EXECUTIVE NOTE

DRAFT : The Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007

The above instrument was made in exercise of the powers conferred by sections 285(1) and 355(1) of the Gambling Act 2005 (c.19**)**. The instrument is subject to the affirmative resolution procedure.

Policy Objectives

Section 282 of the Gambling Act automatically entitles (subject to notification and payment of the appropriate fee) the holders of a "relevant Scottish licence" to 2 gaming machines of category C or D. The Act defines such licences as those granted under section 9(1) of the Licensing (Scotland) Act 1976, provided it is not an off-sale licence. Licensed premises gaming machine permits apply where such licence holders wish to make available further category C or D gaming machines on the premises.

These Regulations prescribe the administrative procedures and fees payable in relation to licensed premises gaming machine permits. No limit is imposed on the number of the category C or D gaming machines that can be made available under such a permit. In Scotland, the issuing authority is the Licensing Board for the area in which the premises in question are situated. The permit will specify in each case the number of machines that it authorises. Licensing Boards have no discretion to add conditions to such permits, which are of unlimited duration, but certain conditions apply automatically under the Act.

The policy aim is to ensure that there are in place consistent, light-touch and user-friendly procedures to enable licensed premises to obtain gaming machine permits, which do not place unnecessary burdens on businesses or Licensing Boards.

Consultation

Draft regulations on the above matters issued for consultation on 11 June 2007 to 200 interested parties including local authorities, Licensing Boards, the police, those involved in the provision of gambling, their trade associations, legal interests, club associations, faith groups and gambling help/charity groups. The consultation paper was also posted on the Scottish Executive's consultation website and copies were placed in SPICe. The Executive received 6 responses as at the closing date of 17 August 2007, which were fully considered before finalising this instrument. The individual responses, an analysis of their comments and the Executive's response will shortly be posted on the Executive's website.

Financial Effects

The processes for obtaining permits under the Act are broadly comparable to those which existed under the Gaming Act 1968. The fees payable to Licensing Boards are intended to cover the whole cost of the administrative work associated with permits, and the fees represent a very small proportion of business costs. The fees set by this instrument accord with the proposals consulted on by the Executive and are in line with the equivalent fees in England and Wales. A Regulatory Impact Assessment covering the financial effects of the instrument is attached.

Criminal Justice Directorate
September 2007

EXECUTIVE NOTE

DRAFT : The Club Gaming and Club Machine Permits (Scotland) Regulations 2007

The above instrument was made in exercise of the powers conferred by sections 285(1) and 355(1) of the Gambling Act 2005 (c.19**)**. The instrument is subject to the affirmative resolution procedure.

Policy Objectives

Sections 271 and 273 of the Gambling Act make provision for club gaming permits to be issued to members' clubs and miners' welfare institutes and for club machine permits to be issued to such clubs and institutes or to commercial clubs. In Scotland, the issuing authority is the Licensing Board for the area in which the premises in question are situated. Clubs and institutes are allowed up to 3 gaming machines of category B, C or D and in certain instances can offer some other gaming facilities.

These Regulations prescribe the administrative procedures and fees payable in relation to club gaming permits and club machine permits where the applicant for, or holder of, the permit holds a licence granted under section 9(1) of the Licensing (Scotland) Act 1976 (other than an off-sale licence) or a certificate of registration under section 105 of that Act. Licensing Boards have no discretion to add conditions to such permits, which last for 10 years and can be renewed, but certain conditions apply automatically under the Act.

The policy aim is to ensure that there are in place consistent, light-touch and user-friendly procedures to enable clubs and institutes to obtain club gaming permits and club machine permits, which do not place unnecessary burdens on businesses, Licensing Boards or the Gambling Commission (the GB-wide regulatory body).

Consultation

Draft regulations on the above matters issued for consultation on 11 June 2007 to 200 interested parties including local authorities, Licensing Boards, the police, those involved in the provision of gambling, their trade associations, legal interests, club associations, faith groups and gambling help/charity groups. The consultation paper was also posted on the Scottish Executive's consultation website and copies were placed in SPICe. The Executive received 6 responses as at the closing date of 17 August 2007, which were fully considered before finalising this instrument. The individual responses, an analysis of their comments and the Executive's response will shortly be posted on the Executive's website.

Financial Effects

The processes for obtaining permits under the Act are broadly comparable to those which existed under the Gaming Act 1968. The fees payable to Licensing Boards are intended to cover the whole cost of the administrative work associated with permits, and the fees represent a very small proportion of business costs. The fees set by this instrument accord with the proposals consulted on by the Executive and are in line with the equivalent fees in England and Wales. A Regulatory Impact Assessment covering the financial effects of the instrument is attached.

Criminal Justice Directorate
September 2007

FINAL REGULATORY IMPACT ASSESSMENT

Title of proposal

1. The proposals are for the following Scottish Statutory Instruments (SSIs):

(a) The Club Gaming and Club Machine Permits (Scotland) Regulations 2007
(b) The Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007

Purpose and intended effect - (i) Objective

2. The purposes of the SSIs are to make provisions in respect of the administrative procedures for obtaining (a) club gaming and machine permits and (b) licensed premises gaming machine permits. The SSIs also set the associated fee levels and are planned to come into force in early October 2007, subject to the approval of the Scottish Parliament - the regulations are subject to the 'affirmative' procedure, thus requiring a Parliamentary debate.

(ii) Background

3. The Gambling Act 2005 (the Act) introduces a new system for the regulation of gambling in Great Britain with effect from 1 September 2007. The 3 licensing objectives of the Act are:

- to prevent gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime and disorder;
- to ensure that gambling is conducted in a fair and open way;
- to protect children and other vulnerable persons from being harmed or exploited by gambling.

4. The Act contains a sizeable number of regulation-making powers for Scottish Ministers. Section 285 of the Act enables Scottish Ministers to make equivalent provisions to those contained in Schedules 12 and 13 to the Act (and regulations made under them). Those schedules respectively set out the procedures for club gaming and club machine permits, and licensed premises gaming machine permits in England and Wales. Basically, clubs are allowed up to 3 gaming machines and, in certain cases, can offer some other gaming facilities; pubs are allowed up to 2 gaming machines and can apply to licensing authorities (Licensing Boards in Scotland) to increase that number

5. **Club gaming permits** apply to members' clubs (but <u>not</u> commercial clubs) and miners' welfare institutes. Such permits authorise the provision of:

- up to 3 gaming machines, each of which must be category B, C or D (in any combination);
- equal chance gaming which must be in accordance with the rules set out in section 269 of the Act; and
- prescribed games of chance.

6. **Club Machine Permits** apply to a members' club, a miners' welfare institute or a commercial club and only authorise the provision, on their club premises, of up to 3 gaming machines, each of which must be of category B, C or D (in any combination). For both the

club gaming and machine permits, Licensing Boards have no discretion to add further conditions, though certain ones apply automatically under the Act.

7. **Licensed premises gaming machine permits** apply where such licence holders wish to make available further category C or D gaming machines on the premises. Section 282 of the Act automatically entitles (subject to notification and payment of the appropriate fee) the holders of a "relevant Scottish licence" to 2 gaming machines of category C or D. The Act defines such licences as those granted under section 9(1) of the Licensing (Scotland) Act 1976, provided it is not an off-sale licence.

8. No limit is imposed on the number of the category C or D gaming machines that can be made available under a licensed premises gaming machine permit. The permit will specify in each case the number of machines that it authorises. Licensing Boards have no discretion to add conditions to such permits, which are of unlimited duration. Again certain conditions apply automatically under the Act.

(iii) Rationale for Government intervention

9. The aim of both sets of regulations is to ensure that we have in place consistent, light-touch and user-friendly procedures to enable clubs and pubs to obtain the appropriate gaming permits, which do not place unnecessary burdens on businesses, Licensing Boards or the Gambling Commission (the GB-wide regulatory body).

Consultation

10. Both sets of regulations issued together for consultation on 11 June 2007 to 200 interested parties including local authorities, Licensing Boards, the police, those involved in the provision of gambling, their trade associations, legal interests, club associations, faith groups and gambling help/charity groups. (The fee levels contained in these regulations were the subject of an earlier consultation exercise with the same stakeholders and drew no adverse comments from respondents.) Due to time constraints a partial Regulatory Impact Assessment was not carried out. There has also been close consultation with the lead English Department, the Department for Culture, Media and Sport (DCMS), as gambling is primarily a reserved matter. Respondents were generally content with the provisions set out in the draft regulations but some minor modifications were made following the consultation exercise. An analysis of the responses will shortly appear on the Executive's website.

Options

11. The only options available are:

Option 1 – make no regulations under section 285 of the Act
Option 2 - implement the proposed regulations under section 285.

12. Option 1 was disregarded as Schedules 12 and 13 to the Act are disapplied to Scotland (with the exception of clubs that do not hold alcohol licences). This means that, in the absence of Scottish Ministers exercising their section 285 powers, Scottish pubs and clubs would be unable to apply for appropriate permissions under the Act.

13. Under option 2, the 2 sets of regulations seek to take a light-touch approach to the procedures governing the issue and monitoring of the appropriate permits. The regulations will ensure that the application process for obtaining such permits is administered in a consistent way across Scotland, and broadly in line with the procedures operating in England and Wales.

Costs and Benefits - (i) Sectors Affected

14. The regulations apply only to clubs and premises licensed to sell alcohol as set out in section 285 of the Act. As such, the regulations will affect approximately 45 Licensing Boards and:

- approximately 2,300 clubs; and
- approximately 5,200 pubs.

(ii) Benefits

15. There are no benefits to option 1, which would result in the entire club and pub sector in Scotland being unable to obtain the appropriate gaming permissions under the Act.

16. The regulations under option 2 will ensure a straightforward, light-touch administration process for obtaining gaming permits, which will keep the costs to industry to a minimum.

(iii) Costs

17. Option 1 would not incur any costs as no regulations would be made but as stated above this is not a credible option. Doing nothing would mean that regulation of this sector would not be modernised, as envisaged under the Act.

18. It is not anticipated that the gambling industry costs of option 2 will be significantly higher than under the current gambling legislation. The processes for obtaining permits under the Act are broadly comparable to those which exist under current law. The fees payable to Licensing Boards are intended to cover the whole cost of the administrative work associated with permits, and the fees represent a very small proportion of business costs. (The fees are set out in the Annex to this Regulatory Impact Assessment.) This option also entails a small cost to the Executive associated with the preparation of the SSIs, laying them before the Scottish Parliament and notifying interested parties.

Small/Micro Firms Impact Test

19. In developing its proposals, DCMS consulted the clubs/pubs sector and sought to minimise any disproportionate impact on small businesses. The new permits regime set out under the Act to a large degree replicates the provisions of the existing law. As stated in paragraph 10 above, we consulted widely over these regulations. In particular, we consulted BACTA (the industry group representing small and large businesses with gaming machines), the Scottish Beer and Pub Association and bodies representing club interests. The Executive has mirrored the DCMS' processes and procedures, and is satisfied that any requirement of small businesses created by the regulations is proportionate and fair, and will not place an undue burden on them.

Test Run of Business Forms

20. The regulations require clubs to complete a simple, user-friendly form when applying for their permits. The form was part of the above-mentioned consultation exercise, thus directly affected businesses had the opportunity to comment on how user-friendly it was. The form drew no adverse comments from any of the respondents.

Competition Assessment

21. The proposed regulations will not limit or influence the number or range of operators. This is because if the operator satisfies the criteria for issue of a permit, then the permit will be issued. The regulations will apply equally to all clubs/pubs that enter the industry and existing operators. Equally, other than under the transitional arrangements for existing operators, the fee levels will have the same application to existing and new operators. The Executive does not consider therefore that there is any need to conduct a full competition assessment of these measures.

Enforcement, Sanctions and Monitoring

22. A Licensing Board officer will be able to request the permit-holder to produce a copy of the permit for inspection (as will a constable or a Gambling Commission enforcement officer). Failure to produce the permit could result in summary conviction or a fine not exceeding level 2 on the standard scale.

23. The Act requires Licensing Boards to keep a register of permits; make the register and information available for the public to inspect; and allow the public to have copies of entries in the register (for which a fee may be charged). Licensing Boards will also provide the Gambling Commission with certain information about the permits they have issued. The introduction of the permits regime will be monitored through the information that will be maintained in the registers held by the Licensing Boards and the Commission.

24. Failure to comply with certain procedures and conditions set out in the regulations and Act may result in Licensing Boards cancelling permits. Applications for permits will not proceed unless the appropriate fee has been enclosed with the application.

Implementation and Delivery Plan

25. Subject to the approval of the Scottish Parliament, the licensed premises and clubs gaming permit regulations will be implemented by way of SSIs in early October 2007, which will be notified to Licensing Boards and other parties.

Post-implementation Review

26. The effect of these regulations will be kept under general review in liaison and consultation with stakeholders, and the legislation will be reviewed within 10 years of it coming into force (as laid out in Executive guidance) to ensure that it is still fit for purpose.

Summary and Recommendation

27. Our aim has been to develop practical, user-friendly proposals with a light touch. The Executive considers that the regulations strike a balance between the need to be prescriptive (providing consistency and clarity to Licensing Boards, enforcement agencies, the gambling industry and the public), and the need of those same groups for flexibility and proportionate regulation. It is recommended that the SSIs be implemented as described above.

Declaration

28. I have read the Regulatory Impact Assessment and am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed …***Kenny MacAskill***……..

Date 3 September 2007

Kenny MacAskill, Cabinet Secretary for Justice

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Annex

Permit Fees

Permit Type	New Applications * £	Annual Maintenance £	Renewal £	Variation £	Change of Name/ Transfer £
Club Gaming	200	50	200	100	N/A
Club Gaming Machine	200	50	200	100	N/A
Licensed Premises Gaming Machine	150	50	N/A	100	25

* under GB-wide transitional arrangements, the fee for all types of permit for existing operators will be £100