

## Written submission from The Gambling Commission

### Introduction

1. The Gambling Commission (the Commission) offers this response to the Scottish Parliament's Local Government and Regeneration Committee (the Committee) on its Inquiry regarding Fixed-odds Betting Terminals (FOBTs) and their consideration of further devolution of powers related to gambling in the Scotland Bill as recommended by the Smith Commission.
2. The Commission makes this submission in its capacity as advisor to the Secretary of State for Culture, Media and Sport and to the Scottish Government.
3. The Commission's response addresses two of the Committee's questions:
  - Question 4: Are there any changes in this area of law you would like to see which are not covered by the proposal, and why?
  - Question 5: Please make any further comment you feel is relevant to Committee's enquiry into FOBTs.
4. We offer no comment in response to the other questions posed as these are outside our statutory remit under the Gambling Act 2005 (the Act) to provide advice to the UK governmental bodies on gambling and its regulation.
5. The Commission's observations fall in to three parts:
  - a. The existing powers of licensing authorities in relation to gambling regulation
  - b. The anticipated consequences of a reduction or restriction on the number of FOBTs in betting premises
  - c. The legislative anomaly in relation to gambling regulation in Scotland and a suggested solution.
6. The Commission is willing to provide further explanatory detail should the Committee consider that helpful. Our response develops our earlier submission to the Committee as part of its recent consideration of the Air Weapons and Licensing (Scotland) Bill.

### Background

7. The Act has three licensing objectives:
  - preventing gambling being a source of crime and disorder
  - ensuring gambling is conducted in an open and fair way
  - protecting children and vulnerable people from being harmed or exploited by gambling.
8. The Act created a co-regulatory structure for the licensing and regulation of gambling<sup>1</sup>. The responsibility is shared between the Commission and licensing authorities. In Scotland licensing authorities are licensing boards

---

<sup>1</sup> Further details of the different responsibilities of the Commission and licensing authorities is included at Appendix 1

constituted under section 1 of the Licensing (Scotland) Act 1976 (now replaced by the Licensing (Scotland) Act 2005).

9. The system is financed, in general terms, by means of fees paid by operators. The Commission receives fees in relation to operator licences and licensing authorities receive fees for premises licences and other local gambling permissions.
10. In Scotland the fee structure for premises licences is set by the Scottish Government (in England and Wales an upper limit is set by the Department of Culture Media and Sport). The fees received by licensing authorities are set in order to meet the cost of licensing, inspection and enforcement.
11. Broadly speaking the division of responsibilities for regulation is that the Commission takes responsibility for issues which have a greater impact or risk at a regional, national or GB-wide level. Licensing authorities are best positioned to manage matters which are more localised in impact (for example ensuring gambling premises comply with the codes of practice<sup>2</sup>, including matters related to social responsibility).
12. Since the Act was introduced, licensing authorities and the Commission have evolved their approach to try to make this shared regulatory structure work effectively, ensuring for example that there is a clear appreciation as to who is best positioned to act in any given situation involving non-compliance or illegality. For reasons set out below, however, the current situation in Scotland (see 27 -31 below) has unfortunately not developed in the same way.

### **Licensing authority powers**

13. Licensing authorities, licensing boards in Scotland, have a broad discretion to regulate local provision of gambling and the Act gives wide-ranging powers to do so. Those include the power:
  - to issue a statement of licensing policy, setting expectations about how gambling will be regulated in a particular area
  - to grant, refuse and attach conditions to premises licences
  - to review premises licences and attach conditions or revoke them as a result.
14. In exercising its functions under the Act, Section 153 states that the licensing authority shall aim to permit the use of premises for gambling in so far as it thinks it is:
  - a. in accordance with any relevant code of practice under section 24
  - b. in accordance with any relevant guidance issued by the Commission under section 25
  - c. reasonably consistent with the licensing objectives (subject to a and b above)

---

<sup>2</sup> Codes of practice are requirements placed on either individual operator licences or groups of licence holders by the Gambling Commission. Many of them relate to social responsibility.

d. in accordance with the licensing authority's statement of licensing policy (policy statement) (subject to a to c above).

15. The 'aim to permit' framework in the Act provides wide scope for licensing authorities to impose conditions on a premises licence, reject, review or revoke premises licences where there is an inherent conflict with the relevant codes of practice, relevant guidance issued by the Commission, the licensing objectives or the licensing authorities' own policy statements.
16. Licensing authorities may also wish to have proactive engagement with local operators to mitigate risks to the licensing objectives. Such engagement can facilitate an open and constructive partnership which, in turn, can improve compliance and reduce regulatory costs. Engagement with operators should be prompted by justifiable concerns or in pursuit of the principles set out under section 153.

### **Local risk assessments**

17. To improve the exchange of information between licensing authorities and operators, the Commission has introduced Social Responsibility code provisions that require operators of premises-based businesses to conduct local risk assessments (SR 10.1.1), and an ordinary code provision that says licensees should share their risk assessments with licensing authorities in certain circumstances (OC 10.1.2). These provisions become fully effective from 6 April 2016.<sup>3</sup>

### **Licensing authority policy statement**

18. The statement of licensing policy is a very important part of the architecture of local gambling regulation and we expect that each licensing authority will use it to set out the local issues, priorities and risks that inform and underpin its approach to local regulation.
19. It provides the opportunity for licensing authorities to agree and set out how gambling is to be managed in different parts of the local authority area to deal with local concerns and issues. The statement is reviewed and consulted upon by licensing authorities every three years with new statements due to be operational by the end of January 2016. The statement provides clarity of expectation for both existing and prospective licensees about how their businesses are likely to be treated in different localities. The existence of a clear and agreed policy statement will provide greater scope for licensing authorities to work in partnership with local businesses, communities and responsible authorities to identify and mitigate local risks to the licensing objectives.

---

<sup>3</sup> [Licence conditions and codes of practice](#)

## B2 (FOBT) controls

20. The number of gaming machines in betting shops across Great Britain increased by 1,806 (5%) between the year ending March 2011 and the year ending September 2014. At that point there were 34,874 machines in betting premises across GB.<sup>4</sup> Over the same period total gaming machine numbers increased by c13%. We do not have data which is specific to betting shops in Scotland as the data we gather is from operators and only relates to their entire estate rather than geographical areas.
21. Between 31 March 2013 and 31 March 2015 the number of betting shops decreased from 9,100 to 8,958.
22. Whilst the number of betting premises has remained relatively constant since the Gambling Act 2005 came in to force the removal of the so called 'demand test'<sup>5</sup> has led to shops relocating to sites with the highest footfall and consumer demand.
23. In part due to recent tax changes and partly due to further industry consolidation the number of betting premises is likely to decrease further over the short to medium term.
24. The Committee's inquiry is concerned with the power to limit the number of FOBTs (that is category B2 machines). Currently betting premises are permitted four machines up to category B2.
25. Most category B2 machines also have category B3 content games on them, which have a maximum stake of £2. B3 content is the fastest growing content in the betting shop environment and now accounts for around 30% of the total. The removal of B2 machines would not necessarily lead to a decrease in the number of betting premises (beyond that which has started to happen already).
26. Should the policy intention be one of providing greater protection to problem gamblers it is unlikely to be as effective as it may at first appear. As we explained in our [formal advice to DCMS on the Responsible Gambling Trust's \(RGT's\) machines research](#), while we know stake size can be a factor in gambling related harm, reduced access to higher stake machines would have a significant impact on normal leisure gamblers (and the revenue from them) while leaving many problem gamblers who stake at lower levels relatively untouched. The possible benefits for problem and at-risk gamblers are uncertain because reducing access to B2 machines might not take full account of the likely response of gamblers. Problem gamblers typically gamble in a number of different ways. Some might curb excessive expenditure. Others are likely to find other outlets for higher-stake gambling, simply displacing the problem. And for those moving to lower stakes there is

---

<sup>4</sup> [Industry statistics](#) April 2010 to September 2014

<sup>5</sup> The demand test restricted the opening of new betting premises based on the hypothesized demand for their services.

likely to be a consequent increase in the amount of time spent gambling, with the associated risk of enhancing its potentially addictive effect.

### **Scotland, the Licensing (Scotland) Act 2005 and LSOs**

27. There are three classes of persons who have powers of entry (and a range of other authorisations) under the Act. They are, in general terms, Commission enforcement officers, constables and authorised persons. This latter category is the one from which licensing authorities obtain the relevant permissions for staff to undertake inspection, compliance and enforcement activities.
28. Licensing Standards Officers (LSOs) are appointed in Scotland under the Licensing (Scotland) Act 2005 (the Licensing Act) and have a range of functions under the legislation. For example, these include supervising compliance with the requirements of the Act and inspecting and reviewing premises. However at section 304 (2) of the Gambling Act, a section which empowers licensing officers in England and Wales, it refers to 'officers' of licensing authorities. Scottish licensing boards do not have employees or officers as such. Consequently our understanding, and this is a view shared by the Convention of Scottish Local Authorities (COSLA) and LSOs, is that the enforcement powers under the Gambling Act cannot be exercised 'as of right' by a LSO.<sup>6</sup>
29. The Commission developed an [advice note \(July 2013\)](#) on this matter. This sets out our understanding of how, using other legislation, LSOs or others, might be able to act as authorised persons under the Gambling Act.
30. Notwithstanding this advice note, the original drafting error has left licensing boards and LSOs unsure as to the extent of their powers and they have therefore felt unable to engage in gambling regulation to any extent across Scotland.
31. Our [Licensing authority statistics 1 April 2009 – 31 March 2014](#), an annual compilation of licensing authority gambling related activity, demonstrates that such work in Scotland remains low in comparison to that in England and Wales.

### **Possible amendment to the Scotland Bill and the Gambling Act 2005**

32. The Scotland Bill currently under consideration at Westminster may provide an opportunity to clarify the power of LSOs in relation to gambling regulation. This would enable them to take on the important public protection role in gambling that they currently fulfil in relation to alcohol.

---

<sup>6</sup> At section 2 of the Gambling Act a Licensing Authority (in Scotland) is defined as a licensing board constituted under section 1 of the Licensing (Scotland) Act 1976. Licensing Boards do not have employees as such. In England and Wales licensing officers are direct employees of the licensing authority.

33. The Commission is aware that discussions between Westminster and Scottish Government are ongoing regarding the Smith Commission generally and the subject of gambling powers in particular. As things stand, based on the Westminster proposals, changes are required both to the Scotland Act and the Gambling Act.
34. Moves to amend the Scotland Act would provide a very welcome opportunity to put right the original drafting error in the Gambling Act. Whilst we are not in a position to offer definitive legal advice as to how this may be achieved we understand that the change would be relatively minor and straight forward. One suggestion would be to amend section 304 of the Gambling Act to specifically include Licensing Standards Officers (LSOs) in Scotland as authorised persons who may exercise inspection and enforcement functions under the Gambling Act.
35. We would suggest this will deliver a much improved shared regulation environment by ensuring more effective gambling compliance and enforcement, as well as better protecting vulnerable groups in Scotland from the risk of gambling related harm.

## **Appendix 1**

### **The Gambling Commission**

The Commission was set up under the Gambling Act to regulate commercial gambling in Great Britain. The Act came fully into force on 1 September 2007. The Commission is an independent non-departmental public body (NDPB) sponsored by the Department for Culture, Media and Sport (DCMS).

The Commission regulates commercial gambling in Great Britain, including:

- arcades (excluding unlicensed Family Entertainment Centres)
- betting
- bingo
- casinos
- gaming machine manufacturers and suppliers
- gambling software providers
- lottery operators and external lottery managers (excluding small society lotteries)
- British-based remote gambling operators
- The National Lottery<sup>[1]</sup>

The Commission does not regulate spread betting, this is the responsibility of the Financial Conduct Authority.

### **Licensing authorities**

Licensing authorities have a range of specific responsibilities, including the following:

- licensing and regulating premises for gambling activities
- considering and granting notices given for the temporary use of premises for gambling
- granting permits for gaming and gaming machines in clubs and miners' welfare institutes
- regulating gaming and gaming machines in alcohol licensed premises
- granting permits to family entertainment centres for the use of certain lower stake (category D) gaming machines
- granting permits for prize gaming
- considering and granting occasional use notice for betting at tracks
- registering small society lotteries.

---

<sup>[1]</sup> The National Lottery Commission and Gambling Commission merged on 1 October 2013