

## APPENDIX 5

### **Gambling Commission's Guidance to Licensing Authorities (5<sup>th</sup> edition September 2015)**

#### **Part 26: Premises licensed to sell alcohol**

**26.2** S.279-284 of the Act only apply to premises in respect of which an on-premises alcohol licence (in England and Wales) or a premises licence under the Licensing (Scotland) Act 2005 has been issued – provided that, in the case of Scotland, it is not a licence authorising the sale of alcohol for consumption off the premises only – and that have a bar at which alcohol is served, without a requirement that alcohol is served only with food. So any hotel, restaurant or pub that has a bar can offer gambling under Part 12 of the Act, but hotels and restaurants that serve alcohol only with food cannot.

#### **Automatic entitlement to two machines**

**26.4** S.282 of the Act provides an automatic entitlement to alcohol licence holders to make available two gaming machines (of category C or D) for use in alcohol-licensed premises. To take advantage of this entitlement, the person who holds the on-premises alcohol licence or relevant Scottish licence must give notice to the licensing authority of their intention to make gaming machines available for use, and must pay the prescribed fee (as set by regulations)<sup>82</sup>. If the person ceases to be the holder of the relevant alcohol licence for the premises, the automatic entitlement to the two gaming machines also ceases. Whoever applies for the new premises alcohol licence would also need to apply under s.282(2). A renewal of the automatic entitlement is required only where there is a change in the alcohol licence premises holder (either due to a transfer of licence or application for new licence), not for a change in designated premises supervisor /designated premises manager alone. As there is no requirement to stipulate whether the alcohol licensed premises intends to site category C or D or one of each category, a re-notification should not be required for a change in the mix of gaming machines made available provided it remains within the automatic entitlement to two machines of either category C or D.

**26.5** This is not an authorisation procedure. Licensing authorities have no discretion to consider the notification or to turn it down. The only matter to determine is whether the person applying for the automatic gaming machine entitlement is the holder of the alcohol licence and whether the prescribed fee has been paid. There is no statutory requirement for pubs and other alcohol-licensed premises to display a notice of their automatic entitlement to gaming machines.

#### **Removal of exemption**

**26.6** Licensing authorities can remove the automatic authorisation in respect of any particular premises by making an order under s.284 of the Act. They can do so if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives
- gaming has taken place on the premises that breaches a condition of s.282, for example the gaming machines have been made available in a way that does not comply with requirements on the location and operation of gaming machines
- the premises are mainly used for gaming
- an offence under the Act has been committed on the premises.

**26.7** Before making an order, the licensing authority must give the licensee at least 21 days' notice of the intention to make the order and consider any representations that they may make. The licensing authority must hold a hearing if the licensee so requests and must comply with any other procedural requirements set out in regulations. If there is no appeal, the order will take effect 21 days after notice of the intention was given. The authority must give the licensee a copy of the order and written reasons for making it. The licensee may appeal to the Magistrates' court or the Sheriff.

### **Licensed premises gaming machine permits**

**26.8** Licensing authorities may issue licensed premises gaming machine permits for any number of category C or D machines in licensed premises. Where a permit authorises the making available of a specified number of gaming machines in particular premises, this will effectively replace, and not be in addition to, any automatic entitlement to two machines under s.282 of the Act.

**26.9** Holders of licensed premises gaming machine permits are required to comply with a code of practice issued by the Commission on the location and operation of machines, Code of practice for gaming machines in clubs and premises with an alcohol licence.

**26.10** The detail of how to apply for licensed premises gaming machine permits is set out in Schedule 13 of the Act (for England and Wales) and in The Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007 (for Scotland).

**26.11** Applications must be made by a person or organisation that holds the on-premises alcohol licence for the premises for which the application is made. An application may not be made if a premises licence under the Act is in effect at the premises. The application must be made to an authority in whose area the premises are wholly or partly situated. The Act requires an application to include information on the premises to which it relates and the number and category of gaming machines sought. Apart from this it is for the licensing authority to direct the form

and manner of the application and what additional information and documents are required.

26.12 In determining an application, the licensing authority must have regard to the licensing objectives and to this Guidance. They may also take account of any other matters that are considered relevant to the application. The application does not require notification to the Commission or police before determination, however, licensing authorities are able to specify this as a requirement should they see fit.

26.13 The licensing authority may grant or refuse an application. In granting the application, it may vary the number and category of gaming machines authorised by the permit. If granted, the licensing authority must issue the permit as soon as possible after that. Where they refuse the application they must notify the applicant as soon as possible, setting out the reasons for refusal. The licensing authority must not refuse an application, or grant it for a different number or category of machines, unless they have notified the applicant of their intention to do so and given the applicant an opportunity to make representations, orally, in writing, or both.

26.14 The permit must specify the person or organisation to which it is issued, the number and category of gaming machines for which the permit has effect, the address of the premises and the date on which it takes effect.

26.15 The permit holder can apply to the licensing authority to amend the permit to reflect a change in the holder's name. They must comply with the request, provided the prescribed fee is paid.

26.16 The permit holder must keep the permit on the premises and it must be produced on request for inspection by a constable, enforcement officer or local authority officer. Not to do so is an offence. If the permit is lost, stolen or damaged, the holder may apply to the issuing authority for a copy, accompanied by the prescribed fee.

26.17 There are no renewal provisions for this class of permit because they are indefinite and continue in force for so long as the premises continues to have an alcohol licence and the holder of the permit continues to hold that licence. The permit can lapse if the holder surrenders it to the licensing authority.

26.18 The holder may apply to vary the permit by changing the number and/or category of machines authorised by it.

26.19 The licensing authority is able to cancel a permit. It may only do so in specified circumstances which include if the premises are used wholly or mainly by children or young persons or if an offence under the Act has been committed. Before it cancels a permit the licensing authority must notify the holder, giving 21 days notice of

intention to cancel, consider any representations made by the holder, hold a hearing if requested, and comply with any other prescribed requirements relating to the procedure to be followed. Where the licensing authority cancels the permit, the cancellation does not take effect until the period for appealing against that decision has elapsed or, where an appeal is made, until the appeal is determined.