

Paddy Power response on calls for evidence in relation to "Fixed Odds Betting Terminals" and Betting Premises

27th August 2015

Paddy Power PLC ("**Paddy Power**") is the holder of an operating licence from the GB Gambling Commission and operates 25 betting premises in Scotland. We welcome the opportunity to respond to this call for evidence but are disappointed that the Scottish Government is seeking to either press ahead with the proposed new power set out in Clause 45 of the Scotland Bill 2015-16 (the "**Proposed Provision**") or in the alternative, to put in place an even more restrictive provision (the "**Alternative Provision**"). Paddy Power considers that both provisions are unjustified and will be considered contrary to European Union law.

Our responses are set out below under the questions 1, 2 & 3.

1. What would be the benefits and disadvantages for you as a consequence of the UK Government's proposed provision in the Scotland Bill 2015?

We are very concerned by the Proposed Provision which would allow the Scottish Government to vary the number of gaming machines (with a stake over £10) in new LBOs.

We consider that this restriction would represent an unlawful barrier to entry and expansion into the UK retail betting market. The Proposed Provision would have a severely adverse impact on Paddy Power's ability (and the ability of other operators established in the EU) to operate in the UK. We therefore contend that the Proposed Provision would breach Articles 49 and 56 of the Treaty on the Functioning of the European Union, which protect the freedom of establishment and the free movement of services within the EU.

We consider that the Proposed Provision cannot be properly justified since the UK Government, the Scottish Government and the Gambling Commission have failed to identify any material consumer harm, or risk of such harm, under the current regime which would be capable of giving rise to a legitimate public policy objective or which is capable of justifying the restriction.

The Scottish National Party's 2015 Westminster Manifesto stated, "*there is no doubt that Fixed Odds Betting Terminals cause harm and hardship in communities across Scotland*". However there is no evidence that supports this. Research published by the Responsible Gambling Trust ("RGT") in November 2014 could not find any causal link between problem gambling and gaming machines¹. The RGT research clearly shows that responsible gambling should focus on identifying at risk and problem gambling behaviour and then engaging directly with individuals. The Gambling Commission have also said that: "*while stake size can be a factor in gambling related harm, the research reinforces our view that interventions focusing on stake size exclusively are unlikely to be effective.*"² So any policy measure designed to tackle problem gambling should not focus on an individual product or be confined to a product with a specific stake level.

¹ <http://www.responsiblegamblingtrust.org.uk/Research-Publications>

² GC letter to Sajid Javid, 30th March 2015. <http://www.gamblingcommission.gov.uk/pdf/Recent-research-into-Gaming-Machines.pdf>

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The Proposed Provision is disproportionate and does not provide the least restrictive means of achieving the consumer protection objective as required in order to comply with EU law. In this regard, we support the UK Government's stance that policy concerns around FOBTs can be effectively addressed without any need to reduce stakes or the numbers of machines. From April 2015, there are restrictions in how customers can stake above £50. These measures are also in force in Scotland. The UK Government has stated as recently as July 2015 that there is insufficient evidence available which indicates that any further regulation of Category B2 machines requires to be addressed: *"we have already acted by introducing stronger gambling controls to further protect players and promote responsible gambling. The Government will continue to monitor the effectiveness of existing controls and will take further action if necessary"*.³ We do not see that the conditions in Scotland are materially different to the rest of Great Britain and therefore question the further restrictions proposed in the Scotland Bill.

We would also note that the proportion of net revenue derived from FOBTs in Scotland is 42% in contrast to 56% in England. Despite this, the UK Government is content that existing measures, including the wide range of voluntary measures put in place by the industry, are sufficient to address any policy concern.

Future of the High Street

The gambling industry in Scotland is a key part of the leisure offering which is enjoyed safely by the vast majority of locals and visitors alike. Like any business we need to compete and be profitable. New openings of betting shops are the only way a challenger brand, like Paddy Power, can enter the market in any scale. With FOBTs making up 42% of our profit in shops in Scotland, future openings are less likely if the number of machines are limited.

Paddy Power is one of the few bookmakers who continue to invest on the High Street. We currently have about 4% share of the UK market and in Scotland we operate just 25 of the estimated 950 betting shops and employ 116 staff. Paddy Power plans to continue opening shops in Scotland over the coming years but these proposals put this under threat.

Competition

Limiting our ability to compete with the existing brands also means that consumers lose out.

Our retail margin is considerably lower than our major competitors meaning we offer better prices to our consumers. Coral Retail's most recently published gross win margin was 17.4%⁴. Ladbrokes' most recently published retail gross win margin is 15.6%⁵. William Hill's most recently published retail gross win margin 18%⁶. By contrast Paddy Power's retail gross

Government's response to Newham council, July 2015.

http://barrierbusting.communities.gov.uk/barriers?sc=status&cc=bb_admin.bbuid&sd=asc&search_text=fobt&bb_admin.statusid=#search_table

⁴ Gala Coral Financial Results, 20th August 2015

⁵ Ladbrokes, Interim Results 11th August 2015

⁶ William Hill Interim Results 7th August 2015

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win margin is 11.4%. We therefore offer significantly better value to Scottish consumers, taking less per pound bet from them than our major competitors do. In addition, when Paddy Power enters the market, the other retailers lower their margins to compete which means that all customers in the area enjoy better value.

By restricting the ability of an efficient lower margin operator to open shops and compete with the incumbent operators these measures will have a detrimental impact on the Scottish retail betting market. This will be bad for Scottish consumers who will be forced to bet with operators offering worse odds and bad for Scottish high streets as incumbent operators will not be incentivised to compete, including by way of maintaining and investing in their retail estate.

Responsible Gambling

Paddy Power and other betting operators recognise that in a small number of cases individuals can have an unhealthy relationship with gambling as a leisure activity. We take our obligations in this area very seriously and have made considerable steps to ensure that the gambling licensing objectives are upheld in our individual premises. We are also founder members of the Senet Group, set up to promote responsible gambling standards and ensure that the marketing of gambling is socially responsible.

We have worked closely with the Association of British Bookmakers (ABB) and other operators to advance best practice in social responsibility and evolve our practices on the back of the RGT research. As of January 2015, all customers playing on gaming machines are required to make an active decision as to whether to set a time or spend limit before commencing play. This world leading measure built on evidence showing that whilst the number of customers setting time or spend limits – the ability to do so was a measure included in the original ABB Code – was low, the majority of those who do set limits stick to them.

The RGT, along with independent experts, attest that problem gambling is not confined to one channel and problem gamblers gamble across multiple products. The way to tackle problem gambling is to focus on the individual. We are therefore progressing with the development of 'behavioural analytics' where these 'markers of harm' are applied to customer machine data allowing for the early identification of individuals who might be displaying signs of problem gambling. This in turn allows operators to interact at an early stage with responsible gambling messages and to signpost to support services.

We are also working with other operators to develop the process of self-exclusion available to customers. In July 2015 a self-exclusion pilot scheme was launched in Glasgow City Centre in partnership with Glasgow City Council. The pilot trials what will be a nation-wide scheme in place by April 2016 allowing individuals a single point of contact to discuss and develop tailored self-exclusion schemes relevant to their needs. For example, a customer might be excluded from betting shops close to their home, place of work and areas of socialising.

- 2. What would be the benefits and disadvantages for you as a consequence of the proposed alternative provision suggested by the Scottish Government?**

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We note the series of amendments to the Scotland Bill lodged on behalf of the Scottish Government at the House of Commons debate on 6 July 2015 in relation to the proposed Clause 45 of the Bill.

We are greatly concerned that the scope of these amendments and the Call to Evidence suggest that Scotland should limit gaming machine numbers of any type, not just FOBTs, for any premises, not just betting shops, and that this could apply retrospectively.

As for the Proposed Provision discussed above, we consider that the Alternative Provision proposed by the Scottish Government will represent an unlawful barrier to entry and expansion into the UK retail betting market. We contend that it would breach Articles 49 and 56 of Treaty on the Functioning of the European Union, which protect the freedom of establishment and the free movement of services within the EU.

As outlined in question 1 above, we do not believe there is any evidence to justify the Alternative Provision in an already highly regulated industry. Applying this retrospectively would be catastrophic for the Scottish betting industry. It will significantly impact those employed in the sector, perhaps resulting in job losses and impacting economic prosperity and regeneration in the Scottish High Street.

We run our premises responsibly and our internal policies and procedures are vetted and approved by the Gambling Commission. It is disproportionate and harmful to long-term investment that our existing licences could be "called in" so that a licensing board could impose a limit on the number of gaming machines we can offer our customers, especially in the absence of any empirical test.

We are also at a loss to understand the need for regulatory reform of Category B2 machines on new premises licences at this time, particularly as the impact would be drastic for the gambling industry in Scotland as whole. As far as we are aware the only type of machine ever discussed by the Smith Commission was Category B2 and that the power to limit those machines should only apply to new applications. We are opposed to any power which removes existing permissions to use B2, B3, C and D machines in betting premises. Licensing authorities already have a range of powers as per the provisions of the Gambling Act 2005.

The Gambling Act 2005 has sufficiently robust provision to allow anyone to seek a review of a licence if they believe any of the licensing objectives under that Act are breached. We do not see why further restrictions or powers are necessary when the existing legislation already provides a mechanism to allow any person to seek a licence review.

Article 1 of Protocol 1 of the European Convention on Human Rights (the "ECHR") entitles gambling operators to the peaceful enjoyment of their possessions. Section 6(1) of the Human Rights Act 1998 (the "HRA") provides that: *"it is unlawful for a public authority to act in a way which is incompatible with a Convention right"*.

It was confirmed in *Tre Trektor Aktiebolag v Sweden (1989) 13 EHRR 309* that the interests associated with exploiting an existing licence are property rights attracting the protection of Article 1 of Protocol 1. Where a licence is not withdrawn in full but is deprived of its substance, Article 1 of Protocol 1 is also engaged (*Centro Europa 7 S.r.l. and Di Stefano v. Italy (2012) 38433/09*). The terms of existing licences (for betting premises and otherwise) have created a legitimate expectation as to their exploitation.

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We are therefore concerned that the proposal to revoke or limit our licence entitlements appears to be at odds with the right to peaceful enjoyment of possessions pursuant to the ECHR and the HRA.

A public authority may control the use of property in accordance with the general interest. However, as set out above, there is no evidence presented in the Smith Report, Scotland Bill or other consultations which demonstrates that limiting machines numbers is in the public interest or that an interference is necessary, justified or proportionate, in order to permit the deprivation or interference with property rights under existing licences..

3. Which of these approaches do you prefer, and why?

As we have outlined in answers 1 & 2 above, we do not believe either approach is justified or proportionate. However, should the Government decide to proceed, the un-amended proposals in the original Scotland Bill will do least damage to consumer choice and the industry's economic contribution to Scotland. We also believe that any provisions should be extended to all operators with gaming machines on their premises, most of who have not put in place the extensive social responsibility measures that LBOs have.

The industry is committed to continuing to advance best practice in social responsibility drawing upon the latest academic research. We believe that this is the best way to help those customers experiencing problems. As we have with DCMS, we are very keen to work with the Scottish Government to help tackle problem gambling.