



department for
**culture, media
and sport**

Gambling Act 2005

DCMS Consultation on Casino Premises Licence Regulations
under Section 172(6)

January 2009

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Section 1: Introduction

Policy background

- 1.1 A cornerstone of government policy towards casinos is that casinos should offer a balanced mix of real table gaming and machine gambling. Casinos should not be required to offer only table games, but table games should remain core to their offer. The government considers that it would be undesirable for casinos to offer only or predominantly gaming machines and other automated equipment – in effect creating a wholly automated casino environment. This general approach has been confirmed by Parliament in the enactment of section 172 of the Gambling Act 2005 (the Act)
- 1.2 The government believes that this balanced offer supports the delivery of the licensing objectives of the Act in a number of ways:
- casinos uniquely have been granted the right to offer unlimited stake and prize gaming on the basis that they are the most heavily regulated of gambling environments. The presence of licensed staff to operate and oversee the gaming has always been, and will remain, an integral part of the system of regulation of casinos;
 - in particular, the presence of real gaming tables ensures there is a greater number of staff trained to spot the signs of problem gambling on the gaming floor;
 - it means that customers are able to make a choice whether to play table games which are more social in nature, as opposed to gaming machines and other automated gaming equipment, where there is less potential for human interaction and which tend to be more repetitive in nature.
- 1.3 The Act created three new categories of casino and provided for up to 17 new casinos: 1 regional casino; 8 large casinos; and 8 small casinos. The government decided not to proceed with the regional casino. The proposal set out in this consultation will only apply to the 16 new large and small casinos.
- 1.4 The large and small categories of casinos are defined by reference to the size of the total gambling area in each casino. The minimum and maximum floor areas for the gambling area of these categories of casinos are specified in the Categories of Regulations 2008, which were approved by the House of Commons on 26 March 2008 and by the House of Lords on 15 May 2008. These Regulations, and the Geographical Distribution of Large and Small Casinos Premises Licences Order, which specifies the local authority areas where the 16 new casinos should be located, came into effect on 20 May 2008.
- 1.5 Parliament has already enacted a number of measures designed to ensure that these new casinos provide a balanced mix of real table and machine/automated gaming. These include:
- capping the number of gaming machines that the new casinos will be able to offer so that gaming machines, and the risks associated with them, are not able to predominate in casinos;

- introducing in the Act a gaming table:machine ratio, which will require the new casinos to be using gaming tables if they are to exercise their rights to make available for use the maximum number of gaming machines permitted on the premises; and
- requiring a minimum table gaming area to be offered.

1.6 Parliament has left it to the Secretary of State to provide the details of these measures by means of secondary legislation. This consultation concerns proposals for definitions which are intended to complete the regulatory jigsaw to ensure this balance is maintained.

Proposal: Definition of gaming table for the purposes of the gaming table:machine ratio

1.7 As noted above, the Act sets strict limits on the number of gaming machines which the large and small categories of casino may offer, and lays down a ratio for how many gaming tables they must be using in order to be able to exercise their full entitlement. These requirements in Section 172(4)-(5) of the Act are summarised in the table below:

Category of casino	Ratio Gaming tables:machines	Maximum number of machines
Large	1:5	150
Small	1:2	80

1.8 Under section 172(6), the Secretary of State may make regulations:

- to define “gaming table” for the purposes of section 172(4)-(5);
- to specify the purposes, circumstances and extent of use of a gaming table if it is to be treated as being used in a casino for the purposes of section 172(4)-(5);
- to specify circumstances in which a number of tables are to be treated as if they were a single gaming table.

1.9 This consultation document sets out the Department for Culture, Media and Sport's (the Department's) proposals for regulations under this section of the Act and invites comments on them.

1.10 It is important to note that these proposals will only apply to the new categories of casino as defined under section 7(5) of the Act, and in this consultation to the 8 large and 8 small casinos. There were no provisions in the, now repealed, Gaming Act 1968 equivalent to those which may be contained in regulations under section 172(6), and these proposals will not affect casinos which are operating under a converted casino premises licence.

1.11 The proposals set out in this consultation will form the basis of regulations which will be subject to the negative resolution procedure in Parliament. A partial draft regulatory Impact Assessment (IA) and copies of the draft Regulations accompany this consultation.

Consultation

1.12 This document outlines the policies we are proposing to adopt in respect of this proposal at the end of this formal consultation, and invites comments on them. We will publish a response document following this consultation, which will be based on the responses we receive.

1.13 The Department welcomes comments on these proposals. The paper will be of particular interest to:

- casino operators;

- trade associations representing casino interests;
- trade associations representing manufacturers of casino equipment;
- organisations or individuals concerned with tackling problem gambling.

The closing date for responses is **Friday 15 May 2009**. Please send your comments in writing or by e-mail to the following address:

Alistair Boon
Gambling Sector Team
Sport and Leisure Directorate
Department for Culture, Media and Sport,
2-4 Cockspur Street,
London SW1 5DH;
alistair.boon@culture.gsi.gov.uk

1.14 A summary of responses will be published after the consultation closing date. All information in responses, including personal information, may be subject to publication or disclosure under Freedom of Information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Section 2: Proposals for consultation

Proposal: Definition of gaming table for the purposes of the gaming table:machine ratio

Background

2.1 Sections 172(4)-(5) of the Gambling Act set strict limits on the number of gaming machines which the large and small categories of casino may offer, and lay down ratios for how many gaming tables they must be using in order to be able to exercise their full entitlement:

- s.172(4) a large casino using at least 1 gaming table may make gaming machines available for use so long as the number of machines is not more than 5 times the number of gaming tables used in the casino, and is not more than 150;
- s.172(5) a small casino using at least 1 gaming table may make gaming machines available for use so long as the number of machines is not more than twice the number of gaming tables used in the casino, and is not more than 80.
- A large casino must, therefore, make 30 gaming tables available for use to be able to offer the maximum 150 gaming machines; a small casino must make 40 tables available for use to be able to offer the maximum 80 gaming machines.

2.2 Under section 172(6) of the Gambling Act 2005 (the Act), the Secretary of State may make regulations:

- to define "gaming table" for the purposes of section 172(4)-(5);
- to specify the purposes, circumstance and extent of use of a gaming table if it is to be treated as being used in a casino for the purposes of section 172(4)-(5);
- to specify circumstances in which a number of tables are to be treated as if they were a single gaming table.

2.3 As explained above, these regulations form an integral part of the government's efforts to ensure that the new casinos offer a balanced mix of real table games and machine and other automated gaming. In particular, they are intended to ensure that operators do not seek to increase artificially the number of gaming machines which they are entitled to operate, for example by including in a casino significant numbers of real gaming tables which are never used.

2.4 The government set out the broad approach it proposed to take in paragraph 45 of the delegated powers memorandum, published while the Gambling Bill was in Parliament:

The regulations will also define "available for use" by reference to a formula prescribing, for any given number of tables, a minimum number of the qualified staff (i.e. holding the appropriate personal licences) who must be on the premises to operate the tables if needed. The numbers to go in this formula are subject to further consultation with interested bodies and advice from the Gambling Commission in due course.

2.5 The intention at that time was to include the relevant provisions together with regulations under section 7(5) of the Act, which defines the new categories of casino. Since enactment, the Department has reached the view that it is more appropriate to include the relevant provisions in separate regulations under section 172(6). However, the Department remains keen to find a formula which balances the need to ensure new casinos genuinely offer real table gaming and machines, as intended by the Act, with practical operational concerns.

2.6 The regulations proposed here should be read alongside related requirements contained in The Gambling Act 2005 (Mandatory and Default Conditions)(England and Wales) Regulations 2007:

- there must be a minimum table gaming area of 1000m² in the large casinos and a minimum table gaming area of 500m² in the small casinos;
- only table gaming may take place in the table gaming areas of casinos;
- no area counting towards the minimum table gaming area may comprise less than 12.5% of the total minimum table gaming area for that category of casino;
- no other gambling facilities may be situated within 2 metres of any gaming table used for casino games.

2.7 During the course of developing the current proposals the Department considered whether additional regulations might be needed to address potential abuses of the table:machine ratio. For example, we considered whether it might be necessary to introduce regulations relating to:

- the minimum number of players which tables can accommodate;
- the minimum size of tables; or
- the minimum footprint for tables.

2.8 This would have ensured that operators did not seek to increase artificially the number of gaming machines they were entitled to offer by offering a large number of very small tables, or placing tables in positions which render them incapable of use. However, the Department concluded that the minimum table gaming area requirements and the requirement for there to be adequate space around tables were already sufficient to prevent potential abuse of this sort.

2.9 The Department therefore decided to limit any regulations in this area to the staffing issue highlighted in the Delegated Powers Memorandum.

Proposals

Section 172(6)(a) - definition of "gaming table"

2.10 Ministers are not proposing to use regulations under section 172(6) to set out an exhaustive definition of what constitutes a gaming table. Instead it is proposed to rely on its natural and ordinary meaning. Even though there is no statutory definition of a gaming table under the current legislation, the meaning of the term is well understood by the industry and casino users alike to a sufficient degree so as to make this definition robust.

2.11 The Department considers that for the purposes of section 172(4)-(5) the term "gaming table" should only include tables used for "real" casino games. Although we do not propose to give an exhaustive definition of "gaming table", we propose to exercise the powers in the Gambling Act 2005 specifically to exclude from the meaning of "gaming table" wholly automated tables. As explained above, the main intention behind these regulations is to ensure that casinos offer a balanced mix of real tables and machine/automated gaming. It would undermine this approach if automated table games were allowed to count for the purposes of the table:machine ratio.

2.12 Partially automated gaming tables which are operated by a trained member of staff will be able to count towards the ratio.

Question 1: do you agree that "gaming table" should only include tables used for "real" gaming?

Question 2: do you agree that wholly automated gaming tables should not be included under the definition of "gaming table"?

Section 172(6)(b) – rules setting out when a gaming table is to be treated as being used in a casino

2.13 Section 172(6)(b) allows regulations to provide that a gaming table is to be treated as being used in a casino for the purposes of s.172(4)-(5) only if used-

- for a specified purpose,
- in specified circumstances, and
- to a specified extent.

2.14 It is important to note that whatever provision the regulations make for when a gaming table is to be treated as being used in a casino, operators will be free to determine how many tables they wish to use at any one time, and so how many gaming machines they may offer, in accordance with the relevant ratio. This will rightly be a matter for their commercial judgement.

Available for use

2.15 One possible approach would be to say that a gaming table is only being used in a casino at any time if at that time casino gaming is taking place at the table. However the Department does not propose to adopt such a restrictive approach. It recognises that it would be impractical for operators to have to turn machines on and off depending on whether customers were at any particular moment playing at a table.

2.16 Instead, the government proposes to provide in the regulations for a gaming table to be treated as being used in a casino provided it is made available for use in the casino for casino gaming. This consultation therefore focuses on the criteria new casinos will have to meet in order for a table to be regarded as being made available for use so that it counts for the purposes of the table:machine ratio.

2.17 We have identified three main options for determining whether a casino table is being made available for use, within each of which are two sub-options. This effectively creates six potential ways forward. These options are set out in the table below:

A gaming table is to be treated for the purposes of section 172 (4) to (5) as being used in a casino...		
Option 1	Option 2	Option 3
at any time if at that particular time it is being used in the casino for playing casino games or is available for customers to use for that purpose.	on any day if for no less than 75% of the time on that day when the casino is used in reliance on a casino premises licence it is used in the casino for playing casino games or is available for customers to use for that purpose.	on any day if— i. for no less than 75% of the time on that day when the casino is used in reliance on its casino premises licence the table is used for playing casino games or is available to be used for that purpose, and ii. for any other part of the day when the casino is used in reliance on its casino premises licence not less than 10 gaming tables are used or made available for use in the casino.
<p>For these purposes, a gaming table is to be treated as being available for use for playing casino games if arrangements are in place which ensure that customers of the casino are made aware (whether by means of a notice placed on or near the table, or otherwise) that the table is available to be used for playing casino games, and that customers are able to request to use the table. Where such a request is made:</p> <ul style="list-style-type: none"> • the table must be available for use by the customer immediately (<u>Sub-option A</u>); • the table must be available for use by the customer within a reasonable period of time of the request being made (<u>Sub-option B</u>). 		

Option 1

2.18 The Department believes option 1 offers the most straightforward interpretation of “making a table available for use”. Such an approach would be in keeping with the intentions of the 2005 Act in that it would support the government’s objective of ensuring new casinos offer a balanced mix of real tables and machine gaming. It would also provide certainty for operators that they were meeting the minimum requirements and, would be relatively straightforward for the Gambling Commission and licensing authorities to monitor and enforce.

2.19 However, a strict interpretation of this option could potentially hamper operators as during quiet periods during the day if the operator decided that it would not be economic to keep all gaming tables open then they would be forced to turn off a commensurate number of machines.

Option 2

2.20 Under this option, a table would be treated as being made available for use if it were being used for 75% of the time in any one day. This would enable operators to plan resources to cope with peaks of demand and to close tables during quieter periods of the day without having to turn off a commensurate number of machines.

2.21 However, this option does create the potential for casinos to be operating for at least part of the day with their full compliment of gaming machines but with no gaming tables being used. This runs counter to the intentions behind the table:machine ratio and the government’s desire to ensure a balanced offer in casinos. Further, because different casinos may apply the 75% at different times during the day (depending on what is commercially best), this approach poses potential practical difficulties in respect of monitoring and enforcement for licensing authorities and the Gambling Commission.

Option 3

2.22 This option builds on option 2 by adding a further condition that a table may count towards the ratio provided that it is open for at least 75% of the day and at other times that at least ten other tables are being used.

Sub-options

2.23 Within each of these options, there are two sub-options in terms of what it means to make a table available for use. The strict interpretation is that if a casino table is not being used, then it must be immediately available to be used – this is Sub-option A. In practice this is likely to mean that an appropriately qualified casino employee would be standing at the table ready to run games. While this would provide greater certainty for operators, regulators and customers alike, it would also be inflexible. If, for example, an employee suddenly became unwell or went on a break then machines would possibly have to be turned off temporarily until they returned or a substitute was found.

2.24 Sub-option B is designed to offer a more flexible approach which would help ameliorate these problems. Rather than requiring a table to be immediately available for use, this sub-option only requires the table to be available within a reasonable period of time of a request being made by a customer to use the table. This would reduce the need for employees to be standing by tables at all times.

Government’s preferred option

2.25 The government’s preferred option is **1B**:

- A gaming table is to be treated for the purposes of section 172 (4) to (5) as being used in a casino **at any time if at that particular time it is being used in the casino for playing casino games or is available for customers to use for that purpose**;
- For these purposes, a gaming table is to be treated as being available for use for playing casino games if arrangements are in place which ensure that customers of the casino are made aware (whether by means of a notice placed on or near the table, or otherwise) that the table is available to be used for playing casino games, and that customers are able to request

to use the table. **Where such a request is made the table must be available for use by the customer within a reasonable period of time.**

2.26 This is the option on which it has decided to consult. The Department considers that this strikes the right balance between ensuring that the requirements of the Act are fulfilled in a way which provides clarity and certainty for operators and regulators, and gives operators a degree of flexibility to be able to respond to peaks of demand and staff breaks.

2.27 The Department would also welcome views on the other options discussed, in particular Option 3B. While this would not provide quite as much certainty for operators and regulators, it would give operators a greater degree of flexibility without the serious weakness inherent in Option 2.

Question 3: do you agree that Option 1B is the best way forward? If not, would you prefer the government's second choice – Option 3B?

s.172(6)(c) - circumstances in which a number of tables can be treated as if they were a single gaming table

2.28 Section 172(6) includes a power for the Secretary of State to set regulations to provide where a number of tables are to be treated as a single table in specified circumstances. The Department has considered carefully whether it might be necessary to use this power to cater for a situation where a number of tables may be linked to, for example, one roulette wheel or one croupier in an attempt to artificially increase the number of gaming machines on a premises.

2.29 The Department has concluded for the time being not to use this power. The natural and ordinary meaning of "gaming table" on which the government has decided to rely for the purpose of these regulations, along with the minimum table gaming area requirements included as mandatory casino premises licences, should be sufficient to mitigate this type of potential abuse. The Department will continue to monitor this aspect of policy and will not hesitate to use this power if it becomes clear that abuse is taking place.

Question 4: do you agree that the Department should continue to monitor this area of policy, but that no regulations are necessary for the time being?

Section 3: consultation questions

You are invited to comment freely on any aspect of this consultation document. However, you may find it useful to refer to the checklist of questions below, which cover the main points on which we would particularly welcome views. Where possible, please do:

- Be as specific as possible in your responses;
- Explain, where appropriate, the reasons behind your agreement or disagreement with a proposal;
- Suggest what alternative you would prefer in place of any proposals you may disagree with.

In summary, the questions asked in the consultation document are:

Question 1: do you agree that “gaming table” should only include tables used for “real” gaming?

Question 2: do you agree that semi and wholly automated gaming tables should not be included under the definition of “gaming table”?

Question 3: do you agree that Option 1B is the best way forward? If not, would you prefer the Department’s second choice – Option 3B?

Question 4: do you agree that the Department should continue to monitor this area of policy, but that no regulations are necessary for the time being?