

Licensing Committee

on

20 February 2007

Report Title: **Gaming machines in Alcohol Licensed Premises**

Forward Plan reference number (if applicable): **N/A**

Report of: **Head of Legal Services**

Wards(s) affected: **All**

Report for: **Non-Key Decision**

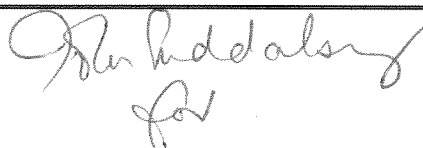
1. Purpose

- 1.1 To inform Members of the Committee about the legal position on the grant of permits for gaming machines in alcohol licensed premises and to recommend an increase in the current powers delegated to officers

2. Recommendations

- 2.1 That Members note the legal advice set out in the Appendix to this report
- 2.2 That Members approve the delegation to the Assistant Director Enforcement of decisions on applications for licensed premises gaming machine permits when 3 or 4 machines are to be made available subject to the requirement that officers refer to the Licensing Sub-Committees any application where there is specific information causing concern about the proper management of the premises which might justify the refusal of the application wholly or partly.
- 2.3 If Members approve recommendation 2.2 above, to note that the delegation is incorporated into the draft terms of reference of the Licensing Sub-Committees proposed in Appendix 3 to the report to this meeting on the Implementation of the Gambling Act 2005.

Report Authorised by:



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2 Executive Summary

3.1 The report attaches a Note on the legal position relating to the grant of permits for gaming machines in alcohol licensed premises under the gaming Act 1968 and the Gambling Act 2005. Holders of alcohol premises licences have an automatic right to make available one or two gaming machines. In the majority of cases where there is no information adverse to an applicant, it is recommended that applications for three or four machines be delegated to officers for decision. Applications for five or more machines would come before Members as would any application where there was specific information causing concern about the premises.

3 Reasons for any change in policy or for new policy development (if applicable)

4.1 Changes in the law on the introduction of the Gambling Act 2005.

4 Local Government (Access to Information) Act 1985

5.1 The following background papers were used in the preparation of this report:

(i) the Council's Statement of Gambling Policy (ii) the Guidance from the Gambling Commission (iii) The Council's Statement of Gambling Policy

6 Report

6.1 The Chair has asked for the attached Note on the grant of permits for gaming machines in alcohol licensed premises to be updated in the light of the Gambling Act 2005 and for this to be reported to the Committee for information. The Note is attached as the Appendix to this report. It explains the existing legal position under the Gaming Act 1968. It continues by setting out the slightly different rules which will apply when the relevant provisions of the Gambling Act 2005 are in force on 1 June 2007. These provisions will allow applications to be made for permits from the start of June which will come into effect on 1 September when the 2005 Act is fully in force.

6.2 Members can see that public houses and bars with a premises licence under the 2003 Act will have an automatic entitlement to one or two gaming machines provided the notification procedure is followed.

6.3 If an alcohol premises licence holder wishes to apply for three or more gaming machines, they will make an application for a "licensed premises gaming machine permit" or section 283 permit. As matters stand, all of these applications are referred to Members of a Licensing Sub-Committee.

6.4 As the attached Note points out, there is no procedure now, and there will be no procedure after 1 June, requiring applicants to give public notice or to require notification to be given to the Police or the Gambling Commission. In all but exceptional

circumstances, there will be no objections to any application and no information that would justify refusal.

- 6.5 However, the legislation and the Guidance from the Gambling Commission aim to prevent public houses from being used “mainly” for gaming. This implies that there should be some numerical limit on the machines to be allowed depending on the circumstances of each case.
- 6.6 The Licensing Manager suggests that applications for three or four machines are common and should not give cause for concern provided that applicants are abiding by the Code of Practice restricting under-age play on category C machines (see Code at the end of the Appendix). Unless there was specific information to the effect that there were problems with the management of the premises, Members would have no grounds for refusing or cutting down an application. Therefore, it is being recommended that applications for three or four machines be delegated to officers except in the rare instances when there was specific information causing concern about the proper management of the premises which might justify the refusal of the application either wholly or partly. The most common problem would be the failure of public house managers to prevent play on category C machines by under-18s.
- 6.7 Any application for five or more machines would be referred to Members of a Licensing Sub-Committee. Applicants for five or more machines would be asked for a special explanation of their reasons for seeking that number and invited to attend the meeting in order to answer questions.
- 6.8 In any case where there was specific information causing specific concern about the management of the premises then the application would be referred to a Licensing Sub-Committee even if the application was only for three or four machines.
- 6.9 Members would retain the power to determine officer proposals to cancel a section 283 permit where there was evidence of abuse. Members would also have power to remove the automatic entitlement to one or two machines in such cases.

7 Comments of the Director of Finance

- 7.1 There are no specific financial implications.

8 Comments of the Head of Legal Services

- 8.1 The legal implications are set out in the body of the report.

9. Use of Appendix

- 9.1 The Appendix to this report is a Briefing Note explaining the legal position on gaming machines. At the end there is a copy of the relevant Code of Practice.

APPENDIX

THE LEGAL POSITION IN RELATION TO THE GRANT OF PERMITS FOR “AMUSEMENTS WITH PRIZES” GAMING MACHINES IN ALCOHOL LICENSED PREMISES UNDER THE GAMING ACT 1968 AND THE GAMBLING ACT 2005

THE EXISTING LAW UNDER THE GAMING ACT 1968

1. Permits for “Amusements with Prizes” (AWP) gaming machines are granted under powers in section 34 of the Gaming Act 1968 (“section 34 permits”). This jurisdiction was formerly with the local Magistrates Court in relation to public houses and bars. After the Licensing Act 2003 came fully into force on 24 November 2005, that jurisdiction passed to the Council.
2. The grant of section 34 permits is governed by the Gaming Act 1968 which has its own special rules. The Licensing Act 2003 and related policies do not apply except to require the Council’s decisions on section 34 permits to be taken by its Licensing Committee. The Committee can delegate to its Licensing Sub-Committees or to officers of the Licensing Service.
3. For many years before 2005 the Council had in force a resolution under the Gaming Act not to grant section 34 permits for any premises except dedicated amusement arcades. Here, by law, permits must be granted subject to conditions restricting the admission of under 18s. So premises such as fish and chip shops and mini-cab offices should not have gaming machines.
4. When the Council took over responsibility for gaming machines in pubs and bars, it had no power to pass a resolution prohibiting all gaming machines in pubs and bars generally. However, the law did allow the Council to prohibit gaming machines in some licensed premises, such as hotels and restaurants, that only serve alcohol as an accompaniment to meals i.e. the premises must have a proper bar before they can have a gaming machine.
5. Accordingly, the Licensing Committee on 6 December 2005 passed a resolution not to grant or renew section 34 permits in all premises except amusement arcades and proper pubs or bars.
6. Taking into account Government advice from the Department of Culture, Media and Sport (DCMS), the Committee resolved to grant or renew section 34 permits for up to 2 machines without the need for a hearing before Members. This reflected the previous practice of the Magistrates to allow the owners of pubs and bars to obtain or renew permits for up to 2 machines without a hearing in Court. The Committee decided that applications for more than 2 machines would require a hearing before Members of a Licensing Sub-Committee.

7. There is no Council resolution or policy under the Gaming Act 1968 stating exactly how many machines above 2 will generally be acceptable. This is matter that Members must decide on a case by case basis having regard to the individual circumstances of each premises.
8. Under the Gaming Act 1968, Members will have a discretion to decide on the number of machines above 2 that they will allow. This is a general discretion and Members can take into account any circumstance which makes it undesirable to allow more machines at any particular premises. Before Members refuse to grant or renew a section 34 permit, they must have a sufficient reason i.e. a factor based on the character of the premises or its customers. It would be insufficient simply to object to gaming machines in principle.
9. Members can only decide on the number of gaming machines to be allowed. They cannot impose conditions about any other matters such as the siting of machines or the level of prizes. Section 34 permits must be issued for at least 3 years.
10. An AWP gaming machine is often known as a “fruit” or “slot” machine. There are two types:
 - (i) the “all-cash” machine with a maximum stake of 30p and a maximum prize of £25. These are often found in pubs or arcades with an over 18s only door policy.
 - (ii) the “coin or token” machine which has a maximum stake of 30p and a maximum prize of £5 cash or £8 value non-cash. This is the type found in premises to which children have access.
11. There is no provision for giving public notice about applications for section 34 permits or for notifying other parties. If, exceptionally, there were to be information opposed to the grant or renewal of a permit, then it would be necessary to give adequate advance warning to the applicant so that they had a chance to answer any allegations made against them.

POSITION UNDER THE GAMBLING ACT 2005

12. The new provisions of the Gambling Act 2005 relating to pubs and bars will come into force on 1 June 2007. Section 282 gives an automatic entitlement to install one or two category C or D gaming machines on alcohol licensed premises. The right only applies to holders of a premises licence under the 2003 Act which authorises the supply of alcohol for consumption on the premises without a requirement that alcohol is served only with food (this is the same limitation to “proper bars” as before). The licence holder must:

(i) send written notice to the Council that the gaming machines are being made available.

(ii) pay the prescribed fee.

Unless the Council has already made an Order under section 284 (see paragraph 20 below), this is an automatic entitlement that the Council has no discretion to refuse.

13. Under the 2005 Act and Regulations there are revised categories of gaming machines as follows:
 - (i) the category C machine is equivalent to the former “all-cash” machine except that the maximum stake is now 50p and the maximum prize is now £35.
 - (ii) The category D machine is equivalent to the former “coin or token” machine except that the maximum stake is now 50p. The maximum prize limits are as before. Only the category D machines can be made available to children and under 18s.
14. If an alcohol premises licence holder wishes to have more than two gaming machines within categories C or D, an application must be made to the Council for a licensed premises gaming machine permit or section 283 permit. Such an application cannot be made if there is already in force a premises licence for other gambling activities.
15. When Members make a decision on a section 283 permit application, they can either grant it or refuse it or grant it for fewer machines or a lower category of machine(s) than specified in the application. For example, only category D machines could be allowed.
16. When Members consider an application they must have regard to the national licensing objectives relating to gambling, the Gambling Commission’s Guidance, and the Council’s own Statement of Gambling Policy. Under these objectives/policies the following points are likely to be relevant:
 - (i) there should be measures to ensure that under-18s do not play category C machines
 - (ii) this will involve locating machines where they can be supervised effectively by the staff
 - (iii) staff should ask for proof of age and require under-age players to leave the premises
 - (iv) there should be notices on category C machines prohibiting play by under-18s

- (v) machines should also display the “Gamcare” helpline number to assist other vulnerable persons
 - (vi) licence holders will be expected to comply with the Code of Practice on Responsible Management (see example attached at the end).
- 17. In other respects the procedures and criteria for granting permits remain the same as under the previous law except that a permit under section 283 of the 2005 Act, once granted, remains in force for as long as the premises have an alcohol licence.
- 18. As before, there is no requirement for an applicant for a section 283 permit to give public notice of the application nor is there any obligation to notify the Police or the Gambling Commission. In the absence of exceptional circumstances, there will be no objections for the Council to consider.
- 19. The Council does have power to cancel a section 283 permit already granted if there is evidence that:
 - (i) there has been gaming on the premises that was not in accordance with the permit, or
 - (ii) an offence under the 2005 Act has been committed, or
 - (iii) the premises are mainly used for making gaming machines available, or
 - (iv) the continuation of the permit would not be reasonably consistent with the licensing objectives relating to gambling (e.g. the protection of children from harm).
- 20. The Council also has power under section 284 to make an Order removing the automatic entitlement of an alcohol premises licence holder to make available one or two gaming machines. This type of Order can only be made if there is evidence of one or more of the matters listed in the paragraph above.
- 21. Before the Council can cancel a section 283 permit or make an Order under section 284, it must give the permit/licence holder advance notice of the action proposed by officers and the reasons for it. The holder has a right to a hearing at a Licensing Sub-Committee before Members decide whether to approve the action.

Code of Practice on Restricting Under Age Play on All Cash AWP Machines (Category C)

The signatories to this Code have agreed to abide by its terms which restrict the age of play to 18 wherever such machines are sited.

- **Under 18 year olds are NOT permitted to play All-Cash Machines (Category C)**
- **Machines will be kept under supervision by staff**
- **Notices on machines will make it clear that no under 18s are to play.**
- **Machines must display the Gamcare Helpline Number**



- **The signatories will ensure that operators are made aware of the revised Code and it is available to them prior to the conversion of machines to the new prize level.**