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Betting shops: licensing and planning issues

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Summary

Under the *Gambling Act 2005*, a betting shop needs a [premises licence](#), issued by the local licensing authority. Objections can be raised against an application for a new licence by interested parties (e.g. people living close by) and responsible authorities (e.g. the police). It is also possible to trigger a review of an existing licence.

The only objections that are likely to be relevant are those that relate to the Gambling Act's licensing objectives, or that raise issues under a licensing policy statement, or the Gambling Commission's [guidance](#) (September 2016) and [codes of practice](#) (October 2020). The Act's licensing objectives are:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder 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.

The 2005 Act abolished an earlier "demand test" for granting licences to open new gambling premises. The Act places a duty on the Gambling Commission to aim to permit gambling "in so far as the Commission think it reasonably consistent with pursuit of the licensing objectives". This has led to concerns about the "clustering" of betting shops, often in deprived areas. A July 2020 Lords Committee [report](#) found that "the liberalisation of the regulation of gambling has led to an increased presence of gambling services on the high street." It recommended that local authorities should be given powers to limit the number of new premises.

Concerns had also been expressed about local planning authorities' ability to control the number of betting shops on the high street. The rules on permitted development and change of use were changed in April 2015, so that change of use to a betting shop requires planning permission.

1. The Gambling Act and betting shops

The [Gambling Act 2005](#) (as amended) regulates gambling in Great Britain. It is enforced by the [Gambling Commission](#). Under the Act, a betting shop needs an [operating licence](#), issued by the Commission, and a [premises licence](#), issued by the local licensing authority. Unless it is a very small operation, [personal licences](#), also issued by the Gambling Commission, will be needed for certain staff.

Detailed information on the licensing requirements can be found in the Gambling Commission's [Guidance to licensing authorities](#) (updated September 2016) and from the Commission's [website](#). The following section focuses on premises licences and when and how these can be challenged.

1.1 Premises licences

The framework for premises licences is set out in [Part 8](#) of the 2005 Act.

The Gambling Act and demand for gaming premises

Before the 2005 Act came into force, the issuing of premises licences was subject to a "demand test".¹ The *Gambling Review Report* (the "Budd Report", July 2001) claimed that this restricted new trade and that demand was best assessed by potential operators on commercial grounds alone.²

The 2005 Act removed the demand test. [Section 153](#) of the Act states that a licensing authority "shall aim to permit the use of premises for gambling", providing they think it in accordance with the relevant codes of practice and guidance issued by the Gambling Commission, and that the application is consistent with the "licensing objectives" laid down in the Act and the authority's statement of licensing policy. The latter is required under [section 349](#) of the Act.³

In its [guidance](#) to licensing authorities, the Gambling Commission makes clear that each licence application should be "considered on its merits without regard to demand", that a licensing authority's statement of policy should reflect the "aim to permit", and "should not comment on whether there is demand for gambling premises".⁴

However, a statement of policy may comment on the location of premises and the general principles that will be applied in considering location as far as it relates to the licensing objectives:

For example, a statement of policy may set out that the licensing authority will carefully consider applications for premises licences and whether there is a need for condition(s) to mitigate risks, in

¹ Schedule 2 of the *Gaming Act 1968*

² DCMS, *Gambling Review Report*, July 2001, paras 20.15-20.31

³ For further information on statements of licensing policy, see part 6 of the Gambling Commission's [Guidance to licensing authorities](#) (5th ed), Updated September 2016

⁴ *Ibid*, para 6.37

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respect of certain kinds of gambling located very close to a school or a centre for gambling addicts, in light of the third licensing objective. The statement of policy must be clear that each case will be decided on its merits and will depend to a large extent on the type of gambling that is proposed for the premises.⁵

Moral objections to gambling

The Gambling Commission's guidance states that a licensing authority cannot make decisions based on moral objections to gambling:

Licensing authorities should be aware that other considerations such as moral or ethical objections to gambling are not a valid reason to reject applications for premises licences. In deciding to reject an application, a licensing authority should rely on reasons that demonstrate that the licensing objectives are not being, or are unlikely to be, met, and such objections do not relate to the licensing objectives. An authority's decision cannot be based on dislike of gambling, or a general notion that it is undesirable to allow gambling premises in an area...⁶

Even if a licensing authority finds no reason to reject a licence application, others can object. The term used in the 2005 Act and associated guidance is not "objections" but "representations".

Objecting to a new licence application

In dealing with an application, licensing authorities must consider representations from "responsible authorities" and "interested parties".⁷

Responsible authorities

These are listed in [section 157](#) of the 2005 Act and include:

- the licensing authority in England and Wales;
- the Gambling Commission;
- the chief officer of police or chief constable;
- the fire and rescue authority;
- the local planning authority;
- an authority which has functions in relation to pollution to the environment or harm to human health;
- HM Revenue & Customs.

Interested parties

To accept a representation from an interested party, the licensing authority must take the view that the person:

- lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- has business interests that might be affected by the authorised activities;

⁵ Ibid, para 6.38

⁶ Gambling Commission, *Guidance to licensing authorities*, para 8.1

⁷ [Gambling Act 2005 s161](#)

- represents persons in either of the above two groups.⁸

The Gambling Commission's guidance states that interested parties can be people who are democratically elected, such as councillors and MPs, representing individuals in the other categories.

Other representatives might include trade associations, trade unions, and residents' associations. A school head or governor might act in representing the interests of pupils or parents and a community group might represent vulnerable people living near to a proposed premise. Apart from democratically elected persons, licensing authorities should satisfy themselves on a case by case basis that a person does represent interested parties and can request written evidence where necessary.⁹

Representations

To be given consideration, representations must not be "vexatious" or "frivolous".¹⁰ Licensing authorities should consider:

- who is making the representation, and whether there is a history of making representations that are not relevant;
- whether it raises a 'relevant' issue;
- whether it raises issues specifically to do with the premises that are the subject of the application.¹¹

The only representations that are likely to be relevant are those that relate to the Gambling Act's licensing objectives, or that raise issues under a licensing policy statement or the Gambling Commission's guidance or codes of practice.¹²

If a relevant objection is received, the licensing authority must arrange a hearing to determine whether to:

- grant the licence;
- grant the licence subject to additional conditions;
- refuse the application.

The licensing authority's decision can be appealed at the magistrates' court.

Once issued, a premises licence remains in place unless the annual fee is not paid or where the holder: is not occupying the premises; dies; becomes mentally or physically incapacitated; is declared bankrupt or goes into liquidation; surrenders the licence; or has it forfeited by a court.

⁸ [Gambling Act 2005 s158](#)

⁹ Gambling Commission, *Guidance to licensing authorities*, paras 8.16- 8.17

¹⁰ [Gambling Act 2005 s162\(3\)](#)

¹¹ Gambling Commission, *Guidance to licensing authorities*, para 7.54

¹² *Ibid*, para 7.53

Review of an existing licence

A premises licence can be reviewed by the licensing authority. Responsible authorities and interested parties can also apply for a review.¹³

Initiation of review by licensing authority

Under [section 200](#) of the 2005 Act, a licensing authority can review any matter connected with the use made of a premises if:

- it has reason to suspect that licence conditions are not being observed;
- the premises is operating outside of the principles set out in the licensing authority's statement of policy;
- there is evidence to suggest that compliance with the licensing objectives is at risk;
- for any other reason which gives them cause to believe that a review may be appropriate, such as a complaint from a third party.¹⁴

The licensing authority must give written notice to the licence holder and responsible authorities that it intends to undertake a review and must also publish notice of its intention to carry out the review.¹⁵

Application for a review

Applications must be submitted to the licensing authority in the prescribed form and state the reasons why a review is being requested, together with any supporting information. The applicant for a review must provide notice in writing of their application to the premises licence holder, and to all responsible authorities, within seven days of making the application. Representations about the application must be made within 28 days, commencing seven days after the date on which the application was received.¹⁶

Deciding whether to grant a review

An application for a review may be rejected if the grounds on which it is sought:

- are not relevant to Gambling Commission guidance/codes of practice, the licensing authority statement of licensing policy, or the licensing objectives;
- are frivolous or vexatious;
- 'will certainly not' cause the licensing authority to revoke or suspend a licence or to remove, amend or attach conditions to the premises licence;

¹³ [Gambling Act 2005 s197](#)

¹⁴ Gambling Commission, *Guidance to licensing authorities*, para 10.7

¹⁵ *Ibid*, paras 10.9-10.10

¹⁶ *Ibid*, paras 10.11-10.13

- are substantially the same as previous representations or requests for a review.¹⁷

Carrying out a review

A licensing authority should carry out a review as soon as possible after the 28-day period for making representations has passed.¹⁸ The purpose of the review is to determine whether the licensing authority should take any of the following steps:

- add, remove or amend a licence condition imposed by the licensing authority;
- exclude a default condition imposed by the Secretary of State or Scottish Ministers (for example, relating to opening hours) or remove or amend such an exclusion;
- suspend the premises licence for a period not exceeding three months;
- revoke the premises licence.¹⁹

The licensing authority must hold a hearing, unless the applicant and any person who has made representations consent to the review being conducted without one.

The licence holder has the right to appeal a review decision.²⁰

1.2 Concerns about the “clustering” of betting shops

In a July 2012 [report](#) on the Gambling Act, the Culture, Media and Sport Committee concluded that the removal of the demand test had had the “unintended consequence of encouraging the clustering of betting shops in some high streets.”²¹

Lords Committee report (July 2020)

A July 2020 Lords Committee [report](#) on gambling harm also claimed that “the liberalisation of the regulation of gambling has led to an increased presence of gambling services on the high street”²²:

Allowing operators to decide “on commercial grounds alone” where to locate new betting shops has resulted in betting shops being disproportionately located in places where people can least afford to gamble: what is referred to as “clustering” or “bunching”. The Estates Gazette’s evidence showed that “more than half of the nation’s 6,000 bookies are in the UK’s most deprived areas”, and that 56% of all the big four’s betting shops are located in the top 30% most deprived areas in England. 78% of the stores of Paddy Power are located in the top 40% most

¹⁷ Ibid, para 10.14

¹⁸ Ibid, para 10.18

¹⁹ Ibid, para 10.19

²⁰ Gambling Commission, *Guidance to licensing authorities*, part 12

²¹ Culture, Media and Sport Select Committee, [The Gambling Act: a bet worth taking?](#), HC 421 2012/13, July 2012, paras 58-66

²² House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry, [Gambling Harm - Time for Action](#), HL Paper 79, July 2020, para 110

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deprived areas. An article published in the Estates Gazette at the same time included the chart below showing that over 20% of betting shops are located in the top 10% most deprived areas, with only 2% in the 10% least deprived areas; in between there is a direct correlation.²³

According to the report, the gambling industry is to some extent driving demand: "Ease of access to betting shops incites and encourages gambling".²⁴ One way of alleviating the problem would be to increase the regulatory powers of local authorities.²⁵

In relation to alcohol licensing, the *Licensing Act 2003* (as amended) gives local authorities the power to limit the growth of licensed premises where the promotion of the 2003 Act's licensing objectives is being compromised.²⁶ The Lords Committee recommended that the Gambling Act should be amended so that local authorities have similar powers in relation to the licensing of gambling premises.²⁷

The Committee noted the view of Leeds City Council:

"The Council would welcome more control, such as the ability to control numbers in a given area, for example in the same way as cumulative impact areas work for the Licensing Act 2003. This would prevent the proliferation of any single type of gambling premises in an area - such as betting shops, AGCs or bingo halls, which not only have an impact on the local high street but also seem to accumulate in deprived areas..."²⁸

It also quoted Gerald Gouriet QC:

...The control that most licensing authorities would like to exercise is the refusal of a licence for a betting shop or adult gaming centre on the simple ground: "the local community doesn't want it". Licensing authorities do not have that power - although licensing justices under the repealed legislation did. Even if (as is frequently the case) substantial numbers of local people strongly object to the grant of a new licence for gambling premises on the perfectly rational ground that the high street already has enough of them and the local community doesn't want any more, that is not a lawful ground for rejecting an application made in accordance with the 2005 Act.²⁹

The Committee agreed with the above views and said that any change to the law would not be inconsistent with the Budd Report:

...We accept that to give local authorities such a power in respect of the licensing of premises for gambling would be a reversal, not only of the general "aim to permit" philosophy which underpins the Act, but also of the prohibition on licensing committees having regard to "the expected demand for the facilities which it is proposed to provide." It would not however be inconsistent

²³ Ibid, para 112, footnotes removed

²⁴ Ibid, para 113

²⁵ Ibid, para 113

²⁶ For further detail see, Library Paper, [Alcohol licensing: cumulative impact assessments](#) (CBP 7269, April 2019) and chapter 14 of Home Office [guidance](#) (April 2018) on the Licensing Act 2003

²⁷ House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry, [Gambling Harm - Time for Action](#), para 261

²⁸ House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry, [Gambling Harm - Time for Action](#), para 257

²⁹ Ibid, para 258

with the Budd report which, having recommended the abolition of the demand test, went on to say: "We recommend that in determining whether the location for gambling premises is appropriate the local authority should have regard to the general character of the locality and the use to which buildings nearby are put."³⁰

A change to the law would be "justified":

...The interests of the operators should not be the only significant factor in a decision on where a betting shop is located. Local authorities should be able to decide not just on the basis of "what is good for the punter", but what is good for the community as a whole. In this respect licensing committees should have the same powers as they do when licensing premises for the sale of alcohol.³¹

Government response (December 2020)

In its December 2020 [response](#) to the Committee's report, the Government noted the shift from land based to online gambling and the impact of Covid-19. It wanted to understand the impact of these changes and, referring to its [Gambling Act Review](#) (December 2020), said that it would seek the views of local authorities on any change to their powers:

26. Like many sectors of the economy, the gambling industry is seeing a significant and ongoing shift to online. Between the financial years 2015-16 and 2018-19, the gross gambling yield of the land-based gambling sector fell by 6.5%, while that of the online sector grew by 18% in real terms. This change in consumer preferences was reflected in falling numbers of land-based premises. From March 2016 to March 2020 the number of gambling premises operated by Gambling Commission licensees fell by 13%. In addition to the impact of the stake cut to B2 gaming machines in betting shops, the entirety of the land based sector has been affected by the impacts of Covid-19 and the long term consequences of this are not yet known.

27. The government is keen to understand more about the immediate and long term effects of these changes. We will seek views from licensing and local authorities on what, if any, changes they want to see made to their powers, and consider these alongside any evidence they can provide to demonstrate the necessity for these changes. The Gambling Act Review will also consider the balance between online and land-based gambling to make sure we have an equitable approach to the regulation of different types of operator.³²

³⁰ Ibid, para 259, footnotes removed

³¹ Ibid, para 260, footnote removed

³² DCMS, [Government Response to the House of Lords Gambling Industry Committee Report: Social and Economic Impact of the Gambling Industry](#), December 2020, paras 26-27

2. Planning matters

In brief

Since April 2015, betting shops have been in the “sui generis” category, so any change of use to a betting shop requires an application to the local planning authority for planning permission.

Before April 2015, under permitted development rules, buildings with a range of high street uses could be converted into betting shops with no planning permission required. Amid concerns that local planning authorities did not have enough control over this change of use and the resulting proliferation of betting shops, the then coalition Government consulted on change.

2.1 Planning control and permitted development change of use

The *Town and Country Planning (Use Classes) Order 1987* puts uses of land and buildings into various categories known as “Use Classes”. The categories give an indication of the types of use which may fall within each use class and are then further divided into a number of subclasses. There are four main categories, of which Class A covers shops and other retail premises such as restaurants and bank branches. Not all uses are put into a use class; these are called “sui generis”

A further regulation, the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#) grants what are called “permitted development rights” (PDRs), in broad terms a right to develop without the need to apply for planning permission.³³ Under the 2015 Order, planning permission is not needed for changes in use of buildings within each subclass and for certain changes of use between some of the classes.

Before 15 April 2015, betting shops were in the A2 use class, which also covered financial services such as banks and building societies and solicitors and estate agents. PDRs also allowed the change of use from restaurants and cafés (A3), public houses (A4), and hot food takeaways (A5) into betting shops or payday loan shops. Planning permission was therefore not required to change from these uses to betting shop use and so local planning authorities did not have a role in approving (or not) change of use.

2.2 New use classes from 1 September 2020

New use classes were introduced from 1 September 2020, when certain former use classes were revoked and new classes were created. The position of betting shops did not change – they remain within the “sui

The Commons Library briefings [Permitted development rights, Planning: change of use and Planning for the Future: planning policy changes in England 2020 and future reforms](#) provide more information (SN 485 and SN 1301, both 23 April 2020 and CBP 8981, 11 December 2020)

³³ SI 2015/596

generis” category – although certain other uses were added to that category.³⁴

The [Explanatory Memorandum to these Regulations](#) provide background information. [The Planning Portal](#) also offers a guide to which use classes – including the former Class A - have been revoked and how the new use classes relate to the old.³⁵

2.3 Background: other calls for change

In a [debate on bookmakers and planning in Haringey](#) in November 2010, David Lammy observed that his constituency had 39 bookmakers but no book shop and asked for betting shops to be reclassified as sui generis. The then Planning Minister, Robert Neill, rejected the suggestion and recommended the use of an Article 4 Direction, whereby a local council can suspend permitted development rights in certain circumstances.³⁶

Mary Portas’s [High Street Review in](#) December 2011 also recommended putting betting shops into a separate use class.³⁷

2014 consultation on changes

The April 2015 changes followed a July 2014 [technical consultation](#).³⁸

The consultation originally proposed to create a larger, renamed A1 class to incorporate a lot of what were then A2 uses, leaving betting shops in a more limited class A2. The then Government decided, though, to move betting and payday loan shops out of the A2 class and into the sui generis class. The Explanatory Memorandum to the 2015 Order introducing the change observed that there had been “overwhelming support” for the proposal always to require planning permission for change of use to a betting shop or pay day loan shop.³⁹

Research for the Responsible Gambling Trust, July 2016

In July 2016, the Local Government Association (LGA) quoted research conducted by [Geofutures for the Responsible Gambling Trust](#) which found that rates of “problem gambling” were higher in areas with clusters of betting shops. The LGA called for the Government to introduce a “cumulative impacts test” to enable councils to reject applications for new betting shops where there are already existing clusters of shops.⁴⁰

³⁴ The [Town and Country Planning \(Use Classes\) \(Amendment\) \(England\) Regulations 2020](#), SI 2020/757

³⁵ Planning Portal, [Change of use: use classes](#) (undated, accessed 17 December 2020)

³⁶ [HC Deb 24 November 2010 c406-9](#)

³⁷ The Portas Review: [An independent review into the future of our high streets](#), December 2011

³⁸ Department for Communities and Local Government, [Technical consultation on planning](#), July 2014

³⁹ [The Town and Country Planning \(Use Classes\) \(Amendment\) \(England\) Order 2015](#) (SI 2015/597), [Explanatory Memorandum: paragraph 8.5](#)

⁴⁰ Local Government Association, [“Extra powers and lower machine stakes are needed to tackle betting shop clustering”](#) 23 July 2016

Neighbourhood Planning Bill debates 2016-17

In December 2016, at Commons Report Stage, Graham Jones MP moved an amendment to the [Neighbourhood Planning Bill 2016-17](#) to deal with guidance on clustering of betting shops. He cited the Portas review's findings and highlighted the problems of clustering, particularly in poorer areas.⁴¹ In response, the then Housing and Planning Minister, Gavin Barwell, said that he did not see a need for national guidance.⁴²

In February 2017 at the Bill's House of Lords Committee stage, Labour's Lord Beecham also moved an amendment to insert a new clause into the Bill designed to control the proliferation of betting shops.⁴³ For the Government, Lord Bourne of Aberystwyth replied that the changes made in April 2015 gave local authorities better control of betting shops and, if they were concerned about clustering of betting shops, they should have an up-to-date local plan with "robust" policies in place.⁴⁴ Lord Beecham withdrew the amendment.

⁴¹ [HC Deb 13 December 2016 c667-8](#)

⁴² [HC Deb 13 December 2016 c731](#)

⁴³ [HL Deb 2 February 2017 c276](#)

⁴⁴ [HL Deb 2 February 2017 c278](#)

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