

circumstances it is reasonably foreseeable that another public or private body may choose to investigate and prosecute the offence.

Under the Code of Practice for CPIA (section 5.70) all material which may be relevant to an investigation must be retained until a decision is taken whether to institute proceedings against a person for an offence.

There is guidance on further periods of retention when there is a conviction but not otherwise.

Request by owner for return of property

If property is retained under the Police (Property) Act 1897 it must be retained for 12 months before it is disposed of so the costs and availability of storage space must be considered. Any person claiming ownership of seized property may apply to a Magistrates' Court under the Police (Property) Act 1897 for its return. Property must be returned immediately in the event of a court order being issued.

PACE Code B (section 7.12) states that when an officer exercises a power of seizure they shall provide the person from whom the property was seized with a written notice specifying what has been seized under the powers conferred by that section, specifying the grounds for those powers' use and setting out the grounds for application to a judicial authority for the seized property's return.

Disposal of property

After the retention period (which under police policy tends to be no less than 14, nor more than 28, days) has expired, steps should be taken to return the property to any claimant, provided they have a legal right to possess the property. If they refuse to collect the property, or if they give written consent, the property may be disposed of.

Cash

With regards to cash, it is likely that any cash in the machines will inevitably fall within the definition of "recoverable property" in s304 of the Proceeds of Crime Act 2002 (POCA) and thus should, if in excess of £1,000 be dealt with in accordance with section 294 and following in POCA.

Section 294 POCA enables cash to be seized by an officer of HMRC, a constable or an accredited financial investigator.

Section 295 POCA enables cash to be retained for 48 hours. Extensions may be sought from the magistrates' court (for up to 6 months initially and potentially for up to a total of 2 years) where (in broad terms) there are ongoing investigations or prosecutions.

Under section 298 to 300 POCA, application may be made to a magistrates' court for forfeiture of the cash if there is sufficient evidence to establish that the cash is recoverable property (or intended for use in unlawful conduct). Cash forfeit is to be paid into the Consolidated Fund.

The POCA powers do not apply to cash under £1,000 which, if not required as evidence, must be returned to its owner.

If the cash were to be held by the police, and the owner not ascertained, then once it had been held for a year it could be paid into the Police Property Act Fund and used for various purposes including expenses of safe custody of property or charitable purposes (Police (Property) Regulations 1997).

Recovering Costs

Local authorities can administer simple cautions for the offence(s) and ask for the costs of the investigation to be recovered from the person being cautioned. However if the offender refuses to pay the costs, the caution must still be given.

Under the Criminal Justice Act 2003, the police have powers to administer a conditional caution and one of the conditions could be that the offender pays the costs of the investigation in reparation to the local authority. The local authority does not have the power to administer a conditional caution and would need to engage with their local police to ascertain their willingness to assist in administering a conditional caution and requesting costs.

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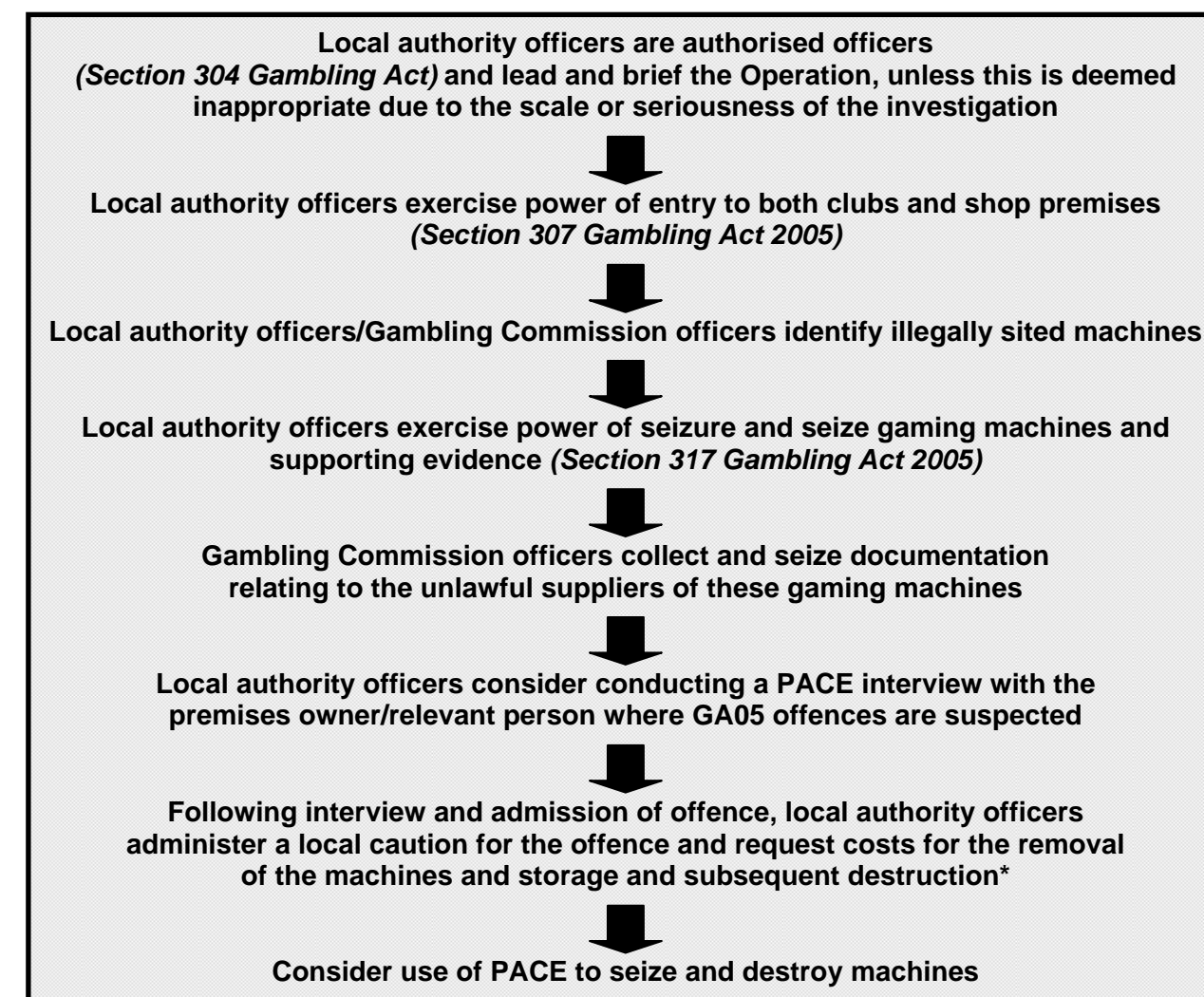
Gaming machine seizures: a suggested approach for local authorities

Background

The Gambling Commission ('the Commission') has been involved in various operations in recent years to address the issue of unlawfully sited machines in premises. Typically these operations have been led by local authority officers, supported by Commission staff who provided expertise and advice. The local police provided reassurance and protection for staff when they conducted their duties at the premises.

The Commission wishes to share the approach used in these operations to assist local authorities in England and Wales when dealing with similar problems. It is worth noting that this approach focuses primarily on local authority officers, even though others such as the police and Gambling Commission officers have the same powers, these are not referenced for simplicity.

However as circumstances locally will inevitably vary this is just one possible approach, and does not constitute legal advice. Each local authority should seek its own legal advice, and have regard to its own internal processes before taking any action.



*it may be more appropriate to prosecute rather than caution if there are previous offences/cautions under the Gambling Act for the same person/premises, or other relevant offences/cautions/convictions are known.

The process above is dealt with in more detail below with reference to the relevant sections of the Gambling Act ('the Act').

Authorised persons: Section 303 of the Act gives the Commission the power to appoint persons other than Commission employees as “enforcement officers”. The Act is not explicit in the procedures to be applied in order for this to occur. The power has not been used to date. It is likely that it would only be used where alternatives are unavailable and to address the requirements of a specific case.

Officers of a local authority which is a licensing authority can be **authorised persons** under section 304 of the Act if the conditions in s304 (2) are met. Section 304(2) states: “An officer of a licensing authority is an **authorised person** for a purpose relating to premises if - (a) the premises are wholly or partly situated in the authority’s area and (b) the officer is designated for the purposes of the section.” Licensing authorities are defined in section 2 of the Act.

Sections 304 (3) and (4) set out the circumstances in which officers of local authorities that are not licensing authorities, and certain other person can be **authorised persons** for the purposes of Part 15 of the Act.

Designation of someone as an authorised person for the purposes of section 304(2) is likely to be carried out by the local authority’s licensing committee. Section 101(1) of the Local Government Act 1972 provides that: “...a local authority may arrange for the discharge of any of its functions by a committee, sub-committee or officer of the authority.”

Power of entry: Section 305 of the Act ‘compliance’ is a general power and allows authorised persons to “undertake activities” for the purpose of assessing compliance with a provision in the Act or, to assess whether an offence under the Act is being committed. However, this should be read alongside the sections of the Act which follow it and which set out specific powers. It is therefore unlikely that an authorised person can gain entry under this section alone.

Section 307 of the Act ‘inspection of gambling’ allows a constable, enforcement officer, or **authorised person** to enter premises if they reasonably suspect that facilities for gambling are being, are about to be, or have been provided on the premises. This does not apply if the suspected gambling is private or non-commercial gaming or betting. For example, in one Operation it was suspected that an offence under section 242 of the Act ‘making a machine available for use’ was being committed which is not within the Act’s

definitions of private or non-commercial gaming or betting.

However, reasonable suspicion is a high threshold and any person entering under these powers would need to be able to justify this (to a court if required). Under this section, an **authorised person** would also be able to enter a private club or other premises.

Section 309 deals with a constable, enforcement officer, or **authorised person** entering a family entertainment centre to determine compliance with gaming machine permit requirements.

Section 310 allows a constable, enforcement officer or **authorised person** to enter premises in respect of which an on-premises alcohol licence has effect for the purpose of determining if any gaming and bingo being played meets the requirements of the Act, and to ascertain the number and category of gaming machines being made available for use on the premises.

Section 311 allows a constable, enforcement officer or **authorised person** to enter premises to determine compliance with prize gaming permit requirements.

Section 312 of the Act deals with clubs including commercial clubs. This ONLY allows police officers and enforcement officers to enter the premises which are subject to a permit to determine if the things being done are in accordance with that permit (and not primarily because they suspect a crime is taking place/has taken place). Therefore, if an **authorised person/member of the local authority** was to accompany a police officer or enforcement officer (under section 324), they would not then be able to exercise any powers i.e. seize any items.

Under section 318 of the Act a constable, enforcement officer or **authorised person** can only enter a dwelling with a warrant issued by a justice of the peace.

Section 324 of the Act allows a constable, enforcement officer, or **authorised person** to be accompanied by another person when exercising a power to enter premises under Part 15 of the Act. Although the statute does not restrict who that person is, it would not permit a **local authority/authorised person** to enter premises to exercise powers unless they have their own powers of entry. One view is that the intention of Parliament in relation to this section, was to allow access to

those assisting a police officer, enforcement officer, or **authorised person** in carrying out duties within his/her lawful power e.g. forensics, photographers, note takers.

Power to seize: Section 317 (e) of the Act allows a constable, enforcement officer or an **authorised person** exercising a power under part 15 of the Act to enter premises and amongst other things “remove and retain anything if he reasonable believes that it constitutes or contains evidence of (i) the Commission of an offence under this Act...” **Therefore if the authorised person has entered a premises under the correct power (section 307), the seizure is lawful.**

It is also worth pointing out that section 306 of the Act ‘suspected offences’ only applies to police officers and enforcement officers. It allows them to enter premises and seize items with/without a warrant. If this is the power of entry used (and not section 307), it is likely to be unlawful for an **authorised person** to enter and seize items even if they were accompanying a police officer or enforcement officer.

Powers of destruction: The power under section 345 of the Act applies if a person is convicted of an offence under the Act. The court can make an order for forfeiture of an article which relates to the offence and provision for its disposal. In the Commission’s operational guidance, the owner can sign a Commission disclaimer form to allow the Commission to dispose of the article. This is largely similar to the procedure adopted by the police.

If an owner cannot be identified, there is no legislative basis which will enable the Commission to dispose of such property and a risk based decision has to be made based on financial cost, the continued indefinite storage, and possible future compensation claims should an owner come forward.

Section 317(2) enables the Secretary of State by regulation to make provision about (among other things - see section 317(3)(a)) destruction of things removed on an inspection, but no such regulations have been made.

Consider the use of PACE to seize and destroy: Section 317(6) of the Act provides that a person exercising a power under or by virtue of Part 15 of the Act (in England and Wales) shall have regard to any relevant provision of a code of practice issued under

the Police and Criminal Evidence Act 1984 (‘PACE’).

Police and Criminal Evidence Act 1984 (PACE)

PACE governs police activities but also applies to other investigating authorities (including Local Authority investigators (s 67 (9) PACE). Failure to comply with PACE and its codes of practice may result in disciplinary proceedings against the investigator or refusal by the court to admit the evidence.

Seizure and retention

Section 19 of PACE gives a constable the power to seize anything which is on the premises if he has grounds for believing (a) that it has been obtained in consequence of an offence; and (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed, or (a) that it is evidence in relation to an offence which he is investigating or any other offence; and (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

Also, section 7.1 of PACE Code B allows an officer to seize anything covered by a warrant or covered by the powers in the Criminal Justice and Police Act 2001, Part 2.

Anything which has been seized by a constable may be retained so long as is necessary in all the circumstances (section 22 of PACE).

These powers mirror, to an extent, the powers under section 317(1) (e) & (f) of the Act and, as such local authority authorised persons exercising such powers should have regard to relevant provisions of PACE Code B

Period of retention of items seized

The Criminal Procedures and Investigation Act (CPIA) 1996 requires material obtained in the course of a criminal investigation to be retained. The seized property is to be retained until the suspect is acquitted or convicted or the prosecutor does not continue with the case.

PACE Code B, section 7.14 states that anything seized in accordance with the above provisions may be retained only for as long as is necessary. This means as long as is necessary to carry out the purposes for which the powers of seizure had been conferred. If the Crown Prosecution Service decides not to prosecute, evidence may be retained if in the