

Appendix 1

Gambling Act 2005

Decision-Making

Considerations

The Main Institutions

- Secretary of State
- Gambling Commission
- First Tier Tribunal (Gambling)
- Licensing Authorities
- Magistrates Courts

Role of the Gambling Commission

- **Statement of principles for itself** (Statement expresses the principles to be applied by it in exercising its own functions)
- **Codes of Practice for providers** (Codes concern the manner in which facilities for gambling are provided)
- **Guidance to local authorities** (the manner in which and principles applied by local authorities when exercising their functions under the Act)
- First Tier Tribunal deals with appeals from a Gambling Commission Decision

Licensing Authority

- Publication of three-year licensing policy
- Grant of premises licences
- Administration of occasional use notices
- Endorsement of temporary use notices
- Grant of family entertainment centre gaming machine permits
- Grant of club gaming permit
- Grant of club machine permit
- Grant of licensed premises gaming machine permit
- Grant of prize gaming permit
- Grant of application for registration of small societies
- Maintenance of registers
- Compliance

Magistrates Court

Appeals from licensing authorities regarding:

- Decisions re. premises licences, including transfer and review.
- Refusal or revocation of small society registration
- Temporary use notice decisions.
- Refusals of FEC gaming machine permits.
- Decisions re. club gaming / machine permits.
- Refusals of prize gaming permits.

What is gambling?

Gambling is:

- Gaming
- Betting
- Participating in a lottery

Relevance of distinction?

- Type of gambling affects type of operating licence

Remote Gambling

Gambling includes remote gambling, i.e. participation by:

- Internet
- Telephone
- Television
- Radio
- Any other electronic or other technology for facilitating communication.

Gambling Licensing Objectives

- Preventing gambling from being:
 - a source of crime or disorder
 - associated with crime or disorder
 - 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.

Application of Objectives

- Premises licences: aim to permit where reasonably consistent with licensing objectives (subject to other considerations)
- Club gaming permits / club machine permits, have regard to licensing objectives (subject to other considerations)
- Licensed premises gaming machine permits: have regard to licensing objectives (among other things)
- Family entertainment centre gaming machine permits and prize gaming permits: **may** have regard to objectives (among other things)

Determination of Application

- Operating licence required for provision of facilities.
- Premises licence required for premises.
- Operating licence a prerequisite for premises licence (save track betting licence)
- But a premises licence does not remove need for operating licence, and vice versa.

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Principles to be applied

Authority shall aim to permit the use of premises for gambling in so far as the authority think it:

- (a) In accordance with any relevant code of practice;
- (b) In accordance with any relevant guidance issued by the Commission;
- (c) Reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b));
- (d) In accordance with the statement of licensing policy (subject to paragraphs (a) to (c)).

Irrelevant Considerations

- Licensing authority may not have regard to:
 - the expected demand for the facilities.
 - whether a proposal is likely to receive planning permission or building regulations approval.
- Note, a decision by the licensing authority “shall not constrain” planning or building authority.

Weighting of Criteria

- “Aim to permit” is not “shall permit”
- Where (a) – (d) satisfied:
 - there is presumption of grant;
 - but what, if anything, may displace the presumption?
- Where (a) – (d) not satisfied:
 - Presumption of refusal?
 - Authority should consider conditions to overcome perceived problems.
- Hierarchy:
 - Licensing objectives not predominant, unlike LA03
 - Local policy subordinate to national guidance, unlike LA03

Grounds for Refusal

- Gambling Commission advises that: Licensing authority may refuse only on grounds of the licensing objectives or breach of policy, code or guidance
- But “aim to permit” does not mean that the starting point is the issue of a licence. It means do everything possible to allow the licence to be issued incl. adding conditions
- The Act is silent on whether Licensing Authorities retain say about layout, toilet provision, disabled facilities, location (except where children/vulnerable harmed), character, good neighbourliness, over-concentration, nuisance etc?

Imposing Conditions

- According to GA05, must not:
 - Prevent compliance with condition of operating licence
 - Vary number of machines permitted under Act
 - Contradict Regulations re. machines.
 - Require premises to be operated as a club / membership body.
 - Impose limits on stakes, fees, winnings or prizes (save fees for admission to a track).
- According to Guidance, should be:
 - Relevant to need to make building suitable for gambling;
 - Directly relevant to premises and type of licence;
 - Fairly and reasonably related to scale/type of premises;
 - Reasonable.

And if it all goes wrong?

- Despite the best laid plans, and tightest conditions, there may be problems associated with a gambling establishment.
- Licensing Authority may review:
 - **Multiple** licences of a particular **class**, re. use made of premises and arrangements for ensuring compliance with conditions.
(Note, this appears to be information-gathering exercise)
 - Interested/Responsible party or Licensing Authority can apply to review a **single** licence if:
 - Reason to suspect condition breached;
 - It thinks review appropriate.