



12 July 2011

## **THE GAMBLING ACT 2005 (GAMING MACHINES IN ADULT GAMING CENTRES AND BINGO PREMISES) ORDER 2011**

### **Guidance for Operators and Licensing Authorities**

This Order comes into force on 13 July 2011. It amends the Gambling Act 2005 in order to allow adult gaming centre (AGC) and bingo premises to make available a number of category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises.

The Order also includes provisions, known as grandfather rights, to protect the entitlements of existing AGC or bingo premises licensees, so that they are not disadvantaged in the event that the 20% formula would have resulted in a reduced entitlement. These grandfather rights are not time limited. A similar protection (but applicable only prior to 1 April 2014) is included for new AGC and bingo premises licences granted on or after the day the Order comes into force but before 1 April 2014.

The Department and the Gambling Commission have produced this guidance note to bring the changes to the attention of operators and licensing authorities and explain the principles underpinning the new entitlement and other provisions.

The guidance note is in the form of Q&A. We have tried to make it as comprehensive as possible but should you have any further queries then please contact either the Department or the Gambling Commission ([www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)).

## **The Gambling Act 2005 (Gaming Machines in Adult Gaming Centres and Bingo Premises) Order 2011**

### ***1. Do I need to vary my premises licence to take up my new entitlement?***

Only where there are material changes to the layout of the premises will there be an expectation that an application for a variation will be required. What constitutes a material change will be a matter for local determination, but the Government envisages that a common sense approach is adopted. Where variations are applied for, the licensing authority concerned will need to have regard to the principles to be applied as set out in section 153 of the Gambling Act 2005.

### ***2. I operate premises that are split, with a set-up of 'X'. What is the process for changing this to take up the new entitlement?***

The process is the same whether premises are split or not. If you wish to materially vary what is on the original submitted plan for each premises then you will be required to submit an application for a variation. (It may be the case that, where a number of 'units' exist within one building, operators choose to surrender premises licences and apply for a variation to one premises.)

### ***3. How much does it cost to apply for a variation to an existing premises licence?***

The cost varies between local authority areas: The maximum fee that can be charged is £1,750 for bingo premises and £1,000 for AGC premises.

### ***4. How do the grandfathering arrangements work?***

Any AGC or bingo premises whose licence was granted before the Order comes into force on 13 July 2011 will be permitted to either; offer a number of category B gaming machines not exceeding 20% of the total number of gaming machines available for use on the premises, or retain their existing entitlement of category B gaming machines (that is four for AGC premises and eight for bingo premises). These rights are not time limited.

### ***5. If I have already applied for a premises licence, but it hasn't been granted, will that premises have grandfather rights if it is granted?***

Grandfather rights will only apply to those premises with licences granted before the Order comes into force on 13 July 2011.

Any AGC or bingo premises whose licence is granted on or after the Order comes into force on 13 July 2011 will be permitted to either; offer a number of category B gaming machines not exceeding 20% of the total number of gaming machines available for use on the premises, or offer four category B gaming machines if it is an AGC or eight category B machines if it is a bingo premises. Either option may be utilised until 1 April 2014. From 1 April 2014 the premises must comply with the 20% entitlement.

**6. Where there are three AGC premises within a single building, will that building always retain an entitlement to offer twelve category B gaming machines, even if it becomes a single premises?**

If an operator chooses to amend their arrangements such that three premises in a single building becomes a single premises then this would, in effect, constitute a new premises. The operator would therefore have to adhere to the new entitlement as set out in question 5.

**7. Does an electronic bingo terminal (EBT) which offers gaming machine content (including hand-held versions) count towards the total number of gaming machines (or the permitted number of category B machines)?**

If an EBT offers gaming machine content in addition to bingo content it is considered a gaming machine for the purposes of primary gambling activity (if it is available for use) and would count towards the total number of gaming machines. Correspondingly, that terminal would not count towards the offering of bingo for primary gambling activity purposes. Any EBTs that do not offer gaming machine content would not count towards the number of gaming machines.

It should be noted that if the number of EBTs that can offer gaming machine content simultaneously is restricted (most likely for AMLD reasons) then the maximum number that can be available for use at one time should be used for the purposes of calculating how many gaming machines the premises has. This is not expected to be a problem as category D content can be offered without an AMLD licence. Operators and licensing authorities should note the AMLD regime is expected to be replaced in due course; further details about this can be found at [http://www.hm-treasury.gov.uk/consult\\_machine\\_games\\_duty.htm](http://www.hm-treasury.gov.uk/consult_machine_games_duty.htm)

**8. How does the new 20% entitlement work with the primary gambling activity requirements?**

The Gambling Commission's 'Licence Conditions and Code of Practice' (LCCP) contains conditions and codes concerning primary gambling activity.

In the case of bingo operators it should be noted that the following condition applies:

*In cases where bingo is exclusively offered by means of electronic bingo terminals or bingo machines, there must be more individual player positions made available for bingo than there are gaming machines made available for use.*

For bingo premises licences granted on or after 13 July 2011 where bingo is exclusively offered by electronic means, this will mean that from 1 April 2014 in order to operate eight category B machines an operator must operate 32 other gaming machines. To meet the primary gambling activity condition the operator must offer 41 player positions for bingo. It should be noted that, as in question 7 above, any device offering both bingo and gaming

machine content counts as a gaming machine and does not contribute to the bingo offer for the purpose of this calculation.

The LCCP can be accessed online at:

[http://www.gamblingcommission.gov.uk/publications\\_guidance\\_advic/lccp.aspx](http://www.gamblingcommission.gov.uk/publications_guidance_advic/lccp.aspx)

**9. How will licensing authorities and the Gambling Commission check compliance with the new 20% entitlement?**

This will be a matter for licensing officers and the Gambling Commission. The Government envisages that a pragmatic approach will be taken.

**10. What types of gaming machine will count towards the new 20% entitlement?**

All permitted gaming machines will count towards the 20% entitlement - that is category B3, B4, C and D. This will include products considered gaming machines because they have gaming machine offerings on them, even if they also offer something else (for example electronic bingo terminals which also offer gaming machine content are classed as gaming machines). Skill with prize machines will not contribute to the number of gaming machines.

**11. For the purpose of calculating the permitted category B allocation, will numbers of gaming machines be rounded up, down or to the nearest number?**

The 20% entitlement will be strictly applied. Therefore, to be permitted four category B gaming machines an operator would need to have another 16 gaming machines available for use; to be permitted eight category B machines an operator would need 32 other gaming machines. An operator with only 39 gaming machines (including category Bs) would only be able to offer seven category B machines, whereas an operator with 40 gaming machines could offer eight category Bs. As such the number of category B machines is rounded down for the purpose of this calculation.

**12. How will licensing authorities or the Gambling Commission define 'available for use'?**

The Gambling Commission considers that a gaming machine is defined as 'available for use' if a person can play it. Further guidance on this issue has been published by the Commission and is available at:

<http://www.gamblingcommission.gov.uk/pdf/advice%20regarding%20when%20a%20gaming%20machine%20is%20available%20for%20use%20-%20dec%202007.pdf>