate. To enforce such a condition, the Commission would be asked to micro-manage businesses and substitute its views on appropriate “presentation” of premises for

those of the licensee. These are commercial matters for the Operator to decide. The proposal envisages the Commission effectively approving or having a veto of names, signage, etc. – a suggestion unheard of in any other sector, including the alcohol industry, where no such restrictions apply to pubs/hotels/clubs/restaurants.

5. As above, (Q1.3), at its workshop in January 2016, the Commission confirmed that it has no evidence of any confusion on the part of consumers as to the type or nature of the gambling adult-only premises they entered, nor had there been any complaints by consumers or suggestions that consumers had been confused in this way. The Act has been in force since 2007 and if there were any real issues, the Commission would know of them and have evidence of them to share with licensees. Furthermore, no consumer will be able to recite the number and categories of machines that each premises licence brings with it. The name of a betting premises will not, in its name or presentation, demonstrate to a consumer that it can offer B2 machines, but it can; nor does referring to “bingo” in the name of bingo licensed premises tell a consumer that gaming machines are available - yet they are. As such, this proposal would be ineffective in informing the consumer of the facilities available in any particular premises.
6. If, notwithstanding the above and other responses to the consultation, the Commission (regrettably) proceeds with the substance of the code provision changes, we submit that they should take the form of Ordinary Code provisions rather than SR codes. This point was made by the Industry to the Commission during the workshop in January 2016.

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**

1. As above, the focus on “external and internal presentation” is, with respect, misplaced and unnecessary. The Commission risks micromanaging the operation of premises and substituting its own views on presentation for those of the licensed operator. There is no evidence or risk of confusion, nor have there been any complaints that consumers were confused because they did not know what type of licence a premises had. This unnecessary provision could prove costly in making “presentational” changes to premises and may lead to expensive and time-consuming litigation, without providing any benefit to consumers.
2. We would point out that the policy objectives as set out, are also part of this consultation (Q1).

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?

1. The Act is permissive and level of use is not referred to in it.

2. The Consultation document acknowledges that ultimately it is consumer choice that dictates the use made of facilities. It states that it is not proposed to assess which activity is dominant, but wishes to avoid “operators [contriving] to merely give the appearance of an environment which the [SoS] considers appropriate for the provision of Category B gaming machines”. This wording is very difficult to understand - how does one give the “appearance of an environment” without providing the environment itself?

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

1. No evidence has been produced to explain the need for the proposal, or how it would work, whether introduced by condition or code provision.
2. If the Commission was to share evidence to demonstrate such inclusion would be appropriate, only an Ordinary Code provision could achieve consistency.
3. In any event, regardless of the method of introduction, the Consultation document does not indicate when a condition relating to “use” might be imposed; how the Commission would assess the form that a condition would take; nor, in relation to a condition or a code provision, what level of use would be relevant or how the Commission would decide on this essentially commercial issue. This is something the Commission unsuccessfully tried to do under the concept of Primary Activity.

Business plans and applications for licences

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?

1. No. Again, this would amount to wholly inappropriate micro-management on the part of the Commission/local authority and lead to an increase in the number of contested licence applications. In particular, it is not a role for the regulator to evaluate and assess commercial business plans. The proposal seeks to increase the level of restrictions placed on licensees beyond that ever envisaged by the Act.
2. The suggestion that the regulator, in the form of the Commission or the local authority, should be able to intervene simply if operators trial a new concept at premises, or open an “exceptional” premises, is unduly restrictive and encroaches on operators’ rights to make commercial decisions about their businesses within the constraints of their licences. Those constraints are already considerable and to allow further restrictions and commercial conditions to be attached to licences, would not only be to stray from the role of regulator, but would inevitably lead to inconsistency and an increase in litigation across the country. That would be highly regrettable.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

Please see above. The proposal is effectively to substitute the views of the operator with those of the local authority on what premises should look like. There is no basis for this in the Act and it would inevitably lead to undesirable inconsistency across the country and an increase in contested applications.

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?

This is a question best directed to Licensing Authorities who are already overwhelmed with increasingly complicated Guidance, at a time when a huge number simply do not have the recourse to wade through and assimilate it. It must not be forgotten that "Guidance" is just that – guidance - it is not a substitute for the Act and cannot alter the provisions of legislation.

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Controlling where gaming machines may be played

Consultation – November 2015

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Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Ellie Green

Organisation:

LB Enfield

Email address:

Ellie.green@enfield.gov.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|---|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | x | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

Agree that these policy objectives are clearly defined and should assist in minimising gambling related harm.

‘Primary gambling activity’

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?

Agree to remove earlier guidance and advice. This will draw a line under the old material and remove the volume of reference material.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

The proposed codes clearly support the policy objectives and it is practical to amend the tool already widely used by operators and regulators to facilitate the move forwards.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

The provisions are clear and concise, and should not be subject to misinterpretation.

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**

The provisions should not be onerous on the affected sectors. The introduction of supervising gambling activities is essential and will go a long way to address current concerns. Increasing staffing levels as a resolution to various issues, is often rejected by operators, so increased monitoring by regulating bodies may be required to ensure compliance.

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

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| combination with the named activity in a substantive manner? |
| Agree with introducing this to be clearer to regulators as to the operators intended activities. It will also aid the consumer in making an informed decision about what facilities the premises offers, prior to entering. |

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| <p>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?</p> <ul style="list-style-type: none"> • Social responsibility code provision • Ordinary code provision |
| Social responsibility provision – to allow customers to make more informed decisions – as per Q6(i) above. |

Business plans and applications for licences

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| <p>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?</p> |
| Yes agree, this is a pragmatic approach and will assist regulators to impose conditions, based on the merit of each application, which should result in workable and necessary conditions. |

Guidance to licensing authorities

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| <p>Q8. Do you have any views or comments on the proposed guidance to licensing authorities?</p> |
| No. |
| <p>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?</p> |
| To provide working examples/case studies of applications. |

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Controlling where gaming machines may be played

Consultation – November 2015

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Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

Cherry Hosking

Organisation:

The Bingo Association

Email address:

cherry@bingo-association.co.uk

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | X | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

In so far as the policy objectives are clear, we agree with them. However, from the drafting of the consultation, it is not clear what risk the Gambling Commission is seeking to avert.

However, there is no definition of “low risk exceptions” and the consultation document does not give any indication of what these are. The implication is that these “low risk exceptions” are obvious, but they are not.

The Bingo Association is concerned that the drafting of the proposals in the consultation document would mean that Holiday Parks would fall foul of the stated aim to restrict gambling to dedicated gambling premises and that the sum of gambling activity should not be ancillary to something else; clearly the situation in a Holiday Park.

We would like the Commission to formally confirm the assurance, expressed in a meeting on 18th January, that the wording of the consultation is misleading and that there is no intention to take bingo operating licences away from Holiday Parks.

We agree that the distinctions between different types of licensed gambling premises are maintained, but there is no evidence that there is a blurring of differences or that customers are confused about what sort of gambling is offered in any type of premises. The consultation document does not provide any evidence that these distinctions are being blurred. The Gambling Commission has recently reaffirmed its intention to focus on analysis and evidence and The Bingo Association welcomes this statement and would like to emphasise the need for the Gambling Commission to apply this to its consultations. As the Gambling Commission is responsible for issuing operating licences, it is in the best position to ensure that the distinctions remain.

We agree that gaming machines should be made available in accordance with the entitlements which come with specific named non remote activities. The consultation document should be clear that “in combination with” does not mean “at the same time as”. Machines are made available as set out in the Mandatory and Default conditions, which are not mentioned in this document. It is unclear if the Commission is suggesting that machines are currently not being made available in a lawful manner.

The consultation also refers to pubs in 2.13, yet there is no definition of a pub provided.

‘Primary gambling activity’

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?

The Bingo Association does not object to the removal of the above references from the LCCP. It is not clear whether the references will be replaced with anything in the LCCP. The consultation document states that the explanations and proposals relating to “Primary Gambling Activity” set out in the document would be a starting point on the subject. Unfortunately the lack of clarity in this document will only serve to confuse. Should the Commission desire to restate their views on the subject, it should be part of a separate consultation.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

It is unnecessary to use social responsibility code provisions to deliver these policy objectives. An ordinary code would be sufficient without imposing criminal liability on operators.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

See answer above. There is no need to use a social responsibility code provision, and ordinary code provision would be adequate. The proposed wording relating to the bingo sector should be amended to replace the word “when” with “where”. The suggestion that non-remote bingo and the use of machines must take place at the same time is incorrect and should be amended.

Whatever is meant by “substantive” should be replaced by a clearer definition and indication of measure. It is unclear what the suggestion in 3.6 relates to in terms of only using CCTV as supervision for bingo premises. The Bingo Association does not recognise the scenario of managing the operation and supervision of a bingo-licensed premises by CCTV; the Commission has provided no evidence of this taking place anywhere. Perhaps the Commission would expand on this concern with The Association?

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**

The Bingo Association cannot comment as it is not clear what the first bullet point refers to.

The second bullet point relates to the operating licences issued by the Commission and it is always very clear on a licence application what gambling activity is being licensed. The consultation document does not set out any instance where the types of gambling activity have become blurred or that customers are confused. It is hard to understand why the Commission proposes social responsibility codes for something which has not been set out or substantiated in

the consultation.

The third bullet point is equally unsubstantiated in the document. Supervision is already an LCCP requirement and there is no evidence that this is not being undertaken responsibly.

The fourth bullet point should be clear what “in combination” means; it does not mean that they must be played at the same time.

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?

Is this an introduction of a demand test? How would this be calculated? Use of different facilities can vary over times of day, days of the week and months of the year. An operator cannot compel the use of certain products. A variety is offered in order to allow customer choice, but the variety on offer is always within the permissions granted under the operating and premises licences. “Use made” cannot be confused with demand, neither is it the same as “provision”. S.72 GA states that the Commission may not have regard to the expected demand for the facilities that an operator proposes to provide.

Is this a suggestion that the Commission will require operators to provide evidence about levels of use of particular products even when their operating licence gives them an entitlement to also provide certain categories and numbers of gaming machines?

S.86 GA states that an operating licence may not include a condition that limits the number/category of machines that can be made available for use in accordance with the licence or which contradicts a provision of regulations relating to gaming machines made by the Secretary of State.

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

It is unclear what this question means. The Bingo Association does not support the arbitrary use of social responsibility conditions, which bring with them criminal liabilities, especially when it is entirely unclear in what circumstances this is being proposed.

Business plans and applications for licences

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?

The Bingo Association agrees that it is entirely reasonable to remind licencees about the business plan on which they based their application to the Gambling Commission in order to obtain an operating licence. It should not, however, be necessary for known, experienced operators who propose something substantially similar to that for which the Commission knows them to be obliged to present another business plan. If both the Commission and LAs are going to make assessments based on business plans, the Commission should be aware of inevitability of an inconsistent approach between one LA and another.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

In the proposed new guidance to licensing authorities – Gaming machines in bingo premises there are a number of areas that lack clarity: “available for use” and “available in combination” seem to contradict each other.

18.24 s. 68(5) repetition of this sub-section of the Gambling Act is confusing as the draft box only refers to bingo; the Act does *not* allow category A machines to be made available for use in a bingo licensed premises.

18.25 refers to the function of a bingo premises, with no definition or clarification. It is difficult to comment when this is so unclear. This section is also contradictory

Sections 18.24 and 18.25 are contradictory in that .24 refers to the provision of facilities and .25 relates to machines being only made available in combination with function

18.27 directs LAs to ensure that if a request is made to vary a bingo premises licence to extend the opening hours, the LA should ensure that the reason for the request is in line with the operating licence conditions and codes of practice. This should be rephrased to ensure that there is no confusion about the hours during which gaming machines may be made available for use; the Mandatory and Default Conditions Regulations 2007 for bingo set out that there is no limit on the hours during which gaming machines may be made available for use

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?

No.

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Controlling where gaming machines may be played

Consultation – November 2015

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| Name: | Simon Levingston |
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- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | X | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

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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.

The proper focus for the protection of the consumer are the Licensing Objectives.

Most consumers will not appreciate the distinction between remote and non-remote gambling products. Nor will the distinction between different types of licensed premises be an issue for the consumer.

It is already implicit within the operating licence and the premises licence that gambling activities are appropriately supervised and to the extent that this needs to be reiterated as a policy objective it is acceptable but this is the only one of those listed that is worthy of being described as such.

‘Primary gambling activity’

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?

Primary gambling activity never having been adequately defined and thus difficult to manage in any case we do not object to its wholesale removal as a reference in the above cited material.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

The frailty of now using the introduction of new social responsibility code provisions to deliver policy objectives is that this is being done without the required evidence to justify extending the scope of the Commission’s regulatory powers.

There must also be a question as to the appropriateness of dealing with the control and siting of gaming machines under a social responsibility code as distinct from considering specific gaming machine regulation.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

We consider that the theme of the response to this consultation is that the Gambling Commission has failed to show the rationale of what is being proposed, the consequence of which can be that new social responsibility codes are being proposed for introduction that may not be appropriate to

all sectors. The onus has been and should remain with the Gambling Commission to demonstrate the risk and then to propose regulatory remedies appropriate not only to the risk but the degree of risk rather than the proposed approach here which is to generate a generic response in the absence of evidence and then to retrospectively consider if it is appropriate. This would appear to be the hallmark of poor regulation.

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?

Once again the matter in hand is the evidence of risk to the licensing objectives without which the proposals should be dismissed.

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

Business plans and applications for licences

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?

We do not agree with this proposal particularly in the absence of evidence to identify the perceived risk or that this is a proportionate approach to managing the licensing objectives.

We do not consider that it is within the remit of a Local Authority to evaluate and assess commercial business plans and particularly where this might involve extracting a part only of any

such plan.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

In our view the existing version of Chapter 20 of the Guidance to Licensing Authorities is sufficient and there is no need for any changes to it.

It would be helpful if the Commission were to share with Industry their evidence that shows there is a risk to fairness and openness if a premises does not appear as the customer envisages.

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?

In respect of the betting premises at tracks we consider that the existing guidance in relation to the availability of gaming machines is clear and sufficient and does not need to be augmented.

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Controlling where gaming machines may be played

Consultation – November 2015

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- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
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| Trade association | | Campaigning or political group | |
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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.

The Gala Coral Group ("GCG") note that these policy objectives are based on principles that were first expressed 15 years ago, based as they are on the Budd Report of 2001. We have a concern that the Commission is crystallising new policy objectives that are based on these old principles despite the fact that in the intervening time, primary legislation, which does not deal with the concept of primary gambling activity, has been passed. In this respect the Commission is effectively circumnavigating the legislative process by constructing and then cementing their own policy objectives into LCCP as Social Responsibility ("SR") conditions.

Irrespective of the merits of the objectives that the Commission is trying to achieve, we do not support the way in which they are being introduced. Further comment is included in Q3.

Finally, given these policy objectives are the basis of proposed LCCP SR conditions, the wording is too vague particularly in respect of what constitutes '*substantive*' facilities and '*appropriate*' supervision which could have significant room for interpretation. GCG comment further on this in Q4.

'Primary gambling activity'

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?

Due to the controversy and legal argument in respect of the concept of primary gambling activity we can understand why the Commission would want to 'wipe the slate clean' and remove all previous guidance and advice.

However, amongst the various documents there is some useful guidance which does try to capture the essence of what a LBO should be (i.e. the offer of established core products (including live event pictures and bet range), the provision of information on products and events, the promotion of gambling opportunities and products, etc.).

If the Commission, as it has proposed, retains its view that gambling activities should be offered and overtly aligned to their specific premise licence there is merit in retaining some of the above guidance. Notwithstanding this, the Commission will need to accept that what constitutes an LBO now may substantially change as the business model is affected by technological change and rising costs.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

GCG notes that Section 84 of the Gambling Act 2005 restricts an operating licence having conditions imposed upon it in relation to a future premises licence. There is a concern that by imposing these SR code provisions to deliver the policy objectives the Commission are not in line with the 'spirit' of Section 84.

As mentioned in our response to Q1 it could be seen that introducing these policy objectives is a way of reconstructing primary gambling activity in a different way via a SR code provision.

However, given that the Commission itself acknowledges that few gambling operators are circumnavigating the concept of primary gambling activity, GCG believe the right and proportionate way for these policy objectives to be introduced into LCCP would be as Ordinary Code ("OC") provisions supported by clear guidance rather than as SR code provisions.

The Commission's recent trend of enshrining requirements as SR code provisions is disproportionate given the level of sanction that can be imposed should a breach occur. This trend is even more of a concern when the SR codes contain terminology or concepts that are open for interpretation (e.g. gambling activities to be supervised '*appropriately*').

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

As mentioned already in our responses to Q1 and Q3 GCG believe that the proposed wording is not clear enough and there may be some room for interpretation of what constitutes '*substantive*' facilities and '*appropriate*' supervision. More guidance is needed on this.

Also, the wording for the third SR code provision (... "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") looks to be too subjective, asking operators to take into account the perception of individuals regarding the internal and external presentation of betting premises. Given the issues with this provision it provides GCG with another example of why we feel this should be an OC provision supported by clear guidance.

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**

The proposed provisions will have limited impact on the betting sector as the number of operators that operate outside the 'spirit' of licence condition 16 is limited.

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?

GCG are concerned that the Commission are to place a reliance of the 'use' of non-remote facilities, potentially as a proxy measure, for whether they are deemed to be provided in a 'substantive' manner. As operators we cannot force customers to use certain products over others. There is also a danger that if 'use' becomes a determining factor a 'demand test' has

effectively been introduced undermining the 'aim to permit' principle.

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

GCG attended the Commission's workshop on this consultation on January 19th and it was only made clear at that time that the Commission were pursuing a two stage approach i.e. proposing specific licence conditions to be added to an organisation's Operating Licence in addition to codes provided by way of LCCP.

GCG do not believe that individual Operating Licences should have conditions placed upon them that may restrict certain business opportunities that do not apply across all operators of the same activity.

Should the Commission pursue this proposal we would want to understand and comment further on how these conditions would be imposed and the right of appeal should the operators deem them to be overly restrictive or hamper competitiveness.

Business plans and applications for licences

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?

The GCG do not agree with this approach.

We believe that this would restrict innovation and create an uneven playing field with different operators having potentially different restrictions. In an industry which has to react to fast paced technological and market changes such an approach is against the principles of the Regulators Code that requires regulators to support operators to grow.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

The proposed guidance would seem to suggest that the level of disclosure required by operators at the point of application or variation is considerably increased from what is expected currently. Licensing authorities should be first and foremost be considering the 'aim to permit' principle rather than trying make judgements on a business model that is yet to trade particularly if concepts such as 'use' are considered a component.

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?

GCG have nothing further to comment in respect of this guidance.

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- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | X | Professional services provider | |
| Trade association | | Campaigning or political group | |
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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.

The Consultation document is brief in providing clarity of the Policy Objectives.

Definitions and or supporting evidence relating to the Policy Objectives would enable a more comprehensive appraisal, for example, definition of low risk exceptions, evidence of where distinctions between different types of licensed gambling premises have not been maintained.

Further clarity is required in relation to the Policy Objective 'Within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity of the operating licence'. Specific clarification is required for the term 'in combination with'.

'Primary gambling activity'

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?

Agree, however further clarification is required to determine any substitute references in the LCCP.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

Use of Social Responsibility code provisions to deliver the Policy Objectives is not appropriate or necessary. Ordinary code would be sufficient.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

Further to our response in Q3, the proposed new Social Responsibility Code requires clarity and or amendment in relation to:

- 1) Gaming Machines may be made available for use in licensed bingo premises only 'when' there is also substantive facilities for non-remote bingo. 'When' can be interpreted that Gaming Machines may only be available when bingo is being played, therefore further clarity is required. Consideration to be given to amend phrasing to 'where' not 'when'.
- 2) Detail required over what is deemed appropriate for the external presentation of the premises. Signage often refers to 'Bingo', however would this meet the proposed code provisions.

- 3) 3.6 of the Consultation document makes specific reference to the sole reliance on CCTV to supervise bingo premises, which is suggestive that there is evidence of this taking place within the Industry. Detail of such evidence to support this point should be provided.

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**

Further to our response in Q1, further clarity and definition of the new proposed Policy Objectives are required in order for the impact of the outlined objectives to be fully appraised.

There are elements of the Policy Objectives, for example, 'Supervision' included within existing LCCP, however the consultation document does not provide any supporting evidence of current LCCP not being met.

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?

This question asks for consideration of a measure which appears to contradict point 3.11 of the Consultation document.

Furthermore clarification is required as to how the 'use made' would be measured and expected to be evidenced by operators, given that the Operating Licence gives entitlement to provide specified categories and numbers of Gaming Machines.

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

There is no evidence of increased risks detailed in the consultation document to support the requirement for case by case specific conditions, therefore we are unable to objectively appraise this option.

It is our view that Social Responsibility code provision is not appropriate.

Business plans and applications for licences

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?

We agree with the assessment of business plans to ensure they reflect the future use of the operating licence and that licensing objectives are met.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

The proposed new guidance to licensing authorities for Bingo requires further clarity and definition of some of the key measures outlined, for example:

- 1) 18.24/18.25, Clarity is required over when Gaming Machines can be played. Consistency is required throughout to eliminate contradiction of terms.
- 2) 18.25, 'The appearance and function of a bingo premises should be that of a premises licensed for that activity'. Clarity is required on what minimum requirements are expected.
- 3) 18.27, This point does not appear appropriate to the playing of Gaming Machines given the Mandatory and Default Conditions Regulations 2007 does not give a limit on the hours in which Gaming Machines can be played.

18.24 makes reference to Category A Gaming Machines which are not applicable in Bingo.

In the absence of clarity and definition ensuring compliance within the Industry and fairness in the approach of Local Authorities when exercising their duties will not be achieved.

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?

No.

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|-----------------------|--|
| Name: | Ursula Servis |
| Organisation: | Association of British Bookmakers |
| Email address: | ursulaservis@abb.uk.com |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | x | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

We broadly agree with the policy objectives as set out, however would caution that in realising these objectives the Gambling Commission is not overly restrictive with regards to encouraging innovation in the retail betting environment.

Following discussion at the workshop held by the Gambling Commission regarding this consultation, we would reiterate comments made by others that there is a need for the terminology 'in combination with' to be refined within the fourth policy objective.

'Primary gambling activity'

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?

We disagree with the proposal to remove earlier requirements, guidance and advice relating to 'primary gambling activity' from the LCCP, GLA and other related materials.

In the experience of our members we are aware that the meaning of 'primary gambling activity' has been interpreted differently by Local Authorities. Some Local Authorities have sought to define 'primary gambling activity' by percentage of revenue derived from over-the-counter activity compared with revenue derived from play on gaming machines. 'Primary gambling authority' should instead be defined by the provision of facilities made available within the retail environment rather than by varying customer choice e.g. the 'use' of facilities within a premises.

The existing guidance is helpful in that it has been developed over time in consultation with the industry and in that it provides detail of precedent which can be referred to in cases such as those outlined above.

To remove earlier guidance and advice would remove precedent and is concerning when it is unclear as to what advice it would be replaced with.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We have reservations as to the proposed use of a social responsibility code provision in this way. We would point to Section 84 of the Gambling Act 2005 restricting the imposition of conditions on an operating licence in relation to a future premises licence. We are concerned that by using Social Responsibility Code provisions to deliver these policy objectives the Gambling Commission is not acting in the 'spirit' of Section 84.

Given the level of sanctions applicable for non-compliance with a licence code, and in particular for non-compliance with a social responsibility code, it is imperative that clear wording is used in the drafting of the code provision(s).

Specifically with regards the new proposed code provisions for 'gaming machines in gambling premises – betting', further clarification is required of the terminology 'substantive facilities' (see proposed code provision '1') and of 'appropriate supervision' (see proposed code provision '2').

Likewise, as with any social responsibility code provision, it is imperative that clear guidance is provided to operators to aid compliance.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

It is imperative that there is clarity in the drafting of the proposed social responsibility code provisions. Specifically, as outlined previously, we would urge clarification of the terminology used 'substantive facilities' (see proposed code provision '1') and of 'appropriate supervision' (see proposed code provision '2').

We have no concern regarding the third proposed code provision aimed at ensuring customer awareness of the type of premises which is being operated in the case of betting shops.

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**

We think that it is unlikely that the proposed provisions will have significant impact for the retail betting sector unless they are taken out of context by Local Authorities. This is especially the case when compared with other sectors within the gambling industry.

To ensure consistency of application across Local Authorities there is a need to make sure that existing guidance is kept, including guidance developed in association with the industry and where precedents have been established.

It is also necessary to ensure that the provisions are clearly drafted and appropriate guidance provided.

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?

We are surprised that the 'use' made of facilities is being considered by the Gambling Commission.

As noted in our response to question 2, we believe that the provision rather than the use of facilities made available within the retail environment should define 'primary gambling authority'. On this same logic we do not believe that the Gambling Commission should consider 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

We do not believe the Commission should include reference to the use made of the non-remote named facilities on a case by case basis either via specific conditions, or in a more general sense via either a Social Responsibility or Ordinary Code provision.

Should the Commission opt to include reference to the use made of the non-remote named facilities, only an Ordinary Code provision should be used.

Business plans and applications for licences

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?

Whilst it is logical that substantive changes to a business plan are notified to the Commission, we would be concerned should the need to notify the Commission be required for any small change made. Although unlikely, we are concerned that this requirement may result in micromanagement of businesses where there is not the intention to do so.

In the case of independent operators any additional requirement to inform the Commission of changes in business plans would be particularly onerous.

From an innovation perspective, this proposal is concerning. It may limit the ability of a business to change its offering and could neuter innovation before an idea has had the change to develop.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

We are generally content with the proposed guidance to licensing authorities as drafted.

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?

We have nothing further to comment in relation to this guidance.

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Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
- 1.2** The templates leaves space for responses to all the questions asked in the consultation. However, we understand that respondents to the consultation may wish to answer only those questions which are relevant for their business, organisation or interests.
- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by ~~Monday 22 February, 2016~~ **deadline extended to 21 March 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
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Victoria Square House
Victoria Square
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Name:

Peter Hannibal

Organisation:

The Gambling Business Group

Email address:

peterhannibal@newgenleisure.com

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|--------------------------|--------------------------------|-----|
| Licensed operator | | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | Membership Organisation. | | Yes |

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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.

Firstly, it is both relevant and timely to say that we welcome the Gambling Commission's recent announcement that communicated the forthcoming changes to the organisational structure. There appears to be a positive review of the Commission's approach to regulating in progress.

What this announcement also makes apparent is that the Commission's new thinking and this consultation are some way out of alignment. The following is an extract from the announcement;

These key changes are designed to;

- *ensure sufficient focus on analysis and evidence. The Gambling Commission is an evidence-led regulator. We produce regular public data on industry trends and consumer participation. This helps shape policy on gambling in Britain, as well as informing regulatory decisions*

The fundamental flaws in this consultation start with the complete absence of evidence or evaluation of evidence required to inform these regulatory decisions.

The Gambling Business Group understands the difficulties in exercising the premises licence regime within the 2005 Act. However, whilst the above principles and policy objectives may have had some relevance fifteen years ago (when the original words were written), since that time the references to premises and distinctions between remote and non-remote have been made less and less relevant by advances in technology and by changes in consumer demands.

The 2005 Act was created as an 'enabling' Act that was intended to keep pace with the changing environment, consumer demands and advances in technology. This is one of those key areas where the Act and the current policies surrounding it are in need of review.

The Licensing Objectives are rightly primarily focused on protecting the consumer, yet consumers do not understand or appreciate the legislative differences between remote and non-remote products. Neither are the 'distinctions' between different types of licensed gambling premises of huge importance to the consumer (if they ever were). In no other sector or industry do operators legally have to differentiate between different types of premises. This is because the consumer is quite capable of discerning one premise from another for themselves.

The inevitable conclusion therefore is that this policy must not be there to protect the consumer. During the workshop to discuss this very consultation on the 19th January the Commission admitted that they had no evidence or research to demonstrate that customers are unaware of the type of premises that are being operated when they enter, or of any resulting harm to the objectives.

The fact that gambling of any type, stake or odds can take place on any premises, whether licensed or not, via a tablet or mobile phone, make any pursuit of the above policy a questionable exercise, and for what purpose other than to uphold an outdated policy.

Therefore, the only element of the above Policy Objectives that is still relevant today is that 'Gambling activities are supervised appropriately'. The remainder of the above are overdue a review and if they were, the consumer would have far more protection than would be gained from following the other Policy Objectives identified above.

What we believe is still very relevant are the Licensing Objectives. As opposed to the above, the Licensing Objectives have stood the test of time and should be referenced accordingly.

The following is an extract from the Gambling Commission's own Statement of Principles;

The licensing objectives.

1.3 The licensing objectives are set out in the Act and are:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime*
- ensuring that gambling is conducted in a fair and open way*
- protecting children and other vulnerable persons from being harmed or exploited by gambling.*

The duty to pursue the licensing objectives and permit gambling.

1.4 In exercising its functions under the Act the Commission is under a duty to pursue, and wherever appropriate to have regard to, the licensing objectives, and permit gambling, in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives.

We are not aware of the presence of any evidence of risk to the Licensing Objectives caused through where machines are being made available today, whether in premises dedicated for gambling or not. If and when instances do arise, where there is an apparent risk, and the risk can be identified and evaluated, it is the regulator's job to enforce the Licensing Objectives and regulations and to deal with the matter accordingly through the sanctions available to them, on a case by case basis.

In the absence of risks to the Licensing Objectives the Commission should (as per 1.4 above) be aiming to 'permit gambling'.

Wholesale change to all Operating Licences because of a very small number of incidents cannot be regarded as a proportionate response, nor can rewriting the Gambling Act.

In the absence of a section in this response document for 'any other additional comments' we have included below some feedback regarding the Commission's workshop convened at the request of the Industry on January 19th;

Although those who were able to attend the meeting on the 19th January found some of it useful, its impact has been significantly dampened as there have been no agreed outcomes or written amendments to the consultation upon which the industry can rely when responding. The meeting was unfortunately therefore not effective and is regarded as a missed opportunity.

'Primary gambling activity'

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?

'Primary gambling activity' was an ill-conceived concept that was poorly researched, poorly consulted and was not accepted by the Industry, and because of this it was impossible to regulate with any effectiveness.

We agree with its removal.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

The Gambling Business Group is of the view that it is not for the Gambling Commission to effectively extend regulation (by introducing new SR codes to the LCCP) in order to bolster an unnecessary and unsupported interpretation of gambling policy and in some cases, law. Particularly where there has been no apparent evaluation of evidence to support such a position.

Social Responsibility codes should be used for their said purpose – regulating Social Responsibility practices & measures. It is a stretch of the imagination for anyone to accept that regulating the siting of gaming machines should be placed under a Social Responsibility code. Would the Commission then argue that ALL gambling regulations should be regarded and categorised as Social Responsibility requirements just because they relate to gambling activities? Gaming machine regulation is gaming machine regulation and should not be confused with Social Responsibility issues.

As explained in our answer to Q1 above, the policy objectives being referenced are out of date so the question is moot.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

The Gambling Business Group has a concern with the drafting of the proposals as key points of regulation that have been agreed between the regulator and the Industry in the past appear to have been discarded by the Commission.

Similarly, the Gambling Commission has ignored current practices of which they have clearly been aware and involved in conversations and discussions about. These relate specifically to;

- The fact that bingo is restricted in the times that it can be played and that machines in bingo premises can be operated 24/7. This is written in the 2005 Act and we are surprised that it has not been acknowledged in the consultation document.
- Casinos have been operating automated roulette terminals for a number of years (in the manner in which the Commission now appear to dislike) with the full awareness and acknowledgement of the Gambling Commission. We understand that a number of businesses will become unviable if the Commission does not carry through this consultation process effectively, resulting in closures and job losses.

We also believe that Licensees are entitled to see the evidence that has been evaluated in support of the Commission's stated 'emerging view' that CCTV is not appropriate supervision in bingo premises.

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**

It has been brought to the Gambling Business Group's attention that there are consequences to the document that the Commission appear to have not considered. Not least of all the potential closure of some casino and bingo licensed premises. It is disproportionate to cause damage to businesses without substantial evidence of harm being caused to justify it.

That said, we are aware that the proposals as written regarding machines not being available outside of the playing of bingo cannot come into force as it would contravene the 2005 Act (see answer to Q4 above).

One overriding effect of these proposals will be the further stifling of innovation and business and product development. Businesses will be deterred from investing in growing their businesses if there is the possibility that their Operating Licence can be changed to include new conditions that effectively stops that growth from materialising.

We are also concerned that there is additional responsibility and burden (particularly considering the cumulative effect including prior changes) being placed upon local authorities who do not have the capacity or spare resources to deal with them effectively. It is therefore likely that much of what is required to happen at a local level may not be achievable. In this regard we would have expected the Commission to have carried out an impact assessment on the ability of Local Authorities to take on the requirements in order to avoid unintended consequences. This assessment has not been made available to stakeholders.

We have a further concern for unintended consequences in the case where these new requirements enable an overzealous Licensing Officer to place unnecessary additional requirements on a premises licence that have no bearing on upholding the Licensing Objectives. Just one example would be in the area of additional (usually expensive) signage to differentiate premises beyond that necessary for a customer to know whether they are entering a bingo venue or a betting shop.

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?

We would like to understand where there is evidence of risk to the Licensing Objectives in this point. If there is not any evidence then the proposed changes cannot be regarded as proportionate or necessary.

It is difficult to comment objectively in the absence of said evidence.

However, we would remind the Commission of S.86 of the 2005 Gambling Act that states that an operating licence may not include a condition that limits the number/category of machines that can be made available for use in accordance with the licence or which contradicts a provision of regulations relating to gaming machines made by the Secretary of State.

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

The Commission has evidently been happy with the deployment of non-remote products in gambling venues to date and have engaged in meetings and dialogue to that effect.

If there has been a new evaluation of evidence to support a change in the Commission's position on this then we would suggest that this evaluation is made available to those engaging in this consultation process.

Otherwise, we would reiterate our reminder in our answer to the point above; we would remind the Commission of S.86 of the 2005 Gambling Act that states an operating licence may not include a

condition that limits the number/category of machines that can be made available for use in accordance with the licence or which contradicts a provision of regulations relating to gaming machines made by the Secretary of State.

Business plans and applications for licences

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?

No we do not. We are not aware, neither have we been made aware by the Commission of evidence of any real risk suggesting that this is necessary or proportionate.

Incidents of issues arising have, in the Commission's own admission, 'reduced to a miniscule number'.

Business plans are currently a fundamental part of the Operating Licence application process and in our members experience works very well without the need for further change. As we have mentioned in other parts of this document we are very concerned that the proposed approach would restrict operators from innovation, i.e. where a new product to becomes available to an operator, which impacted on an operator's business plan, would this require a variation of the licence just because one of the elements of the business plan with which the licence was issued had changed?

Furthermore, we do not see it as a role of the Local Authority to evaluate and assess commercial business plans as suggested in 3.19 of the consultation document other than in pursuit of the Licensing Objectives.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

There are errors in this guidance similar to those in the drafting of the new codes.

It is also wrong to suggest that a local authority should 'ensure that the appearance and function of a.....premises should be that of a premises licensed for that activity'. The consultation document is written as if customers can't tell the difference between a betting shop and a casino without being told or through reading a sign first. This is treating the UK public as incapable of thinking for themselves and is also giving a misguided LA official a reason to stipulate unnecessary signage and displays.

It also risks stifling innovation and the opening of new premises.

It would be helpful if the Commission were to share with the Industry their evidence that shows there is a risk to fairness and openness if premises do not appear as they envisage.

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?

In our members experience they already do. So there is no need for any change.

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Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

Name:

David Grant

Organisation:

London Borough of Newham

Email address:

david.grant@newham.gov.uk

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| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | | Professional services provider | |
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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.

We fully agree with the above policy objectives. They are necessary to ensure the integrity and principles of the Gambling Act.

However, there is a blatant anomaly in the provision of category B machines within the existing regulatory framework - B2 or Fixed Odds Betting Terminals (FOBTS) in betting shops.

‘Primary gambling activity’

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?

We agree, provided that adequate safeguards as proposed in Q1 are introduced.

Primary activity should be determine and based on yield contribution. In which case, the bookmakers’/betting shops’ primary activity today, as it has been for a growing number of years, is B2 gaming machines and not betting.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We agree that that the proposed policy objectives should be contained in the social responsibility code, as it will help Licensing Authorities in exercising the principles that can be applied by them.

We are concerned that betting shops offer inadequate supervision when compared to all other gambling sectors. They operate lone staffing of premises as standard practise and there are many instances of failures in social responsibility, particularly linked to the provision of B2 gaming machines.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

The Gambling Commission must undertake further consultation on any draft.

It should address the lack of supervision provided in betting premises when compared to all other gambling premises.

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**
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They would appear to be sufficient to deliver the Commissions underlying policy objectives.

However, we urge the Commission to pay further regard to the lack of supervision provided in betting premises when compared to all other gambling premises.

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?

We are extremely disappointed that the Gambling Commission has not taken into consideration that the use of B2 (FOBT) machines in non-remote betting licensed premises is becoming the principal activity of such premises instead of the betting activity; and that the Gambling Commission have not taken action in the proposals to ensure that the principal activity of betting premises is clearly defined in the LCCP, code provisions, etc, as being betting and not the use of gaming machines. Even though betting premises may have sufficient betting facilities, we consider that they are for all intents becoming gaming machine centres with the betting becoming ancillary to both the machine use and the profits made from such machines. In view of the stakes and prizes of B2 machines, we are of the opinion that the licensing objective of the protection of vulnerable persons is being severely jeopardised by this situation.

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

It should be on a case by case basis via specific conditions.

Business plans and applications for licences

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?

Yes.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

Many Local Authorities themselves question the guidance given by the Commission, which has fuelled support for the Sustainable Communities Act proposal submitted by Newham.

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?

Please see Q6(ii) above.

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Alternatively, responses can be sent by post to:

Tom Deery
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Name:

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- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|----------|--------------------------------|--|
| Licensed operator | x | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

1.5 If you are responding as an individual, please indicate your own interest:

N/A

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.

1.1 As a casino operator Genting recognise that it is appropriate for gambling activity to be provided within dedicated gambling premises which are subject to appropriate levels of regulation. It is not however agreed that this policy objective in the case of casinos is not already being achieved through existing regulation or operator management.

1.2 Casinos are a distinct gambling offering and ultimately remain destination venues where customers make a positive choice as to whether or not to visit and once there, whether or not to gamble. It is not accepted that there is a high risk of customers inadvertently entering into casinos without knowing at the time of entering or during their visit the true function of the premises. Distinct from other categories of gambling premises, all casinos have staffed control points at the place of entry which reinforce the identity of casinos as being heavily regulated and well supervised venues. Genting believe that casinos can legitimately be offered in a range of formats and make available different gambling and non gambling facilities to customers. The function of a casino should not be to the exclusion of other ancillary leisure activities, for example in larger venues operators should be able to cater to customers seeking a full nights entertainment and who are likely to expect the provision of a quality restaurant, bar and ancillary entertainment such as live music or dancing areas etc. Customers who use smaller electronic casinos in contrast will expect a provision of Automated table games. Genting is however concerned that there may be occasions when customers enter other categories of gambling facilities under the belief that those premises are casinos when they are not. The external marketing by some operators of premises licensed as Adult Gaming Centres and betting shops with names connected to casinos can be misleading and devalue the use of the term "casino" when premises are genuinely licensed and operated as such.

1.2 Genting does not disagree that gambling activities should be supervised, however it does not accept that in respect of Casinos this policy objective is not already being achieved through existing practices. Casino staff are already trained to a high standard to ensure that gambling activities undertaken by customers are monitored and where necessary procedures for customer interaction are implemented.

1.3 To date Genting, like other casino operators has upheld the requirements of the current primary gambling activity policy as set out in the LCCPs. As the Commission will be aware only Genting and Grosvenor Casinos Limited currently operate wholly electronic casinos where electronic automated versions of table games (usually American Roulette) are made available alongside gaming machines. In the case of both operators, the requirements of Operating Licence conditions 16.1.2 are always complied with, i.e. where

wholly automated games are exclusively offered there are always more individual playing positions made available than gaming machines. These obligations on casino operators are clear and at present the Commission's "primary gambling activity" for casinos includes the provision of facilities to participate in casino games whether by non-remote or remote means. To date Genting is not aware of any issues of concern having been raised by the Commission or any other third party that would indicate that the operation of Electronic Casinos in their current format is or will in future be contrary to the licensing objectives under the Act, in particular there is no evidence that they cause harm or increasing the risk of harm to persons who may or be vulnerable to problem gambling.

- 1.4 Automated versions of table games have been available in casinos for a considerable number of years now having been permitted under the Gaming Act 1968. They were recognised by the Gaming Board and subsequently by the Commission as being equivalent to traditional table games and as a consequence 8 electronic playing positions were taken as the equivalent of one traditional table in demand calculations. Today automated versions of table games are a key feature of all casinos and there is a substantial demand for them from customers who like them as an alternative to placing bets at a live table. Indeed automated versions of table gaming are deliberately excluded from the Gaming Machine definition under S.235. Furthermore the Commission's own Guidance to Local Authorities at paragraphs 16.23 and 16.24 also acknowledges this and recognises such terminals as the provision of live gaming. Automated versions of table games are an established feature which would convey to a customer who knows and is familiar with casinos that they are present in such a premises.
- 1.5 The change in policy proposed under this consultation causes Genting great concern in respect of the requirement that Gaming Machines are only made available in combination with the named non-remote activity of the operating licence. This is on the basis that it is apparent from the consultation document that the Commission considers that wholly automated versions of casino games constitute remote gambling and therefore as a consequence, many, if not all of the electronic casinos would have to cease operation at least in their current format or close for good. Genting does not consider that this interpretation and approach by the Commission is either correct in law or indeed proportionate to the aims of the policy which is to minimise gambling related harm. The Commission will be aware that Genting and Grosvenor Casinos Ltd have jointly taken legal advice on this point from Stephen Walsh QC a copy of which was supplied to Helen Venn on the 26th February 2016. That note of advice is to be considered as part of Genting's response to the consultation and is to be read in conjunction with this reply.
- 1.6 As set out in Counsel's advice, it is not accepted that the provision of wholly automated table games fall under the definition of remote gambling under S.4 of the Act, merely the requirement for operators to obtain Ancillary remote licences was to address a perceived unintended consequence of the Act on transition which a broad (non-purposive) interpretation of Section 4(2) might have had to the lawfulness of terminal gaming within casinos. Even the Commission could not justify a requirement for a full remote operating licence for automated table gaming where the relevant equipment is on the same premises. The provision of wholly automated table games on casino premises gives no real sense to those playing the game that they are participating in "remote gambling". The customer places the bet on the premises with the operator, the result is generated live on the premises as part of a real game and the bet is settled on the premises with the operator. This is very different to the scenarios contemplated by the Commission in either the Luxury Leisure or Greene King cases.
- 1.7 The LCCPs aside, the Act does not expressly require the provision of Gaming Machines to be ancillary to the core licensed gambling activity, (other than in the case of Large and Small Casinos granted under the Act, where the provision of Machines is directly linked to the number of Table Games made available on those premises). In all other cases the number of Gaming Machines is specifically set out under S.86, and the Act also makes it

clear that neither the Licensing Authority nor the Commission are able to alter these entitlements. There is no express provision which states that both Gaming Machines and the core activity as authorised under a Premises Licence must be mutually made available. In fact the language of the Act under S.150 which “authorises” licensed premises to be used to provide a specified gambling activity is almost identical to S.172 which “authorise” the holder of a Premises Licence to make gaming machines available for use on the premises. In the context of converted casino premises, both S.150 and S.172 also have to be read in conjunction with the Gambling Act (Commencement No.6) Order 2006, Schedule 4 at paragraphs 65 which set out the grandfather rights for Casinos granted under the Gaming Act 1968 including the existing entitlement to “authorise” making up to 20 category B machines available. It is the Commission’s conditions which have imposed the primary gambling activity requirement for machines, including the necessity that where only wholly automated gaming terminals are provided there should be more player position than gaming machines, not the Act itself. Likewise under this proposed policy change it is the Commission that is imposing the requirement for the provision of non-remote gambling facilities without really contemplating what the real potential for harm may or may not be.

- 1.8 The Commission’s proposal in the Consultation is that Gaming Machines can only be made available alongside the non-remote activity stated on the Operating Licence. It is agreed that under S. 68 (5) and (6) of the Act that non-remote operating licences are required for the provision of gaming machines, however, Genting does not accept that the provision of gambling on a premises has to be exclusively or predominantly non-remote. A premises licence can and does authorise the provision of both remote and non remote gambling activities on the specified licensed premises as is expect in the definition of Casino under S.7(4) of the Act, but obviously the correct category of Operating Licences will need to be held.
- 1.9 Genting is of the view that where wholly automated casino games are made available within the Electric casinos it in reality will have no difference whether those facilities are categorised as remote or non-remote gambling as genuine live bankers games will be available to customers playing the game on the premises. To impose the policy change as outline in the consultation would be disproportionate to its aims and will have a detrimental and prejudicial impact on electric casino operators who for some time have legitimately offered the format with the full knowledge of the Commission consistently. There is no risk of over proliferation of Electric Casinos with Casino licences being finite in number and restricted in terms of geographical location, in contrast, betting and bingo operators could apply for licences without such constraints.

‘Primary gambling activity’

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?

- 2.1 As stated in response to Q2 above, in respect of Casinos, Genting considers that the position in respect of Primary Gambling Activity particularly with the implementation of LCCP Condition 16.1.2 is sufficiently clear for Casino operators and has been consistently adopted. The provision of Gaming Machines alongside an exclusive provision of fully automated casino games has not given rise to any reported instance of concern or harm and accordingly Genting would proposed that the current “primary gambling activity” requirements and the related, guidance, should remain unchanged.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

- 3.1 As already set out above, Genting are of the view that in respect of casinos there is no requirement for the existing policy to be changed and the new proposed Social Responsibility codes should not be imposed. If this new policy is to be delivered by the Commission through the use of social responsibility codes Genting is concerned that licensing authorities may interpret the codes inconsistently particularly as some of the key terminology in the wording of the provisions may be open to ambiguous interpretation. This could cause operators a great deal of uncertainty especially when trying to develop new casino premises formats.
- 3.2 Furthermore Genting are of the view that, (particularly as no existing harm has been identified) it may be more appropriate for the social responsibility codes to be alternatively implemented as Ordinary Codes. This would enable casino offerings to be looked at “in the round”, taking into account both environment, function and gambling facilities collectively whilst ensuring that appropriate standards are maintained and that the objectives of the codes to prevent ambient gambling are maintained.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

“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.”

- 4.1 It is Genting’s concern that this condition infers that Gaming Machines can only be provided simultaneously with non-remote casino games and/or games of equal chance. It is common practice within casinos for gaming machines to be made available at other times to when gaming tables are open for use. A similar issue was raised during responses to the “Primary Gambling” consultation in 2008 and it is understood that this was accepted by the Commission as industry practice and accordingly amendments were made to permit machine provision at times when casino games were not being offered.

- 4.2 Genting are also concerned as to how the term “substantive facilities for non-remote casino games and/or games of equal chance” may be interpreted. No guidance has been provided by the Commission as to what constitutes “substantive” other than the suggestion that the term is defined giving it its ordinary English meaning. There is a significant risk that the term could be interpreted inconsistently, especially by different local authorities, and there is potential for there to be as much debate on the terminology as was generated in respect of the “primary gambling activity” definition. Clearly operators need to have clarity and certainty in their business model.

“2 Facilities for gambling must only be offered in a manner which provides for appropriate supervision of those facilities by staff at all times.”

- 4.3 The term “in a manner which provides for appropriate supervision of those facilities by staff at all times” again lacks clarity and could be open to differing interpretation. Does this require operators to employ staff in every gaming area at every moment when gambling facilities are being provided/utilised to supervise customers, or does it simply require that staff remain on premises or in a position capable of providing regular supervision during operation at appropriate intervals?

“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.”

4.4 It is Genting’s view that the consideration should be “*internal and/or external presentation*”.

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**

5.1 Should the Commission proceed to implement the proposed reforms as outline, the greatest impact to Casino operators will be in respect of requiring that gaming machines are only made available in combination with non-remote casino games and/or games of equal chance, if it is not accepted that wholly automated table games are non-remote gambling. In the case of Genting specifically, it operates 4 casinos on a wholly electronic format and each operation will need to be reviewed to consider how it can be reconfigured to accommodate the “substantial” alternative “non-remote casino games.. ” As these premises are small and were purposefully chosen for accomodating an electric format, it may be the case that most of these operations may have to be closed permanently if a viable case cannot be made for reconfiguration or their relocation to larger premises. Whilst it is acknowledged that the Commission has suggested that consideration of transitional arrangements may be made, there is no indication of how long such a grace period may be. If new formats need to be reviewed, licences relocated and premises refitted the period of time for such changes to be implemented could be substantial and may exceed any transitional period leading to interim closure. Alternatively if it is not economically viable to undertake such changes premises may need to be closed permanently with the consequential loss of jobs. Reconfiguration of these casinos will also have financial costs, closure will lead to a substantial loss of revenue whilst relocation and fit out will have not insignificant associated costs to the business.

5.2 Genting is also concerned that if there is a requirement for gaming machines to only be made available when substantial facilities for non-remote casino games and/or games of equal chance are available this could have a significant affect on the business. Income received from slot machines which are currently made available when traditional gaming tables are closed will be lost. Again as well as financial impacts on the business there will inevitably be consequential loss of staff.

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?

6.1 Genting do not agree that the Commission should consider the use made of the non-remote facilities as an indicators of whether gaming machines are being provided in combination with the named activity in casinos in a substantive manner. As the Commission has pointed out in the consultation, consumer choice will dictate the use of gaming machines and the other gambling facilities that are made available and the dominance of one category of gambling facility should not be judged against another. The casino environment in which the Gaming Machines are made available is already a heavily regulated and one in which it is appropriate for them to be made available.

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

6.2 As stated in response to Q6(i) above, Genting do not accept that consideration should be made to the dominance of non-remote gambling facilities either by way of specific conditions or generic codes of practice.

Business plans and applications for licences

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?

7.1 As has already been indicated the Commission already has extensive powers under s.77 to impose conditions on premises licences. Genting's main concern should this practice become more frequent is that for large operators particularly, over time business plans are revisited and revised for a range of commercial reasons. It is not clear from the consultation document but it is presumed that operators may be required to vary operating licences where there are business plan revisions that supersede those previously approved by the Commissions where specific licence conditions have been applied. This requirement could become burdensome for operators and may even see sensible commercial proposals being delayed by the Operating Licence variation process. Genting do not believe that this issue should be dealt with by generic codes of practice or conditions.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

8.1 Genting is of the view that paragraph 17.55 of the proposed new guidance is misleading. If the new Social Responsibility Code is implemented requiring gaming machines to be

made available only when substantial non-remote casino facilities are available it is that code that prohibits the provision in casinos of Gaming Machines without other gambling facilities (either remote or non-remote) being made available. As stated above the language is S.150 and S.172 of the Act is similar in that they both “authorise” the use of premises as a casino and the provision of gaming machines respectively. Nothing in the Act requires that for the provision of gaming machines any other gambling facilities should be provided and this is also reflected in the fact that S.86(1) which prohibits any condition from being imposed on a Operating Licence which interferes with the entitlement to gaming machines under that licence. Furthermore it is Genting’s proposition as set out in Counsel’s advice that wholly automated table games do not constitute remote gambling and should the Commission accept this guidance should be provided to Local authorities in the guidance in this regard also.

- 8.2 Whilst the policy outlined in paragraph 17.56 is not agreed by Genting as set out above, Genting are of the view that it must be made clear to Licensing Authorities that casinos can operate in a number of different formats and it is permissible and indeed quite usual for larger Casinos to provide a range of ancillary leisure and hospitality facilities and entertainment whilst still retaining the identity as a casino. Indeed there is a requirement for designated non-gambling areas to provide recreational facilities under the mandatory conditions which apply to Premises Licences.
- 8.3 In respect of paragraph 17.57 of the draft guidance Genting is of the view that the Commission should not oblige local authorities to request all information, but remind them that they may request information if they considers it appropriate when considering the application.
- 8.4 Genting is concerned that paragraph 17.58 may cause confusion as a consequence of the current drafting of first proposed Social Responsibility Code in respect of the timing when Gaming Machines may be made available. Extended operating hours could legitimately be applied for to enable the provision of gaming machines before live gaming tables are opened.
- 8.5 Genting is of the view that the wording and intentions of paragraph 17.59 of the draft guidance is unclear and confusing as to what particular aspect of “this” licensing condition and codes of practice it is referring to. Furthermore, as part of the application process for a new premises licence or a variation of an existing premises licence, it is a statutory requirement for the Commission to be served with a copy of the application and as a Responsible Authority it has the right to make representations on a case by case basis. Clearly this requirement under the guidance will add to the administrative burden of licensing authorities who may feel obliged to contact the Commission if they are unclear as to their obligations under this paragraph, but may not actually have any operations concern in respect of an application.

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?

9.1 Please see response to Q8 above where relevant.

1.6 Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be

treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.

- 1.7** 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.
- 1.8** All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments or agencies, local authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to do so.

Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
- 1.2** The templates leaves space for responses to all the questions asked in the consultation. However, we understand that respondents to the consultation may wish to answer only those questions which are relevant for their business, organisation or interests.
- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by ~~Monday 22 February, 2016~~ **deadline extended to 21 March 2016**.

Alternatively, responses can be sent by post to:

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- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|--|--------------------------------|----------|
| Licensed operator | | Professional services provider | x |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

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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.

We welcome the Gambling Commission's recent announcement concerning the forthcoming changes to the organisational structure. In particular the following:-

"These key changes are designed to;

- ensure sufficient focus on analysis and evidence. The Gambling Commission is an evidence-led regulator. We produce regular public data on industry trends and consumer participation. This helps shape policy on gambling in Britain, as well as informing regulatory decisions".

The fundamental flaw in this consultation is the complete absence of evidence or evaluation of evidence required to inform those regulatory decisions.

The proposed policy objectives may have had some relevance fifteen years ago, since that time the references to premises and distinctions between remote and non-remote gambling have been made less relevant by advances in technology and changes in consumer demands.

The 2005 Gambling Act was permissive and intended to keep pace with the changing environment, consumer demands and advances in technology.

The licensing objectives are primarily focused on protecting the consumer but consumers do not understand or appreciate the legislative difference between remote and non-remote products.

Neither are the 'distinctions' between different types of licensed gambling premises of importance to the consumer. In no other sector or industry do operators legally have to differentiate between different types of premises. This is because the consumer is quite capable of discerning one type of gambling venue from another.

The Commission has accepted that there is no evidence or research to demonstrate that customers are not aware of the type of gambling premises which are being operated when they enter them, or of any resulting harm to the licensing objectives.

The fact that gambling of any type can take place on any premises, whether licensed or not, by means of a mobile phone or other remote device makes any pursuit of the proposed policy objectives a questionable and unjustified exercise,

If there is any evidence of risk to the licensing objectives caused as a direct result of gaming machines being made available in a specific location, the risk can be properly identified and evaluated. It is then the task of the relevant authority to enforce the licensing objectives and to deal with the matter accordingly through the sanctions currently available to them, on a case by

case basis.

Wholesale changes applied to all operators because of a very small number of incidents cannot be regarded as a proportionate response. It will inevitably place an onerous burden on businesses with detrimental consequences for future development, employment and revenue for central and local government.

There is no evidential basis to justify the introduction of the additional policy objectives.

‘Primary gambling activity’

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?

We agree with its removal.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We are of the view that the Gambling Commission should not increase the regulatory burden on businesses by introducing new social responsibility code provisions in circumstances where they are not necessary and are not supported by evidence which justifies their introduction.

Breach of social responsibility code provisions carries severe sanctions including criminal and financial penalties.

It is contrary to established principles to introduce measures which carry such sanctions on a basis which is not clear and unequivocal, which is the situation which prevails in this case.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

The Gambling Commission appears to be criticizing two current methods of operation which were apparently acceptable to the Commission, as no action is believed to have been taken by the Commission to prevent them taking place, namely;

- The default conditions in the premises licence regulations provide that although bingo is restricted in the times that it can be played, gaming machines in licensed bingo premises can be available for 24 hours each day.
- Casinos have been operating automated roulette terminals for a number of years.

Businesses may no longer be viable if the Commission maintains its opposition to the operation of casino and bingo premises in this way, resulting in closures and job losses.

We would also ask to see the evidence that has been produced to provide support for the Commission's 'emerging view' that CCTV does not provide appropriate supervision in bingo premises. Until we have been able to consider such evidence we would disagree with the Commission's view.

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**

Our concern is that these proposals will be detrimental to innovation and the development of businesses and products. Operators will be deterred from investing in their businesses if there is uncertainty about the application of the proposed policy objectives and new social responsibility code provisions, which may result in operating licences being made subject to new conditions that effectively prevent development and growth from materialising.

Some of the proposals contained in the consultation extend beyond bingo, betting or casino premises. There are implications for other gambling sectors such as arcades. For example, CCTV supervision is used by all non-remote gambling operators. It is reasonable to assume that if CCTV supervision is 'not appropriate' for bingo, the Commission will adopt the same approach to all other types of non-remote gambling activity.

We are also concerned about the additional responsibility and burden being placed upon licensing authorities by the proposed provisions that do not have the capacity or spare resources to deal with them effectively, especially at a time when they are dealing with other requirements placed upon them by previous amendments to the LCCP.

There is also the concern that, as a consequence of the proposals, licensing authorities will attach unnecessary and disproportionate conditions on a premises licence that have no relevance to the licensing objectives. An example being the requirement for additional supervision by CCTV and/or individuals (including door staff) where it cannot be justified on an evidential basis and may result in substantial additional expenditure for an operator.

The existence of an appeal process is of little assistance in practical terms because of the expense involved.

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?

This appears to be a means by which the Commission is attempting to circumvent the provisions of section 86 of the Gambling Act 2005 which provides that an operating licence may not include a condition about the number or categories of gaming machine that may be made available for use in accordance with the licence or that contradicts a provision of regulations relating to gaming machines made under the Act.

As no evidence of risk to the licensing objectives has been provided by the Commission to support the proposal it cannot be justified as being either necessary or proportionate.

Furthermore, any such provision should be introduced as an amendment to the Act and only after proper legislative consideration by all relevant parties including an impact assessment.

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

We would repeat our view that this appears to be a means by which the Commission is attempting to circumvent the provisions of section 86 of the Gambling Act 2005 which provides that an operating licence may not include a condition about the number or categories of gaming machine that may be made available for use in accordance with the licence or that contradicts a provision of regulations relating to gaming machines made under the Act.

As no evidence of risk to the licensing objectives has been provided by the Commission to support the proposal it cannot be justified as being either necessary or proportionate.

Furthermore, any such provision should be introduced as an amendment to the Act and only after proper legislative consideration by all relevant parties including an impact assessment.

We would also re-iterate that the Gambling Commission should not increase the regulatory burden on businesses by introducing new social responsibility code provisions in circumstances where they are not necessary and are not supported by evidence which justifies their introduction.

Breach of social responsibility code provisions carries severe sanctions including criminal and financial penalties.

It is contrary to established principles to introduce measures which carry such sanctions on a basis which is not clear and unequivocal, which is the situation which prevails in this case.

Although the breach of ordinary code provisions does not carry the same criminal and direct financial sanctions, the financial implications of a review of an operating licence may be substantial and the same principles should therefore apply.

Business plans and applications for licences

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?

No we do not agree.

We are not aware of any evidence of any actual risk to the licensing objectives which would justify the proposal as necessary or proportionate. On the contrary, the Commission accepts that such cases are isolated.

We are concerned that the proposal would unnecessarily restrict operators who would not have the flexibility to innovate without seeking an amendment to their operating licence conditions.

The imposition of additional conditions would increase the regulatory burden on operators without justification and also expose them to potential criminal liability for breach of a condition which has been imposed without the requisite justification mentioned above (in respect of social responsibility code provisions).

Furthermore, we do not see it as a role of the licensing authority to evaluate and assess commercial business plans. For the reasons set out above we do not consider that licensing authorities will have the resources to deal with premises licences in the way envisaged by the Commission.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

We would repeat the view set out above.

We are concerned about the additional responsibility and burden being placed upon licensing authorities by the proposed provisions that do not have the capacity or spare resources to deal with them effectively, especially at a time when they are dealing with other requirements placed upon them by previous amendments to the LCCP.

Furthermore, we do not see it as a role of the licensing authority to make such subjective decisions including the possible need to evaluate and assess the appearance and function of premises.

There is also the concern that, as a consequence of the proposals, licensing authorities will attach unnecessary and disproportionate conditions on a premises licence that have no relevance to the licensing objectives. An example would be a requirement for additional signage where it cannot be justified on an evidential basis and may result in an operator incurring substantial expenditure.

The existence of an appeal process is of little assistance in practical terms because of the expense involved.

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?

We do not consider that there is any evidence to support the requirement for any additional guidance.

1.6 Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.

1.7 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.

1.8 All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments or agencies, local authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to do so.



THE LAW SOCIETY
of SCOTLAND
www.lawscot.org.uk

Consultation Response

Gambling Commission Consultation: Controlling where gaming machines may be played

**The Law Society of Scotland's response
March 2016**

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish Solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's legal profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective legal profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fair and just society acting through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We welcome the opportunity to respond to the Consultation issued by the Gambling Commission in November 2015 and entitled "Controlling where Gaming Machines may be played". This response has been prepared on behalf of the Law Society of Scotland by members of our Licensing Law Sub-committee.

General Comments

We note that the Consultation document sets out proposed amendments to the Licence Conditions and Codes of Practice (LCCP) which apply to Gambling Operators licensed by the Gambling Commission and that it also sets out proposed amendments to the Commission's Statutory Guidance to Licensing Authorities (GLA)

It appears that these changes do not intend to reduce the number of machines in gambling premises as this would require primary legislation, but rather an attempt to make it clear that an operator cannot only have gaming machines in premises which do not have facilities for over the counter betting.

We note from the decision of the First Tier Tribunal in the Greene King case that the Gambling Commission's purpose in refusing the applications was to prevent Greene King from subsequently applying for a premises licence and that the effect of the Commission's decision would be to impose a condition on the operating licence to the effect that the activity should not be carried out in pubs or in buildings whose primary purpose is that of a pub.

With reference to Section 84(1) of the Gambling Act 2005¹ we note that an operating licence may not include a condition (whether attached by virtue of Section 75, 76 or 78) which

- (i) requires that licensed activities be carried on at a specific place or class of place,
- (ii) prevents the licensed activities from being carried on at a specified place or class of place, or
- (iii) specifies premises on which the licensed activities may be carried on.

Accordingly, the Gambling Commission's concerns about Greene King's premises, having already accepted that they were suitable and competent to offer the proposed gambling activities in a busy pub environment, meant that the Gambling Commission were determining issues which the Gambling Act 2005 assigns to licensing authorities.

It would appear that the LCCP and the GLA are being amended in light of this decision.

We believe that amendments to the LCCP and GLA should only take place once the Greene King case has been finally determined as it is at present subject to appeal.

We note that at present pubs and clubs are entitled to have low level gambling in terms of their premises licence by virtue of section 282 of the Gambling Act 2005 and that with regard to higher stakes, gambling should only take place on premises that are specifically approved for these purposes.

¹ <http://www.legislation.gov.uk/ukpga/2005/19/contents>

We also note that there is a perception that machine gambling either in casino, bingo or betting premises, is more likely to be addictive and accordingly non-remote gambling should be the primary activity of such gambling premises.

We make specific reference to paragraph 3.2 of the Consultation paper and note that the Gambling Commission themselves acknowledged that there has been a significant number of previous guidance documents.

We accordingly question the need for revision of both the LCCP and GLA on such a regular basis and question whether concerns in terms of “primary gambling activity” should now be placed upon the statute.

In response to the questions contained with the Consultation paper, we should like to respond as follows:

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

We would not normally comment on policy objectives, but consider that Licensing Authorities are better placed to consider the merits of gambling applications to individual premises.

We are, however, unsure as what is meant by “with very few low risk exceptions” in respect of non-remote gambling being confined to dedicated gambling premises.

We also note that, with regard to casino, bingo and betting premises, gaming machines are only made available “in combination” with the named non-remote activity of the operating licence. We question the meaning of “in combination”. This requires to be properly defined.

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?

We refer to our comments above.

We are concerned about regular revision of both LCCP and GLA and believe that “primary gambling activity” should be statutorily defined.

We also refer to paragraph 2.13 of the Consultation paper and question the meaning of “the sum of gambling activity”.

In all the circumstances, a statutory definition of “primary gambling activity” is required.

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We refer to paragraph 3.3 of the Consultation paper and note that a new social responsibility code provision is proposed 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 note that the Gambling Commission considers 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.

We are concerned that, in terms of the social responsibility code provisions, applications will be assessed with regard to future risk as opposed to past evidence of breach of code provisions or detriment to the statutory objectives, particularly the third objective.

With particular reference to paragraph 3.14 of the Consultation paper, it is the Commission’s preferred approach where it is judged necessary to refer to the use made of non-remote facilities, to do this by way of the imposition of specific conditions rather than include any reference in the proposed general provisions.

We question what these conditions would be and in this respect refer to Section 77 of the Gambling Act 2005 in this regard.

Also, with reference to the social responsibility code provisions in respect of non-remote general betting operating licences, non-remote bingo operating licences and non-remote casino operating licences, we note that the term “substantive facilities” is also not defined and we would seek clarification with regard to same.

We refer to paragraph 3.15 of the Consultation paper and note that the Gambling Commission appears to be asking licensing authorities to consider risk assessments and business plans in order to impose conditions.

We believe that the imposition of conditions should always be based on evidence, be capable of being understood, proportionate and capable of enforcement.

We refer to paragraph 3.19 in this regard.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

We refer to our comments on question 3 above.

Q5. What impact do you consider the proposed provisions will have on the affected sectors and are they sufficient to deliver the Commission underlying policy objectives below?

We refer to our comments on question 3 above.

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?

We do not understand what this question means so cannot offer any comment.

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?

We refer to our comments on question 3 above.

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?

We refer to our comments on question 3 above.

We refer specifically to Section 24 of the Gambling Act 2005 whereby the Commission shall issue one or more Codes of Practice about the manner in which facilities for gambling are provided and accordingly question the need for this proposed approach.

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

We refer to our general comments and consider that the continual revision of guidance provides additional resource implications for licensing boards in Scotland.

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?

We refer to our comments on question 8 above. With particular reference to paragraph 17.59, 18.28 and 19.25 of the Consultation paper, we question the



meaning of “cause for concern” in terms of the new proposed guidance to licensing authorities in respect of casinos, bingo and betting.



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CONTROLLING WHERE GAMING MACHINES MAY BE PLAYED
A SUBMISSION BY THE ASSOCIATION OF LICENSED MULTIPLE RETAILERS

The Association of Licensed Multiple Retailers (ALMR) welcomes the opportunity to comment on the Gambling Commission's proposed amendments to the Licence Conditions and Codes of Practice. As the only national trade body dedicated to representing those companies operating pubs and bars, our members manage the majority of the machine estate in the sector. We are therefore well placed to comment on the impact of the Government's proposals. By way of background, between them our 200 member companies operate just over 22,000 outlets – almost all of the managed pub estate in the UK - employing 625,000 staff. Members include major national pub retail chains, dedicated late night operators and casual dining outlets.

Licensed hospitality is one of the UK's primary economy sectors. It has a turnover of £21 billion, and in the past year its contribution to GDP increased by over 8% – the average GVA each pub makes to its local community is £190k per annum. Around half a million people are employed directly in pubs and bars alone, with jobs in all regions for all ages and all skill levels. Crucially, the sector provides the first taste of work for many young people and generated 1 in 6 of all new jobs for 18-24 year olds in the last year.

It is, however, an industry made up of small businesses, many of them independently owned and managed. Two-thirds of our members are small independent companies operating 50 outlets or fewer under their own branding, predominantly suburban community outlets. These are valuable social and economic assets – community centres, tourist attractions and significant revenue generators – as well as providing a well regulated and controlled environment for people to enjoy alcohol responsibly and socially. With low net profit margins, these businesses face higher than average compliance costs and struggle with ever increasing levels of red tape. This is particular the case with regard to the amusement machine category, where changes in legislation have resulted in anomalies, complexities and red tape. This was exacerbated by the shift from a duty based system to a gross profits tax in 2013.

We recognise concerns about proliferation of high stakes machines and the need to see they are provided in appropriate and responsible gambling environment, but provided that pub operators are able meet that requirement – by, for example, providing licensed gambling in a separate and secure space within the premises - the fact that they are a pub shouldn't preclude the possibility of a gambling licence being granted.

Market Overview

In the last decade, the pub industry – and the role of amusement machines within it - has undergone significant and profound change. Particularly since 2001, the market for gambling and gambling products has changed significantly. The proliferation of varied and new lottery games, the introduction of a second national health lottery and the introduction of new FOBT machines in licensed betting shops on the high street have all increased the competitive environment. It is the revolution in online gambling through smartphones and handheld devices which has had the single biggest impact on other, softer forms of gaming. The failure of pub amusement machines to offer an attractive stake and prize proposition throughout the period has seen a significant falling away of revenues derived from gaming.

The uplift granted to Cat C machine prizes in the 2013 Triennial Review slowed but did not reverse this decline. The ALMR has surveyed its members' gaming machine estate regularly over the past 12 years and the results of our gambling prevalence survey show a steady decline in machine density for both AWP and SWP machines which was slowed but not reversed by the stakes and prizes uplift in 2013. AWP density has remained stubbornly low at around 1.2 over the last three years and SWP density has continued to fall – in 2015 it was just 0.4 – reflecting the growing trend of removing less viable machines. The proportion of the overall estate with gaming machines has also continued to fall since the Triennial Review – after which it stood at 61% - down almost 10 percentage points in just 5 years to 58% in 2015.

Data from our annual Benchmarking Survey also reflects the declining revenues pubs are achieving from amusement machines. Machine income was equivalent to 3.6% of turnover in the first benchmarking survey. Since then, machine income has fallen by more than 83% and after a small recovery last year, it fell again from 1% to 0.6% of turnover across the market as a whole: a record low. Gaming turnover is particularly important to community locals, comprising 2.4% of turnover for the segment, compared with 0.6% across the survey. The trend in machine income as a share of turnover within the community local segment has also been downwards, though as one would expect with a smaller sample, the trend has been a little more erratic.

At the same time as these difficulties, changes to the regulatory regime governing machine licences have seen the density of machines in pubs decline over time. Amusement machine permits for pubs are not issued separately but are attached to and an integral part of the alcohol premises licence. Previously, pubs had been able to apply for an effectively unlimited number of permits, but the Gambling Act saw this restricted to 2 as of right. Whilst there was an ability to apply to the local authority for more, many local authorities have not been sympathetic to such requests and the level of bureaucracy surrounding permit transfers and management is now considerable. We would welcome a widening of the scope of this guidance to address these concerns and reduce the regulatory burden.

For example, some local authorities say that you just need to state the number of machines eg 2 machines; some say that you must specify the Category machines present eg 4 machines, both Cat C, D and SWP and others say that you have to precisely indicate the number and category of machine. If either of the two latter approaches is adopted, then operators must submit renotifications to amend the alcohol premises licence. Coupled with the increase in tax arising from the introduction of MGD in February 2013, and the resulting decline in machine income for smaller operators, there is now evidence that community pubs choose to restrict machine numbers or remove them altogether as the income they attract does not compensate for the additional costs and red tape.

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

While we do not believe that mainstream pubs should be capable of offering gambling products, we disagree with some of the changes as they suggest that the Commission is attempting to prevent premises – or, crucially, parts of premises which comply with the necessary conditions – from ever

applying for a bingo licence – as the consultation puts it, they would mean that “the Commission would regard it as wholly unacceptable for a pub to have a premises license for bingo” – despite there being no identified problems that this change will tackle and no clear desire from operators of mainstream pubs to offer bingo or other gambling licensed products. If a pub or other premises is able to comply with the strict conditions attached to bingo licences – for example with a separate, secure and age-verified area within which gambling would potentially be offered – we see no reason for the Commission to preclude the possibility of a grant simply because the premises is already licensed for another controlled function.

Without any evidence of detriment or harm being caused or even likely to be caused by the offering of commercial bingo within alcohol-licensed premises the proposed change is overly restrictive, especially as the Upper Tribunal recently upheld the Commission’s right to reject such a licence application. We do not believe that, had the licence been granted, it would have threatened the distinction between different types of licensed gambling premises; most bingo licensed venues serve alcohol and any pub offering commercial bingo under a bingo licence would be bound by the conditions of their stricter bingo licence.

We agree on the need for supervision but believe that the Commission should clarify that supervision should be “proportionate” as well as “appropriate” – the need for supervision of gambling activities increases with risk. There is a risk that the requirement for “appropriate” supervision could result in overly-cautious and expensive monitoring requirements being placed on venues which offer only lower-risk gambling.

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?

We agree with the proposal, which will bring clarity to an increasingly-complex and often-confusing licensing regime.

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We have no objection to the use of social responsibility code provisions to deliver the Commission’s policy objectives in respect of gambling machines in premises which have a gambling licence and it should be made clear that this is where Code applies and has relevance. We do not agree with the Commission’s reasoning for some of the proposed changes. There is no evidence to suggest that “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 members of the public are ever unclear what type of gambling premises they are entering. The Commission’s proposals would empower it to determine the frontage and appearance of even those licensed premises it acknowledges

as low risk, which would result in significant costs for operators despite no evidence that such a power would reduce harm.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

Given that these areas are being strengthened and there is a clear onus and additional controls on entry to make sure that people are aware it is a gambling premises, this suggests that a pub which may be capable of meeting these criteria and differentiating itself in this way would not be capable of gaining a licence and that it is therefore unnecessary to specify that a pub or part of a pub premises may never hold a licence even if these criteria are met. A traditional pub wouldn't want to do this – only one which is appropriate, in terms of layout and operation, for meeting these conditions would apply.

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?

As our members operate pubs, bars, restaurants and other alcohol-licensed premises we are unable to comment on the likely impact of the provisions on those already operating within the sectors concerned. However, the Commission should ensure that guidance fosters a flexible licensing regime which allows for the businesses it regulates to innovate and adapt to changes in the marketplace.

Q6(i) and (ii)

No comment.

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?

While we understand and support the need to prevent the proliferation of high-stakes gambling machines, the Commission should be careful that such conditions are only applied in situations and to premises where there is clear evidence that doing so is necessary to safeguard the licensing objectives.

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

The Commission's aim for customers to be aware before entrance that a premises is a gambling premises can be achieved through the use of signage on entrances and does not require the Commission to have the power to determine the "appearance" of venues.



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?

We believe that the April 2015 iteration of the guidance is sufficiently clear.

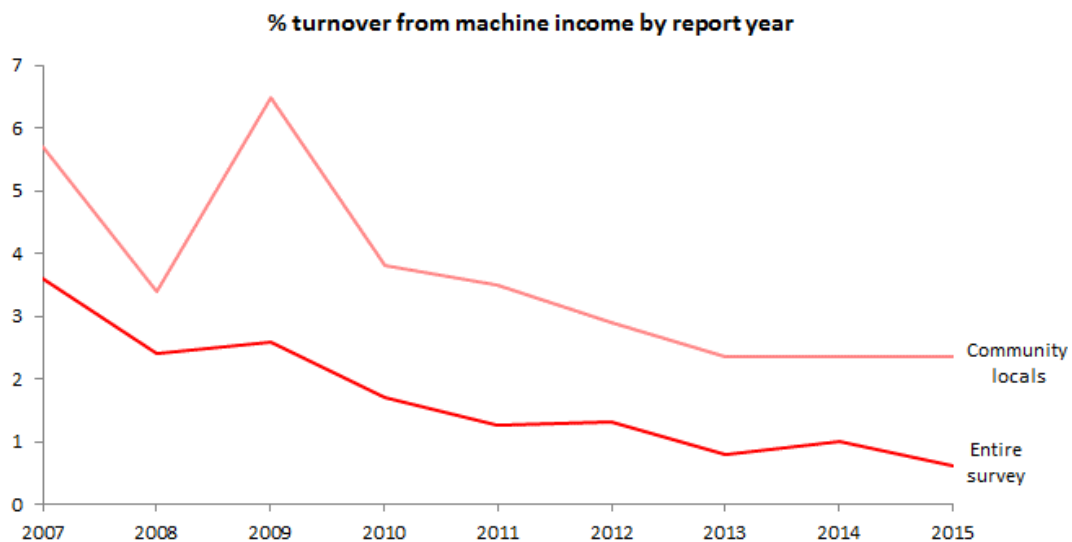
Appendix – ALMR survey data

Benchmarking Survey

Machine income was equivalent to 3.6% of turnover in the first benchmarking survey. Since then, machine income has fallen by more than 83% and after a small recovery last year, it fell again from 1% to 0.6% of turnover across the market as a whole: a record low.

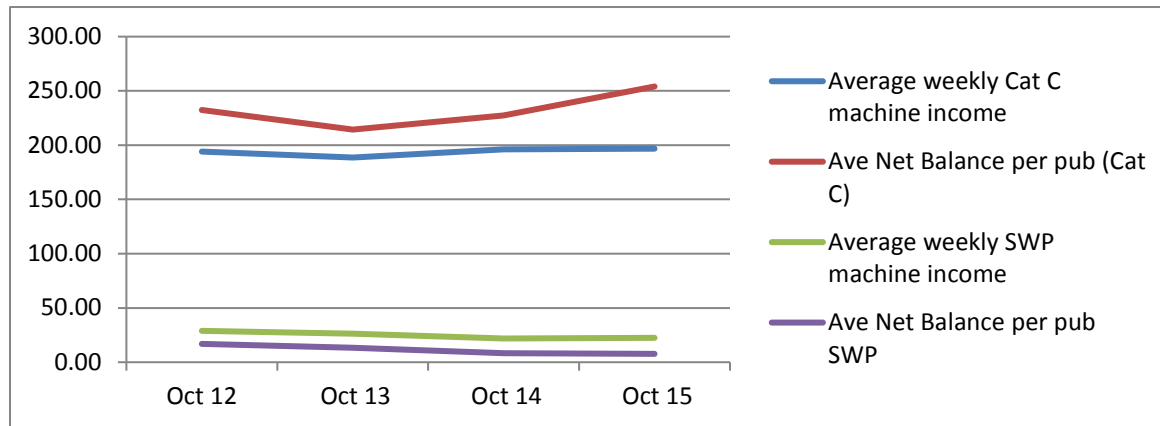
Gaming turnover is particularly important to community locals, comprising 2.4% of turnover for the segment, compared with 0.6% across the survey. The trend in machine income as a share of turnover within the community local segment has also been downwards, though as one would expect with a smaller sample, the trend has been a little more erratic. For community locals, the proportion of turnover accounted for from gaming machine takings increased slightly, up 4% on last year and perhaps reflecting the benefits of changes to stakes and prizes introduced in January 2014 in stabilising this vital income stream.

The chart below shows the decline in machine income as a share of total turnover across the sample and specifically in community local outlets:

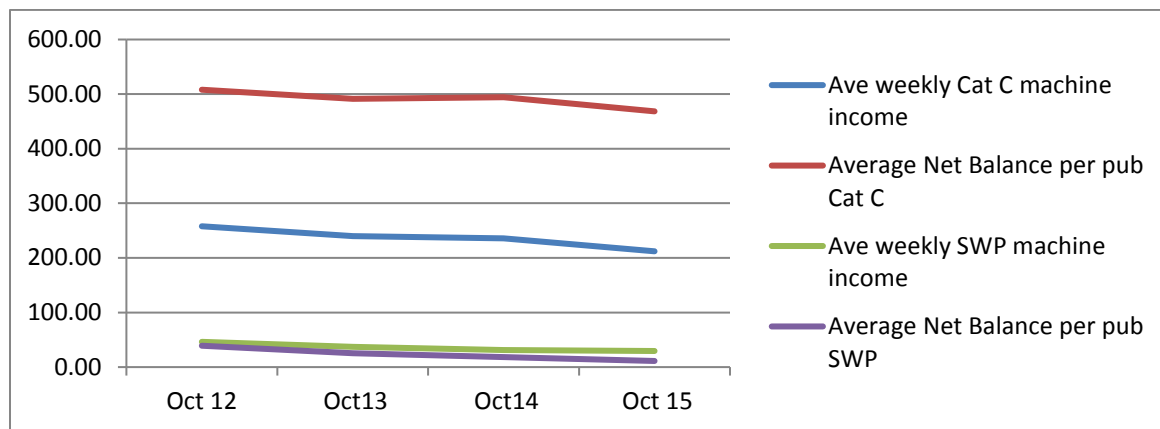


Gambling Prevalence survey

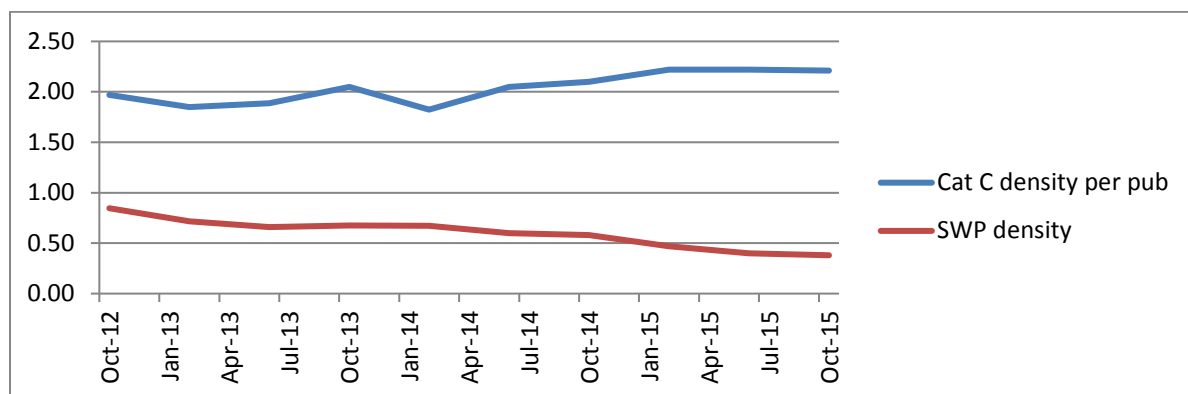
Leased estates



Managed estates



Density



Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
- 1.2** The templates leaves space for responses to all the questions asked in the consultation. However, we understand that respondents to the consultation may wish to answer only those questions which are relevant for their business, organisation or interests.
- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by ~~Monday 22 February, 2016~~ **deadline extended to 21 March 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|-------------------------------|
| Name: | Helena Chambers |
| Organisation: | QAAD |
| Email address: | helenaqaad@hotmail.com |

- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

| | | | |
|--------------------------|-------------------------------|--------------------------------|--|
| Licensed operator | | Professional services provider | |
| Trade association | | Campaigning or political group | |
| National government body | | Charity or support group | |
| Local government body | | Academic institution | |
| Other (please specify) | Faith-based group and charity | | |

- 1.5** If you are responding as an individual, please indicate your own interest:

| |
|--|
| |
|--|

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.

Broadly speaking, we do agree, but would make the following observations:

- We would prefer that there be no exceptions to the general principle that gambling only take place on dedicated premises. Casual gambling is more likely to be associated with problem play, and some contexts (such as alcohol licensed premises) increase risk by combining two sets of risk factors, particularly for those in vulnerable groups.
- We agree that the distinction between different types of licensed gambling premises be maintained. It is particularly important that gaming machine types and numbers be related to the nature of the gambling premises given that these are one of the higher risk forms of gambling.
- We agree that supervision is necessary for all the purposes of the Gambling Act, and particularly so in relation to higher levels of supervision in order to pick up signs of problem gambling.
- We agree that if gaming machines are to be made available, their numbers and types should be in relation to the named non-remote activity of the operating licence. However, in general terms we think there are risks in combining different forms of gambling, particularly as regards lower and higher risk forms, including machines.

‘Primary gambling activity’

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?

We would prefer the existing guidance to remain.

We supported the Commission’s formulation of ‘primary gambling activity’ and its embodiment in various forms of guidance because it addressed the risks of premises being used mainly, or even simply, to provide access to machine entitlements - and thus to increase the numbers and accessibility of gaming machines, which are relatively high risk in terms of problem gambling. FOBTs are used by 26% of callers to Gamcare and slot machines by 20% (2014/15 figures).

Having followed the Parliamentary considerations and debates that led to the Gambling Act of 2005 (and indeed, given oral evidence to the Parliamentary Committee that considered it) we are aware that the risks of machines were acknowledged - particularly as regards FOBTs, which were confined to betting shops and casinos in order to limit proliferation, and which were described as being ‘on probation’ by the government minister Richard Caborn.¹ The importance of maintaining the distinction between ‘hard’ and ‘soft’ gambling environments was also considered important by the Parliamentary Committee that considered the Draft Gambling Bill, including in relation to bingo.² All of these considerations relate to the graduated regulatory framework described in the consultation document. Our view, then, is that the Commission’s

¹ See Hansard for 7th February 2005

² Joint Committee on the Draft Gambling Bill 2003-4 Volume 1 HC 139-1 page 121

endeavours as regards 'primary gambling activity' were not simply one reading of the Gambling Act, but were based on the Parliamentary and government policy discussions that preceded it, and have been correctly aimed at carrying out the intentions of legislators in relation to the Act's third objective.

In a context in which some sectors of the industry have become increasingly reliant on gaming machines, which may be high-risk or else 'harder' forms of gambling than the one they are licensed to provide, we think that the balance of both customer use and business revenue between the 'original' gambling business and gaming machines remain highly relevant considerations for the Commission as a regulator.

We appreciate the Commission is making these proposals partly in response to the various legal proceedings referred to in the consultation document. We assume that legal advice has been taken. Our central concern is that the alternative approach suggested in the consultation be at least as robust as 'primary gambling activity' in terms of realising the third objective. In our view this is uncertain, and we would prefer to see the concept retained in ways that are legally effective. If this is not to happen, we hope that both the specific consequences and the broader issues will be kept under review by the Commission as part of its role as advisor to government. FOBTs in particular remain a subject of public and Parliamentary concern and a more fundamental approach than codes or guidance may be necessary.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

We do think it appropriate that social responsibility codes be used, given that delivering the third objective of the Act is the policy aim.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

We appreciate that the term 'substantive' could be considered as a stronger term than 'sufficient', but we think it may not be specific enough in terms of what operators are required to demonstrate, and may therefore also be open to legal challenge. The earlier indicators of space allowed, information about and provision for the licensed activity all remain relevant and could be specified, perhaps with an open discretionary category for individual circumstances.

We think 'appropriate supervision' could be more tightly defined in terms of what the supervision is 'appropriate' for. In particular, the level of supervision appropriate to monitoring and responding to signs of problem gambling is higher than that required for most other purposes (for example, staff cannot interact sensitively with customers if they have other duties that might simultaneously call on their time/attention). Similar considerations apply to monitoring the risks of under-age use. A mention of purposes, therefore, perhaps with illustrations, would be helpful in meeting the policy goals.

From this point of view as well as evidencing the provision of 'sufficient/substantive/substantial' facilities for the non-remote gambling business, we agree that CCTV is wholly inadequate and inappropriate, and in our view lone working is also likely to be insufficient.

We agree with the points made in 3.8 as regards how these considerations apply to casinos.

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**

We disagree in principle with any provision of gambling in premises that are not dedicated premises, as was originally suggested in the Budd report. We are particularly concerned about this happening in premises that are licensed for the sale of alcohol.

We agree strongly that the distinctions between different types of gambling premises be maintained, and gaming machines should only be provided in combination with the named non-remote activity in view of the risks associated with machine gambling.

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?

We do think use is a relevant and practical indicator for the reasons outlined above, in order to address the third objective of the Gambling Act. If premises are not being used for the licensed purpose, or only to a limited degree, the graded structure of the Gambling Act would be significantly undermined.

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

More general indicators would be appropriate, given that there is a large commonality and a common purpose in terms of minimising the risks of problem gambling. Both social responsibility code provision and ordinary code provision would be appropriate. Specific factors could be drawn attention to by operators at the time of licensing or during inspection.

Business plans and applications for licences

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?

We agree with this for all the reasons outlined above and feel it one of the strongest points in the proposed arrangements. We are extremely concerned about the proliferation that has already taken place in relation to FOBTs over the last ten years in view of the high stakes and the indicators of problem gambling amongst patrons (reported by helping agencies and revealed by the survey of loyalty card holders).

If operators thought they could open premises with minimal provision for betting simply to gain the highly lucrative revenue from high-stakes machines, further proliferation would be a real risk, as other investors/business may be drawn in, particularly in areas of deprivation where rents are likely to be low and vulnerability to problem gambling is high.

Some of these consideration also apply to bingo, where sector reliance on machine revenue has increased to something approaching half. The number of machines in bingo premises has increased markedly since the stakes and the numbers permitted were increased in 2011 (as far as we can gather, both numbers and revenue have risen more than was indicated in the original regulatory impact assessment). We wonder whether part of the reason for the increase has been the ability for B3 machines to constitute a 20% proportion of the total numbers of machines. These are the most lucrative of the machines available in these premises, but also the most concerning as regards problem gambling because of their high speed. In such premises the business plan/model would be highly related to an increased need for social responsibility measures, which the licensee and the licensing authority would need to address.

A different configuration but some common features could also apply to casinos.

A common relevant factor is that problematic/addictive behaviour tends to be occur most in regular/frequent users, who also tend to contribute a disproportionately large proportion to revenues. This is recognised in the alcohol field and, unsurprisingly, also seems to be true of gambling.³ Business model and social responsibility are thus linked and the latter needs to be related to the former, particularly as regards higher-risk products.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

We agree with the Commission that guidance is needed for licensing authorities to help meet the third objective of the Act.

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?

³ Jim Orford , Heather Wardle & Mark Griffiths (2013): What proportion of gambling is problem gambling? Estimates from the 2010 British Gambling Prevalence Survey, International Gambling Studies, 13:1, 4-18

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Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
- 1.2** The templates leaves space for responses to all the questions asked in the consultation. However, we understand that respondents to the consultation may wish to answer only those questions which are relevant for their business, organisation or interests.
- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by ~~Monday 22 February, 2016~~ **deadline extended to 21 March 2016**.

Alternatively, responses can be sent by post to:

Tom Deery
Consultation co-ordinator
Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

| | |
|-----------------------|---|
| Name: | Martin Kettle |
| Organisation: | Mission & Public Affairs, Church of England |
| Email address: | <u>martin.kettle@churchofengland.org</u> |

- 4.** If you are responding on behalf of an organisation, please indicate which type of organisation:

Licensed operator **Professional services provider**
Trade association **Campaigning or political group**
National government body **Charity or support group**
Local government body **Academic institution**
Other (please specify) Faith-based group

- 1.5** If you are responding as an individual, please indicate your own interest:

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.

- a) Non-remote gambling should be confined to dedicated gambling premises. Any other option increases risk of harm, because it makes it more likely that 'hard' forms of gambling become normalised and easily accessible for groups of people who are at risk. These forms of gambling are only safe in contained in an environment and 'atmosphere' (to use the word of the First-Tier Tribunal in *Luxury Leisure vs Gambling Commission*) which both signals and contains the risks unavoidable associated with high-stakes betting.
- b) The distinction between types is essential. The respective types of premises are, especially in respect of accessibility, appropriately calibrated to the level of risk inherent in the different kinds of machine and the number of machines permitted.
- c) Supervision is essential. It must, in all cases, be sufficient to pick up and respond effectively to signs of raised risk or actual harm.
- d) Within casino, bingo and betting premises, machines should be available only where the non-remote activity named on the licence is simultaneously available in the same premises. Further, the level of risk associated with the gaming machines should not be significantly out of proportion to the level of risk posed by the named activity. We regret that the 'primary gambling activity' criterion has been so much criticised; whatever the difficulties in defining it, it remains a valid controlling concept in this regard.

'Primary gambling activity'

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?

The concept of 'primary gambling activity' remains a valid one. If it were permissible for B2 machines, in particular, to become the main activity in any type of licensed premises, that would be a dangerous development. The licensing process would then amount to implied government encouragement of the most harmful form of gambling as the main function of a service outlet. It would be much preferable if a sound legal articulation could be found of the meaning and application of the phrase 'primary gambling activity', and this could be enshrined in regulation. It is unfortunate that the First Tier Tribunal has taken a narrowly literal approach to the wording of primary legislation, when a rounded consideration of the context and intent of that legislation clearly supports the use of 'primary gambling activity' as a key concept.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

Given that social responsibility conditions are enforceable on all licence holders, whereas ordinary code provisions only have to be 'taken account of', it is essential that these measures are contained in social responsibility code provisions. As a rider to this, 'social responsibility' is a phrase often used commercially to indicate activities outside the core business of the trader. These matters do not concern 'social responsibility' in a vague sense, but the health and safety of the public and of local communities which are directly impacted, especially by B2 machines.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

It is far from certain that the normal meaning, if such exists, of the word 'substantive', is either clear or sufficient for the present purpose. It can mean just 'existent' (in which case it comes down at one extreme, the wrong extreme, of District Judge Warren's spectrum of possible meanings between 'existent' and 'dominant'. It is true that 'sufficient' is not a useful word, because it contains an evaluative rather than descriptive element. 'Substantial' might be better. But our preference would be to revisit the 'primary' language and see if a more watertight formation can be found.

The requirement that supervision be 'appropriate' is also problematic. "Appropriate" is an empty evaluative category, whose content would be arguable in every individual situation. It would be better to set the threshold in terms of supervision at a sufficient level to achieve specified outcomes or ends, such as the safety of customers and the public, early identification of and response to signs of risk, etc.

'..ensure that the function along with the internal and external presentation of the premises informs a customer...': This is a brave attempt to meet Judge Warren's challenge about 'atmosphere' etc, but it might be better to consider a formulation such as 'ensure that the function and appearance (internal and external) of the premises are such that every customer is able on entry to understand...'. This might reduce the risk of operators seeking to reduce the meaning of 'informs a customer' to the smallest possible degree of signage etc.

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**

The Commission is seeking in good faith here to stay true to the Act in its letter and its spirit, while taking fully into account the developing case law. While we would prefer to see a more rigorous regime in the light of the remarks above, the proposed revision should not impact the affected sectors in any significant way. I

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?

This is an essential bastion against tokenism on the part of some operators.

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

General conditions under the social responsibility code provision is essential. The risk of the alternative of specific conditions case by case is that effective control might be lost; there could be a fruitful field of argument for operators by comparison with other situations claimed to be analogous, and the Commission and other licensing authorities could be overwhelmed by complex case-by-case argumentation. There could be a similar range of difficulties with enforcement.

Business plans and applications for licences

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?

We cordially support the stated intention to make greater use of the 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.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

We support the guidance as drafted, subject to any possible improvements in line with the comments offered in response to previous Questions above.

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?

As Q8.

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