

Gambling in pubs

Though the Gambling Act 2005 is seen as a 'liberal' regime, its Code of Practice imposes a 'tough' level of compliance for gambling in public houses, says Roy Light

PUBLIC HOUSES TRADITIONALLY have been able to provide gambling by way of gaming machines and equal chance gaming, such as dominoes and cribbage (ss34 and 6 respectively of the Gaming Act 1968). The Gambling Act 2005, which came into force on 1 September 2007, introduces new procedural and regulatory regimes; and, significantly, allows for the playing of poker and bingo in public houses.

Section 279 provides a specific exemption from the need to obtain a licence for equal chance gaming in alcohol-licensed premises. Under s278 equal chance gaming is permitted in premises where an on-licence or relevant Scottish licence, which contain a bar at which alcohol is served for consumption on the premises (without a requirement that alcohol is served only with food), and at a time when alcohol may be supplied under the alcohol licence or sold for consumption on the premises under the relevant Scottish licence (so not during 'drinking-up time').

Public houses must also comply with further conditions in s279:

- a limit on the amount that may be staked;
- a limit on the amount or value of a prize;
- no amount is to be deducted or levied from sums staked or won;
- no participation fee (this includes membership subscriptions);
- no linked games between premises (for a definition see s280(2)); and
- no under 18s may participate.

Otherwise, no specific permissions are necessary, the exemption applies automatically – so no applications need to be made or notices given.

Prize limits

Stake and prize limits have been set by the Gambling Act 2005 (Exempt Regulations in Alcohol-Licensed Premises) Regulations 2007. For all games, including poker and bingo but excluding dominoes and cribbage, the maximum that may be staked by a person must not exceed £5 per game. For poker only, the aggregate of amounts that may be staked on games in one day must not exceed £100



and the maximum amount or value of a prize that may be won in any game is £100.

Additionally, s281 provides a "high turnover bingo" restriction, where in any seven-day period the aggregate amount of either stake or prize money exceeds £2,000. If that should happen, at the end of the seven days a "high turnover period" is said to commence. If, within a year from the first day of the original seven days, the aggregate of stakes or prizes again exceeds £2,000 the exemption is lost. The premises licence holder commits an offence if he/she fails without reasonable excuse to inform the Commission as soon as is reasonably practicable that a high turnover period has begun. (The Code of Practice (see below) states that the gaming supervisor must contact the Commission if the total stakes or prizes for bingo games played in any seven-day period exceeds £2,000.)

Section 284 provides that the exemption can be removed by the licensing authority if: it is not reasonably consistent with the licensing objectives to continue in effect; gaming has taken place in breach of a condition of the relevant statutory provisions; the premises are mainly used for gaming; or a Gambling Act offence has been committed on the premises. Twenty-one days' notice must be given to the premises licence holder, who may make representations and request a hearing. The licence holder may appeal to the magistrates' court within 21 days of receipt of notification of the relevant decision.

Complying with 'low level' gaming

The Gambling Commission has stated that "there would be a significant onus on indi-

vidual licensees to ensure that any gaming on their premises complies with the law" and that a statutory code of practice will be published "to assist licensees in meeting their obligations" under the Act (code of practice for gaming in clubs and premises with an alcohol licence: Consultation Paper, March 2007). The Gambling Commission published *The Code of Practice for Equal Chance Gaming in Clubs and Premises with an Alcohol Licence* in July 2007. Failure to comply with the provisions of the Code will not make a licensee liable to criminal or civil proceedings but such a fact will be admissible in evidence in civil and criminal proceedings.

The Commission's view is that "Compliance with the Code of Practice should be the responsibility of a designated person... in pubs – the designated premises supervisor (DPS) (which the Licensing Act 2003 requires as a condition of any alcohol premises licence). This person is referred to in the Code as the "gaming supervisor".

The Code makes it clear that gaming in public houses is expected to be "low level" and the gaming supervisor "is expected to take all reasonable steps to ensure that this remains the case". The Code also provides that gaming should be ancillary to the main purpose of the premises "not the main reason to go to the premises".

All gaming must be located so that it can be supervised by staff whose duties include supervision of gaming. The gaming supervisor should take reasonable steps to ensure that all employees understand their responsibilities under the Code. The gaming supervisor should put into effect procedures designed to prevent underage gambling which should include: holding the gaming in premises or parts of premises which are restricted to adults; checking the age of potentially underage players; and refusing access to the gaming to anyone apparently underage who cannot produce an acceptable form of age verification and identification.

Acceptable identification will contain a photograph, be current, legible and have no visible signs of tampering or reproduction,

and contain information from which the age of the person can be verified. The Commission considers acceptable forms of identification to include the Proof of Age Standards Scheme logo, such as a Citizencard or Validate card, a driving licence with photocard and a passport. Procedures should be in place for dealing with cases where an underage person repeatedly attempts to gamble including verbal warnings and reporting the offence to the Gambling Commission and the police.

All payments in respect of gaming should be made in cash before the commencement of the game and no credit may be offered to customers by the gaming supervisor. All players should be notified of any stake limits that apply and all equipment used in the gaming should be supplied by the premises and secured when not in use. The equipment should be replaced when damaged or marked. No player should supply his/her own equipment. For all organised games, the rules should be displayed or otherwise made available to all players before and during the game, for example by providing the rules on a laminated card.

The Code is wide-ranging requiring even that "gaming supervisors should ensure a pleasant atmosphere" and deny participation to customers who cheat or collude with other players or employees, threaten other players or employees, create a disturbance or damage equipment.

SJ takeaway

- Equal chance gaming and the provision of gaming machines in public houses are dependent on a premises licence which must include the on-sale of alcohol as a licensable activity. The premises must contain a bar at which alcohol is served without a requirement that the alcohol is served with food. Should the premises licence, or the sale of alcohol as a licensable activity, be lost so would permissions for gaming on the premises.
- Gaming is restricted to those parts of the premises covered by the premises licence and restricted to the times at which sales of alcohol may be made. It is important to check the plan attached to the premises licence to ensure that any gambling activities take place within the area specified and only during the hours licensed for the sale of alcohol (so not any 'drinking-up' time).
- Gambling must remain ancillary to the sale of alcohol. Care should be taken not to offend this requirement, for example, if running daily bingo and poker games in premises with a large number of gaming machines.

To ensure stake and prize limits are not breached, the Code strongly advises that cash games should not be permitted, but if they are the pot should be kept in sight so that it can be viewed by the gaming supervisor at all times. In any event, all games organised by, or on behalf of, the management of the premises should not be cash games but tournament poker played in chips supplied by the premises.

The maximum stakes and prizes set out in the regulations are for a game and not a hand of poker. The Code defines a game as that which "is generally considered to be an established and conventional game". To ensure that the individual, daily and weekly stake and prize limits are not exceeded the gaming supervisor is to keep a record of the number of games played, the number of players and the amount staked.

The gaming supervisor is expected to take all reasonable steps to ensure that individual stakes limits are not exceeded through side bets, additional raises, rebuys or other ways of increasing the pot. If this practice is discovered the game should be stopped and stakes returned to the individual players.

Premises licence holders need to ensure and record the awareness, understanding and acceptance by the DPS/gaming supervisor of their role and responsibilities, the conditions under which poker is permitted – in particular that poker can only be played at a time when alcohol may be supplied in reliance on the alcohol licence and the Code of Practice. If other staff are to be used to supervise poker they must be aware and understand all of the matters listed here as for the DPS/gaming supervisor. Ensuring that any gaming complies with the conditions laid out above will require considerable effort on the part of licensees. This will need to be balanced against the opportunities offered when deciding whether to run poker games in public houses.

Automatic machine permissions

By s282 public houses enjoy an automatic entitlement to a maximum of two machines of category C or D in qualifying on-licensed premises (as for s278 above). The Category of Gaming Machine Regulations 2007 define category C machines as having a maximum stake of 50p and a maximum prize of £35. Category D machines have a maximum stake of 10p (30p non-cash prize) and £5 cash or £8 non-cash maximum prize. There are also new technical regulations for machines and operators should confirm with machine suppliers that these are met for any new

machines (existing machines enjoy certain exemptions as "legacy machines" but must be registered with the Commission by 1 December 2007).

As this is an automatic entitlement the premises licence holder simply must send written notice, together with the prescribed fee, to the licensing authority of his intention to make gaming machines available for use in the premises. Section 284, removal of exemption, applies to machine as well as equal chance gaming (see above).

Licensed premises gaming machine permit

For more than two machines a licensed premises gaming machine permit is needed. Application is made to the licensing authority in the form and manner that the authority directs for grant or variation. There is both an application and an annual fee. Regard must be had to the licensing objectives, s25 guidance issued by the Gambling Commission and "such other matters as [the authority] think fit" (the authority's licensing policy should be read). The application may be granted, granted for fewer machines or different categories of machine (only C and D machines are allowed) or refused. Unless the authority grants the application in full it must allow the licensee to make representations. Reasons must be given for a refusal and appeal lies to the magistrates' court.

Conditions and Codes of Practice

The Gaming Machines Permits code of practice – Club Gaming Permits and Club Machine Permits; Alcohol Licensed Premises Permits and Permissions 2007, deals with location of machines and access to category C machines by those under 18 (as for equal chance gaming above). It is a condition of the exemption that the Code's provisions relating to location and operation of gaming machines are complied with (s282(3)).

All gaming machines must be located so that their use can be supervised, either by staff whose duties include such supervision or by other means (presumably CCTV). Permit holders must make arrangements for such supervision. All gaming machines on the premises must be located where a customer who wishes to use any ATM made available on the premises must cease gambling at the gaming machine to do so.

Roy Light is professor of law at UWE, Bristol and a barrister practising from St John's Chambers, Bristol

• **Gambling Act:** www.solicitorsjournal.com > public > licensing