

**TITLE:** GAMBLING ACT 2005

**TO/ON:** LICENSING COMMITTEE, THURSDAY 26<sup>TH</sup>  
JANUARY 2006

**BY:** SUSAN CHADWICK, LICENSING MANAGER

**LEAD MEMBER:** JUDITH DRIVER, STREET SCENE AND  
LIVEABILITY

**STATUS:** FOR PUBLICATION

**1. PURPOSE OF THE REPORT**

- 1.1 To appraise the Committee of their future functions and responsibilities under the Gambling Act 2005 and outline the time table for the implementation of the Act.

**2. RECOMMENDATIONS**

- 2.1 The Licensing Committee are recommended to:
- a) Note their existing responsibilities since the 24<sup>th</sup> November 2005.
  - b) Note the future implications for the Authority when the Act is finally implemented.
  - c) Consider in general terms when it would be appropriate for applications for the grant or renewal of permits under Section 34 of the Gaming Act, 1968 to be brought before the Licensing Committee.

**3. REPORT AND REASONS FOR RECOMMENDATIONS AND TIMETABLE FOR IMPLEMENTATION**

- 3.1 On the 24<sup>th</sup> November 2005, responsibility for the grant and renewal of permits in alcohol licensed premises under Section 34 of the Gaming 1968 (amusement with prizes gaming machines) transferred from the Magistrates Courts to the Licensing Authority. However, gaming machines in club premises have remained the responsibility of the Magistrates Courts.

- 3.2 Existing permits will only need to be renewed when they expire. Permits have in the past been granted for a period of three years and renewals or new applications will also have to be granted for a minimum period of three years.
- 3.3 There is no power to attach any conditions on permits – they must either be granted or rejected. An appeal against a decision by the Licensing Authority not to grant an application for a permit will be heard by the Crown Court.
- 3.4 The Gaming Act 1968 has not imposed an upper limit on the number of gaming machines that may be installed in licensed premises and all cases must be considered on their merits. However, current guidelines from the Justices Clerk's Society to their members recommended that no hearing be held for applications from premises for no more than two machines. It would also seem likely that when the Gambling Act 2005 is implemented there will be an automatic right for two machines to be in alcohol licensed premises.
- 3.5 Until the Gambling Act is implemented there are no enforcement powers given to Licensing Authorities to deal with any breaches of a Section 34 permit and such matters would have to be reported to the Police for them to take any action they deemed necessary.
- 3.6 At present there is a period of consultation with Licensing Authorities and other interested parties but it is likely that the Gambling Act 2005 will be implemented on the 1<sup>st</sup> September 2007. A draft guidance document, similar to the Licensing Act, has been circulated but final guidance is not anticipated until early summer 2006.
- 3.7 The Act follows, in broad terms, the ethos and framework of the Licensing Act 2003. The Gambling Commission (formerly the Gaming Board for Great Britain) will grant operating and personal licenses for commercial gambling operators and people working in the industry.
- 3.8 Licensing Authorities will be responsible for licensing gambling premises within their areas and functions concerning low stake gaming machines and clubs and miners welfare institutes. Premises licences for casino premises, bingo premises, betting offices, adult gaming centres and family entertainment centres can be authorised and indications are that "grandfather rights" similar to those of the Licensing Act 2003 will form part of the application process. There will be the provision to place conditions on the licence by the Commission and/or the Licensing Authority .
- 3.9 There will be a system of review of a premises licence, the issue of temporary use notices and the means to obtain a provisional statement in respect of a Premises Licence.
- 3.9 Licensing Authorities will have to prepare a Statement of Licensing Policy in respect of gambling in a similar manner to that of the Licensing Act 2003.
- 3.10 There will be three licensing objectives which will underpin the responsibilities of the Licensing Authority:
- a. the protection of children and other vulnerable people from being harmed or exploited by gambling;

- b. the prevention of gambling being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- c. to ensure that gambling is conducted in a fair and open way.

## **4. CORPORATE IMPROVEMENT PRIORITIES**

### **Risk Management, Performance Management, Customer Services**

#### **4.1 FINANCE AND RISK MANAGEMENT**

- 4.1.1 The recommendations reduce risk of legal challenges and the financial burden of such challenges.

#### **4.2 MEMBER DEVELOPMENT AND POLITICAL ARRANGEMENTS**

- 4.2.1 **Not applicable**

#### **4.3 HUMAN RESOURCES**

- 4.3.1 Use is made of existing resources to achieve Best Value.

#### **4.4 ANY OTHER RELEVANT CORPORATE PRIORITIES**

- 4.4.1 Quality Services for Local People, Confident Communities, Effective Partnerships and Culture and Leisure.

## **5. RISK**

- 5.1 There is a theoretical risk of legal challenge.

## **6. LEGAL IMPLICATIONS ARISING FROM THE REPORT**

- 6.1 All legal implications are identified in the report

## **7. EQUALITIES ISSUES ARISING FROM THE REPORT**

- 7.1 Nil

## **8. WARDS AFFECTED**

- 8.1 All wards

## **9. CONSULTATIONS**

- 9.1 Nil

### ***Background documents:***

- 1. DCMS Gambling Circular 13 (published 10<sup>th</sup> October 2005.)

For further information on the details of this report, please contact:

**Susan Chadwick, Licensing Manager (01706) 242 336**

## DCMS GAMBLING CIRCULAR 13

The Chief Executive of the Licensing Authority  
The Licensing Manger, Licensing Authority  
The Clerk to the Licensing Justices  
Local Area Director, HM Courts Service  
Chief Officer of Police  
– England and Wales

ROSSENDALE  
LICENSING UNIT  
RECEIVED

13 OCT 2005 10 October 2005



Dear Colleague,

### Gaming and gaming machines on alcohol licensed premises – transfer of functions from licensing justices to local authorities under the Licensing Act 2003

1. I am writing to advise you of some changes which are being made, as a result of the Licensing Act 2003, to the licensing regime for gaming and gaming machines in pubs and other alcohol licensed premises.
2. This circular has been prepared following discussions with LACORS, the Magistrates' Association, the Justices' Clerks' Society, BACTA and the British Beer and Pub Association. The transitional arrangements we are putting in place are intended to ensure that the burden on local authorities and pubs and other alcohol licensed premises is kept to an absolute minimum in the run up to, and immediately after, 24 November 2005.
3. The main change concerns the grant of permits, under Section 34 of the Gaming Act 1968, for amusement with prizes gaming machines – more commonly known as fruit machines – in pubs and other alcohol licensed premises. However, it will also involve the transfer of two lesser-used functions:
  - orders under Section 6 of the Gaming Act 1968, authorising low-stake gaming on alcohol licensed premises; and
  - the grant of permits, under Section 16 of the Lotteries and Amusements Act 1976, for commercial amusements with prizes on alcohol licensed premises.
4. Currently these functions are all undertaken by licensing justices, as part of their general alcohol licensing functions. From 24 November 2005, which is the second appointed day for the implementation of the Licensing Act 2003, local authorities (in their role as licensing authorities under that Act) will take over these tasks, together with general responsibility for all alcohol licensing matters.



INVESTOR IN PEOPLE



5. This circular explains what the changes will mean for local authorities and pubs and other alcohol licensed premises, and provides information on the transition arrangements DCMS is putting in place to effect these changes. I attach a notice that justices' clerks may wish to copy and pass to applicants explaining the changes to them.
6. It is important to note that these changes will apply not just to pubs, but to any alcohol licensed premises under the 2003 Act with a bar at which alcohol is served for consumption on the premises (provided there is no requirement that food must also be served).

#### **Section 6 – Gaming Act 1968**

7. Section 6 of the Gaming Act 1968 entitles holders of justices' on-licences under the Licensing Act 1964 to apply to their local licensing justices for authority to play certain games on their licensed premises. Justices also have the power to impose conditions or restrictions on the playing of such games. The Licensing Act 2003 will transfer responsibility for this matter from licensing justices to local authorities, and the local authority will have the powers set out in Section 6(4) of the 1968 Act.

#### **Section 34 Gaming Act 1968**

8. Amusements with prizes machines (AWP machines), more commonly known as fruit or slot machines, are authorised by permits for individual premises, granted under Section 34 of the Gaming Act 1968. Local authorities are already responsible for issuing these permits for lower value AWP machines in amusement arcades, and businesses such as fish and chip shops and taxi offices.
9. The Licensing Act 2003 will give local authorities the additional responsibility of authorising AWP machines in alcohol licensed premises. The main type of AWP machine covered by the change is the "all cash" fruit machine, which has a maximum stake of 30p and a maximum prize of £25.

#### **Section 16 Lotteries and Amusements Act 1976**

10. Under Section 16 of the Lotteries and Amusements Act 1976, premises with justices' on-licences under the Licensing Act 1964, can apply for a permit to authorise the commercial provision of amusements with prizes. Under the Licensing Act 2003, responsibility for such permits is also being transferred from licensing justices (who currently undertake this task) to local authorities.

#### **Supplementary information**

11. I attach a supplementary information paper which explains the law in more detail, and sets out what the changes will mean in practical terms for local authorities, for each of these three functions.
12. I would particularly draw your attention to the following points:
  - Licensing justices will continue to be able to receive applications for new or renewed permits until 23 November 2005. Any applications or appeals that are unresolved on 24 November 2005 should be forwarded to the appropriate local authority for consideration.

- Local authorities will not have the power to consider applications or to issue permits prior to 24 November 2005. From that date, local authorities will become responsible for considering all applications for new permits or orders, and renewal of existing permits. This can, in the main, be dealt with administratively by officers.
- Special arrangements will apply to anyone whose existing permit expires between 24 November 2005 and 8 January 2006. People in this position will have a choice about where they apply to renew their permit, but applicants should be encouraged to use the second of these options:
  - before 24 November 2005, they may submit their application to the Licensing Justices. Any applications that remain unresolved on 24 November 2005 will be passed to the relevant local authority for consideration;
  - between 24 November and 8 December 2005, they should submit their application to their local authority;
  - whichever of these two routes are used, the existing permit will be extended automatically until the local authority resolves the application.
- All existing permissions granted by licensing justices will remain valid after 24 November 2005, and will only need to be renewed when they expire.
- The name on some alcohol licences will change on 24 November 2005, when they are converted to alcohol premises licences under the Licensing Act 2003. There is no need to obtain a new Section 34 or Section 16 permit as a result of this conversion. Any name change as a result of conversion on 24 November 2005 may be dealt with administratively when the permit comes up for renewal. If the name on the alcohol premises licence changes for any other reason after 24 November 2005 – for example, if the business is sold and the premises licence transferred - then a fresh application under the 1968 or 1976 Acts will be required.
- Local authorities will not be required to do anything in respect of existing permits, until they require renewal (on or after 24 November 2005) in the normal course of events.
- DMCS is not issuing standard application forms or permits for local authorities to use. We expect many authorities will wish simply to adapt their existing application forms. LACORS, with the support of the BBPA and BACTA, is developing a template that local authorities may wish to use for the sake of consistency.

### **Gambling Act 2005**

13. As you may be aware, a new Gambling Act was passed by Parliament in April 2005. Local authorities will also acquire a number of licensing functions as a result of this new Act. The implementation date for the Gambling Act has been set for 1 September 2007. We are working closely with LACORS and local authorities on the

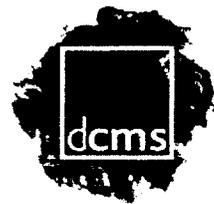
implementation of the 2005 Act, and will keep local authorities closely in touch with what they need to do to prepare as we move forward.

14. I hope that this circular will answer most questions that you may have about the current changes. If you have any further questions, please do contact me, or Katherine Smith at LACORS ([Katherine@lacors.gov.uk](mailto:Katherine@lacors.gov.uk)).

With best wishes,

A handwritten signature in black ink, appearing to read 'D.F.M.', written in a cursive style.

David Fitzgerald  
Head of Gaming and Lotteries Team



## **GAMING MACHINE PERMITS AND PRIZE GAMING PERMITS FOR PUBS AND OTHER ALCOHOL LICENSED PREMISES**

As a result of the Licensing Act 2003, a number of changes are being made to the arrangements for obtaining permits for gaming in pubs and other licensed premises.

The changes concern the following permits:

- **Gaming machines** - Section 34 permits issued under the Gaming Act 2005
- **Amusements with prizes** – Section 16 permits issued under the Lotteries and Amusements Act 1976

Currently these permits are issued by licensing justices. **From 24 November 2005, all Section 34 and Section 16 permits will be issued by local authorities.**

Please note the following key points:

- If you wish to apply for a new or renewed permit **before 24 November 2005**, you should apply to the licensing justices, who will consider your application in the normal way. However, please note that if your application remains unresolved on 24 November 2005, it will be passed to the appropriate local authority for consideration.
- If you wish to apply for a new or renewed permit **on or after 24 November 2005**, you should apply to your local authority.
- Special arrangements will apply to anyone whose existing permit expires between 24 November 2005 and 8 January 2006. If your permit expires between these dates, you will have a choice about where to apply to renew your permit, but we would encourage you to use the second of these options:
  - before 24 November 2005, you may submit your application to the licensing justice. Any applications that remain unresolved on 24 November 2005 will be passed to your local authority for consideration;
  - between 24 November and 8 December 2005, you should submit your application to your local authority;
  - whichever of these two routes you use, your existing permit will be extended automatically until your local authority resolves your application.

- Existing permits, issued by licensing justices prior to 24 November 2005, will continue to be valid. There is no need to do anything until your permit becomes due for renewal.
- The name on some alcohol licences will change on 24 November 2005, when they are converted to alcohol premises licences under the Licensing Act 2003. There is no need to obtain a new Section 34 or Section 16 permit as a result of this conversion. Any name change as a result of conversion on 24 November 2005 may be dealt with administratively when the permit comes up for renewal.
- However, if the name on the alcohol premises licence changes for any other reason after 24 November 2005, for example, if the business is sold and the premises licence transferred, then a fresh application for a Section 34 or Section 16 permit will be required.

More information can be found at [http://www.culture.gov.uk/gambling\\_and\\_racing/](http://www.culture.gov.uk/gambling_and_racing/)

**Gambling Division**  
**DCMS**  
**September 2005**



**GAMBLING CIRCULAR 13 -10 OCTOBER 2005**

**GAMBLING AND THE LICENSING ACT 2003 - SUPPLEMENTARY INFORMATION FOR LICENSING AUTHORITIES**

**INTRODUCTION**

This paper is divided into three parts, which explain the three functions which will be transferred from licensing justices to licensing authorities under the Licensing Act 2003<sup>1</sup>:

Part 1 Section 34 of the Gaming Act 1968 - the grant of permits for amusements with prizes gaming machines (AWP machines) on alcohol licensed premises.

Part 2 Section 16 of the Lotteries and Amusements Act 1976 - the grant of permits for commercial amusements with prizes on alcohol licensed premises.

Part 3 Section 6 of the Gaming Act 1968 - the authorisation of low-stake gaming on alcohol licensed premises.

Parts 2 and 3 should be read in conjunction with Part 1. Each part is divided into the following headings:

- 1 Legal framework
- 2 Timing of the changes
- 3 Alcohol licensed premises
- 4 What will local authorities have to do?
- 5 Application process and fees
- 6 Transitional arrangements

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<sup>1</sup> Licensing authorities are defined in section 3 of the 2003 Act, and cover various forms of local authority.

## **PART 1**

### **Section 34 permits for AWP Machines – Changes as a result of the Licensing Act 2003**

#### **1 – Legal framework**

##### **Q1. What are AWP machines?**

AWP (amusements with prizes) machines are a class of gaming machine, defined in section 34 of the Gaming Act 1968 ("the 1968 Act"). These are frequently known as "fruit" or "slot" machines. There are two types:

- the "all cash" machine, which has a maximum stake of 30p and a maximum prize of £25. This type is commonly found in pubs, or arcades with an over 18 door policy (section 34(5E)); and
- the "coin or token" machine, which has a maximum stake of 30p and a maximum prize of £5 cash or £8 non-cash. This is the type found in take-away restaurants or amusement arcades to which children have access (section 34(1)).

AWP machines are presently authorised by a permit for individual premises, granted under s.34 of the 1968 Act.

##### **Q2. What does the Licensing Act 2003 change?**

Under existing law, local authorities are responsible for authorising the use of AWP machines in amusement arcades, and businesses such as fish and chip shops and cafés. The Licensing Act 2003 will give authorities the additional responsibility of authorising AWP machines in alcohol licensed premises. This task is currently performed by licensing justices, as part of their general alcohol licensing functions. With the transfer of alcohol licensing to authorities under the 2003 Act, the task of granting and renewing permits for AWP machines on alcohol licensed premises is also transferred.

##### **Q.3 Has the Gaming Act 1968 been amended?**

Yes, with effect from what is known as the second appointed day for the implementation of the Licensing Act 2003 – 24 November 2005 (see Section 2 on timing below).

Section 34 of the Gaming Act 1968 contains the legal provisions for authorising AWP machines. Under section 34(1) the "coin or token" machines can be authorised; and under section 34(5E) the "all cash" machines can be authorised. Schedule 9 contains the procedural rules for the grant of permits in both cases.

When the change takes place, Schedule 9 to the Gaming Act 1968 will be amended (by Schedule 6, paragraph 52, to the Licensing Act 2003, and further by Schedule 16, paragraph 3(7) and (8), to the Gambling Act 2005) (see SI 2005/2455, article 2).

The effect of these amendments will be to transfer all functions under s.34 and Schedule 9, in relation to AWP permits for alcohol licensed premises, to licensing authorities (i.e. local authorities). Licensing justices will no longer have any functions in relation to s.34 permits.

As a result of the 2003 Act, licensing authorities will take on the function of issuing s.34 permits. However, it is important to note that the issue of these permits will remain a function under the Gaming Act 1968 (see question 15 below). Consequential amendments are also made to the appeals procedures.

**Q4. What does the Gambling Act 2005 change?**

The Gaming Act 1968 remains in force, and it will not be repealed until 2007. Licensing authorities will acquire a number of new functions under the Gambling Act 2005, but these are not covered by this advice. All issues relating to the implementation of the 2005 Act, including the question of grandfather rights for gaming machines in pubs, will be dealt with separately at a later date.

LACORS and DCMS are working closely on implementation of the 2005 Act, and we will keep local authorities closely in touch with developments as we move towards 2007.

**2 - Timing of the changes**

**Q5. Has all this already happened and I've missed it?**

No. Currently nothing has changed. For the time being, all applications for permits (and renewals) in respect of alcohol licensed premises should be considered by licensing justices. Local authorities should continue to consider applications for permits (and renewals) in respect of amusement arcades or other premises.

**Q6. When does the change occur?**

On 24 November 2005, which is the second appointed day for the implementation of the Licensing Act 2003. On this date the Licensing Act 1964 is repealed and replaced by the 2003 Act. See Question 13 below on action required by local authorities.

It is important to note that local authorities will have no power to consider applications or issue permits prior to 24 November 2005. We recommend that local authorities retain any applications they receive prior to 24 November for consideration after that date.

**3 - Alcohol licensed premises**

**Q7. What does "alcohol licensed premises" mean?**

From the second appointed day, alcohol licensed premises will mean premises with a premises licence granted under the Licensing Act 2003 authorising the supply of alcohol for consumption on the premises, as defined in the Licensing Act 2003.

**Q8. Are all alcohol licensed premises allowed AWP machines?**

No. Under the present law, premises with Part IV alcohol licences under the Licensing Act 1964 (hotels and restaurants) cannot apply for s.34 permits. When local authorities take on this function, it will be an automatic condition of all s.34 permits they issue for alcohol licensed premises that the AWP machines must only be located on premises which have a bar for serving drinks to customers on the premises (without the requirement for food to accompany the alcohol). This is the effect of paragraph 3(8) of Schedule 16 to the Gambling Act 2005, which inserts a new paragraph 10AA into Schedule 9 of the 1968 Act.

Put simply, once licensing authorities take over, only a hotel or restaurant with a bar will be able to apply for a s.34 permit. Hotels and restaurants which serve alcohol only with food will not.

**Q.9 Do these changes affect clubs?**

No. Club premises certificates (authorising the supply of alcohol) under the 2003 Act have no part to play in relation to gaming entitlements or gaming machines. Separate registration arrangements cover gaming machines in clubs, and these arrangements will not change as a result of the Licensing Act 2003 (and will continue to be overseen by licensing justices).

The Licensing Act 2003 will also have no effect on the gambling regulatory framework for other premises where gambling takes place, and which also have alcohol licences (e.g. casinos and bingo halls). The Gambling Act 2005 establishes a new regulatory framework for gambling premises, and we will consult local authorities on these new arrangements during the period between now and when the new Act is formally implemented in September 2007.

**Q10. How many AWP machines are alcohol licensed premises permitted?**

The Gaming Act 1968 does not impose any upper limit on the number of AWP machines a pub is permitted. In determining applications, authorities will have the power to set a limit on the number, on a case by case basis. Authorities should also note question 17 below.

In line with the current Justices' Clerks' Society good practice guide to licensing justices, DCMS recommends that authorities dispense with a hearing where the application is for no more than two machines. This does not mean that local authorities need automatically hold a hearing if the application is for more than two machines. Local authorities should treat each application on its own merits.

Local authorities will also wish to be aware that, from autumn 2007 when the new Gambling Act comes into force, alcohol licensed premises will automatically be entitled to two gaming machines, provided they comply with a simple notification procedure. If they wish to provide more gaming machines, they will be able to apply to the local authority for a permit.

**Q11. Are there any rules relating to where on licensed premises AWP's should be located?**

No. Amendments made to Schedule 9 of the 1968 Act by the 2003 Act remove the existing requirement that the machine must be located in the bar. Authorities should also note question 17 below.

We will separately be encouraging licensees, when deciding where to locate machines, to bear in mind that, when it comes into force, the Gambling Act 2005 will outlaw children under 18 from playing gaming machines with a maximum prize of more than £8. The Gambling Commission is also likely to publish a draft code of practice covering issues like the location and supervision of machines during 2006, in readiness for the 2007 implementation.

In the meantime, there are some common sense things that licensees can do voluntarily to demonstrate that they are acting in a socially responsible way – for example, ensuring machines are located where they can be supervised at all times. Licensees should also be encouraged to follow the relevant best practice guidance published by the BBPA and BACTA.

**Q12. What types of machines are alcohol licensed premises allowed?**

Section 34 permits can be granted for higher value "all cash" AWP's or lower value "coin or token" AWP's. In the case of alcohol licensed premises the permit allows either type of machine to be made available, although common practice is for the higher value machines to be offered on such premises. Alcohol licensed premises must apply under section 34(5)(e) but may then have either all cash or coin or token machines.

**4 – What will local authorities have to do?**

**Q13. What new responsibilities will local authorities take on?**

From the second appointed day of the Licensing Act 2003 (24 November 2005), licensing authorities will be responsible for issuing new s.34 permits to alcohol licensed premises, or the renewal of permits previously granted by licensing justices where they expire on or after 24 November 2005.

As noted under question 6 above, local authorities will have no power to consider applications or issue permits prior to 24 November 2005. We recommend that local authorities retain any applications they receive prior to 24 November for consideration after that date.

All existing s.34 permits for alcohol licensed premises will remain valid, and continue to operate in tandem with new premises licences (authorising the sale/supply of alcohol) granted under the Licensing Act 2003. This will be so, even if there is a change of licensee's name from the 1964 Licensing Act alcohol licence, to the 2003 Licensing Act alcohol premises licence. This change of name may come about because alcohol premises licences can be transferred, upon conversion, to a new holder, with the consent of the original holder. For example, some brewery companies are applying to have alcohol premises licences transferred to them, from individual landlords, now

that limited companies can hold alcohol premises licences.

An order will be laid before Parliament making special provision for the automatic transfer of existing permits where there is a change of name on the alcohol premises licence to which the permit is linked as a result of conversion under the transitional arrangements for the 2003 Act. There should, therefore, be no functions for authorities in relation to existing permits.

Any name change as a result of conversion on 24 November 2005 can be dealt with administratively when the permit comes up for renewal.

After the second appointed day there will be no legal requirement for local authorities to notify permit holders that they need to renew their permits in the future. LACORS will, however, discuss existing practice at the Magistrates' Court via the Department for Constitutional Affairs Licensing Transitional Working Group.

**Q.14 Will the transitional arrangements cover transfers or name changes to the alcohol premises licence made after 24 November 2005?**

No. If the name on the alcohol premises licence changes for any other reason after 24 November 2005 – for example, if the premises are sold and a new person takes it over, so that a transfer of the alcohol licence is required, then any s.34 permit that is linked to the alcohol premises licence will lapse (see paragraph 20 of Schedule 9 to the Gaming Act 1968). The new alcohol premises licensee will need to make a fresh application for a s.34 permit to the licensing authority.

**Q.15. Will these new functions constitute functions under the Licensing Act 2003 or the Gambling Act 1968?**

The grant of permits under s.34 of the Gaming Act 1968 remains a function under that Act. It does not become a function under the Licensing Act 2003.

The only exception to this is that the committee of the local authority established under s.7 of the 2003 Act (the alcohol licensing committee), is authorised to deal with applications for the grant of s.34 permits. But in undertaking this task, the committee must use and abide by the requirements of the Gaming Act 1968 to discharge these functions. So, for example, the licensing objectives in the Licensing Act 2003 are not relevant to the grant of s.34 permits.

**Q.16. Will authorities be able to pass resolutions banning AWP machines in alcohol licensed premises?**

No. There is no power for local authorities to pass resolutions about the availability and numbers of AWP machines in such premises.

Under the present law, local authorities can resolve not to grant or renew s.34 permits for classes of premises in their area, or to limit the number of machines particular classes of premises can use. However, this power does not apply to alcohol licensed premises or to amusement arcade premises. This is provided in paragraphs 3 and 4 of Schedule 9 to the 1968 Act.

**Q17. Can authorities attach conditions to Section 34 permits?**

Local authorities have power to limit the number of gaming machines on a case by case basis, as described in question 10 above.

Apart from this, authorities have no power to attach other conditions on s.34 permits. Local authorities can only decide to grant or reject applications. They have absolute discretion (see paragraph 8 (2) of Schedule 9 to the 1968 Act). All cases must be considered on their merits, and authorities must have lawful reasons for rejecting an application for the grant of a permit, and must take into account the effect of a decision to refuse an application for renewal.

**Q18. Will authorities assume any enforcement powers in respect of Section 34 permits?**

Local authorities will not assume any new enforcement powers as a result of this change. Any breach of the s.34 permit is a matter for the police, and only the police have powers of entry and inspection. Authorities should, of course, report to the police any breaches that come to their attention.

**Q19. Can licensees appeal against an authority decision to refuse an application?**

Yes. The Crown Court will act as the appellate authority for any decision to refuse an application.

**5 – Application process and fees**

**Q20. What application forms should be used and what is the application process?**

The procedure for the issue of permits under s.34 is set out in Schedule 9 of the 1968 Act. Local authorities already issue permits under s.34 in respect of AWP machines in amusement arcades, takeaways, cafes, taxi offices and other similar premises. We anticipate that local authorities will want simply to adapt their existing forms to include alcohol licensed premises.

LACORS has informed DCMS that, with the support of the BBPA and BACTA, it will develop a template application form and permit for local authorities to use if they should wish to do so in the interests of consistency.

**Q21. How long should s. 34 permits be issued for?**

Under the 1968 Act, permits must be issued for at least three years. Most licensing justices have issued permits for three years (some for longer), and most licensees will be accustomed to working on a three year cycle. DCMS recommends that new or renewed permits are issued for three years.

The fact that premises licences under the 2003 Act last indefinitely does not alter the position in relation to permits. Permits must still be given a defined duration.

**Q22. Will licensing authorities be able to charge a fee for this function?**

Yes. The current fee for the grant or renewal of permits for alcohol licensed premises under s.34 of the 1968 Act is £32 (see Section 48(3)(h)). Local authorities will be able to charge this fee for grant or renewal of permits when they take on this responsibility.

**6 - Transitional arrangements**

**Q23. What transitional arrangements will there be?**

Prior to the second appointed day (24 November 2005) licensing justices will retain responsibility for the grant and renewal of permits. There will be a single switch-over day on 24 November, when local authorities will assume responsibility as outlined in question 13 above.

Applications for renewed permits are normally made at least one month in advance, and, prior to the switchover date, licensing justices will continue to be able to issue new or renewed permits that take effect on or after 24 November 2005.

Licensing justices will not be able to accept or consider any applications for new permits or renewals on or after 24 November 2005.

Any applications that remain unresolved on 24 November 2005 should be passed on that date to the relevant local authority for consideration. The designated officer for the relevant local justice area (normally the Local Area Director, HMCS) will be responsible for this task, since that officer will also have acted as the designated officer for the licensing justices immediately before 24 November. He or she will be required to inform the applicant that the application has been forwarded in this way, **and to return the fee to the applicant**. The local authority will need to ask the applicant to re-submit the fee prior to issuing any permit.

Under paragraph 19 of Schedule 9 of the 1968 Act, applicants who submit their renewal application at least one month prior to the expiry of their old permit, will benefit from an automatic extension of their old permit until such time as the appropriate authority has resolved their application. Any applicant who has applied at least a month in advance will continue to benefit from this automatic extension, even where their application has been forwarded to the local authority. The automatic extension will continue until the local authority has resolved their application.

Any applications received by licensing justices on or after 24 November 2005 should be returned to the applicant, with a note advising them to submit the application to their local authority. Licensing justices should be encouraged to return applications promptly to as not to delay applications unnecessarily. During the period shortly after 24 November, local authorities are also encouraged to consider promptly any applications that have been misdirected in this way.

Local authorities will not have the power to consider applications or issue permits prior to 24 November 2005. We recommend that local authorities retain any applications received prior to 24 November for consideration after that date.

**Q24. What happens to unresolved appeals?**

Where there is an unresolved appeal, the designated officer for the local justice area (normally the Local Area Director, HMCS) will be responsible for informing the local authority of this fact and forwarding to them any papers relevant to the application and appeal. The designated officer should also inform the appellant and the Crown Court that the local authority will take over the role of respondent to the appeal.

Where on 24 November notice of appeal has been given, but that notice has not been sent to the Crown Court, the designated officer will be responsible for carrying this task out as well.

We do not anticipate that there will be many of these cases. However, on the rare occasion that unresolved appeals are transferred in this way, the local authority will need to review the original decision, and consider what part (if any) it wishes to take in the appeal proceedings.

**Q25. Who should people apply to if their existing permit expires around the time of the switchover?**

Special arrangements will apply to anyone whose existing permit expires between 24 November 2005 and 8 January 2006. Permit holders in this position will have a choice about where they apply to renew their permit, but they should be encouraged to use the second of these options:

- before 24 November 2005, they may submit their application to their licensing justice. Any applications that remain unresolved on 24 November 2005 will be passed to the relevant local authority for consideration;
- between 24 November 2005 and 8 December, they should submit their application to their local authority;

Whichever of these two routes are used, the existing permit will be extended automatically until the local authority resolves the application.

## **PART 2**

### **Prize gaming permits - Section 16 of Lotteries and Amusement Act**

#### **1 – Legal framework**

1. Under s.16 of the Lotteries and Amusements Act 1976, local authorities have responsibility for granting amusements with prizes permits to a range of premises, but licensing justices currently have responsibility for granting such permits to alcohol licensed premises. Schedule 3 to the 1976 sets out the procedure, which is similar to the procedure for s.34 permits, explained in Part 1.
2. S.16 permits allow the playing of certain games and lotteries for prizes, commercially, within specified money limits. S.16 permits are not intended to be used for authorising gaming machines. The Department plans to issue further guidance on this point shortly.
3. Amendments made to Schedule 3 to the 1976 Act, by Schedule 6 to the Licensing Act 2003 (at paragraphs 62-67), will transfer the responsibility for s.16 permits in alcohol licensed premises from licensing justices to licensing authorities.
4. Under the 1976 Act, permits must be issued for at least three years. Most licensing justices have issued permits for three years, and licensees will be accustomed to working on a three year cycle. DCMS recommends that new or renewed permits are issued for three years.

#### **2 - Timing of the changes**

5. As with s.34 permits, nothing changes until 24 November 2005. From that date, as part of their responsibility for licensing alcohol premises, local authorities will assume responsibility for the matters set out in s.16 of, and Schedule 3 to, the 1976 Act.
6. For the present, nothing in the Gambling Act 2005 affects s.16 permits, and the 1976 Act remains in force.

#### **3 – Alcohol licensed premises**

7. For amusements with prizes permits, "alcohol licensed premises" means something slightly different to the answers given to questions 7 and 8 in Part 1. Under the existing law, premises with Part IV justices' licences under the 1964 Act (hotels and restaurants) cannot obtain a permit under s.16. That limitation is now being removed under the Licensing Act 2003. Any premises with a licence for the consumption of alcohol on the premises, granted under the 2003 Act, will, therefore, be entitled to apply for a permit on or after 24 November 2005.

#### **4 – What will local authorities have to do?**

8. From the second appointed day of the Licensing Act 2003 (24 November 2005), local authorities will be responsible for issuing new s.16 permits to alcohol licensed

premises, or the renewal of permits previously granted by licensing justices where they expire on or after 24 November 2005.

9. All existing s.16 permits for alcohol licensed premises will remain valid, and continue to operate in tandem with new alcohol premises licences granted under the Licensing Act 2003. This will be so, even if the licensee's name changes as a result of conversion from the 1964 Licensing Act alcohol licence, to the 2003 Licensing Act alcohol premises licence. An order will be laid before Parliament making special provision for the automatic transfer of existing permits where there is a change of name on the alcohol premises licence to which the permit is linked. The explanation in Part 1, questions 13 and 14 apply to s.16 permits also. There should, therefore, be no functions for authorities in relation to existing permits.
10. After 24 November 2005, there will be no legal requirement for local authorities to notify permit holders that they need to renew their permits in the future. LACORS will, however, discuss existing practice at the Magistrates' Court via the Department for Constitutional Affairs Licensing Transitional Working Group.
11. The grant of permits under s.16 of the Lotteries and Amusements Act 1976 remains a function under that Act. It does not become a function under the Licensing Act 2003.
12. The only exception to this is that the committee of the local authority established under s.7 of the 2003 Act (the alcohol licensing committee), is authorised to deal with applications for the grant of s.16 permits. But in undertaking this task, the committee must use and abide by the requirements of the 1976 Act to discharge these functions. So, for example, the licensing objectives in the Licensing Act 2003 are not relevant to the grant of s.16 permits.
13. As with s.34 permits, local authorities should consider dealing with these applications at officer level.

#### **5 – Application process and fees**

14. No application forms are being set by DCMS for s.16 permits. Authorities will already have forms for their s.16 functions for other premises, and will wish to adapt those for alcohol licensed premises.
15. Licensing authorities will be able to charge a set fee of £32 for the grant or renewal of any s.16 permit.

#### **6 - Transitional arrangements**

16. The transitional arrangements for s.16 permits will be exactly the same as for s.34 permits (see questions 23 – 25 in Part 1 above).

## **PART 3**

### **Section 6 Gaming Act 1968**

#### **1 – Legal framework**

1. Section 6 of the Gaming Act 1968 entitles holders of justices' on-licences under the Licensing Act 1964 to apply to licensing justices for authority to play certain games on their licensed premises.
2. Licence-holders are automatically entitled to play dominoes and cribbage (subject to any conditions the licensing justices may set – see paragraph 3 below). Other games may be authorised by an order under section 6, but such games must be equal chance gaming (e.g. bingo, bridge), and no charges for taking part, or levies on stakes or winnings may be made.
3. Justices also have the power to impose conditions or restrictions by order, concerning the playing of all games on licensed premises (including dominoes and cribbage), to ensure that:
  - a. gaming for high stakes places does not take place; and
  - b. gaming does not become the main inducement for people to attend the premises.
4. An order has no fixed duration, but can be revoked or varied by the justices if there are lawful reasons for them to do so. These reasons could include breach of any conditions attached to the order relating to the level of stakes or where the gaming has become the main inducement for people to attend the premises.
5. Amendments made to s.6 of the Gaming Act, by Schedule 6 to the Licensing Act 2003 (at paragraph 49), and Schedule 16 to the Gambling Act 2005 (at paragraph 3(2) (SI 2005/2455)), transfer the responsibility for gaming in alcohol licensed premises to licensing authorities, from licensing justices.

#### **2 - Timing of the changes**

6. As with s.34 permits, nothing changes until 24 November 2005. From that date, as part of their responsibility for licensing alcohol, local authorities will assume responsibility for the matters set out in s.6 of the 1968 Act.

#### **3 – Alcohol licensed premises**

7. The meaning of alcohol licensed premises is the same as set out in the answer to questions 7 and 8 in Part 1 above. Once local authorities take over, any hotel or restaurant with a bar will be able to apply for a s.6 order. Hotels and restaurants which serve alcohol only with food will not. This is the effect of paragraph 3(2) of Schedule 16 to the Gambling Act 2005.

#### **4 – What will licensing authorities have to do?**

8. From the second appointed day for the Licensing Act 2003 (24 November 2005) local authorities will take over responsibility for dealing with applications for an order under s.6, and for imposing any conditions or restrictions by order on games played on alcohol licensed premises.
9. Where an authority makes an order under s.6, it must send a copy of the notice of the order to the local police. This is required by s.6(6) of the 1968 Act.

#### **5 – Application process and fees**

10. There are no set application forms for a licensee wishing to apply for an order under s.6. Authorities will wish to develop appropriate forms, and template orders. There is no reason that an application could not be made simply in the form of a letter.
11. There is no separate fee payable by applicants for these services. Applicants are likely to apply in conjunction with an application for an alcohol licence under the 2003 Act, and authorities should be able to deal with these matters together administratively.

#### **6 - Transitional arrangements**

12. As with s.34 permits, nothing will change until 24 November 2005. Prior to then, applications under, and responsibility for, s.6 orders remain with the licensing justices. They will be able to conclude any applications made to them prior to 24 November.
13. From 24 November, local authorities will take over the issuing of orders under s.6. All existing orders will remain valid, unless a local authority subsequently revokes or varies them.

**Gambling Division  
DCMS  
10 October 2005**