



GAMBLING ACT 2005

STATEMENT OF PRINCIPLES

JANUARY 2022 – JANUARY 2025

DRAFT

TABLE OF CONTENTS		
SECTION	ITEM	PAGE
1	Introduction	4
1.1	Declaration	5
1.2	Geographic area	5
1.3	Licensing Board Functions	6
1.4	Licensing Objectives	6
1.5	Responsible Authorities	7
1.6	Interested Parties	8
1.7	Consultation	9
2	Consideration of Applications	10
3	Local Risk Assessments	11
3.1	The Local Risk Assessment and Risk Management Measures	11
3.2	Local Area Profile	12
4	Scheme of Delegation	12
5	Enforcement	13
6	Equality and Diversity	13
7	Premises Licenses	14
7.1	General Principles	14
7.2	Decision-making	14
7.3	Definition of 'premises'	15
7.4	Premises 'ready for gambling'	16
7.5	Location	16
7.6	Duplication with other regulatory regimes	17
7.7	Provisional Statements (Provisional Licenses)	17
7.8	Licence Conditions	18
7.9	Door Supervision	19
7.10	Register of Licenses and Exchange of Information	19
7.11	Complaints against Licensed Premises	20
7.12	Licence Reviews	20
7.13	Enforcement	20
8	Licensable Premises	21
8.1	Casinos	21
8.2	Bingo premises	21
8.3	Betting premises	22
8.4	Tracks	22
8.5	Adult Gaming Centres	23
8.6	(Licensed) Family Entertainment Centres	24
8.7	Travelling Fairs	24
9	Permits and Temporary/Occasional Use Notices	25
9.1	(Alcohol) Licensed Premises Gaming Machine Permits	25
9.2	(Unlicensed) Family Entertainment Centres Gaming Machine Permits	25
9.3	Prize Gaming Permit	26
9.4	Club Gaming and Club Machines Permit	26
9.5	Temporary Use Notices	27

9.6	Occasional Use Notices	27
9.7	Small Society Lotteries	28
Appendix 1	Responsible Authorities Contact Details	29
Appendix 2	Consultation Responses	30
Appendix 3	Scheme of Delegation	31
Appendix 4	Categories of Gaming Machines	32

DRAFT

1 Introduction

The Gambling Act 2005 (the Act) is an Act of UK Parliament and is designed to control all forms of gambling. The Act transfers authority for the licensing of gambling activities to Scottish licensing boards, and also created the Gambling Commission (the Commission).

The Commission works in partnership with licensing authorities and licensing boards to regulate gambling. The Commission will tend to focus on operators and issues of national or regional significance, and licensing boards will take the lead on regulating gambling locally.

Section 349(1) of the Act requires East Lothian Licensing Board (The Board) to publish a Statement of Principles (the Policy) to be applied in exercising the authority's functions under the Act.

The Policy will come into effect on 31 January 2022 and will remain in place for a maximum period of three years to 31 January 2025. The Policy will be reviewed, updated and modified as and when the Board considers it appropriate, and at least every three years.

The function of the Policy is to reflect local specific gambling concerns. It also sets out the expectations of gambling operators who have premises in the Board's area and for people who are applying for a premises licence in the Board's area.

Nothing in this Policy will override the right of any person to make an application under the Act or to have the application considered on its individual merits, undermine the right of any person to make representations on an application, or to seek a review of a licence where they have a legal basis to do so.

The Policy is intended to be a general statement of the Board's gambling licensing principles. Applicants and other parties should have regard to codes of practice issued by the Gambling Commission.

The Gambling Commission is an independent public body and is the main advisory body to national and local government on gambling. The Commission has responsibility for granting operating and personal licences for commercial gambling operators and personnel working in the industry.

East Lothian Licensing Board is responsible for issuing gambling licences and permits for premises.

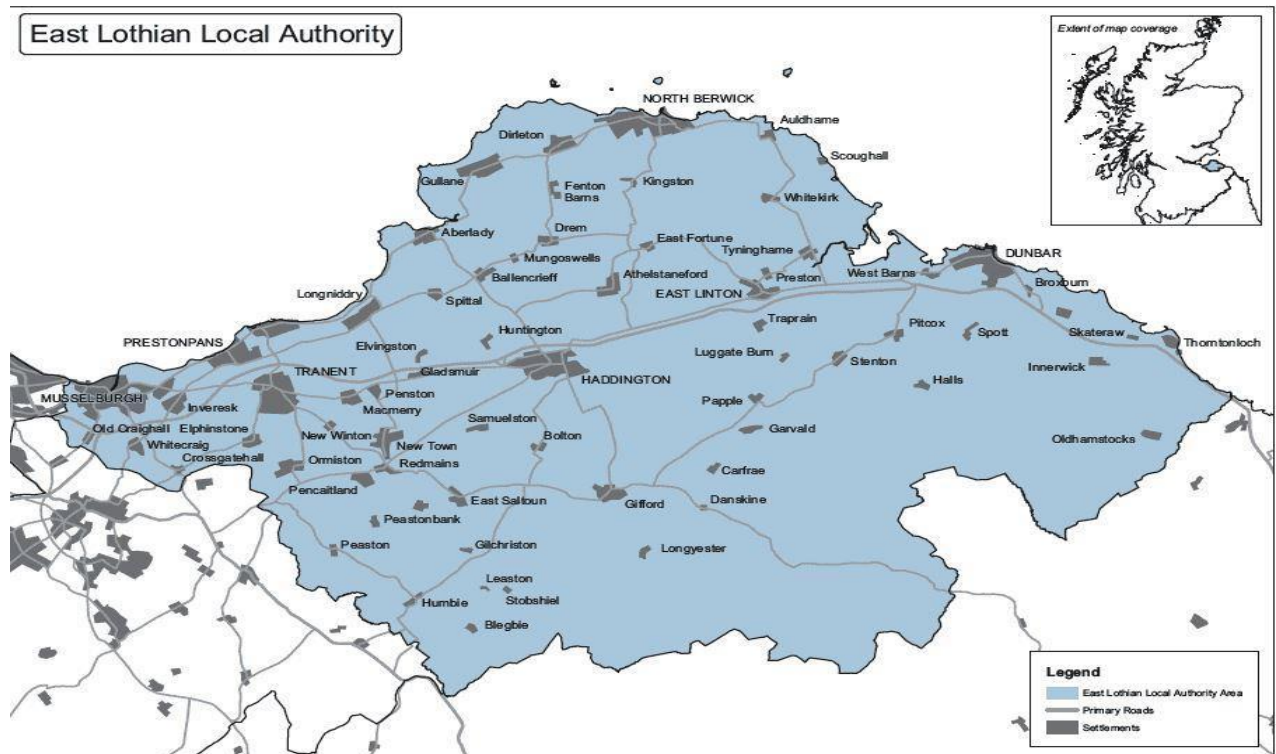
There are four principles to inform the Board as to how it carries out its duties:

- Gambling Commission Code of Practice
- Gambling Commission Guidance to licensing authorities/licensing boards
- The licensing objectives as set out in the Act (see section 1.4)
- The Board's own Statement of Principles (Policy)

1.1 Declaration

In producing this statement, the Board declare it will have regard to the licensing objectives of the Act, the Guidance issued by the Gambling Commission and responses from those consulted.

1.2 Geographical Area



East Lothian had an estimated population of 104,840¹ in 2020 in an area of 679.1 square kilometres². East Lothian shares borders with the City of Edinburgh, Midlothian and Scottish Borders.

Although East Lothian's largest town is Musselburgh, which lies on the border with the City of Edinburgh, the administrative centre of East Lothian Council is in Haddington.

¹ The National Records of Scotland Statistics, 2020

² Scottish Government Statistics, 2011

1.3 Licensing Board Functions

This Board will make decisions upon applications or notifications made for:

- Premises licences
- Temporary Use Notices
- Occasional Use Notices
- Permits as required under the Act and
- Registrations as required under the Act

This Policy relates to all licensable premises, notices, permits and registrations that fall within the provisions of the Act. These are:

- Casinos
- Bingo premises
- Betting premises
- Adult gaming centres
- Tracks
- Licensed family entertainment centres
- Unlicensed family entertainment centres
- Club gaming permits
- Prize gaming and prize gaming permits
- Occasional use notices
- Temporary use notices
- Registration of small society lotteries
- Travelling fairs

The Board will not be involved in licensing remote gambling as defined in Section 4 (1) of the Act. Regulation of remote gambling is the responsibility of the Gambling Commission.

1.4 Licensing Objectives

In exercising its functions under the Act, the Board intends its licensing policy to have regard to the statutory licensing objectives as set in the Act, namely:

- Preventing gambling from being a source of crime or disorder, being associated with crime or being used to support crime,

This Licensing Authority is aware that the Gambling Commission will be taking a leading role in preventing gambling from being a source of crime. The Gambling Commission's Guidance does however envisage that Licensing Authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This Licensing Authority is aware of the distinction between disorder and nuisance and will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see it, so as to make that distinction.

- Ensuring that gambling is conducted in a fair and open way, and

This Licensing Authority has noted that the Gambling Commission has stated that it would generally not expect Licensing Authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. There is, however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section below.

- Protecting children and other vulnerable persons from being harmed or exploited by gambling

This Licensing Authority has noted that the Gambling Commission's Guidance states that this objective means preventing children from taking part in gambling, (as well as restriction of advertising so that gambling products are not aimed at, or are particularly attractive to, children). The Licensing Authority also expects that other gambling related issues will be a consideration and as suggested in the Gambling Commission's Guidance, will take all such matters into account when deciding whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances / machines, segregation of areas etc.

1.5 Responsible Authorities

Responsible Authorities are public bodies that must be notified about applications. Responsible Authorities are entitled to make representations to the Board in relation to existing premises licences, and applications for premises licences.

Section 157 of the Act details the Responsible Authorities. In the Board's area, these are:

- The Gambling Commission
- The Chief Constable, Police Scotland
- The Chief Fire Officer, Scottish Fire and Rescue
- East Lothian and Midlothian Public Protection Committee
- East Lothian Council Licensing Board
- The Planning Authority, East Lothian Council
- Environmental Health Authority, East Lothian Council
- HM Revenue and Customs

Full contact details are available at Appendix 1.

The public health body is not a Responsible Authority; however, the Board will include NHS Lothian in all notifications about licence applications and on all Policy consultations. This is also the situation for Midlothian and East Lothian Drugs & Alcohol Partnership (MELDAP), which will also be included in all notifications and consultations.

In addition to the above, the Board is required under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the Board about the protection of children from harm. The Licensing Authority designates the East Lothian

and Midlothian Public Protection Committee.

1.6 Interested Parties

Interested parties can make representations about licence applications, or apply to the Board for a review, of an existing licence.

Section 158 of the Act defines these parties:

“A person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises licence if, in the opinion of the Licensing Authority which issues the licence or to which the application is made, the person:

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- b) has business interests that might be affected by the authorised activities; or
- c) represents persons who satisfy (a) or (b)”.

In determining whether any person is an interested party in relation to a particular licence or application, as required by regulation, the Board must state the principles it will apply.

The Board will determine each case on its merits. The following factors are likely to be relevant but not necessarily decisive and will not apply a rigid rule:

- Nature of activities taking place
- Size of the premises
- Location of the premises and the character of the surrounding area
- Likely business hours of the premises concerned

The Board will consider the examples provided in the Gambling Commission’s Guidance to Licensing Authorities.

Interested parties can be persons who are democratically elected such as Councillors and MPs and MSP’s. No specific evidence of being asked to represent an interested person will be required as long as the Councillor/MP/MSP represents the ward or constituency likely to be affected. Likewise, Community Councils likely to be affected, will be considered interested parties. Other than these however, the Board will require written evidence that a person/body “represents” someone who is defined in the Act as an interested party as either (a) or (b) above. A letter from one of those persons is sufficient or a statement that they are their legal representative, whether Solicitor or Advocate.

Any written representations submitted to the Board in relation to an application or premises will be made available to the licence holder or applicant and if a hearing is held, will form part of the public documents.

1.7 Consultation

In terms of section 349(3) of the Act, the Board has consulted with the Responsible Authorities listed at 1.5, together with the following parties, before finalising this Policy:

- NHS Scotland
- MELDAP
- The General Manager, Musselburgh Racecourse
- Ladbrokes, William Hill, Coral Racing, Scotbet, and BetFred,
- East Lothian Licensing Forum
- Gamblers Anonymous
- East Lothian Area Partnerships
- Local MP
- Local MSP
- All Community Councils in East Lothian
- All Parent Councils in East Lothian
- All Schools in East Lothian
- Head of Communities and Partnerships, East Lothian Council
- Head of Children and Adult Services, East Lothian Council
- Head of Education, East Lothian Council
- Licensing Standards Officer, East Lothian Council
- The general public, via publication on East Lothian Council's Consultation hub/website

There were **XX** responses to the consultation and these are attached at appendix 2.

2 Consideration of Applications

The Board shall in making decisions concerning premises licences and temporary use notices have regard to Section 153 of the Act which requires it to permit the use of the premises for gambling in so far as it thinks it is:

- in accordance with any relevant Code of Practice issued by the Gambling Commission
- in accordance with any relevant Guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives
- in accordance with the Statement of Principles in this licensing policy

Nothing in this Statement will:

- override the right of any person to make an application under the Act or to have that application considered on its individual merits,
- undermine the right of any person to make representations on an application or to seek a review of a licence where there is a legal power to do so.

In terms of the Act, unmet demand is not a criterion for a Licensing Authority in considering an application and in accordance with Gambling Commission Guidance for Licensing Authorities “moral objections to gambling are not a valid reason to reject applications for premises licences”

Therefore the Board will consider any application in accordance with the Act, on its own merits, without regard to demand or moral objection to gambling in general.

The Board may, under Section 155, of the Act arrange for the delegation of its functions to a Committee of the Board, the Clerk or other appropriate person appointed to assist the Clerk, and the Board will delegate certain powers where it considers that appropriate in the interests of efficiency and in recognition of the largely administrative nature of certain of the procedures.

The Board recognises that the likelihood, or not, of planning permission being granted or building regulation approval being given, are not criteria that the Board may take into account when determining an application (Section 210 of the Act).

Fire or health and safety risks do not form part of the consideration when determining a premises licence as these issues fall under other statutory regimes.

However, the Board can consider the impact of planning and/or building control restrictions (if any) on a licence holder’s ability to comply with any conditions that the Board may attach to the licence.

3 Local Risk Assessments

3.1 The Local Risk Assessment and Risk Management Measures

The Board is entitled to request such information from operators as it requires to make effective licensing decisions. Although the Act requires that an application must be accompanied by a minimum level of information, the Board agrees with the Gambling Commission's view that this does not preclude reasonable requests from the Board for additional information may include, for example, details of the operator's business plan.

The Board welcomes the implementation, from 6 April 2016, of the Social Responsibility Code provision 10.1.1 (which must be followed and has the force of a licence condition). The Code requires applicants and licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises. Applicants and licensees must also have policies, procedures and control measures in place to mitigate against those risks.

A local risk assessment must be fully documented and included as part of a premises licence application. Once a licence has been granted, the completed local risk assessment must be retained on the premises.

As a minimum, the Board expects the local risk assessment to address the following, and include details of the measures that will be put in place to manage any identified risks:

- The location of services for children such as schools, playgrounds, leisure/community centres and other areas where children will gather, in relation to the premises
- The location of residential areas with a high proportion of young families
- The location of hospitals, doctors' surgeries and gambling or addiction support or treatment centres and other areas where vulnerable groups may be present or congregate
- The level of crime and/or disorder in the area where the premises are located
- Age verification policies
- Preventing children and young persons entering premises unnoticed or unchallenged
- Line of sight from the counter to gambling machines
- Security of premises and cash
- Security of staff
- Gaming trends that may reflect benefit payments
- Administration of the self-exclusion process, maintaining its effectiveness, and preventing breaches
- Arrangements for localised exchange of information regarding self-exclusions and gaming trends
- Identifying and reporting attempts to launder money on the premises
- Protecting vulnerable people and those with gambling dependencies
- Dealing with complaints about the outcome of gambling
- Providing information on responsible gambling to players

The Local Risk Assessment must include a description of the risk being assessed, the level of risk (low/medium/high), the impact of the risk, the control system that has been put in place for each risk, risk management procedures, and the review date for each risk being assessed. The Local Risk Assessment must be signed and dated by the licence holder.

Existing licensees must also update their Local Risk Assessment:

- When there is an application for a variation to a premises licence; the updated local risk assessment must be included with the application paperwork
- To take account of significant changes in local circumstances, including any listed in the Board's Policy statement
- When there are significant changes at a licensee's premises that may affect their mitigation of local risks

3.2 Local Area Profile

A Local Area Profile for East Lothian would include deprivation statistics, data about crime hot spots, locations of local education facilities, gambling premises and addiction centres, and anti- social behaviour figures.

The Board does not currently have a Local Area Profile as referenced in the Gambling Commission's Guidance to Local Authorities. However, the Board is committed to ensuring that children and vulnerable persons are not harmed by gambling. The Board will therefore expect applicants to research and understand the local environment in which they wish to operate and to demonstrate, via a local risk assessment as outlined at 3.1, that they have effective and robust measures in place to promote this licensing objective and mitigate any risks related to it. The Board will take appropriate action where this does not appear to be the case.

4 Scheme of Delegation

In terms of Section 155 of the Act, the Board may delegate some of its functions to a Committee of the Board, or members of the Board, the Clerk to the Board, or any person appointed to assist the Clerk. However, the Board cannot delegate all of its functions. The scheme of delegation for East Lothian Licensing Board is attached at Appendix 3. The Board reserves the right to determine all applications and relevant matters under the Act.

5 Enforcement

The Board has powers under Part 15 of the Act to inspect premises, to monitor compliance with the provisions of the Act, and to investigate suspected offences. The Board shall be guided by the Guidance, and the Board's approach to compliance and enforcement will be:

- Proportionate – regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised
- Accountable – regulators must be able to justify decisions and be subject to public scrutiny
- Consistent – rules and standards must be implemented fairly
- Transparent – regulators should be open, and keep regulations simple and user friendly
- Targeted – regulation should be focused on the problem, and minimise side effects.

The Board's main enforcement and compliance role in terms of the Act is to ensure compliance with premises licences and associated conditions and other issues relating to the premises themselves. The Gambling Commission is the enforcement body for the operating and personal licenses. Concerns about manufacture, supply or repair of gaming machines are also dealt with by the Gambling Commission.

The Board has noted the terms of the Commission's advice note entitled The Role of Authorised Persons in Scotland, which relates to the regulatory and enforcement functions of local authorities. As stated in the advice note, East Lothian Council's Licensing Standards Officer (LSO) is not, simply by virtue of the role, an authorised person for the purposes of Section 304 of the Act. That means that the LSO in Scotland has no powers to enter premises to carry out inspections and compliance visits.

6 Equality and Diversity

East Lothian Licensing Board is committed to promoting equal opportunities, valuing diversity and tackling social exclusion. The Board aims to provide opportunities that meet the diverse needs of all residents of East Lothian by ensuring that services are accessible to all. Every person making an application to, or appearing before the Board, will be treated fairly and with respect.

East Lothian Licensing Board has completed an Integrated Impact Assessment in respect of this Gambling Policy. This will be published on the Council's website before the end of the consultation period.

The Board expects all applicants, operators, permit holders and licence holders within East Lothian to be fully aware of its equality agenda and to ensure that applications support the Board's commitment to equality and diversity.

7 Premises Licenses

7.1 General Principles

Premises licences will be subject to the requirements set-out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State. Licensing Authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

Premises licence holders shall comply with relevant Codes of Practice issued by the Commission together with any relevant Guidance. The following may also be of assistance: 'The Commission's 'Licence Conditions and Codes of Practice' ('LCCP') October 2020. This document is available at: www.gamblingcommission.gov.uk

7.2 Decision-making

This Licensing Authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it is:

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant Guidance issued by the Gambling Commission ;
- reasonably consistent with the licensing objectives; and
- in accordance with this statement of licensing principles.

It is appreciated that as per the Gambling Commission's Guidance to Licensing Authorities "moral or ethical objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution' - see section on Casinos below) and also that unmet demand is not a criterion for a Licensing Authority.

The Licensing Authority also notes Gambling Commission Guidance on ensuring that betting is the primary activity of a licensed premises. Gaming machines may be made available for use in licensed betting premises only at times when there are also sufficient facilities for betting available. Operators will need to demonstrate that betting will continue to be the primary activity of the premises when seeking variations to licences.

In making this determination, this Licensing Authority will have regard to the six indicators of betting as a primary gambling activity:

- The offer of established core products (including live event pictures and bet range)
- The provision of information on products and events
- The promotion of gambling opportunities and products
- The actual use made of betting facilities
- The size of premises
- The delivery of betting facilities

7.3 Definition of Premises

Premises is defined in the Act as “any place”. Different premises licences cannot apply in respect of a single premises at different times. However, it is possible for a single building to be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. Whether different parts of a building can properly be regarded as being separate premises will always be a question of fact in the circumstances. However, the Gambling Commission does not consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises, for example by ropes or moveable partitions.

This Licensing Authority takes particular note of the Gambling Commission’s Guidance to Licensing Authorities which states that:

- Licensing Authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non- gambling) purposes. In particular they should be aware that entrances and exits from parts of a building covered by one or more licences should be separate and identifiable so that the separation of different premises is not compromised and that people do not ‘drift’ into a gambling area. The plan of the premises should clearly denote entrances and exits. In this content, it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- Licensing Authorities should pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Clearly, there will be specific issues that authorities should consider before granting such applications, for example, whether children can gain access; compatibility of the two establishments; and ability to comply with the requirements of the Act. But, in addition an overriding consideration should be whether, taken as a whole, the co-location of the licensed premises with other facilities has the effect of creating an arrangement that otherwise would, or should, be prohibited under the Act.
- Premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling where they are prohibited from participating.
- Customers should be able to participate in the activity named on the premises licence.

The Guidance also give a list of factors which licensing authorities should be aware of, which may include:

- Do the premises have separate registration for business rates?
- Is the premises’ neighbouring premises owned by the same person or someone else?
- Can each of the premises be accessed from the street or a public passageway?
- Can the premises only be accessed from any other gambling premises?

7.4 Premises ‘ready for gambling’

The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that the Licensing Authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.

If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made instead.

In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this authority will determine applications on their merits, applying a two stage consideration process:

- First, whether the premises ought to be permitted to be used for gambling.
- Second, whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

Applicants should note that this authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.

More detailed examples of the circumstances in which such a licence may be granted can be found at Part 7 of the Guidance.

7.5 Location

The Licensing Authority is aware that the expected demand for the facilities proposed to be provided cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can.

As per the Gambling Commission’s Guidance, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant to show how potential concerns can be overcome.

The Board will consider individual risk assessments, in particular the Board is mindful of Part 6 of the Guidance in regard to local area profiling to assist licence holders and applicants in preparing locally linked risk assessments for their premises. Taking into account the low volume of licensed gambling premises in the East Lothian, the Board does not consider there to be a high risk of adverse impact on the objectives at the current time therefore will continue to consider each application on its merits.

7.6 Duplication with other regulatory regimes

The Board seeks to avoid any duplication with other statutory regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will though, listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

When dealing with a premises licence application for finished buildings, the Board will not take into account whether those buildings have to comply with the necessary planning or buildings consents. Fire or health and safety risks will not be taken into account, as these matters are dealt with under relevant planning control, buildings and other regulations and most not form part of the consideration for the premises licence.

7.7 Provisional Statements (Provisional Licenses)

Section 204 of the Act, states that a person may make an application for a provisional statement for premises that they expect to be constructed, to be altered or acquire a right to occupy. The Board notes the Guidance which states that: “Developers may wish to apply for provisional statements before they enter into a contract to buy or lease property or land to judge whether a development is worth taking forward in light of the need to obtain a premises licence.”

Applicants for a premises licence must fulfil certain criteria; however, these requirements do not apply to applications for provisional statements. An applicant for a provisional statement does not require to hold an operating licence and they do not need to have acquired a right to occupy the premises that the application relates to. If a provisional statement is granted by the Board, the Board is aware that it is constrained in the matters it may consider when an application for a full premises licence is subsequently made for the same premises. If any representations are made in respect of a full licence application, the Board will disregard these unless it thinks that the representations:

- address matters that could not have been addressed at the time of the application for the provisional statement, or
- reflect a change in the applicant’s circumstances.

The Board may refuse a subsequent (full) premises licence application (or grant it with conditions not included in the provisional statement), only if there are matters:

- which could not have been addressed in representations at the provisional statement stage
- which, in the Board’s opinion, reflect a change in the operator’s circumstances
- where the premises have not been constructed in accordance with the plan and information submitted with the provisional statement application.

7.8 Licence Conditions

Any conditions attached to licences will be proportionate and will be:

- relevant to the need to make the premises suitable as a gambling facility,
- directly related to the premises and the type of licence applied for,
- fairly and reasonably related to the scale and type of premises,
- reasonable in all other aspects.

Decisions on individual conditions will be made on a case by case basis. The control measures, which the Board may consider using, include door supervisors, appropriate signage for adult only areas etc. Licence applicants will be expected to offer their own suggestions as to ways in which the licensing objectives can be effectively met.

The Board may consider specific measures for buildings that are subject to multiple premises licences. Such measures may include the supervision of entrances, segregation of gambling and non-gambling areas frequented by children, the supervision of gaming machines in non-adult gambling specific premises and the display of notices regarding age restriction. These matters are in accordance with the Gambling Commission's Guidance.

The Board will also ensure that where category C or above machines are on offer in premises to which children are admitted:

- All machines are located in an area of the premise which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;
- Only adults are admitted to the area where these machines are located;
- Access to the area where the machines are located is supervised;
- The area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- At the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18 years.

These considerations will apply to premises including buildings where multiple premises licenses are applicable.

This Board is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this Licensing Authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

It is noted that there are conditions which the Licensing Authority cannot attach to premises licences which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition;
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and
- conditions in relation to stakes, fees, winning or prizes.

7.9 Door Supervision

The Gambling Commission advises in its Guidance to Licensing Authorities that if a Licensing Authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a condition on a premises licence to this effect.

Door supervision shall have the meaning as set out in Section 178 of the Act. The Board notes that the Guidance states that:

- door staff employed by the operator at casino or bingo premises do not require to be licensed by the Security Industry Authority
- if a door supervisor is required by the Private Security Industry Act 2001 (section 178) to hold a licence under that Act, then that requirement shall be treated as if it were a condition of the premises licence

7.10 Register of Licences and Exchange of Information

The Board will maintain a register of all premises licences and permits issued. This register is available for public inspection at all reasonable times.

If required by the Commission, under Section 29 of the Act, the Board will exchange any information it receives through the application process with the Commission and other regulatory bodies, in accordance with its obligations and functions under the Act. The information to be exchanged must form part of the Board's register and must be in the Board's possession prior to disclosure. This obligation is subject to data protection and freedom of information legislation.

7.11 Complaints against Licensed Premises

The Board may investigate complaints against licensed premises relating to the licensing objectives.

Any complaints received about a particular premises or a class of premises, could have an impact on the general risk rating of those premises. Complaints received by the Board in relation to particular premises or a class of premises may also initiate the Board's right to review the premises licence under Section 200 of the Act.

7.12 Licence Reviews

Requests for a review of a premises licence can be made by interested parties or Responsible Authorities; however, it is for the Board to decide whether the review is to be carried out. This will be based on whether the request is reasonably consistent with the licensing objectives; relates to a relevant Code of Practice or Guidance issued by the Commission; is in accordance with the Board's Policy; is not frivolous or vexatious; will not cause the Board to seek to alter/revoke/suspend the licence; and/or if the request is substantially the same as previous representations or requests for a review.

The Board can initiate a review of a premises licence on the basis of any reason that it considers to be appropriate. Once an application for a review has been deemed competent, there are statutory timescales for seeking representations from Responsible Authorities and interested parties; and for conducting the review.

The purpose of the review is to determine if the Board should take any action in relation to the licence. Actions available to the Board are to:

- Add, remove or amend a licence condition imposed by the Board
- Exclude a default condition attached to the licence under Section 269 of the Act
- Suspend the premises licence for a period not exceeding three months
- Revoke the premises licence

7.13 Enforcement

The Board has powers under Part 15 of the Act to inspect premises, to monitor compliance with the provisions of the Act, and to investigate suspected offences. The Board shall be guided by the Guidance, and the Board's approach to compliance and enforcement will be:

- Proportionate – regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised
- Accountable – regulators must be able to justify decisions and be subject to public scrutiny
- Consistent – rules and standards must be implemented fairly

- Transparent – regulators should be open, and keep regulations simple and user friendly
- Targeted – regulation should be focused on the problem, and minimise side effects

8 Licensable Premises

8.1 Casinos

There are currently no casinos operating in the Board’s licensing area. However, the Board has not passed a ‘no casino’ resolution under section 166 of the Act. The Board reserves its right to review this at any time in the future and shall update this Policy with any changes.

8.2 Bingo premises

There is no statutory definition of ‘bingo’ in terms of the Act other than “any version of the game irrespective of by what means it is described”. A bingo premises licence holder may generally be able to offer any type of bingo game, whether it be cash bingo or prize bingo.

The Board notes that the Gambling Commission Guidance states that Licensing Authorities need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. The Board is aware that from July 2011, a holder of bingo premises licenses may make available for use a number of category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises. A variation of licence must be applied for if operators wish to take advantage of this change to the legislation.

The Board notes that it will need to satisfy itself that bingo can be played in any bingo premises for which it issues a premises licence. This will be a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its licence and then applies for a new premises licence, or multiple licences, for that or those excluded areas.

The Board is aware of the Guidance at paragraph 18.8 is where an existing bingo premises covered by one premises can apply to vary the licence to split the premises into more than one separate licensed premises. In these circumstances, the Commission’s position is that it is not permissible for all of the gaming machines to be grouped together in only one of the licensed premises.

Children and young persons are allowed into bingo premises but they are not permitted to participate in the bingo activity. If category B and/or C machines (Appendix 2) are made available for use these must be separated from areas where children and young people are allowed access.

In accordance with the licensing objective ‘protecting children and other vulnerable persons from being harmed or exploited by gambling’, the Board may require an applicant to prove that sufficient measures are in place to prevent children, young persons and vulnerable persons from having access to Category B and C machines (Appendix 2).

8.3 Betting premises

The Act contains a single class of licence for betting premises licence, which enables betting to take place on the premises and for the licence holder to make available up to four gaming machines, subject to certain restrictions.

It is noted that the Gambling Commission Guidance for Local Authorities states, “Section 181 contains an express power for Licensing Authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino)”

When considering whether to impose conditions to restrict the betting machines in particular premises, the Board will take into account the size of the premises, the number of counter positions available for person to person transactions and the ability of staff to monitor the use of machines. No children and young persons will be allowed entry to premises with a betting premises licence at any time.

8.4 Tracks

Tracks are premises which include horse racecourses, dog tracks or other tracks where sporting events may take place. The Act does not define what may constitute a sporting event or race and the Board notes the Guidance that the Board may determine what constitutes a sporting event or race, on a case by case basis.

Musselburgh Racecourse (horse racing) is the only track within the Board’s licensing area.

A track premises licence allows facilities for betting on the premises. If the licence holder wishes to provide a casino, bingo or other type of gambling on the track, a separate premises licence will be required. Tracks may therefore be subject to more than one premises licence.

If the operator wishes to use the premises temporarily for gambling and the premises are not licensed, the Board may issue a Temporary Use Notice (Section 9.5).

Where there is betting on a track on eight days or less in a calendar year, an Occasional Use Notice (Section 9.6) may be issued by the Board to permit betting on the premises.

An applicant for a premises licence does not need to hold an operating licence issued by the Gambling Commission as the betting that is provided on the track is provided by third party operators. However, third party operators require to hold an operating licence issued by the Commission.

Children and young persons are permitted to enter track areas whilst betting is taking place, although they are still prevented from entering area where gaming machines (other than category D machines) are provided. The Board will therefore carefully consider any potential impact an accumulation of premises licences may have on the licensing objective of protecting children from being harmed or exploited by gambling.

The Board agrees with the Guidance that it is sometimes difficult to define the precise location of betting areas on tracks. The applicant therefore needs to submit a detailed plan defining the site, any area to be used for temporary “on course” betting facilities and, in the case of dog tracks and horse racecourses, any mobile pool betting facilities as well as any other proposed gambling facilities.

In accordance with Gambling Commission Guidance, the Board will attach a condition to track premises licenses requiring the track operator to ensure that the rules are prominently displayed in or near the betting areas, or that other measures are taken to ensure that they are made available to the public.

The Board requires each applicant to demonstrate that they have measures in place to achieve all three licensing objectives.

8.5 Adult Gaming Centres

An Adult Gaming Centre premises licence authorises the licence holder to make available for use a number of category B (see Appendix 2) gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises and any number of category C or D machines.

No persons under the age of 18 years are allowed to enter an Adult Gaming Centre. The Board shall have particular regard to the location of, and entry to, an Adult Gaming Centre to ensure that opportunities for children to have access are minimised. The Board will therefore expect applicants to offer their own measures to protect children and other vulnerable persons from being harmed or exploited by gambling.

Examples of appropriate measures or licence conditions that may be attached to protect children and young persons are;

- proof of age scheme
- the provision of CCTV
- supervision of entrances
- physical security measures on the premises
- physical separation of areas
- self-exclusion schemes
- the display of notices and signage
- appropriately trained members of staff

8.6 (Licensed) Family Entertainment Centres

A Licensed Family Entertainment Centre is a premises where a licence is granted to provide any number of category C and D (Appendix 2) gaming machines. Persons under 18 years of age are allowed to enter the premises, but no persons under 18 years of age are permitted access to areas where category C gaming machines are situated. The Board requires that category C machines are situated in a separate area to ensure the segregation and supervision of machines that may only be played by those over 18 years of age.

8.7 Travelling Fairs

The Board will consider whether the applicant falls within the statutory definition of a travelling fair. Where category D machines and/or equal chance prize gaming without a permit are to be made available for use at travelling fairs, it will fall to the Board to decide whether the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair, is met.

The 27 day statutory maximum for the land being used for a fair is per calendar year and applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fair, occupying the land.

9 Permits and Temporary/Occasional Use Notices

9.1 (Alcohol) Licensed Premises Gaming Machine Permits

On written notification to the Board, premises licensed to sell alcohol for consumption on the premises have an automatic entitlement to two gaming machines of category C or D (Appendix 2) under Section 282 of the Act.

The Board has no discretion to consider the notification or refuse it. However, if the Board gives the licensee at least 21 days' notice, the Board may remove this automatic entitlement if it thinks that:

- provision of the machines is not reasonably consistent with the licensing objectives
- gaming has taken place on the premises that breaches a condition of Section 282 of the Act
- the premises are mainly used for gaming
- an offence under the Gambling Act 2005 has been committed on the premises

If a premises is looking to have more than two gaming machines, then it needs to apply for a Gaming Machine Permit and the Board must consider that application based upon the licensing objectives, the Guidance and "such matters as it thinks relevant". Generally "such matters" will include the need to protect children and vulnerable people from harm and exploitation, access arrangements, signage, and the provision of information leaflets for organisations such as Gamblers Anonymous Scotland and other support organisations.

The Board can decide to grant the application with a smaller number of machines and/or a different category of machines that those applied for. No other conditions can be attached to the licence.

9.2 (Unlicensed) Family Entertainment Centres Gaming Machine Permits

Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply to the Board for a Gaming Machine Permit. The applicant must show that the premises will be wholly or mainly used for gaming machines.

Unlicensed Family Entertainment Centres are able to offer only category D (Appendix 2) machines under the gaming machine permit. Any number of category D machines can be made available with such a permit, subject to other considerations such as fire regulations and health and safety. Permits cannot be issued in respect of vessels or vehicles.

The Board may grant or refuse a permit but cannot attach conditions. Applicants will be expected to demonstrate that they have policies and procedures in place to protect children from harm.

9.3 Prize Gaming Permit

Section 288 of the Act defines gaming as prize gaming if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming. The applicant should set out:

- the types of gaming that they intend to offer
- should be able to demonstrate an understanding of the limits to stakes and prizes that are set out in regulations, and
- should demonstrate that the gaming offered is within the law

A Prize Gaming Permit is a permit issued by the Board authorising a person to provide facilities for gaming with prizes on specified premises. Permit holders must comply with conditions set out in Section 293 of the Act but the Board cannot attach local conditions to the permit.

9.4 Club Gaming and Club Machines Permit

Members Clubs and Miners Welfare Institutes (but not Commercial Clubs as defined in the Act) may apply for a Club Gaming Permit. This will enable the premises to provide no more than three gaming machines of categories B, C or D (appendix 2), equal chance gaming and other games of chance as prescribed in the Regulations.

If a Members' Club does not wish to have the full range of facilities permitted by a Club Gaming Permit, or if they are a commercial club, they may apply to the Board for a Club Machine Permit. A Club Machine Permit allows the holder to have up to three gaming machines of categories B3A, B4, C and D (Appendix 2). Section 273 of the Act states that a Club Machine Permit is subject to the condition that no child or young person may use a category B or C gaming machine on the premises.

The Gambling Commission's Guidance, which requires the Licensing Authority to satisfy itself that the club meets the requirements of the Act to obtain a club gaming permit. These include the constitution of the club, the frequency of gaming and ensuring there are more than 25 members. The club must be conducted "wholly or mainly" for purposes other than gaming, unless the gaming is permitted by separate regulations. The Secretary of State has made regulations and these cover bridge and whist clubs.

The Board may grant or refuse a permit, but it cannot attach any conditions. The Board expects all permit holders to adhere to the conditions specified in the Commission's Code of Practice on Gaming Machine Permits and to follow these best practice guidelines.

9.5 Temporary Use Notices

Temporary Use Notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. A Temporary Use Notice may only be granted to a person or company that holds a gambling operating licence.

A set of premises may not use a Temporary Use Notice for more than 21 days in a period of 12 months, although it could use several Notices during a 12 month period provided that the total does not exceed 21 days. In determining what may constitute a set of premises for the purposes of a Temporary Use Notice, the Board notes the Commission's Guidance that this is a question of fact regarding the particular circumstances of each Notice that is given. In considering if a place falls within the definition of a set of premises, the Board will look at, amongst other things, the ownership/occupation and control of the premises.

An application for a Temporary Use Notice must be submitted to the Board not less than three months in advance of the date it is required. A copy of the Notice must be served on the Gambling Commission, the Chief Constable (Police Scotland), and HM Revenue and Customs.

Each application for the grant of a Temporary Use Notice will be considered and determined on a case by case basis.

9.6 Occasional Use Notices

Where there is betting on a track on eight days or less in a calendar year betting may be permitted by an Occasional Use Notice without the need for a full premises licence.

In determining an application for an Occasional Use Notice the Board will consider the definition of a 'track' and whether the applicant qualifies for an Occasional Use Notice.

A Notice must be given in writing to the Board and be copied to the Chief Constable, Police Scotland. The Notice must be given only by a person who is responsible for the administration of events on the track, or by an occupier of the track. The Notice must specify the day on which it has effect, and may relate to consecutive days providing the overall statutory limit of eight days is not exceeded in a calendar year. The Board will maintain records to ensure this statutory limit is not exceeded.

9.7 Small Society Lotteries

Small Society Lotteries are non-commercial societies that run a lottery where the income is below certain specified thresholds and that are established and conducted for charitable purposes. These societies could also be established to enable participation in/provide support for sport, athletics or a cultural activity; or for any other non-commercial purpose other than private gain.

Small Society Lotteries whose principal office is located within the East Lothian area require to register with the Board.

All applications for registration must be made in the form specified by Scottish Ministers, and accompanied by all necessary documents specified by Scottish Ministers or required by the Board. When considering an application for registration the Board may request further information from an applicant.

The financial limits that apply to these societies are that the proceeds from one individual lottery cannot exceed £20,000, and in a calendar year the total proceeds cannot exceed £250,000. If these limits are likely to be exceeded, then the Society must apply to the Gambling Commission for a Lottery Operating Licence, at which point its registration with the Board would cease. Societies cannot hold both a Board registration and Gambling Commission licence at the same time.

Appendix One – Responsible Authorities Contact Details

- The Gambling Commission, Victoria Square House, Victoria Square, Birmingham, B2 4BP
- The Chief Constable, Police Scotland, Fettes Avenue, Edinburgh, EH4 1AQ
- The Chief Fire Officer, Scottish Fire and Rescue Service, Lauriston Place, Edinburgh, EH3 9DE
- East Lothian and Midlothian Public Protection Committee, East Lothian Council, F28-29 Brunton Hall, Ladywell Way, Musselburgh, EH21 6AP
- East Lothian Council as a council constituted under the Local Government etc (Scotland) Act 1994, John Muir House, Haddington, EH41 3HA
- East Lothian Council as Planning Authority, John Muir House, Haddington, EH41 3HA
- East Lothian Council as Environmental Health Authority, John Muir House, Haddington, EH41 3HA
- H.M. Revenue and Customs, National Registration Unit, Portcullis House, 21 India Street, Glasgow, G2 4PZ

Appendix Two - Consultation Responses

DRAFT

**Appendix Three - East Lothian Licensing Board,
Scheme of Delegation**

1.0 INTRODUCTION

1.1 This scheme of delegation sets out the powers under the Gambling Act 2005 delegated by East Lothian Licensing Board to the Clerk and Depute Clerk.

1.2 In any particular case where powers are delegated to an officer under this scheme of delegation, if it appears to them that it is appropriate for the power to be exercised by the Board itself then they shall be entitled to refer the case to the Board for the exercise of the power.

2.0 POWERS DELEGATED UNDER THE GAMBLING ACT 2005

2.1 The following powers are delegated to and exercisable by the Clerk or Depute Clerk:-

- Determining an application premises licence application where no objection or representation has been received.
- Determining an application for the transfer of a premises licence where no objection or representation has been received.
- Determining an application for a variation of a Premises Licence where no objection or representation has been received.
- Determining an application for a Provisional Statement where no objection or representation has been received.
- Decision as to whether or not a request for a review can be rejected in terms of the regulations.
- Determining a Gaming Machine Permit in premises that hold an alcohol licence where no objection or representation has been received.
- Determining a Family Entertainment Centre Gaming Machine Permit where no objection or representation has been received

Appendix Four – Categories of Gaming Machines

Machine category	Maximum stake	Maximum prize
A	Unlimited	Unlimited
B1	£5	£10,000(with option of max £20,000 linked progressive jackpot on a premises basis only)
B2	£2	£500
B3	£2	£500
B3A	£2	£500
B4	£2	£400
C	£1	£100
D non-money prize (other than crane grab machine)	30p	£8
D non-money prize (crane grab machine)	£1	£50
D money prize	10p	£5
D combined money and non-money prize (other than coin pusher or penny falls machines)	10p	£8 (of which no more than £5 may be a money prize)
D combined money and non-money prize (coin pusher or penny falls machine)	20p	£20 (of which no more than £10 may be a money prize)

Number and Category of Gaming Machines Allowed

Premises Type	Permissions
Large Casino (table/machine ratio of 5-1 up to maximum)	Maximum of 150 machines. Any combination of machines in categories B to D , (except B3A machines) within the total limit of 150 (subject to table ratio)
Small Casino (table/machine ratio of 2-1 up to maximum)	Maximum of 80 machines. Any combination of machines in categories B to D , (except B3A machines) within the total limit of 80 (subject to table ratio)
Pre 2005 Act Casinos (no table/machine ratio)	Maximum of 20 machines, categories B to D or C or D (except B3A machines) machines instead
Betting premises and tracks occupied by Pool Betting	Maximum of 4 machines, categories B2 to D
Bingo Premises	Maximum of 20% of the total number of gaming machines which are available for use on the premises, categories B3 or B4 .** No limit on C or D machines
Adult Gaming Centre	Maximum of 20% of the total number of gaming machines which are available for use on the premises,, categories B3 or B4 .** No limit on C or D machines
Family Entertainment Centre (with premise licence)	No limit on category C or D machines
Family Entertainment Centre (with permit)	No limit on category D machines
Clubs or Miners' Institutes with permits	Maximum of 3 machines in categories B3A or B4 to D *
Qualifying Alcohol Licensed Premises	1 or 2 machines of category C or D automatic upon notification
Qualifying Alcohol Licensed Premises with Gaming Machine Permits	Number of category C-D machines are specified on permit.
Travelling Fair	No limit on category D Machines

*It should be noted that members' clubs and miners' welfare institutes are entitled to site a total of three machines in Categories B3A to D but only one B3A machine can be sited as part of this entitlement. Commercial clubs are entitled to a total of three machines in Categories B4 to D

** Adult gaming centre and bingo premises are entitled to make available a number category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises . Premises in existence before 13 July 2011 are entitled to make available four (adult gaming centre) or eight (bingo premises) category B gaming machines or 20% of the total number of gaming machines, whichever is the greater. Adult gaming centre premises and bingo premises licences granted on or after 13 July 2011 but before 1 April 2014 are entitled to a maximum of four or eight category B gaming machines or 20% of the total number of gaming machines, whichever is the greater; from 1 April 2014 these premises will be entitled to 20% of the total number of gaming machines only.

DRAFT