

Appendix B

GAMBLING COMMISSION

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Northampton Borough Council
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29/10/2014

Dear Ian,

Family Entertainment Centres (FECs)

Recently the Gambling Commission (the Commission) has become aware of various issues concerning the grant and use of unlicensed family entertainment centre (uFEC) permits, FEC premises licences and related compliance issues surrounding machines normally found in such premises. While the issues are somewhat complex (as reflected by the detail provided later) in essence they relate to making gaming machines available in inappropriate environments or under poorly-controlled circumstances. This letter covers the following topics dealt with under the relevant headings:

1. Unlicensed gaming machine suppliers
2. Machines sited without a permit or premises licence
3. Permits issued for entire venues (e.g. shopping centres, airports etc.)
4. Machines sited in non-enclosed areas
5. Inadequate or potentially inadequate staff supervision
6. Gaming machines presented as “skill machines”
7. Machines that breach entitlements for stakes and prizes (particularly “crane grabs” or similar with combine monetary and non-monetary prizes).

We also provide advice on what to do if you think your licensing authority may have issued a permit or premises licence for a premises that should not in fact qualify for one, although bear in mind that local circumstances are likely to vary and you would need to source your own legal advice.

We are writing to all those local authorities that we consider may be affected. Your authority is included in this mailing either because of intelligence we have received or because it was one of those featured on the lists provided to us by the licensed machine suppliers that we have contacted as a part of our enquiries. Further information will appear in a future LA bulletin and also in the forthcoming consultation on the Guidance to Licensing Authorities (GLA).

It may be helpful to set out the differences between an uFEC and an FEC. At s 238 of the Gambling Act 2005 (GA05) it states:



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- “family entertainment centre” means premises (other than an adult gaming centre) wholly or mainly used for making gaming machines available for use, *(generally referred to as an uFEC or an uFEC gaming permit)*
- “licensed family entertainment centre” means premises in respect of which a family entertainment centre premises licence has effect. *(generally referred to as an FEC or a licensed FEC)*

An **(unlicensed) family entertainment centre** is only entitled to make Category D machines available. This is reflected by the very light touch form of regulation provided by the uFEC permit. The entity making machines available on the premises (the arcade operator) does not need a Commission operating licence. However the entity supplying machines to the business (the machine supplier) must be licensed by the Commission.

A **licensed family entertainment centre** is entitled to make both Category C and D machines available. It is subject to similar controls to many other gambling businesses – the premises need a full premises licence from the licensing authority and the entity making machines available on the premises requires a Commission operating licence, as does the supplier of the machines.

One of the key policy intentions behind the Gambling Act 2005 was to curtail so called “ambient gambling”, and to confine gambling, as far as possible, to suitable premises, generally those dedicated to gambling (with some exceptions). That is why gaming machines were removed from premises like takeaways and taxi offices. It is also why only premises that are wholly or mainly used for making gaming machines available may hold a uFEC gaming machine permit or an FEC premises licence.

At schedule 10 of GA05 it states:

- 2(1) An application for a permit may be made only by a person who -
 - (a) occupies or proposes to occupy the premises, and
 - (b) proposes to use the premises as an unlicensed family entertainment centre.
- (2) If the applicant for a permit is an individual, he must be an adult.
- 3 An application for a permit may not be made if a premises licence has effect in respect of the premises.¹

It is worthwhile noting that both a licensed FEC and an uFEC are classified as ‘premises’. The GLA contains further guidance regarding what constitutes a gambling premises. (See 3 below.)

Given the number of locations under consideration and the varied issues applicable to each one, there may well be more than one of the issues listed below which apply to either uFECs or to licensed FECs in your locality.

The main issues are as follows:

¹ Similarly at s152 (GA2005) it states that ‘A premises licence – (b) may not be issued in respect of a premises if a premises licence already has effect in relation to the premises’ (save in the case of a track)

1. Unlicensed gaming machine suppliers

It has come to the Commission's attention that some FECs may be sourcing machines from unlicensed suppliers. The Commission will take appropriate action against unlicensed suppliers. However, in issuing a permit or premises licence to a FEC, licensing authorities should check that the operator has made suitable arrangements to source machines from licensed suppliers. Details of all Commission licence holders are available on our [website](#). You can use this facility to check whether an applicant has made suitable arrangements with a licensed supplier; operators can also use the facility for similar purposes.

2. Machines sited without a permit or premises licence

In several locations machines have been sited without the requisite uFEC permit or an FEC premises licence being granted by the LA. Such machines are being made available unlawfully and subject to none of the controls necessary to minimise gambling-related harm and protect children and vulnerable people (and without making the contribution, through premises licensing fees, to the costs incurred by the licensing authority in carry out its regulatory functions). The Commission routinely disseminates intelligence and information to licensing authorities, but it may not always have the full picture of what is happening in local areas. The Commission encourages licensing authorities to be vigilant and ensure that all gaming machines in FECs are subject to the appropriate licensing regime.

3. Permits issued for entire venues (shopping centres, airports etc)

Frequently uFEC permits have either been applied for or granted for an entire venue, such as a shopping centre or airport. The Commission considers that this is not permissible and indeed is highly undesirable in that it exposes the public, and young people in particular, to the "ambient gambling" that the Act was designed to prevent. The Commission has received a number of complaints from members of the public about this kind of provision; while we have shared that information with the authorities directly concerned, we would encourage all authorities to satisfy themselves that areas subject to a premises licence or permit are appropriately controlled.

An FEC premises must be *wholly or mainly used for making gaming machines available* (s. 238 GA05). As a result, it is generally not permissible for such premises to correspond to an entire shopping centre or similar. Typically, the machines would be in a designated, enclosed area. (A more detailed explanation of the Commission's view on what constitutes a premises can be found in the [Commission's GLA](#)).

4. Machines sited in non-enclosed areas

It is apparent that, at least in some locations, gaming machines which should be contained within the uFEC or FEC premises, are instead located in corridors and walkways which form part of the larger building. The Commission considers that this is not permissible, for similar reasons as stated above.

5. Inadequate or potentially inadequate staff supervision

The Commission has encountered a number of circumstances in which there is no dedicated staff supervision of FEC areas, whether using a premises licence or permit. Often in those circumstances the responsibility is ostensibly placed on security staff associated with the wider development (eg shopping centre). The Commission would encourage licensing authorities to satisfy themselves that any risk to the licensing objectives, particularly in relation to the protection of children and other vulnerable people is being suitably managed.

6. Gaming machines presented as “skill machines”

The Commission is aware of circumstances in which machines are being deployed ostensibly as “skill with prize” (SWP) machines when in fact they contain elements of chance or other features which would make them properly gaming machines; or indeed contain a function that allows them to be switched between a “skill” game and a gaming machine.

If a machine can be switched between operating as a gaming machine and a skill machine the Act is clear. At s 235 of the Act, it states;

- (1) In this Act “gaming machine” means a machine which is designed or adapted for use by individuals to gamble (whether or not it can also be used for other purposes).

Therefore machines with this switching function are classified as gaming machines and the appropriate category is determined by the stakes and prizes of the machine.

Furthermore, SWPs must not have any mechanism that determines the outcome of the game, such as a compensator or other mechanism that makes the outcome dependent upon chance. The game must operate in a consistent manner, and each must be genuinely achievable, providing time and opportunity to win using skill, and not influenced by chance. A game that contains an element of chance (unless it is so slight that it can reasonably be disregarded) is a gaming machine. If the machine has graphics, either on the cabinet or within the game itself which are presenting the game as involving an element of chance, such as bingo balls or roulette it would normally be classified as a gaming machine. More details are available in our [quick guide](#) on the subject

If the permit holder is claiming, or believes that, machines are skill machines we would encourage authorities to require them to secure and provide written assurance from the supplier/manufacture that this is indeed the case.

7. Machines that breach entitlements for stakes and prizes (particularly “crane grabs” or similar with combine monetary and non-monetary prizes)

Most “crane grab” machines deployed in Great Britain are Category D gaming machines. A mechanism in the machine ensures that prizes are delivered by chance. As such, the machine must comply with the relevant stake and prize limits. For this type of game, while the prize limit for a non-monetary prize is £50, any purely monetary prize offered must not exceed £5, and the total value of any combined monetary and non-monetary prize (e.g. a toy wrapped in a note) must not exceed £8.

The Commission has received a number of reports of toys provided as prizes in “crane grabs” or similar machines wrapped in ten and twenty pound notes. There is a possibility the game may be an illegal gaming machine, in which case it cannot lawfully be sited.

In some circumstances the operator may claim that the machine is a skill machine. While this seems unlikely, authorities are encouraged to follow the advice given in the previous section.

Full details of the machine entitlements for each class of gambling premises and the stake and prize limits is contained in [Annex A](#) and [B](#) of the GLA.

The Commission is making various enquiries to establish, in more detail, how specific models work and we plan to publish a **quick guide** to assist LAs. In the meantime, we would encourage licensing authorities to exercise a suitable degree of challenge in relation to crane

grabs offering prizes that appear to breach stake and prize limits – to assure themselves they do not constitute non compliant gaming machines.

If a permit has been granted for premises that should not qualify

If, having reviewed the permits that your authority has issued, you conclude that there are instances in which a permit should not have been applicable in the circumstances, you would be advised to seek your own legal advice. Note, however, that paragraph 14 of Schedule 10 of the GA05 it states that “*a Permit shall lapse if the Licensing Authority notify the holder that the premises are not being used as a FEC*”. Should you consider that the premises in respect of which the permit has been issued are not being used “wholly or mainly to make gaming machines available for use” as required by the Act, paragraph 14 of Schedule 10 may apply. This provides for a permit to lapse if a licensing authority gives notice to the holder that the premises are not being used as a FEC (for example where a permit has been issued in respect of a shopping centre, airport or similar). Under such circumstances the licensing authority may choose to invite a further application for more suitably restricted premises.

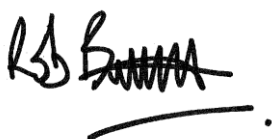
If a premises licence has been granted inappropriately

In the event that you consider that your authority may have granted an FEC premises to premises that should not have qualified for one, the standard procedures [link to Part 10 GLA] apply as for any other class of gambling premises licence. Depending on circumstances this might include sharing your concerns with the premises licence holder (exploring the possibility of them applying to vary the premises licence to render it compliant), seeking a review of the premises licence and imposing conditions.

If you have received an uFEC permit or FEC premises application and have concerns about the issues outlined above you may wish to discuss matters further with colleagues from two licensing authorities who have already taken steps to reject applications. They are David Grant from the London Borough of Newham (0203 373 3547) and Gillian Miller from Newcastle upon Tyne City Council (0191 211 5079).

The Commission would be grateful for any further updates on progress within your authority. If you have any questions about this note, please contact your local compliance manager in the first instance. We will keep everyone updated both via the LA Bulletin and targeted mailings when necessary.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rob Burkitt', with a horizontal line underneath it.

Rob Burkitt
Policy Development Manager