

chapter twenty one

Licencing of Premises, Role of the Local Authority

21.1 We have set out in chapter 18 our recommendation that the licensing of gambling premises should be carried out by local authorities rather than by licensing justices. Licensing of gambling premises should run parallel to planning controls. Planning considerations will determine whether the premises may be used for commercial purposes, and the gambling licensing procedures will determine whether they are appropriate as a gambling venue.

21.2 We have been particularly conscious that one outcome of our proposals on, for example the abolition of permitted areas and the demand test, could be a proliferation of gambling venues in areas where local people consider them to be inappropriate. That is something we are very anxious to avoid. We are concerned that planning controls alone may not bring the accountability and accessibility that we think this licensing system should provide. More specifically, we believe that if a local authority considers that no gambling premises, or none of a particular category, are appropriate in an area the local authority should be able to pass a resolution to that effect. This chapter sets out how we envisage local authorities might perform their licensing functions.

21.3 Prospective operators who wish to open gambling establishments will first have to obtain an authority (or, for example, be licensed as a bookmaker) from the Gambling Commission. As set out in chapter 19, this permission will not be specific to particular premises. Before entertaining an application for a premises' licence, the local authority will have to satisfy itself that the applicant has the necessary authority from the Gambling Commission.

21.4 It is important that there is some consistency in the manner in which applications are dealt with. In the White Paper on Liquor Licensing it is proposed that the Home Secretary should take powers to lay down procedural rules to ensure that there is reasonable consistency in procedures across England and Wales. The rules would include:

- the form of the application
- notice of hearings
- the conduct of the hearings themselves
- the right to hear and comment on objections in good time

- notification of decisions (particularly reasons for refusals)
- time limits for decisions.¹

We recommend that the Gambling Commission should circulate procedural rules to deal with issues of the kind mentioned in the Liquor Licensing White paper.

21.5 **The Gambling Commission should also issue guidance, which local authorities should be obliged to follow, for example, on the minimum floor space for gambling areas in casinos.** We have described in chapter 20, our intention that small casinos should not proliferate and our recommendations about the minimum size of gaming floors.

Which premises?

21.6 Local authorities would be responsible for licensing all gambling premises in their area. This would include:

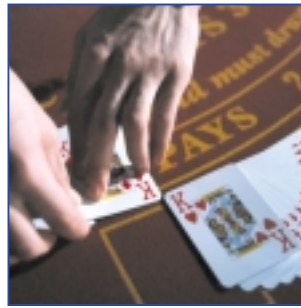
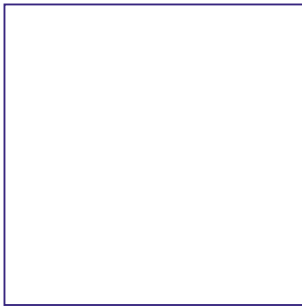
- casinos
- bingo halls
- betting shops
- amusement arcades
- racecourses
- greyhound tracks

21.7 One fundamental requirement should be that the primary purpose of premises licensed for gambling should be gambling. Thus, a cinema or supermarket could not seek to establish a casino as a secondary activity on the same premises. **We recommend that the local authority should ensure that gambling is the primary purpose of premises licensed for gambling.** This would not, of course, apply to premises, such as racecourses, greyhound tracks or other tracks (within the meaning of the 1963 Act) where betting takes place on events which themselves are plainly the primary purpose of the premises.

Number and location of gambling establishments

21.8 We have noted with interest the provisions in the Local Government (Miscellaneous Provisions) Act 1982² relating to the control of sex establishments.

1-Home Office (2000) 2-Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, paragraphs 12,13



Much of what follows is based on those provisions. We are not suggesting that gambling premises are the same as sex establishments, but they do perhaps excite a similar kind of reaction from local communities who face the prospect of gambling venues appearing in close proximity to their homes, schools or churches. That is not to say that we are suggesting moral judgements alone should determine where gambling is permitted. The local authority, of course, must take a balanced and reasonable view of all the facts.

- 21.9 In the case of sex establishments, a local authority can decide that the number of such premises that should be permitted in a particular area should be nil. The variety of gambling establishments that a local authority may be required to licence is perhaps much wider than the variety of sex establishments covered by the 1982 Local Government Act. An authority's reasons for wanting to prevent a casino opening may well be very different from their reasons for wanting to prevent a racecourse or a betting shop. Local authorities already have the power to say that they will not licence amusement machines outside arcade premises and, as reported in chapter 17, we understand that in 1993 over 100 authorities did operate a blanket ban. On the other hand, betting shops are already a common sight on most high streets, and our feeling is that it would be rare for a local authority to want to impose a blanket ban on all gambling premises in their area. But we would not want to prevent that.

Although the power may be rarely used, we recommend that local authorities should have the power to institute a blanket ban on all, or particular types of, gambling premises in a specified area. The local authority should have wide discretion to determine what is "appropriate" taking into account any objections of the local community. By "area", we mean the whole area under the control of the local authority, or an area within it as specified by the local authority.

- 21.10 In the context of what is appropriate in a particular area, it may be that whilst a single gambling establishment would not change the character of an area, two or more such premises would do so. Conversely, in other places local authorities may think it desirable for gambling premises to be gathered together in a discrete area. What is right for a particular location is something that can only be determined locally.
- 21.11 Determining how many gambling premises are appropriate in an area is not the same as making a judgement based on demand. We have made clear in chapter 20 our view that the main effect of the existing demand tests is to stifle competition. That is not

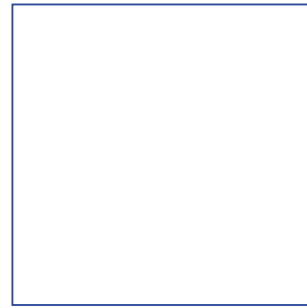
desirable and it would not be a proper role for a local authority. The local authority is not there to second-guess the commercial judgement of the operator. Its role here is to ensure that local people can help shape the environment in which they live. We have considered whether, as with sex establishments, the local authority should have the ability to determine what number (apart from nil) would be an appropriate number of gambling premises in an area. We think the argument is strong for allowing them to say no such premises are appropriate, but we do not think that it would be right to allow local authorities to set, what could only be, an arbitrary limit above that.

We recommend that, unless a local authority has determined that the number of gaming premises of a particular type in its area should be nil, each application for a licence should be considered on its own merits. The authority should have regard to the existing gambling provision, but that should not by itself be a valid reason for refusal.

- 21.12 Other jurisdictions recognise that some locations are unsuitable for gambling premises, for example, because they put undue temptation in the way of young people or impinge on activities with which they are not compatible. The Regulations of the Nevada Gaming Commission³ state that a gaming licence may be denied if the location is unsuitable for the conduct of gaming operations. In particular:

... premises located within the immediate vicinity of churches, schools and children's public playgrounds. The Board may recommend ... that premises located in the vicinity of churches, schools (etc) ... are nevertheless suitable upon a sufficient showing of suitability by the applicant ... including but not limited to whether the premises have been used previously for licensed gaming or are located in a commercial area.

- 21.13 The Local Government (Miscellaneous Provisions) Act 1982 allows the local authority to have regard to the character of the relevant locality and the use to which any premises in the vicinity are put. No doubt this would allow them to take account of circumstances of the kind explicitly set out in the Nevada Regulations. **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. In addition, the Gambling Commission should be able to offer more specific advice on how this provision may be interpreted and local authorities should be obliged to take any such advice into account.**

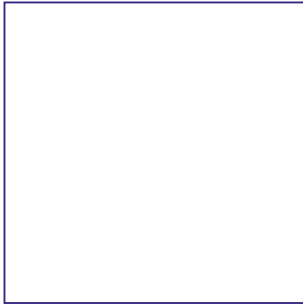


Conditions that may be attached to the licence

- 21.14** One issue raised in many submissions to us is opening hours. Currently, there are different rules applying to different types of premises. For all gambling premises, we have reached the conclusion that opening hours should be determined as one of the conditions attached to the premises' licence. This is not something that legislation should determine centrally. In some places, 24-hour opening may be both commercially viable and not a nuisance or otherwise inconvenient to the local community. In other places, commercial considerations alone may make long hours desirable, but the location of the premises may mean that this is not appropriate. The local authority should decide and the conditions should not be set in stone. If experience shows that the premises are a nuisance late at night, the local authority should be able to take speedy action to remedy this. Alternatively, if the operator can demonstrate a trouble-free track record, the local authority may want to relax restrictions on opening, at least on a temporary basis. The manner in which the conditions are applied should be sufficiently flexible to achieve this.
- We recommend that opening hours should be regulated as one of the conditions of the premises' licence.**
- 21.15** The local authority should have discretion to apply other conditions as it sees fit, with the obvious caveat that they should always be reasonable. The Gambling Commission will set rules and guidelines about what may be permitted within gambling premises. What these might be are discussed in the chapters devoted to each activity. Some of the rules will relate to the operation of the gambling and generally will be enforced by the Gambling Commission itself. Other rules will be more relevant to the fabric of the premises, and so may better be enforced by local authorities. Where the demarcation line lies between the two is not something on which we can be precise in this report.
- 21.16** One example of an issue that will require a joint approach is advertising. The Gambling Commission will set guidelines about what is acceptable in terms of content and location; the local authority will have a view on what is appropriate on the face of the premises; and other regulators will want to consider issues, for example, of taste and decency. Advertising is discussed in more detail in chapter 22.

Appeals against decisions by the local authority

- 21.17** We have considered what the avenue of appeal should be against decisions made by local authorities on the licensing of gambling premises. We have considered whether local magistrates could have a role to play, but having removed the licensing decision from magistrates to try to make it more accountable, we consider that it would be inappropriate to bring magistrates back into the decision-making process to hear appeals. We are anxious that the views of a local community should properly be taken into account.
- 21.18** The basis of our proposals on the licensing of premises has emerged from the Home Office proposals on liquor licensing. Having taken that line, we have looked at the proposals for appeals on liquor licensing premises. We note that the White Paper on liquor licensing said⁴:
- Appeals should be possible where the business concerned, the police, local residents or any other interested party considers that the licensing authority has acted outside its powers, unfairly or unreasonably in granting or refusing a licence or in relation to the conditions attached to it. The appeal process should therefore provide an opportunity for mistakes in law to be put right rather than for the body dealing with the appeal to review the case from scratch and substitute its own judgement for that of the licensing authority on the merits.*
- 21.19** The White Paper proposed that appeals should be to the Crown Court. We had been minded to suggest that gambling premises' appeals should be dealt with in the same way, but the Government announced on 2 May⁵ that it had concluded that appeals against decisions by the local authority should be to the magistrates' court. As we have said, we are concerned that the local community should have a full opportunity to be heard and we are not persuaded that the magistrates' court is the best forum for this. We have considered what alternatives there might be.
- 21.20** We are proposing that a Gambling Appeals Tribunal should be created to hear appeals on personal licences. That Tribunal could be given responsibility for hearing premises appeals also, but there would be drawbacks to this approach. The people appointed to hear personal licence appeals would not necessarily be qualified to determine issues relating to premises and the Tribunal would have to expand to bring in different expertise. Perhaps more crucially, the process would be further removed from local interests than we would like. We have rejected this option, principally on the grounds that any appeal should be heard more locally.



21.21 We are attracted to a proposal that premises' appeals might be dealt with in the same way as appeals against planning decisions. Similar considerations apply, with the addition of some gambling-specific requirements, and the personnel involved are familiar with handling the types of issues that are likely to be raised. The main

advantage would be that the local community would have an opportunity to be heard throughout the appeal process. **We recommend that appeals against decisions made on the licensing of gambling premises should be dealt with in the same way as planning appeals.**