

Controlling where gaming machines may be played

Consultation – November 2015

- 1.1** This template is provided for responses to the Gambling Commission's consultation on proposed amendments to the *Licence Conditions and Codes of Practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission. It also sets out proposed amendments to the Commission's statutory Guidance to Licensing Authorities (GLA). Please use this template if possible.
- 1.2** The templates leaves space for responses to all the questions asked in the consultation. However, we understand that respondents to the consultation may wish to answer only those questions which are relevant for their business, organisation or interests.
- 1.3** All responses should be sent by email to consultation@gamblingcommission.gov.uk by **Monday 22 February, 2016**.

Alternatively, responses can be sent by post to:

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- 1.4** If you are responding on behalf of an organisation, please indicate which type of organisation:

Licensed operator	<input type="checkbox"/>	Professional services provider	<input type="checkbox"/>
Trade association	<input type="checkbox"/>	Campaigning or political group	<input type="checkbox"/>
National government body	<input type="checkbox"/>	Charity or support group	<input type="checkbox"/>
Local government body	<input type="checkbox"/>	Academic institution	<input type="checkbox"/>
Other (please specify)	<input type="text"/>		

- 1.5** If you are responding as an individual, please indicate your own interest:

Policy objectives

- **With very few low risk exceptions, non-remote gambling should be confined to dedicated gambling premises**
- **The distinctions between different types of licensed gambling premises are maintained**
- **Gambling activities are supervised appropriately**
- **Within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity of the operating licence.**

Q1. Do you agree or disagree in whole or in part with the above policy objectives? Please give your reasons as appropriate.

In the introduction to this consultation, the Commission reaffirms its support and that of DCMS for maintaining “distinctions between different types of licensed gambling premises” and that the purpose of this is to allow for the “strict control of the provision of category B gaming machines”.

The policy objectives of dedicated gambling premises which distinguish between different types of gambling with appropriate supervision, is sound policy. However, there is a blatant anomaly in the provision of category B machines within the existing regulatory framework that the Commission again seeks to ignore - B2 or Fixed Odds Betting Terminals (FOBTS) in betting shops.

Referring to the principles outlined in the Report of the Gambling Review Body (Budd Report 2001) and inferring that in conjunction with the 2005 Act, the Commission’s use of these principles as the basis to “underpin” this consultation must mean that the provision of category B2 gaming machines against a betting premise licence should also be reconsidered as part of this consultation.

Budd was quite clear on the appropriate location for high stake gaming machines, despite, at the time of writing the report, category B2 machines not existing in the form that’s recognised today. The bookmakers, in conjunction with a company that is now SG Gaming, were at that time developing what were originally termed FOBTs and, as the Budd report was published in July 2001, it was just five months later in the December that betting shops launched electronic roulette on their FOBTs with **unlimited stakes and prizes**.

Although the Commission maintains the distinction between different types of gambling and the premises on which gambling may take place, it fails to differentiate between “hardness” in types of gaming machines and the appropriate gambling premises for each type of gaming machine. The sector that provides a pure gaming machine offering, Adult Gaming Centres (AGCs), is precluded from offering B2 machines, whilst casinos – a sector that can offer B2 machines and, under the ethos of the Budd report, is the environment most suited to B2 machines – opts to limit offering them. There are 34,552 located in betting shops and just 173 in casinos. Meanwhile, bookmakers continue to offer B2 machines in what is becoming the longest probationary period in history.

‘Primary gambling activity’

Q2. Do you agree or disagree with the Commission removing earlier requirements, guidance and advice relating to ‘primary gambling activity’ from the LCCP, GLA and other related materials?

Considering the mess that the Commission has made of “primary gambling activity” in relation to betting shops, it is understandable that the Commission should now seek to “draw a line” under it.

The Commission notes: *“For the regulatory framework governing licensed gambling premises to work, it is important that customers are aware of the type of gambling premises they are attending, so that they can make a deliberate choice whether to enter. The nature of a particular gambling activity and consequently the controls applied to it underpin the different ancillary machine entitlements available to operators.”*

When a customer enters an AGC, they are aware they are entering a pure machine gaming premises. Likewise, when a customer enters a casino, it is clear they are entering gambling premises offering casino content. Yet the anomaly of casino content on B2 gaming machines means customers entering a licensed betting shop will be offered two very different opportunities to gamble – betting (ambient, soft gambling) and electronic casino games (hard gambling). Those electronic casino games will also be offered at higher stakes, prizes and speed of play than is available on machine play in AGCs.

Reliance on the dictionary definition of “substantive” when describing the facilities available in licensed betting premises will ensure the continued failure of the Commission in the area of primary gambling activity. It is logical and rational to determine primary activity based on yield contribution, in which case, the bookmakers’ primary activity today, as it has been for the last decade, is B2 gaming machines and not betting – which is the “substantive” interpretation of a betting premise licence.

The 93 Local Authorities that supported Newham’s submission, and the 97 Local Authorities that supported the Local Government Association’s resubmission under the Sustainable Communities Act would disagree with the removal of Licence Condition 16 (Primary Gambling Activity) and the Guidance to Local Authorities contained within this that is relevant to betting shops, which have historically breached this guidance. Disregarding this advice will weaken Local Authority licensing of betting premises and risk operators again attempting to open betting premises simply to offer four more B2 machines.

Social responsibility code provisions

Q3. What are your views on the proposed use of social responsibility code provisions to deliver the policy objectives?

The Commission states: *“we consider that for an operator to benefit from the ancillary machine entitlement available in particular types of gambling premises they must do so in combination with the non-remote activity for which they are licensed and also **in a manner which provides for appropriate supervision.**”*

Betting shops offer inadequate supervision when compared to all other gambling sectors. They operate lone staffing of premises as standard practise and there are many instances of failures in social responsibility that the Commission is already aware of, particularly linked to the provision of B2 gaming machines.

The other sector represented alongside betting shops on the high street and in town centres is that of AGCs whose primary purpose is machine gambling including high prize B3 slot machines which the commission often wrongly conflates with B2. However, AGCs do not operate lone staffing nor do they have to call Police out as frequently as betting shops as Commission statistics clearly show.

Casinos offer the hardest form of gambling and the highest prize gaming machines (B1) and provide the highest levels of supervision. Very few casinos offer B2 machines in comparison to the bookmakers and as with AGCs, have a much lower ratio of Police callouts per premises.

	Incidents Jan - Dec 2014	Active Premises as at 31.12.14	Avg incidents per premise
Betting	11,232	8,980	1.25
Casino	72	147	0.49
Adult Gaming Centre	299	1,584	0.19
Bingo	79	674	0.12
Family Entertainment Centre	29	342	0.08
Grand Total	11,711	11,727	1.00

Despite B2/FOBT machines not being available at the time of Budd, when looking at the issue of machine locations and allowance, the report argued: *“that in the strictly regulated environment of a casino, slot machines with unlimited stakes and prizes should be permitted”*. Betting shops, it was proposed, should be allowed up to four Jackpot (now B3) machines. Absolutely no consideration was given to allowing higher stake and prize machines in betting shops above the then limit on Jackpot machines of 50 pence per spin.

Therefore, the anomaly of £100 per spin casino gaming machines in betting shops (following their illegal introduction by bookmakers) has never been consulted on and the failure of the Commission to address this, continues today under this consultation.

Q4. Do you have any comments on the drafting of the proposed social responsibility code provisions?

The Commission risks encouraging unscrupulous operators to challenge the interpretation of the proposed social responsibility code provisions. Rather than rely on indisputable yield data that shows primary activity, the Commission prefers to rely on dictionary definitions that are guaranteed to be interpreted in ways that suit operators and consequently undermine the licensing objectives.

This consultation is clearly orientated towards addressing some non-gambling sectors' desire to provide machine gambling or gambling per se and is another missed opportunity to address historical failures around the provision of B2 gaming machines in betting shops.

Q5. What impact do you consider the proposed provisions will have on the affected sectors and are they sufficient to deliver the Commission's underlying policy objectives below?

- **With very few low risk exceptions, non-remote gambling should be confined to dedicated gambling premises**
- **The distinctions between different types of licensed gambling premises are maintained**
- **Gambling activities are supervised appropriately**
- **Within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity of the operating licence**

The Commission continues to disregard the danger posed by B2s in betting shops and these proposals again ignore the anomaly in the gambling hierarchy that they have created. In 2001, Budd argued against a submission from the Better Regulation Task Force (BRTF) that made the case for “self-regulation”, saying: *“some forms of gambling can particularly encourage repetitive play to the point at which the punter may suspend rational judgement and display all the signs of addiction, with subsequent financial and psychological harm. Evidence from countries where there has been considerable deregulation does suggest that the extent of problem gambling can grow significantly. So we are not proposing the degree of deregulation seen in some parts of the world. That means inevitably that we are limiting the freedom of individuals who could safely participate in such forms of gambling”*.

These proposed changes ignore the anomaly of the highest stake gaming machines being made available in a gambling environment that Budd perceived as inappropriate for high stake machine gaming.

Under this consultation the Commission again pays no regard to the lack of supervision provided in betting premises when compared to all other gambling premises and ignores that betting shops now beam in international racing late at night, with little commercial value, just to keep shops open for B2s. When these are taken into consideration alongside the Responsible Gambling Trust research conclusions that B2 staking levels reach their highest in the later hours of betting shop trading, it is clear that this consultation seeks to ignore any issues relating to B2s and the betting sector.

Q6(i) What are your views in relation to the Commission considering the use made of the named non-remote facilities as an indicator of whether gaming machines are being provided in combination with the named activity in a substantive manner?

It is abundantly clear that the Commission has made a mess of primary gambling activity in respect of betting shops and the provision of B2s and is now seeking to try and “bury” the issue. “Substantive facilities” clears the way for those seeking to provide B2s under the guise of a betting shop, to do so and for existing operators it is a green light to continue opening or relocating shops based on increasing B2 yield rather than the core business of betting. This represents a “substantive” failure by the Commission.

Bookmakers recently committed to remove all POS from window displays relating to B2. A strange move on their part if, as they say, the machines do not cause harm. However, the proposed SR code provision 3 implies that bookmakers must now inform customers of the availability on their premises of all types of gambling offered. Is the Commission over ruling the bookmakers’ apparently “socially responsible” decision and asking them to reinstate B2 window marketing?

Q6(ii) If appropriate, should the Commission include reference to the use made of the non-remote named facilities on a case by case basis via specific conditions, or in a more general sense via one of the two alternatives below?

- Social responsibility code provision
- Ordinary code provision

The use made of the non-remote facilities can only be measured and compared to the use made of ancillary gaming machines either through turnover (activity) or yield (total losses). As the Commission refuses to use these measures as a determinant for primary activity and therefore the “use made of the facilities”, it looks like the Commission is embarking on more guesswork and so neither provision will produce clear definition of use being made of the facilities.

Business plans and applications for licences

Q7. Do you agree with the proposed approach, where judged necessary, to draw out key elements of an applicant's business plan and use specific licence conditions to ensure they reflect the future use of the operating licence?

This is a marginal move in the right direction, however those elements drawn out in the licensing stage must then be revisited on annual review. Again though, the measure of the business plan proposals can only be achieved if Licensing Authorities are given access to yield breakdown and are empowered to take action if there is clear and deliberate deviation from the original business plan for which the license was considered.

Guidance to licensing authorities

Q8. Do you have any views or comments on the proposed guidance to licensing authorities?

Many Local Authorities themselves question the guidance given by the Commission, which has fuelled support for the Sustainable Communities Act proposal. This consultation and the proposals within, will prolong the view that the Commission is not fit for purpose.

Q9. Is there any additional guidance that would assist licensing authorities to apply appropriate licensing decisions relating to the availability of gaming machines in licensed premises?

Licensing Authorities should be able to insist on two staff or more in premises where B2s are in operation. Licensing Authorities should also be empowered to require all crime on premises to be reported.

- 1.6** Please note that responses may be made public or published in a summary of responses of the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
- 1.7** Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000 (FOIA). The Commission's policy on release of information is available on request or by reference to our website at www.gamblingcommission.gov.uk. The Commission will treat information marked confidential accordingly and will only disclose that information to people outside the Commission where it is necessary to do so in order to carry out the Commission's functions or where the Commission is required by law to disclose the information. As a public authority the Commission must comply with the requirements of FOIA and must consider requests for information made under the Act on a case-by-case basis. Therefore when providing information, if you think that certain information may be exempt from disclosure under FOIA, please annotate the response accordingly so that we may take your comments into account.
- 1.8** All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments or agencies, local authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to do so.