



Law Society  
of Scotland

# Consultation Response

Department of Digital, Culture, Media & Sport  
Consultation on proposals for changes to Gaming  
Machines and Social Responsibility Measures

23 January 2018



## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Licensing Sub-committee welcomes the opportunity to consider and respond to the UK Government consultation on proposals for changes to Gaming Machines and Social Responsibility Measures. The Licensing Sub-committee has the following general comments to put forward for consideration.

## General Comments

The purpose of this consultation is to review the existing gaming machine regime and social responsibility measures. The consultation seeks to achieve the correct balance between investment and employment in the gambling industry while making sure the gaming industry is aware of its social responsibilities, namely, protecting consumers and communities.

We have already had the opportunity, in December 2016, to contribute to the then Department of Culture, Media and Sport – Review of Gaming Machines and Social Responsibility Measures- Call for Evidence.<sup>1</sup> Many comments made in that context remain relevant and are reflected below.

## Working with Scotland

Paragraph 1.10 of the consultation recognises, that as far as Scotland is concerned, gambling remains substantially a reserved matter.<sup>2</sup> Scotland<sup>3</sup> now has a future right to legislate to allow licensing boards to vary the number of gaming machines authorised by a betting premises licence. The Scottish Parliament may yet make provision for such a change in the current term. We fully welcome the commitment expressed within the consultation *'to protect the devolution settlement and to work constructively with the*

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<sup>1</sup> <https://www.lawscot.org.uk/media/9739/lic-law-society-of-scotland-response-to-the-dfcm-consultation-on-gaming-machines-and-social-responsibility-submitted.pdf>

<sup>2</sup> Section 236 of the Gambling Act 2005

<sup>3</sup> Section 52 of the Scotland Act created a specific exception into section B9 of Part 2 of Schedule 5 to the Scotland Act 1998

*devolved administrations*'. That does come into focus when deciding how to take forward the results of this consultation.

Our members represent the interests of the industry and are involved in advising individuals and organisations in relation to making licensing applications, but moreover, our members include those working in-house with local authorities in relation to the grant, management and enforcement of such licences. What all would welcome is clarity and consistency as a result of the consultation, in taking forward the changes, whether enacted in primary or secondary legislation. All with interests in betting premises licences need to understand what the legislation requires and accordingly be able to advise clients or the industry on their respective roles and responsibilities.

As the legislation currently stands, one licensed betting premise may require to refer to both Scottish and UK legislation. That adds layers of unnecessary complexity. It also leads to difficulties for those responsible for enforcement in Scotland such as Police Scotland, the licensing authorities and the Gambling Commission compliance officers as to rights and powers to enforce discussed below. Where there are potential problems with enforcement (leaving aside any questions as to actual manpower) that leads to inconsistency in practices across the UK and this should be avoided. The issues with unhealthy gambling are not unique to Scotland and the various national strategies which have been developed show the benefit of continuity across the UK and we respectfully suggest that the underlying law should adopt a similarly consistent approach.

## **Social responsibility**

We fully support the principles outlined in chapter 5 as to : social responsibility measures that include (i) player protections on gaming machines (ii) online gambling (iii) gambling advertising and (iv) research, education and treatment for gambling-related harm. We agree with the call for any changes to be based on evidence and relevant research. To be successful there is the need for industry support along with awareness-raising as well as help and support, all of which have been recognised. We understand that if a voluntary system does not work then alternative options would need to be pursued thereafter.

Reference has been made to the National Responsible Gambling Strategy. We are concerned that the appropriate research and information which is being obtained is proceeding without reference to Scotland. We note that paragraph 5.96 refers to the Department of Health, working with Public Health England.

Health is, of course, a devolved matter. We would wish to ensure that the relevant commissioning of further research, to understand the impacts of gambling-related harm on health should include Scotland and the Scottish perspective. We are aware of Scottish based initiatives regarding responsible gambling to educate customers about control of their spending such as the 'Betting Industry launches Gamble Aware Week in Scotland'<sup>4</sup>that included:

- raising awareness of measures designed to address public concerns about the visibility of gambling
- highlighting a significant increase in promotion of responsible gambling advice to all customers

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<sup>4</sup> <https://www.abb.uk.com/betting-industry-launches-gamble-aware-week-in-scotland>

- inclusion of the industry's ongoing commitment to promoting responsible gambling – using an evidence-based approach.

As Paul Darling QC, Chairman of the Association of British Bookmakers said:

'This Gamble Aware Week in Scotland marks the latest step in the industry's approach to responsible gambling. We are absolutely committed to addressing public concern and doing everything we can to better protect our customers.... however, we remain determined to do more and will continue to work with all interested parties in order to build on the measures already taken.'

We would highlight reference to the Local Government Association (LGA) which is of course an England and Wales organisation. There is no apparent reference to the Scottish equivalent, COSLA (Convention of Scottish Local Authorities).

Turning to the specific questions:

#### **Questions 1- 14**

These questions primarily relate to consideration of the options to change the maximum stakes and prize limits. We would merely observe that any changes that are brought in should be justified to deal appropriately with the problems that gambling may present as fully outlined in the consultation and the actual mischief or harm. Such changes should be proportionate. There have been concerns that any changes could cost the industry in relation to jobs.<sup>5</sup> Thereafter that would affect the revenue obtained from gaming duty.

#### **Q.15 Do you agree with our assessment of the current powers available to local authorities?**

We note in relation to chapter 6 Local Authorities paragraph 6.2 that no submissions were noted from Scotland in relation to the Call for Evidence. Notwithstanding, this chapter applies to Great Britain. It appears to us that this does not take into account that the practical operating arrangements in Scotland are different from England and Wales.

The Licensing Authority in Scotland is the Licensing Board which has no officers or employees. Licensing Standards Officers are the employees of the relevant Local Authority appointed in terms of section 13 of the Licensing (Scotland) Act 2005, which regulates alcohol and not of the Licensing Board. Section 14 of that Act sets out their powers. These powers are derived from and exercised in respect of alcohol licensed premises and do not extend to gambling premises 'Enforcement officers' are appointed under section 303 of the Gambling Act 2005 (2005 Act) which provides them with powers of inspection under Part 15. Are Licensing Standards Officers Enforcement Officers?

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<sup>5</sup> The Association of British Bookmakers indicated that this could cost up to 20000 jobs. <http://abb.uk.com/statement-on-leaked-labour-party-manifesto/>

We refer to our response to the Call for Evidence<sup>6</sup> in which we indicated that we had raised concerns with the Gambling Commission about the powers of the Licensing Standards Officers. That was specifically with regard to power to carry out inspections under Part 15 of the 2005 Act. We understand that there may have been some discussions with the Gambling Commission regarding this issue. We are aware of the Gambling Commission's Guidance to licensing authorities which refers to this unique Scottish issue and that the Gambling Commission remain of the view that as Licensing Standards Officers can be authorised to undertake additional roles, such as doubling as environmental health inspectors (or similar). Thus the argument is that they can in turn be authorised for the purposes of gambling enforcement. The Subcommittee is aware, however, that the view of the Gambling Commission on this issue is not shared by a number of Scottish licensing boards, Licensing Standards Officers, or the Society of Local Authority Lawyers & Administrators in Scotland (SOLAR).

There is no doubt that we agree that gambling premises should be subject to the scrutiny of the appropriate Licensing Board and such scrutiny inevitably requires proper inspection and enforcement procedures. It would be preferable that this is addressed by the law being amended to properly reflect the Scottish position.

Licensing Standards Officers already have a heavy workload dealing with alcohol and now their civic enforcement duties, which in many cases have been added, following the creation of 'civic licensing standards officers' under the Air Weapons and Licensing (Scotland) Act 2015. To be asked to undertake enforcement in relation to gambling will require them to undertake additional work. Before doing so, as highlighted above, they must be certain that they have the relevant authority to exercise their powers, otherwise all sorts of legal consequences could arise from any improper use of such powers. Furthermore, there is a question as to ensuring that relevant training is undertaken. Who will train Licensing Standards Officers to enforce the Gambling Act's provisions? By contrast, there is a three day statutory period of training in relation to alcohol but there is no equivalent in relation to gambling. If there is not adequate training provided, mistakes will be made. As well as ensuring the law is clear, there needs to be guidance provided to cover the relevant issues surrounding training and its fundamental importance for those who will be undertaking inspection or enforcement.

We also note in terms of paragraph 6.4, discussion surrounding support of the Licensing Boards in making decisions on planning policy for the number of betting licences that may be authorised.

Reference is made to the planning laws in England (paragraph 6.3). It should be noted that the Scottish Government looked at adopting a similar position in managing the number and location of betting premises through amending the Use Classes Order but this was rejected. Accordingly, whilst in England and Wales a planning application to change a financial service premises such as a bank to a betting premises will require a change of use application, this is not the case in Scotland. This differing approach between the two jurisdictions links back to our comments regarding the devolved powers to Scotland to vary the number of gaming machines authorised by a betting premises licence. Exactly how and what should be taken into account when deciding how many gaming machines there should be remains unclear. Reference needs to

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<sup>6</sup> <https://www.lawscot.org.uk/media/9739/lic-law-society-of-scotland-response-to-the-dfcs-consultation-on-gaming-machines-and-social-responsibility-submitted.pdf>



be made to what the relevant considerations are in Scotland, be it planning, devolved controls or otherwise.

We trust this response is useful for your purposes. Please let us know if you have any questions.



**For further information, please contact:**

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