

**SCOTTISH BORDERS LICENSING BOARD**  
**THE GAMBLING ACT 2005**  
**2019 to 2022 STATEMENT OF PRINCIPLES**

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This is the statement of principles (“licensing policy”) the Scottish Borders Licensing Board (“the Board”) proposes to apply in the exercise of its functions under the Gambling Act 2005 (“the Act”) during the three year period from 2019 to 2022.

The Act can be accessed via <http://www.legislation.gov.uk/ukpga/2005/19/contents>

## PART A

### 1. OBJECTIVES

In exercising its functions under the Act, the Board intends its licensing policy to have regard to the statutory licensing objectives as set in the Act, namely

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

## **2. INTRODUCTION**

The geographical area covered by this licensing policy is the Scottish Borders local government area. The Scottish Borders has a population of around 115,000, in an area of 4743 square kilometres and shares borders with East Lothian, Midlothian, North Lanarkshire, Clydesdale and Dumfries and Galloway and the national border with England. The principal towns are Galashiels and Hawick and further main centres at Peebles, Kelso, Jedburgh, Melrose, Duns and Eyemouth. Traditionally there has been a reliance on fishing, farming, food, textiles and electronics. Tourism is an important factor in the economy and the area has recently benefited from the reopening of the Borders Railway.

## **3. CONSULTATION**

In adopting this licensing policy, the Board has regard to the licensing objectives of the Act, the Guidance issued by the Gambling Commission and responses from persons (to be) consulted:

- The Chief Constable, Police Scotland
- The Chief Fire Officer, Scottish Fire and Rescue Service
- The Scottish Borders Alcohol and Drugs Partnership
- The Scottish Borders Licensing Forum
- All Scottish Borders Community Councils
- The Gambling Commission
- Lead Officer, Scottish Borders Child Protection Committee
- All Service Directors, Scottish Borders Council
- HM Revenue and Customs
- Existing holders of Betting Office, Bingo and Track Licences

## **4. CONSIDERATION OF APPLICATIONS**

The Board shall in making decisions concerning premises licences and temporary use notices have regard to Section 153 of the Act which requires it to permit the use of the premises for gambling in so far as it thinks it is:

- in accordance with any relevant Code of Practice issued by the Gambling Commission
- in accordance with any relevant Guidance issued by the Gambling Commission <https://www.gamblingcommission.gov.uk/PDF/GLA5.pdf>
- reasonably consistent with the licensing objectives
- in accordance with the Statement of Principles in this licensing policy

Nothing in this Statement will:

- override the right of any person to make an application under the Act or to have that application considered on its individual merits,
- undermine the right of any person to make representations on an application or to seek a review of a licence where there is a legal power to do so.

In terms of the Act, unmet demand is not a criterion for a Licensing Authority in considering an application and in accordance with Gambling Commission Guidance for Licensing Authorities “moral objections to gambling are not a valid reason to reject applications for premises licences”

Therefore the Board will consider any application in accordance with the Act, on its own merits, without regard to demand or moral objection to gambling in general.

The Board may under Section 155 of the Act arrange for the delegation of its functions to a Committee of the Board, the Clerk or other appropriate person appointed to assist the

Clerk, and the Board will delegate certain powers where it considers that appropriate in the interests of efficiency and in recognition of the largely administrative nature of certain of the procedures.

## **5. DECLARATION**

In producing this statement, the Board declares it will have regard to the licensing objectives of the Act, the Guidance issued by the Gambling Commission and responses from those consulted in terms of paragraph 3.

## **6. RESPONSIBLE AUTHORITIES**

Under Section 157(h) of the Act, a Licensing Authority is required to designate, in writing, a body which is competent to advise the Board about the protection of children from harm.

This Licensing Authority designates the Scottish Borders Child Protection Committee.

Responsible authorities are those public bodies as specified by the Act which must be notified of applications for a premises licence and are entitled to make representations to the Board in relation to the application.

The responsible authorities are:

- The Scottish Borders Licensing Board
- The Gambling Commission
- The Chief Constable, Police Scotland
- The Chief Fire Officer, Scottish Fire and Rescue Service
- HM Revenue and Customs
- Service Directors - Regulatory Services, Social Work and Education, Scottish Borders Council
- Scottish Borders Child Protection Committee

Additional parties may be presented by regulation made by the Scottish Ministers.

## **7. INTERESTED PARTIES**

Interested parties can make representations about licence applications, or apply to the Board for a review, of an existing licence.

Section 158 of the Act defines these parties:

“A person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises licence if, in the opinion of the Licensing Authority which issues the licence or to which the application is made, the person:

- (a) lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- (b) has business interests that might be affected by the authorised activities; or
- (c) represents persons who satisfy (a) or (b)”.

In determining whether any person is an interested party in relation to a particular licence or application, as required by regulation, the Board must state the principles it will apply.

The Board will determine each case on its merits. The following factors are likely to be relevant but not necessarily decisive and will not apply a rigid rule:

- Nature of activities taking place
- Size of the premises

- Location of the premises and the character of the surrounding area
- Likely business hours of the premises concerned

The Board will consider the examples provided in the Gambling Commission's Guidance to Licensing Authorities.

Interested parties can be persons who are democratically elected such as Councillors and MPs and MSP's. No specific evidence of being asked to represent an interested person will be required as long as the Councillor/MP/MSP represents the ward or constituency likely to be affected. Likewise, Community Councils likely to be affected, will be considered interested parties. Other than these however, the Board will require written evidence that a person/body "represents" someone who is defined in the Act as an interested party as either (a) or (b) above. A letter from one of those persons is sufficient or a statement that they are their legal representative, whether Solicitor or Advocate.

Any written representations submitted to the Board in relation to an application or premises will be made available to the licence holder or applicant and if a hearing is held, will form part of the public documents.

## **8. EXCHANGE OF INFORMATION**

In discharging its functions under the Act, the Board will exchange information with other regulatory bodies.

In exchanging such information, the Board will conform to the requirements of the Act, Data Protection and Freedom of Information legislation as well as the Gambling Commission's Guidance to Licensing Authorities.

The Board will enter data on its register of applications which may be inspected by members of the public who may be supplied with certified copies or extracts of this register on request and payment of the appropriate fee.

## **9. ENFORCEMENT**

In exercising its functions under the Act, the Board will be guided by the Gambling Commission Guidance.

In relation to the inspection of premises, the Board will endeavour to ensure enforcement is:

- proportionate - regulators should only intervene when necessary, remedies should be appropriate to the risk posed, and costs identified and minimised,
- accountable – regulators must be able to justify decisions and be subject to public scrutiny,
- consistent – rules and standards must be implemented fairly,
- transparent – regulators should be open and regulations be user friendly,
- targeted regulation should be focussed on the problem and minimise the side effects.

The Board's inspection programme will be risk based. Premises will be subject to a scheme of routine inspection, the frequency of which will be determined by the risks posed. Those premises considered to pose a greater risk will be subject to more frequent inspection.

The criteria for risk based inspections will be informed by the Gambling Commission's own criteria.

The Board recognise that the Gambling Commission has a lead role through the issuing of operating and personal licences in ensuring gambling is conducted in a fair and open way.

The Board will act in accordance with its own enforcement policy and the main enforcement and compliance role for the Board in terms of the Act will be to ensure compliance with the premises holders and other permissions that it authorises.

## **10. LICENSING BOARD FUNCTIONS**

The Board will make decisions upon applications or notifications made for:

- Premises Licences
- Temporary Use Notices
- Occasional Use Notices
- Amendments as acquired under the Act
- Registration as required under the Act

This statement or principles relates to all those licensable premises, notices, permits and registrations identified as falling within the provisions of the Act, namely:

- Casinos
- Bingo premises
- Betting premises
- Tracks
- Adult Gaming Centres
- Licensed family entertainment centres
- Unlicensed family entertainment centres
- Club gaming permits and Club machine permits (Members Club and Miners' welfare institutes)
- Automatic notifications from alcohol licensed premises
- Prize gaming and prize gaming permits
- Occasional use notices
- Temporary use notices
- Registration of small society lotteries

The Board will not be involved in licensing remote gambling. Regulations will fall to the Gambling Commission through operator licences.

## **11. LICENSING BOARD CONTACTS**

You can contact the Boards staff at the Licensing Unit of Scottish Borders Council by:

E-mail            liquorandlicensing@scotborders.gov.uk  
Phone            01835 826662  
Fax                01835 826693  
Or in writing:    Licensing Unit  
                      Regulatory Services – Legal and Licensing  
                      Scottish Borders Council  
                      Council Headquarters  
                      Newtown St Boswells TD6 0SA

## **PART B**

### **PREMISES LICENCES**

#### **1. GENERAL PRINCIPLES**

Premises licences will be subject to the requirements set-out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State. Licensing Authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

##### **(i) Decision-making**

This Licensing Authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it is:

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant Guidance issued by the Gambling Commission ;
- reasonably consistent with the licensing objectives; and
- in accordance with this statement of licensing principles.

It is appreciated that as per the Gambling Commission's Guidance to Licensing Authorities "moral or ethical objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution' - see section on Casinos below) and also that unmet demand is not a criterion for a Licensing Authority.

The Licensing Authority also notes Gambling Commission Guidance on ensuring that betting is the primary activity of a licensed premises. Gaming machines may be made available for use in licensed betting premises only at times when there are also sufficient facilities for betting available. Operators will need to demonstrate that betting will continue to be the primary activity of the premises when seeking variations to licences.

In making this determination, this Licensing Authority will have regard to the six indicators of betting as a primary gambling activity.

- The offer of established core products (including live event pictures and bet range)
- The provision of information on products and events
- The promotion of gambling opportunities and products
- The actual use made of betting facilities
- The size of premises
- The delivery of betting facilities

##### **(ii) Definition of "premises" -**

Premises is defined in the Act as "any place". Different premises licences cannot apply in respect of a single premises at different times. However, it is possible for a single building to be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. Whether different parts of a building can properly be regarded as being separate premises will always be a question of fact in the circumstances. However, the Gambling Commission does not consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises, for example by ropes or moveable partitions.

This Licensing Authority takes particular note of the Gambling Commission's Guidance to Licensing Authorities which states that:

- Licensing Authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware that entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not 'drift' into a

gambling area. The plan of the premises should clearly denote entrances and exits. In this content, it should normally be possible to access the premises without going through another licensed premises or premises with a permit.

- Licensing Authorities should pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Clearly, there will be specific issues that authorities should consider before granting such applications, for example, whether children can gain access; compatibility of the two establishments; and ability to comply with the requirements of the Act. But, in addition an overriding consideration should be whether, taken as a whole, the co-location of the licensed premises with other facilities has the effect of creating an arrangement that otherwise would, or should, be prohibited under the Act.
- Premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling where they are prohibited from participating.
- Customers should be able to participate in the activity named on the premises licence.

### **(iii) Premises “ready for gambling” -**

The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that the Licensing Authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.

If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made instead.

In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this authority will determine applications on their merits, applying a two stage consideration process:-

- First, whether the premises ought to be permitted to be used for gambling.
- Second, whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

Applicants should note that this authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.

More detailed examples of the circumstances in which such a licence may be granted can be found at Part 7 of the Guidance.

### **(iv) Location –**

This Licensing Authority is aware that the expected demand for the facilities proposed to be provided cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can. As per the Gambling Commission’s Guidance, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant to show how potential concerns can be overcome. The Board will consider individual risk assessments, in particular the Board is mindful of Part 6 of the Guidance in regard to local area profiling to assist licenceholders and applicants in preparing locally linked risk assessments for their premises. Taking into account the low volume of licensed gambling premises in the Scottish Borders, the Board does not consider there to be a high risk of adverse

impact on the objectives at the current time therefore will continue to consider each application on its merits.

#### **(v) Planning -**

The Gambling Commission Guidance to Licensing Authorities states:

7.58 - In determining applications the Licensing Authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, i.e. those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.

This authority will not take into account irrelevant matters as per the above Guidance. In addition this authority notes the following excerpt from the Guidance:

7.65 - When dealing with a premises licence application for finished buildings, the Licensing Authority should not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the 2005 Act prevents Licensing Authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

#### **(vi) Duplication with other regulatory regimes –**

In line with the Gambling Commission's Guidance, this Licensing Authority will seek to avoid any duplication with other statutory regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will though, listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

#### **(vii) Equalities**

The Board complies with its duties under the Equality Act 2010 and its current Equalities Outcomes and Mainstreaming Report has been published on its website. It opposes all forms of unlawful discrimination and will expect all parties to work to delivering equality for all people.

#### **(viii) Licensing objectives –**

Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this Licensing Authority has considered the Gambling Commission's Guidance to local authorities and some comments are made below.

- **Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime** - This Licensing Authority is aware that the Gambling Commission will be taking a leading role in preventing gambling from being a source of crime. The Gambling Commission's Guidance does however envisage that Licensing Authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This Licensing Authority is aware of the distinction between disorder and nuisance and will consider factors such as whether

police assistance was required and how threatening the behaviour was to those who could see it, so as to make that distinction.

- **Ensuring that gambling is conducted in a fair and open way** - This Licensing Authority has noted that the Gambling Commission has stated that it would generally not expect Licensing Authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. There is, however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section below.
- **Protecting children and other vulnerable persons from being harmed or exploited by gambling** - This Licensing Authority has noted that the Gambling Commission's Guidance states that this objective means preventing children from taking part in gambling, (as well as restriction of advertising so that gambling products are not aimed at, or are particularly attractive to, children). The Licensing Authority also expects that other gambling related issues will be a consideration and as suggested in the Gambling Commission's Guidance, will take all such matters into account when deciding whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances / machines, segregation of areas etc.

This Licensing Authority will also make itself aware of the Codes of Practice which the Gambling Commission issues as regards this licensing objective and will expect applicants to be aware of, and licenceholders to comply with the relevant codes, in particular those relating to social responsibility as fully detailed in the Gambling Commissions Local Conditions and Codes of Practice referred to in its Guidance.

As regards the term "vulnerable persons" it is noted that the Gambling Commission is not seeking to offer a definition but states that it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gamble beyond their means; and people who may not be able to make informed or balanced decisions about gambling, for example due to mental health, a learning disability or substance misuse relating to alcohol or drugs. This Licensing Authority will consider this licensing objective on a case by case basis.

#### **(ix) Conditions on Premises Licences**

Any conditions attached to licences will be proportionate and will be:

- relevant to the need to make the premises suitable as a gambling facility,
- directly related to the premises and the type of licence applied for,
- fairly and reasonably related to the scale and type of premises,
- reasonable in all other aspects.

Decisions on individual conditions will be made on a case by case basis. The control measures, which the Board may consider using, include door supervisors and appropriate signage for adult only areas. Licence applicants will be expected to offer their own suggestions as to ways in which the licensing objectives can be effectively met.

The Board may consider specific measures for buildings that are subject to multiple premises licences. Such measures may include the supervision of entrances, segregation of gambling and non-gambling areas frequented by children, the supervision of gaming machines in non-adult gambling specific premises and the display of notices regarding age restriction. These matters are in accordance with the Gambling Commission's Guidance.

This Licensing Authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling

Commission's Guidance, this Licensing Authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

It is noted that there are conditions which the Licensing Authority cannot attach to premises licences which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition;
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and
- conditions in relation to stakes, fees, winning or prizes.

#### **(x) Door Supervisors -**

The Gambling Commission advises in its Guidance to Licensing Authorities that if a Licensing Authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a condition on a premises licence to this effect.

There is no evidence that the operation of particular gambling premises, eg. betting offices, has required door supervisors for the protection of the public. The authority will only impose this requirement in circumstances where there is clear evidence, from the history of trading at specific premises, that such premises cannot be adequately supervised from the counter and that such requirements are both necessary and proportionate.

## **2. ADULT GAMING CENTRES**

The Board will have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling. It will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that persons under 18 years of age do not have access to the premises.

Appropriate licensing conditions may cover issues such as

- proof of age schemes,
- CCTV,
- door supervisors,
- supervision of entrances/machine areas,
- physical separation of areas,
- location of entry notices/signage and specific opening hours,
- self exclusion schemes

This list is merely indicative and not intended to exclude other conditions in appropriate cases.

## **3. FAMILY ENTERTAINMENT CENTRES**

The Board will have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling. The applicant will be expected to satisfy the authority that there will be sufficient measures to ensure that persons under 18 years of age do not have access to the adult only gaming machine areas.

It would expect applicants, as part of their application, to offer their own measures to promote the licensing objectives. Appropriate licence conditions may cover issues such as

- proof of age schemes,
- CCTV,
- supervision of entrances/machine areas,
- physical separation of areas,
- location of entry notices/signage,
- specific opening hours and
- measures/training for staff on how to deal with unsupervised children and suspected truanting school children on the premises and recognise any form of child exploitation.

This list is merely indicative and not intended to exclude other conditions in appropriate cases.

In accordance with the Gambling Commission Guidance, the Board will ensure that it is sufficiently aware of any conditions that apply to operating licences, for instance those covering the way in which the area containing the category C or higher machines should be delineated.

The Board will also make itself aware of any mandatory or default conditions on premises licences, when they have been published.

#### **4. CASINOS**

The Board has not passed a “no casino” resolution under Section 166 of the Gambling Act 2005, but it is aware that it has the power to do so. The Board reserves the right to review this situation.

#### **5. BINGO PREMISES**

The Board notes that the Gambling Commission Guidance states that Licensing Authorities need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. The Board is aware that from July 2011, a holder of bingo premises licences may make available for use 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. A variation of licence must be applied for if operators wish to take advantage of this change to the legislation.

Children and young people are allowed to enter premises licensed for bingo, but it is important that they do not participate in gambling, other than on category D machines. Where category C or above machines are available in premises to which children and young people are admitted, the Licensing Authorities should ensure that :

- all such machines are located in an area of the premises separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance,
- only adults are admitted to the area where these machines are located,
- access to the area where machines are located is supervised,
- the area where the machines are located is arranged so that it can be observed by staff of the operator of the licence holder, and
- at the entrance to, and inside any such area there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.”

## 6. BETTING PREMISES

The Act contains a single class of licence for betting premises licence, which enables betting to take place on the premises and for the licenceholder to make available up to four gaming machines, subject to certain restrictions.

It is noted that the Gambling Commission Guidance for Local Authorities states “Section 181 contains an express power for Licensing Authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino)”.

When considering whether to impose conditions to restrict the betting machines in particular premises, the Board will take into account the size of the premises, the number of counter positions available for person to person transactions and the ability of staff to monitor the use of machines by children and young people or by vulnerable persons.

## 7. TRACKS

The Act contains rules that apply to applicants for a premises licence in relation to a track. The applicant need not hold an operating licence, because the betting that is provided upon the track will be provided by other operators who come on-course. Since those people will require the necessary operating licences, the Act allows the track operator to obtain a premises licence without also having to hold an operating licence. This track premises licence then authorises anyone upon the premises with an operating licence to offer betting facilities.

Tracks are different from other premises in that there may be more than one premises licence in effect, each covering a specified area of the track. In accordance with the Gambling Commission Guidance, the Board will especially consider the impact of the third licensing objective in this area.

There may be some specific considerations with regard to the protection of children and vulnerable persons from being harmed or exploited by gambling, the need to ensure entrances to each type of premises are distinct and that children and excluded from gambling or betting areas where they are not permitted to enter.

Children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog and horse racing takes place, although they are still prevented from entering areas where gaming machines (other than category D machines) are provided. Premises licence applicants will have to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. Appropriate licensed conditions may include:

- proof of age schemes,
- CCTV,
- door supervisors,
- supervision of entrances/machine areas,
- physical separation of areas,
- location of entry notices/signage,
- specific opening hours and
- the location of gaming machines.

This list is merely indicative and not intended to exclude other conditions in appropriate cases.

The Gambling Commission will issue Guidance addressing where such machines may be located on tracks and any special considerations that should apply to promote the licensing objectives.

The Board notes the Commission's Guidance that Licensing Authorities need to consider the location of gaming machines at tracks, any applicants for licences at tracks will need to demonstrate that, where the applicant holds a pool betting operating licence and is going to use the entitlement to four gaming machines, these machines will be located in areas from which children are excluded.

The Board has a power under the Act to restrict the number of betting machines, their nature and the circumstances in which they are made available, by attaching a licence condition to a betting premises licence.

In accordance with the Gambling Commission's Guidance in relation to betting premises away from tracks, the Board will take into account the size of the premises and the ability of staff to monitor the use of the machines by vulnerable people when determining the number and nature of machines permitted.

The Board also notes that the Gambling Commission's Guidance is that it would be preferable for all self-contained premises operated by off-course betting operators on tracks to be the subject of separate premises licence. This would ensure a clear division of responsibilities.

In accordance with the Gambling Commission Guidance, the Board will attach a condition to track premises licences requiring the track operator to ensure that the rules are prominently displayed in or near the betting areas, or that other measures are taken to ensure that they are made available to the public.

## **8. APPLICATIONS AND PLANS**

The Gambling Act (S51) requires applicants to submit plans of the premises with their application, in order to ensure that the Licensing Authority has the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan will also be used for the Licensing Authority to plan future premises inspection activity. (See Guidance to Licensing Authorities, part 7.)

Plans for tracks do not need to be in a particular scale, but should be drawn to scale and should be sufficiently detailed to include the information required by regulations. (See Guidance to Licensing Authorities, part 7.)

Some tracks may be situated on agricultural land where the perimeter is not defined by virtue of an outer wall or fence, such as point-to-point racetracks. In such instances, where an entry fee is levied, track premises licence holders may erect temporary structures to restrict access to premises (See Guidance to Licensing Authorities, part 7. In the rare cases where the outer perimeter cannot be defined, it is likely that the track in question will not be specifically designed for the frequent holding of sporting events or races. In such cases, betting facilities may be better provided through occasional use notices where the boundary premises do not need to be defined. (See Guidance to Licensing Authorities, part 7.)

This Board appreciates that it is sometimes difficult to define the precise location of betting areas on tracks. The precise location of where betting facilities are provided is not required to be shown on track plans, both by virtue of the fact that betting is permitted anywhere on the premises and because of the difficulties associated with pinpointing exact locations for some types of track. Applicants should provide sufficient information that this authority can satisfy itself that the plan indicates the main areas where betting might take place. For racecourses in particular, any betting areas subject to the "five times rule" (commonly known as betting rings) must be indicated on the plan. (See Guidance to Licensing Authorities, part 7.)

## **9. TRAVELLING FAIRS**

The Board will consider whether the applicant falls within the statutory definition of a travelling fair. Where category D machines and/or equal chance prize gaming without a permit are to be made available for use at travelling fairs, it will fall to the Board to decide whether the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair, is met.

The 27 day statutory maximum for the land being used for a fair is per calendar year and applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land.

## **10. PROVISIONAL STATEMENTS**

The Board notes the Gambling Commission Guidance which states that “it is a question of fact and degree whether the premises are finished to a degree that they can be considered for a premises licence” and that “requiring the building to be complete ensures that the authority could, if necessary, inspect it fully”.

In terms of representations about premises licence applications following the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account by the Board unless they concern matters which could not have been addressed at the provisional statement stage, or they reflect a change in the applicant’s circumstances.

In addition, the Board may refuse the premises licence or grant it on terms different to those attached to the provisional statement only by reference to matters:

- (a) which could not have been raised at the provisional licence stage, or
- (b) which, in the Board’s opinion, reflects a change in the operator’s circumstances.

The Board has noted the Gambling Commission Guidance that Licensing Authorities should not take into account irrelevant matters such as the likelihood of the applicant obtaining planning or building consent for the proposals.

## **11. REVIEWS**

A premises licence may be reviewed by the Board of its own accord for any appropriate reason or following the receipt of an application for a review by an interested party or responsible authority. It is for the Board to decide whether the review should be carried out.

Section 200 of the Act provides that Licensing Authorities may initiate a review in relation to a particular class of premises licence or in relation to particular premises. Officers may be involved in the initial investigations of complaints leading to a review, or may try informal mediation or dispute resolution techniques prior to a full-scale review being conducted by the authority.

An application for a review may be rejected if the Licensing Authority is of the view that the grounds on which the review is sought:

- are not relevant to the principles that must be applied by the Licensing Authority in accordance with Section 153,
- are frivolous or vexatious,
- will certainly not cause the authority to revoke or suspend the licence or exclude, remove or amend a condition attached to the licence,
- are substantially the same as the grounds specified in an earlier application in respect of the same premises or are substantially the same as representations made in relation to the application for the premises licence.

In determining whether to exercise the power to reject an application, the Board will take into account the length of time that has elapsed since the making of the earlier application or since the making of the representation.

## PART C

### PERMITS / TEMPORARY & OCCASIONAL USE NOTICES

#### 1. UNLICENSED FAMILY ENTERTAINMENT CENTRE GAMING MACHINE PERMITS

Where premises do not hold a premises licence but wish to provide gaming machines, they may apply to the Board for this permit. The applicant must show that the premises will be wholly or mainly used for making gaming machines available for use.

Unlicensed FECs will be able to offer only category D machines and rely on a gaming machine permit. Any number of category D machines can be made available with such a permit. Permits cannot be issued to vessels or vehicles.

The Board can grant or refuse a licence, but can not attach conditions to this type of permit.

The Board will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm is not limited to harm from gambling, but includes wider child protection considerations.

The Act states that a Licensing Authority may prepare a statement of principles that it proposes to consider in determining the suitability of an application for a permit. This is mirrored in the Gambling Commission's Guidance.

Except as detailed above, the Board has not adopted any further statement of principles, but if it does, such a statement will be made publicly available.

#### 2. (ALCOHOL) LICENSED PREMISES GAMING MACHINE PERMITS

There is provision in the Act for premises licensed to sell alcohol for consumption on the premises to automatically have 2 gaming machines of categories C and/or D. The premises merely need to notify the Licensing Authority and pay the prescribed fee. The Licensing Authority can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the Licensing Authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises.

If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the Licensing Authority must consider that application based upon the licensing objectives, any Guidance issued by the Gambling Commission under Section 25 of the Gambling Act 2005, and "*such matters as they think relevant.*" This Board considers that "such matters" will be decided on a case by case basis, but generally there will be regard to the need to protect children and vulnerable persons from being harmed or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Measures which will satisfy the authority that there will be no access

may include the adult machines being in sight of the bar, or in the sight of staff whom will monitor that the machines are not being used by those under 18. Notices and signage may also help.

It is recognised that some alcohol licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would most likely need to be applied for, and dealt with, as an Adult Gaming Centre Premises Licence.

It should be noted that the Licensing Authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

### **3. PRIZE GAMING PERMITS**

The Act states that a Licensing Authority may “procure a statement of principles that they propose to apply in exercising their functions under this schedule” which “may, in particular, specify matters that the Licensing Authority propose to consider in determining the suitability of the applicant for a permit.

The applicant should set out the types of gaming that he or she is intending to offer, should be able to demonstrate an understanding of the limits to stakes and prizes that are set out in regulations and should demonstrate that the gaming offered is within the law. In making a decision on the application for this permit, the Board will have regard to any Gambling Commission Guidance.

There are conditions in the Act with which permit holders must comply, but the Board, as Licensing Authority, cannot attach conditions.

### **4. CLUB GAMING AND CLUB MACHINES PERMITS**

Members Clubs and Miners’ welfare institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Club Gaming machines permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance as set-out in regulations. A Club Gaming machine permit will enable the premises to provide gaming machines (3 machines of categories B, C or D). Commercial clubs may apply for a Club Gaming Machine Permit.

This Licensing Authority notes the Gambling Commission’s Guidance, which requires the Licensing Authority to satisfy itself that the club meets the requirements of the Act to obtain a club gaming permit. These include the constitution of the club, the frequency of gaming, and ensuring that there are more than 25 members.

The club must be conducted “wholly or mainly” for purposes other than gaming, unless the gaming is permitted by separate regulations. The Secretary of State has made regulations and these cover bridge and whist clubs.

There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

### **5. TEMPORARY USE NOTICES**

Temporary use notices allow the use of premises for gambling where there is no premises licence, but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. They may only be granted where a relevant operating licence has been granted.

The Board notes the statutory Guidance where “premises” is defined as including “any place” and will look at, amongst other things, the ownership/occupation and the control of the premises when considering any particular use.

A set of premises may not be the subject of a temporary use notification for more than 21 days in a period of 12 months. In consideration of temporary use notice applications, the Board will apply any regulations made under the provisions of the Act.

## **6. OCCASIONAL USE NOTICES**

Where there is betting on a track on eight days or less in a calendar year, betting may be permitted by an occasional use notice, without the need for a full premises licence.

The Board will ensure that the statutory limit of eight days in a calendar year is not exceeded. It will consider the definition of a “track” and whether the applicant is permitted to avail him/herself of this notice.

A register of all applications will be maintained.

## **7. SMALL SOCIETY LOTTERIES**

The Board will adopt a risk based approach towards its enforcement responsibilities for small society lotteries. This authority considers that the following list, although not exclusive, could affect the risk status of the operator:-

- submission of late returns (returns must be submitted no later than three months after the date on which the lottery draw was held)
- submission of incomplete or incorrect returns
- breaches of the limits for small society lotteries

Non-commercial gaming is permitted if it takes place at a non-commercial event, either as an incidental or principal activity at the event. Events are non-commercial if no part of the proceeds is for private profit or gain. The proceeds of such events may benefit one or more individuals if the activity is organised:-

- by, or on behalf of, a charity or for charitable purposes
- to enable participation in, or support of, sporting, athletic or cultural activities

## PART D

### RESPONSIBLE AUTHORITY CONTACTS

ORGANISATION	CONTACT TELEPHONE AND EMAIL ADDRESS	WEBSITE
SBC Licensing <i>Contact them for advice on licenses and permits</i>	01835 826662 <a href="mailto:Liquorandlicensing@scotborders.gov.uk">Liquorandlicensing@scotborders.gov.uk</a>	<a href="https://www.scotborders.gov.uk/info/20025/licensing">https://www.scotborders.gov.uk/info/20025/licensing</a>
Police Licensing Officers	<a href="mailto:lothianscotborderslicensing@scotland.pnn.police.uk">lothianscotborderslicensing@scotland.pnn.police.uk</a>	<a href="http://www.scotland.police.uk/your-community/the-lothians-and-scottish-borders/">http://www.scotland.police.uk/your-community/the-lothians-and-scottish-borders/</a>
SBC Planning	0300 100 1800 <a href="mailto:prs@scotborders.gov.uk">prs@scotborders.gov.uk</a>	<a href="https://www.scotborders.gov.uk/site_search/results/?q=planning#Information">https://www.scotborders.gov.uk/site_search/results/?q=planning#Information</a>
SBC Environmental Health	0300 100 1800 <a href="mailto:PLACEhealth@scotborders.gov.uk">PLACEhealth@scotborders.gov.uk</a>	<a href="https://www.scotborders.gov.uk/site_search/results/?q=Environmental+Health#Information">https://www.scotborders.gov.uk/site_search/results/?q=Environmental+Health#Information</a>
<b>Add Social Work/Education contact</b>		
<b>Add Child Protection contact</b>		
Scottish Fire and Rescue Service 143 Croft Street Galashiels TD1 3BS		<a href="http://www.firescotland.gov.uk">www.firescotland.gov.uk</a>

Gambling Commission Victoria Square House Victoria Square Birmingham B2 4BP		<a href="http://www.gamblingcommission.gov.uk/home.aspx">www.gamblingcommission.gov.uk/home.aspx</a>
H M Revenue and Customs National Registration Unit Portcullis House 21 India Street Glasgow G2 4PZ		<a href="mailto:Nrubetting&amp;gaming@hmrc.gov.uk">Nrubetting&amp;gaming@hmrc.gov.uk</a>