

Advice on gaming in clubs and alcohol licensed premises: Gambling Act 2005

December 2007

1 Introduction

- 1.1 This advice replaces the memorandum issued by the Gambling Commission (the Commission) in June 2006 concerning gaming on alcohol licensed premises. In the light of the interest in poker the Commission has been asked to give advice to licensing authorities (local authorities and Scottish licensing boards) and others on poker games, including tournaments and leagues, bingo and other equal chance gaming in clubs and alcohol licensed premises. It has therefore revised and updated its earlier advice following the full implementation of the Gambling Act 2005 (the Act). This advice has been circulated to licensing authorities in England, Wales and Scotland and to chief officers of police. This advice does not constitute guidance under section 25 of the Gambling Act 2005 ("the Act").
- 1.2 It is an offence to provide facilities for gambling without the relevant operating licence and premises licence unless the gaming is subject to an exception. Part 12 of the Act allows that in pubs and clubs certain activity including poker is exempt (subject to stakes and prizes limitations) or if correct permissions are held (club gaming permit) then there can be unlimited stakes and prizes.
- 1.3 Gaming of the type usually provided in clubs and alcohol licensed premises is subject to lesser controls and a code of practice. These are designed to protect both the players and those providing the gaming facilities and ensure that, in general, gaming remains ancillary to the main purpose of the pub or club. While the principles are the same for both pubs and clubs there are different provisions for each sector. It remains the case that the law in this area is complex and each case must be judged according to its facts.
- 1.4 A summary of gaming entitlements is set out in an Annex at the end of this paper.

2 Defining clubs and alcohol licensed premises

- 2.1 The Act separates gaming in clubs from that in other alcohol licensed premises (commonly known as pubs).
- 2.2 The Act creates two types of club for the purposes of gaming: Members clubs (including miners' welfare institutes) and commercial clubs. This is an important and significant distinction in respect of the gaming that may take place.
- 2.3 A Members Club is a club that is not established as a commercial enterprise, and is conducted for the benefit of its members. Examples include working men's clubs, miners' welfare institutes, branches of the Royal British Legion and clubs with political affiliations. Members clubs may apply to their local licensing authority for club gaming permits and club gaming machine permits.
- 2.4 The Act states that members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is restricted to bridge and whist. Members clubs must be permanent in nature; there is no need for a club to have an alcohol licence.
- 2.5 Club gaming permits permit the playing of poker for unlimited stakes and prizes and also allow certain bankers games to be played. Before granting such permits, local authorities must satisfy themselves that the club is not wholly or mainly devoted to gaming (other than bridge and whist). It will not be sufficient for a club simply to offer other sports and activities with a view to meeting this requirement. Where the majority of the club's activities comprise gaming (e.g. poker), gaming will be the main activity of the club. Those clubs which hold club gaming permits and conduct themselves in such a way that gaming (e.g. poker) is the main activity may be in breach of the Act and may render themselves liable to prosecution.

- 2.6 The definition of a miners' welfare institute has changed since they were first set up. They are associations established for recreational or social purposes. They are managed by representatives of miners or use premises regulated by a charitable trust which has received funds from one of a number of mining organisations. Miners' welfare institutes may also apply for club gaming permits and club gaming machine permits
- 2.7 A Commercial Club is a club established for commercial gain (whether or not they are making a commercial gain). Examples include snooker clubs, clubs established as private companies and clubs established for personal profit. There are established tests in respect of determining a club's status. In case of doubt, legal advice should be sought. Commercial clubs may only apply for club gaming machine permits.
- 2.8 Alcohol licensed premises are premises where there is an "on premises licence". The Act applies to premises which have a bar and where there is no requirement that alcohol is only served with food i.e. the premises should be dedicated bar premises as opposed to restaurant type premises. Alcohol licensed premises are not able to apply for club gaming or club machine permits.

3 Permitted and exempt gaming in clubs and alcohol licensed premises

- 3.1 The Act creates two types of gaming permission for clubs and alcohol licensed premises:
- 3.2 **Permitted gaming** is equal chance and other gaming permissible through the grant of a club gaming permit. A club gaming permit can only be granted to a members club (including a miners' welfare institute). A club gaming permit cannot be granted to a commercial club or other alcohol licensed premises.
- 3.3 Other than in the case of clubs established to provide the prescribed games of bridge and whist, clubs seeking club gaming permits must be, as set out above, established 'wholly or mainly' for purposes other than gaming. As was the position under the former Gaming Act 1968, when a club gaming permit is granted there are no limits on the stakes and prizes associated with permitted gaming. Permitted gaming also includes two bankers' games: pontoon and chemin de fer.
- 3.4 **Exempt gaming** is equal chance gaming generally permissible in any members club, commercial club or alcohol licensed premises. Such gaming should be ancillary to the purposes of the premises. Unlike the position under the former Gaming Act 1968, this provision is automatically available to all such premises, but is subject to statutory stakes and prize limits determined by the Secretary of State.
- 3.5 The Secretary of State has set both daily and weekly prize limits for exempt gaming (ref SI 2007/1940). Different, higher stakes and prizes are allowed for exempt gaming in clubs than in alcohol licensed premises (ref SI 2007/1944).
- 3.6 Exempt gaming should be supervised by a nominated gaming supervisor and comply with any code of practice issued by the Commission under S24 of the Act.

4 Gambling Commission codes of practice

- 4.1 The Commission has issued a code of practice under section 24 of the Act in respect of exempt equal chance gaming. This can be found here:
<http://www.gamblingcommission.gov.uk/client/mediadetail.asp?mediaid=184>

- 4.2 The guidance requires owners/licensees to adopt good practice measures for the provision of gaming in general and poker in particular. The code also sets out the stakes and prizes limits and the limits on participation fees (as applicable) laid out in regulations.
- 4.3 The additional advice provided in respect of poker is a result of the nature of the game and it's escalating staking patterns. These can create significant tensions and losses and it is possible for experienced players to collude or manipulate the game to the disadvantage of weaker players.
- 4.4 There is likely to be limited regulatory scrutiny of the gaming provided in pubs and clubs given that, while licensing authorities will have issued the premises with an alcohol licence, there is no general provision for the inspection of gaming in pubs and the fee payable for the club gaming permit is low. Therefore the emphasis of the regulations and the code of practice is on self-regulation by the management of the premises. For this reason and where breaches are detected, licensees and management can expect a strong line to be taken by both the Commission and licensing authorities.
- 4.5 Clubs with a gaming permit or a machine permit have up to three category B3 machines on their premises. Pubs and other alcohol licensed premises have an automatic entitlement to two category C gaming machines and may apply for more machines to their licensing authority. No conditions are applied to gaming machines permits but all operators offering gaming machines should abide by the Commission's code of practice on gaming machines.
- 4.6 The Commission's code of practice on gaming machine permits can be found here: <http://www.gamblingcommission.gov.uk/client/mediadetail.asp?mediaid=124>

This code includes sections relating to:

- the location and operation of machines, which are a requirement of the permits;
- access to gambling by children and young persons, which sets out best practice guidance for permit-holders; and
- self-exclusion, which relates only to club gaming permits and club machine permits and which again sets out best practice for permit-holders

5 Poker leagues and tournaments

- 5.1 Gaming is only covered by the Act if it is played for prizes of money or money's worth. However, since 2004 a number of poker tournaments and leagues have been established in alcohol licensed premises based on playing for points. These games usually involve the payment of a nominal fee to take part, but the games do not allow the use of cash for bets. In some leagues the organisers offer 'prizes' at the end of a series of weekly games for the players with the most points.
- 5.2 It is likely that the association of a prize with a monetary value with a game or series of games constitutes gaming, certainly by the latter stages of the competition. If the eventual prize is worth more than the maximum prize set out in regulations then it could be unlawful gaming. For example if a tournament simply involves a series of straightforward 'knock out' qualifying rounds, culminating in a 'final' game, then the winner's prize in the final - whether it comprises the stakes laid in that game, a separate prize provided by the organiser, or a combination of the two - must not exceed £100. The regulations set a limit of £100 on a prize that may be won in any game of poker. In a knock out tournament, the overall prize is clearly referable to a single game – the final – and is therefore won in a game of poker and subject to the prize limit. The stake and prize limits must also, of course, be applied to each game in the tournament.

- 5.3 In other leagues the prize competed for is the opportunity to play in 'invitational cash tournaments'. Notwithstanding that these 'prizes' may be of an uncertain value, and are likely to be held in mainstream gaming venues under regulated conditions, usually a casino, the Act prohibits gaming in alcohol licensed premises being linked to gaming in any other premises. Players competing across premises for a 'prize' are likely to be engaged in linked gaming, which is unlawful. Consequently, licensees should not host events where players are competing against players in other premises for a prize.
- 5.4 In some types of tournaments there will be no single 'final' game in which it can be said with certainty that the player won the overall prize. In such circumstances, our view is that one should look to the individual games played by the overall winner and ensure that the overall prize does not cause any of those individual games to exceed the maximum £100 prize limit per day.

Example 1: The overall winner wins the pot in each game and wins an overall prize based on points.

If the tournament winner played three games in the whole tournament, and his winnings (from the pot) in each of these games were £70, £70 and £60 respectively, each game would fall under the £100 limit. This would leave £30 for the first two games and £40 for the third game, which could be put towards the winner's overall tournament prize; in these circumstances, the tournament prize could be up to £100 (£30 + £30 + £40). Thus where the pot in individual games is under £100, the tournament winner's overall prize must not exceed the aggregate of the shortfall in each of the games he plays. If the winnings in each individual game reach the £100 maximum, there cannot be an additional overall prize.

Example 2: The overall winner is only awarded points in each game and wins an overall prize based on points.

Let's still assume that the tournament winner plays three games in the whole tournament. If there is no individual prize in any of the three games, then the overall prize can be up to £300 (£100 for each game the winner has played). If, on the other hand, the winner played in only two games, then his overall prize may not exceed £200, and so on. Please note that, the relevant number of games is the games in which the winning player participated, and not only the games that they won.

Organisers of such competitions will therefore need to work out the total value of any overall prize with reference to the number of games to be played by the overall winner and the total pot (if any) in each game.

- 5.5 While 'non-cash' poker for points leagues can provide harmless and legal entertainment, those promoting such leagues should be aware of the Commission's code of practice on equal chance gaming, and take steps to prevent illegal activity such as side betting or agreements to 'settle' games outside the gaming area. Any such illegal activity would bring a licensee's licence into question and expose the licensee, the organisers and the participants to the risk of prosecution.

6 Charity events

- 6.1 Organisations that wish to provide casino games or equal chance gaming (such as poker or bingo) for charitable or other non-commercial purposes (e.g. to raise funds for a club or society) may do so under the non-commercial gaming provisions in Part 14 of the Act.
- 6.2 Non-commercial gaming is gaming that takes place at an event where none of the proceeds from the event itself are used for private gain. For these purposes, the proceeds of an event constitute the sums raised by its organisers (including sums raised by way of entrance or participation fees, sponsorship, commission from traders, or otherwise) minus the costs

reasonably incurred in organising the event. However, sums raised by other persons will not form part of the proceeds of the event and so may be appropriated for private gain. An example would be refreshments provided at the event by an independent third party.

6.3 The Act lays down different rules depending on whether the non-commercial gaming is equal chance gaming or prize gaming.

6.4 The players participating in non-commercial prize gaming must also be told what “good cause” is to benefit from the profits from the gaming. This requirement does not apply to non-commercial equal chance gaming. There are no statutory limits on stakes, prizes, participation fees or other charges for this type of non-commercial prize gaming. No licence, permit or other form of permission is required to operate this kind of gaming provided that the statutory conditions are complied with.

7 Bridge and whist

7.1 Bridge and whist clubs may offer gaming under the auspices of a club gaming permit (see above). Clubs established wholly or mainly for other gaming will require a Commission casino or bingo operating licence and any relevant personal licences if they offer anything other than exempt gaming.

8 Bingo

8.1 Under the new Act clubs and pubs can offer bingo without a permit or a licence provided that:

- no sums are deducted from sums staked or won – so there can be no ‘rake’ from the prize pot (unless a club gaming permit is held);
- the participation fee is no more than £1 per person per day, or £3 where a club gaming permit is held;
- games are held on the premises;
- games are not linked with games held on other premises; and
- the total stakes or prizes for bingo games played in any seven day period does not exceed £2,000 more than once in 12 months.

8.2 In the case of members’ clubs and miners’ welfare institutes, bingo may only be played by members and bona fide guests.

8.3 Clubs and pubs will need to apply for a bingo operating licence if they operate bingo on club/pub premises with total stakes or prizes that go above £2,000 in any week and they plan to do so again at any time during the following twelve months. This is known as high turnover bingo. After the first week of high turnover bingo the club will commit an offence if high turnover bingo is played again in the following twelve months, unless a bingo operating licence has been obtained. Provided the conditions outlined in the Act are complied with, the club will not need a premises licence.

9 Prohibited gaming

9.1 No bankers' games may be played either in commercial clubs or alcohol licensed premises or in members clubs/miners’ welfare institutes unless they have a club gaming permit. This means that games such as pontoon, blackjack, roulette and any others which involve staking against the holder of the bank are unlawful on such premises except as mentioned in paragraph 2.4 above.

ANNEX: Summary of gaming entitlements for clubs and pubs

	Members' club or WM institute with club gaming permit	Members' bridge or whist club with club gaming permit	Members' club or commercial club with club machine permit	Members' club, commercial club or WM institute without a permit	Pubs and other alcohol-licensed premises
Equal chance gaming	Yes	Bridge and/or Whist only	Yes	Yes	Yes
Limits on stakes	No limit	No limit	Poker £1000 per week £250 per day £10 per person per game Other gaming No limit	Poker £1000 per week £250 per day £10 per person per game Other gaming No limit	Cribbage & dominoes No limit Poker £100 per premises per day Other gaming £5 per person per game
Limits on prizes	No limit	No limit	Poker £250 Other gaming No limit	Poker £250 Other gaming No limit	Poker £100 All other gaming No limit
Maximum participation fees – per person per day	Bridge and/or Whist ¹ £20 Other gaming £3	£20	Bridge and/or Whist ¹ £18 Other gaming £3	Bridge and/or whist ¹ £18 Other gaming £1	None permitted
Bankers or unequal chance gaming	Pontoon Chemin de Fer	None permitted	None permitted	None permitted	None permitted
Limits on bingo	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence	Not applicable	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence	Maximum of £2,000 per week in stakes/prizes. If more then will need an operating licence

¹ On a day when no other facilities for gaming are provided

Gambling Commission December 2007

The Gambling Commission regulates gambling in the public interest. It does so by keeping crime out of gambling, by ensuring that gambling is conducted fairly and openly, and by protecting children and vulnerable people from being harmed or exploited by gambling. The Commission also provides independent advice to government on gambling in Britain.

For further information or to register your interest in the Commission please visit our website at:
www.gamblingcommission.gov.uk

Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

T 0121 230 6500
F 0121 230 6720
E info@gamblingcommission.gov.uk