

GAMBLING COMMISSION

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

September 2008

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.
- 1.2 It is an offence to provide facilities for gambling without the relevant operating licence and premises licence unless the activity is subject to an exception. Part 12 of the Act provides that in pubs and clubs, certain gaming, 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 appendix 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 distinction in respect of the gaming that may take place.

Members' club

- 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 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, but there is no need for a club to have an alcohol licence, if they want to provide gaming.

Miners' welfare institute

- 2.5 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 machine permits.

Commercial club

- 2.6 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 machine permits.

Alcohol licensed premises

- 2.7 **Alcohol licensed premises** are premises where there is an 'on-premises alcohol licence'. The Act applies to premises which have a bar and where there is no requirement that alcohol is only served with food, that is, the premises should be dedicated bar premises as opposed to restaurant type premises. Pubs are not able to apply for club gaming or club machine permits, as they do not have membership.

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.

Permitted gaming

- 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. A club gaming permit will allow a club to offer equal chance gaming with unlimited stakes and prizes, pontoon and chemin de fer (unequal chance gaming), and bingo. There are limits on participation fees (maximum of £20 for bridge and whist and £3 for other gaming) and the maximum for bingo stakes and prizes is £2,000 per week.
- 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, as set out above, be 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.

Exempt gaming

- 3.4 **Exempt gaming** is equal chance gaming generally permissible in any club or alcohol licensed premises. Equal chance gaming includes games such as backgammon, mah-jong, rummy, kalooki, dominoes, cribbage, bingo and poker. Such gaming should be ancillary to the purposes of the premises. Unlike the position under the Gaming Act 1968, this exemption is automatically available to all club or alcohol licensed 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). These limits are set out in the Appendix to this advice document.
- 3.6 Exempt gaming should be supervised by a nominated gaming supervisor and comply with any code of practice issued by the Commission under section 24 of the Act. In this regard, the Commission has issued a code of practice for exempt equal chance gaming. This can be found here: www.gamblingcommission.gov.uk/client/mediadetail.asp?mediaid=184

- 3.7 A fee may not be levied for participation in the equal chance gaming offered by the club or alcohol licensed premises under the exempt gaming rules. A compulsory charge, such as a charge for a meal, would probably constitute a participation fee.
- 3.8 In order to qualify as exempt gaming, clubs and alcohol licensed premises may not charge a rake on games or levy or deduct an amount from stakes or winnings.
- 3.9 Members' clubs may only be established wholly or mainly for the purposes of the provision of facilities for gaming *if the gaming is of a prescribed kind*. The Secretary of State has decided that bridge and whist should be the only prescribed kinds of gaming. So long as it does not provide facilities for other types of non-machine gaming, a bridge or whist club may apply for a club gaming permit. If gaming is the principal reason for attendance at a club (*other than a dedicated whist or bridge club*), then it is not exempt gaming under Section 269 of the Gambling Act 2005. This would include poker clubs and the like established primarily for the purpose of providing poker. If the gaming which is provided is not exempt, the operator will need to apply to the Commission for the relevant operating licence.

4 Permits

Club gaming permits

- 4.1 **Club gaming permits** allow the playing of poker for unlimited stakes and prizes and also allow certain bankers games to be played, but may only be issued to members' clubs and miners' welfare institutes.

Club machine permits

- 4.2 **Club machine permits** may be issued to members' clubs, commercial clubs or miners' welfare institutes, but these permits do not allow the playing of poker for unlimited stakes and prizes.
- 4.3 Before granting club gaming or machine permits, local authorities are required to 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 is gaming (for example, poker), gaming will be considered the main activity of the club. Those clubs which hold club permits and then conduct themselves in such a way that gaming (for example, poker) is their main activity, will lose their entitlement to a permit and may be in breach of the Act and may render themselves liable to prosecution, unless the gaming offered is exempt gaming.
- 4.4 Clubs with a gaming permit or a machine permit may have up to a maximum of three gaming machines of categories B4, C or D on their premises. Non-commercial members' clubs and miners' welfare institutes may also have a category B3A as one of their machines, but may not exceed three gaming machines in total. The restriction of one category B3A machine is as a result of the voluntary agreement entered into by CORCA, the trade association representing the majority of members' clubs.
- 4.5 Pubs and other alcohol licensed premises have an automatic entitlement to two category C or D gaming machines and may apply for more machines to their licensing authority. No conditions are applied to gaming machine permits but all operators offering gaming machines should abide by the Commission's code of practice on gaming machines.

5 Gambling Commission codes of practice

- 5.1 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:
www.gamblingcommission.gov.uk/client/mediadetail.asp?mediaid=184
- 5.2 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.
- 5.3 The additional advice in respect of poker provided in this document is a result of the nature of the game and its 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.
- 5.4 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, they have limited powers in respect of 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 are 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.
- 5.5 The Commission's code of practice on gaming machine permits can be found here:
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
- self-exclusion, which relates only to club gaming permits and club machine permits and which again sets out best practice for permit-holders.

6 Poker leagues and tournaments

- 6.1 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. In some leagues the organisers offer 'prizes' at the end of a series of weekly games for the players with the most points.
- 6.2 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 'knockout' 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 knockout 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.
- 6.3 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.

- 6.4 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 game and the maximum stake of £100 per day.

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

- 6.5 If the tournament winner played three games in the whole tournament, and his winnings (from the pot) in each of these games were £100, £70 and £60 respectively, each game would fall under the £100 prize limit. This would leave £0 from the first game, £30 from the second game and £40 from the third game, which could be put towards the winner's overall tournament prize. In these circumstances, the tournament prize could be up to £70 (£0 + £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.

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

- 6.6 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.
- 6.7 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.
- 6.8 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 individual stakes limits being exceeded through side bets or illegal activity such as agreements to 'settle' games outside the gaming area. Any such illegal activity would expose the owner or manager of the alcohol licensed premises, the organisers and the participants to risk of prosecution, or lead to the removal of the alcohol licensed premises' exemption, which allows poker to be played.

Example 3: The overall winner is only awarded points in each game and wins an overall prize such as the opportunity to participate in a major poker tournament, casino vouchers, holidays, etc

- 6.9 The final of a poker tournament may be held in a licensed casino where high stakes poker may be played. Tournament organisers must nonetheless ensure that the statutory limits for poker in alcohol licensed premises and clubs are complied with. In particular, they must carefully consider the value of the prizes offered for games leading up to the tournament final (including money's worth or non-monetary prizes such as holidays, cars, casino vouchers, or buy-ins or seats at the final).

Example 4: Free or donated prizes are awarded to players in addition to the maximum prize pools for poker in clubs and alcohol licensed premises

- 6.10 The Gambling Act 2005 speaks about money or money's worth in respect of prizes. This would include free or donated prizes which have an intrinsic value. Any prizes offered in addition to the prize pool must remain within the limits for prizes in games of poker in clubs

and alcohol licensed premises. The prize limit is £250 per game in a club and £100 per game in a pub. Therefore, for example, if the prize pool available for a particular game is £80, then any non-monetary prizes must not have a value exceeding £20.

Example 5: Poker is offered in a members' club or miners' welfare institute with a club gaming permit

- 6.11 Members' clubs or miners' welfare institutes with club gaming permits may offer poker with unlimited stakes and prizes, but the only persons who may participate in such gaming are club members and their genuine guests. In this regard, the club must be able to demonstrate that it has a genuine and legitimate club membership scheme. Clubs must also ensure that the statutory limits on participation fees are not exceeded. The limit for bridge and whist is £20 and for other gaming is £3. In addition, there is a limit of a maximum of £2,000 per week in stakes and prizes for bingo in a members' club or welfare institute. If it is the intention of the club or institute to exceed these limits, it will be necessary for them to apply for an operating licence.

7 What constitutes 'money's worth'?

- 7.1 Money's worth relates to the *realistic value of the prize* offered. It includes emoluments, vouchers, goods or other items which have a value.
- 7.2 A prize such as a 'goodies bag' would be considered money's worth and is hence subject to the statutory limits for exempt gaming. Donated prizes would also be considered money's worth. This would include prizes such as the buy-ins at major poker tournaments or the opportunity to participate in poker tournaments at venues such as Las Vegas, especially as this type of prize is likely to include the cost of the airfare and accommodation.

8 Bridge and whist

- 8.1 Bridge and whist clubs may not offer any other gaming besides bridge and whist if they rely on a club gaming permit. If they do not have a permit, they may provide exempt gaming as set out in paragraphs 3.4 to 3.6 above. If they wish to offer other non-exempt gaming they will require a Commission casino or bingo operating licence and any relevant personal licences.

9 Bingo

- 9.1 Under the 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
 - no participation fee is charged in respect of bingo games in pubs and the participation fee is no more than £1 per person per day in respect of bingo games in clubs, 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
 - 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, and
 - there is a maximum stake per game per player of £5 for bingo in pubs.
- 9.2 In the case of members' clubs and miners' welfare institutes, bingo may only be played by members and bona fide guests.

- 9.3 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.

10 Charity events

- 10.1 Organisations that wish to provide casino games or equal chance gaming (such as poker or bingo) for charitable or other non-commercial purposes (for example, to raise funds for a club or society) may do so under the non-commercial gaming provisions in Part 14 of the Act.
- 10.2 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.
- 10.3 The Act lays down different rules depending on whether the non-commercial gaming is prize gaming or equal chance gaming. In both instances, however, the players participating in the gaming must be told what 'good cause' is to benefit from the profits from the gaming.

Non-commercial prize gaming

- 10.4 There are no statutory limits on stakes, prizes, participation fees or other charges for non-commercial prize gaming. In addition, no licence, permit or other form of permission is required to operate this kind of gaming, provided that the statutory conditions are complied with.

Non-commercial equal chance gaming

- 10.5 No licence, permit or other form of permission is required to operate non-commercial equal chance gaming, provided that the statutory conditions are complied with, including any limits on participation fees, stakes and prizes.
- 10.6 In order to participate in each and every game played at an event where non-commercial equal chance gaming is offered, participants must not make or be required to make more than one payment (whether by way of a participation fee, stake or other charge, or a combination of those charges) and this payment must not exceed £8. The participation fee includes any charge for admission to the premises where the gambling takes place.
- 10.7 In respect of all games played at an event at which non-commercial equal chance gaming is offered, the aggregate amount or value of prizes and awards distributed in respect of those games must not exceed £600.
- 10.8 Where two or more events at which non-commercial equal chance gaming is offered are promoted on the same premises by the same person on the same day, the limits mentioned in paragraphs 10.6 and 10.7 above apply collectively in relation to those events (as if they were a single event).

10.9 Where a series of events are held (excluding cases where two or more events are promoted on the same premises by the same person on the same day), the limits mentioned in paragraphs 10.6 and 10.7 above apply separately in relation to each event in the series. In these circumstances, the amount or value of prizes and awards distributed in respect of all games played at the final event must also not exceed £900. In this context, an event is a 'final event' if no other event is promoted on the same premises by the same person on the same day as that on which the final event takes place, and each person participating in the event has qualified to do so by reason that they have taken part in games played at another event of the series held on a previous day.

11 Prohibited gaming

11.1 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 4.1 above.

12 Advertising

12.1 Section 331 of the Gambling Act 2005 specifically prohibits the advertising of 'foreign gambling' in the United Kingdom. Foreign gambling, in this sense, is gambling which takes place outside of the European Economic Area (including Gibraltar and Malta), the Isle of Man, Alderney and Tasmania. Therefore advertising of this nature would be illegal, but if the prize advertised was an all-expenses paid holiday to Las Vegas, then the operator would not fall foul of Section 331.

12.2 Many poker websites promote other online gambling websites, usually by the provision of a hyperlink to that website. A hyperlink has been deemed to constitute advertising as it brings facilities for advertising to the attention of the person who clicks on the link. Poker operators must, therefore, be mindful that the provision of a hyperlink to a website operating outside of the EEA or white-listed states (the Isle of Man, Alderney and Tasmania) will constitute advertising of foreign gambling which is not permitted.

Gambling Commission August 2008

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:
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Appendix: Summary of gaming entitlements for clubs and pubs

	Members' club or MW institute with club gaming permit	Bridge or whist club	Members' club or commercial club with club machine permit	Members' club, commercial club or MW institute without a club gaming 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 per game Other gaming No limit	Poker £250 per game Other gaming No limit	Poker £100 per game Other gaming No limit
Maximum participation fees – per person per day	Bridge and/or Whist ¹ £20 Other gaming £3	£18 (without club gaming permit) £20 (with club gaming permit)	Bridge and/or Whist ¹ £18 Other gaming £3 (commercial club) £1 (members' club)	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.	No bingo permitted	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