

## POLICY STATEMENT – GAMBLING ACT 2005

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<p><i>This Policy Statement was approved by The City of Edinburgh Licensing Board on 31<sup>st</sup> January 2022, to take effect on 10<sup>th</sup> March 2022</i></p> <p><i>All references to the Guidance refer to the Gambling Commission's Guidance to Licensing Authorities, updated as at 13<sup>th</sup> May 2021</i></p>	

## **PART A**

### **1. The Licensing Objectives**

In exercising most of their functions under the [Gambling Act 2005](#) ('the Act'), licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

It should be noted that the Gambling Commission has stated: "The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling".

The City of Edinburgh Licensing Board ('the Board') is aware that, in terms of Section 153 of the Act, in making decisions about premises licences and temporary use notices it should aim to permit the use of premises for gambling in so far as it thinks it:

- 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 the Board's statement of licensing policy

### **2. Introduction**

The Board is the licensing authority in terms of the Act for the local government area of the City of Edinburgh, Scotland's inspiring capital. A plan showing the extent of the local government area is attached as Appendix 1. The environment of the area continues to provide the basis for a successful tourist industry which brings cultural benefits to the city and is a vital part of its economy. The local government area covers 264 square kilometres and is divided into 17 multi-member wards.

Licensing authorities are required in terms of section 349 of the Act to publish a statement of the principles which they propose to apply when exercising their functions. This policy statement must be published at least every three years. The statement must also be reviewed from "time to time" and any amended parts re-consulted upon. The statement must be then re-published.

This policy statement was presented for adoption by the Board on 31<sup>st</sup> January 2022, taking effect on 10<sup>th</sup> March 2022, to be published on its website at:

[www.edinburgh.gov.uk/licensingboard](http://www.edinburgh.gov.uk/licensingboard)

The Board consulted upon this statement before finalising and publishing. The consultation took place between 3<sup>rd</sup> November and 15<sup>th</sup> December 2021.

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The Act requires that the following parties are consulted by licensing authorities:

- the Chief Constable of Police Scotland;
- one or more persons who appear to the licensing authority to represent the interests of persons carrying on gambling businesses in the licensing authority's area;
- one or more persons who appear to the licensing authority to represent the interests of persons who are likely to be affected by the exercise of the licensing authority's functions under the Act.

Consultation was carried out using the Council's online Consultation Hub and by targeted communication with consultees considered to be representative of the above groups. Should you have any comments as regards this policy statement please send them in writing by any of the contact options listed below:

Post: The Clerk of the Licensing Board, City of Edinburgh Council, Waverley Court, 4 East Market Street, Edinburgh EH8 8BG  
Tel: 0131 529 4424 or 0131 529 4304

E-mail: [licensing@edinburgh.gov.uk](mailto:licensing@edinburgh.gov.uk)

It should be noted that this policy statement will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Act.

### **3. Declaration**

In producing this policy statement, the Board declares that it has had regard to the licensing objectives of the Act, the [Guidance to licensing authorities](#) (as last updated 13<sup>th</sup> May 2021) issued by the Gambling Commission in terms of section 25 of the Act ('the Guidance'), the [consolidated Gambling Codes of Practice](#) issued by the Gambling Commission and any responses from those consulted on the statement.

### **4. Responsible Authorities**

The Act specifies details of the "responsible authorities" to whom the Board must have regard, when considering applications in connection with gambling premises licences. The responsible authorities include:-

- The Gambling Commission
- The Chief Constable, Police Scotland
- The Chief Officer, Scottish Fire and Rescue Service
- Planning, Directorate of Place, The City of Edinburgh Council
- The City of Edinburgh Council
- Environmental Health, Directorate of Place, The City of Edinburgh Council
- HM Revenue & Customs

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 authority about the protection of children from harm. In doing so, the principles it must consider are:

- the need for the body to be responsible for an area covering the whole of the licensing authority's area; and
- the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group.

The Board has designated the Edinburgh Child Protection Committee, an inter-agency body representing the statutory, private and voluntary sectors for this purpose. This is on the basis that it operates throughout the whole of the area covered by the Board and because it has the specialist knowledge and expertise to fulfil this role.

The contact details of all the Responsible Authorities under the Act are available via the Board's website at: [www.edinburgh.gov.uk/licensingboard](http://www.edinburgh.gov.uk/licensingboard)

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## 5. Interested parties

Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Act as follows:

“For the purposes of this Part a person is an interested party 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 applications 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 paragraph (a) or (b)”

The Board is required by regulations to state the principles it will apply in exercising its powers under the Act to determine whether a person is an interested party.

Each case will be decided upon its merits. The Board will not apply a rigid rule to its decision making. It will consider the examples of considerations provided at Part 8 of the Guidance. It will also consider the Guidance that "has business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.

Interested parties can be persons who are democratically elected such as councillors and MPs. No specific evidence of being asked to represent an interested person will be required as long as the councillor / MP represents the ward likely to be affected. Likewise, community councils likely to be affected will be considered to be interested parties. Other than these however, this authority will generally require written evidence that a person/body (e.g. an advocate / relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation is sufficient.

If individuals wish to approach councillors to ask them to represent their views then care should be taken that the councillors are not Board members. If there are any doubts then please contact the Clerk of the Licensing Board as below:-

Address: Clerk of the Licensing Board, City of Edinburgh Council, Waverley Court, 4 East Market Street, Edinburgh EH8 8BG  
Tel: 0131 529 4424 or 0131 529 4304  
E-mail: [licensing@edinburgh.gov.uk](mailto:licensing@edinburgh.gov.uk)

## **6. Exchange of Information**

The Board is required to include in its statement the principles to be applied in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

The principle that the Board applies is that it will act in accordance with the provisions of the Act in its exchange of information. The Board will also have regard to Part 13 of the Guidance and any further guidance issued by the Gambling Commission on this matter, as well as any relevant regulations issued by the Secretary of State or Scottish Ministers under the powers provided in the Act.

Should any protocols be established as regards information exchange with other bodies then they will be made available.

## **7. Enforcement**

The Board is required by regulation under the Act to state the principles to be applied in exercising its functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

This licensing authority's principles are that it will be guided by the Guidance and will endeavour to 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 joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and
- Targeted: regulation should be focused on the problem, and minimise side effects.

In accordance with the Guidance the Board will endeavour to avoid duplication with other regulatory regimes so far as possible.

The main enforcement and compliance role for the Board in terms of the Act is to ensure compliance with premises licences and other permissions which it authorises. The Gambling Commission is the enforcement body for the operating and personal licences. Concerns about manufacture, supply or repair of gaming machines are not dealt with by the Board but should be notified to the Gambling Commission.

The Board has noted the terms of advice issued by the Commission regarding the regulatory and enforcement functions of local authorities. It notes that the City of Edinburgh Council's

Licensing Standards Officers are not, simply by virtue of their role, authorised persons for the purposes of section 304 of the Act. The Board notes that the Commission suggests the means by which Council officers can be authorised persons, on the basis of their other statutory functions.

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## 8. The Board's functions

The Board is required under the Act to:

- Be responsible for the licensing of premises where gambling activities are to take place by issuing *Premises Licences*
- Issue *Provisional Statements*
- Regulate *members' clubs* and *miners' welfare institutes* who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
- Issue *Club Machine Permits* to *Commercial Clubs*
- Grant permits for the use of certain lower stake gaming machines at *unlicensed Family Entertainment Centres*
- Receive notifications from alcohol licensed premises (under the Licensing (Scotland) Act 2005) for the use of two or fewer gaming machines
- Issue *Licensed Premises Gaming Machine Permits* for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing (Scotland) Act 2005, where there are more than two machines
- Register *small society lotteries* below prescribed thresholds
- Issue *Prize Gaming Permits*
- Receive and Endorse *Temporary Use Notices*
- Receive *Occasional Use Notices*
- Provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange')
- Maintain registers of the permits and licences that are issued under these functions

It should be noted that the Board is not involved in licensing remote gambling. This is regulated by the Gambling Commission via operating licences.

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## **PART B**

### **PREMISES LICENCES: CONSIDERATION OF APPLICATIONS**

#### **1. General Principles**

Premises licences and the applications process are subject to the requirements set out in the Act and regulations, as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State. The Board can exclude default conditions and also attach others, where it is believed to be appropriate. The Board considers it important to involve local communities in the licensing process. The Board expects and encourages applicants to notify relevant local community councils of application details (details of community councils available here - [Community Councils – The City of Edinburgh Council](#)).

##### **(i) Decision-making**

The Board 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:

- 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 the Board's statement of licensing policy.

It is appreciated that in accordance with the Guidance "moral and ethical objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution') and also that unmet demand is not a criterion for a licensing authority.

The Board has delegated certain functions to its Clerk and persons appointed to assist the Clerk in terms of section 155 of the Act. [Appendix 2](#) sets out the Scheme of Delegation.

##### **(ii) Definition of “premises”**

The Board takes particular note of the Guidance 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 of the following:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore 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.
- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not “drift” into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- Customers should be able to participate in the activity named on the premises licence.

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

- Do the premises have a 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?

The Board will consider these and other relevant factors in making its decision, depending on all the circumstances of the case.

The Gambling Commission's relevant access provisions for each premises type are set out in part 7 of the Guidance and reproduced below:

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### **Casinos**

- The principal access entrance to the premises must be from a street (as defined at part 7 of the Guidance)
- No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons
- No customer must be able to enter a casino directly from any other premises which holds a gambling premises licence

### **Adult Gaming Centre**

- No customer must be able to access the premises directly from any other licensed gambling premises

### **Betting Shops**

- Access must be from a street (Guidance part 7) or from another premises with a betting premises licence
- No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind. As an example, it would not be permissible to have a betting shop at the back of a café – the whole area would have to be licensed.

### **Tracks**

- No customer must be able to access the premises directly from:
  - a casino
  - an adult gaming centre

### **Bingo Premises**

- No customer must be able to access the premises directly from:
  - a casino
  - an adult gaming centre
  - a betting premises, other than a track

## Family Entertainment Centre

- No customer must be able to access the premises directly from:
  - a casino
  - an adult gaming centre
  - a betting premises, other than a track

Part 7 of the Guidance contains further guidance on this issue, which this licensing authority will also take into account in its decision-making.

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### (iii) 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, the Board 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 the Board 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.

### (iv) Location

The Board is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives are relevant to its decision-making. In accordance with the Guidance, the Board 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 showing how potential concerns can be overcome. Regard will be had in particular to the terms of Risk Assessments carried out by applicants (about which more is said later in this policy). The Board remains mindful of the requirements of section 153 of the Act regarding the aim to permit the use of

premises for gambling.

The Board notes the terms of Part 6 of the Guidance regarding Local Area Profiling, in connection with identifying risks, etc for the purposes of assisting licence holders and applicants for licences in preparing locally-linked risk assessments for their premises. The Board will carry out further work on the identification of Local Area Profiles, working with Police Scotland, the City of Edinburgh Council and others with an interest in public health, mental health, community safety, housing and education with a view to assessing potential impacts on the licensing objectives, particularly relating to protection of children and vulnerable persons.

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#### **(v) Planning**

The Guidance states:

7.58 – In determining applications the licensing authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, i.e. those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.

The Board will not take into account irrelevant matters. In addition the Board notes the following excerpt from the Guidance:

7.65 - When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

#### **(vi) Duplication with other regulatory regimes**

The Board seeks to avoid any duplication with other statutory / regulatory systems where possible, including planning. The Board 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 must not form part of the consideration for the premises licence.

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## **(vii) Licensing objectives**

Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, the Board has considered the Guidance and some comments are made below.

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

The Board is aware that the Gambling Commission takes a leading role in preventing gambling from being a source of crime. The 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 the Board 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. The Board is aware of the distinction between disorder and nuisance and will consider factors (for example 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**

The Board has noted that the Gambling Commission states that it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences.

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

The Board has noted the Guidance 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 Board will therefore consider, as suggested in the Guidance, 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.

The Board is also aware of the Gambling Commission Codes of Practice as regards this licensing objective, in relation to specific premises.

As regards the term “vulnerable persons” it is noted that the Gambling Commission does not seek to offer a definition but states that “it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gambling beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.” The Board will consider this licensing objective on a case by case basis.

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## **(viii) Conditions**

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

- relevant to the need to make the proposed building 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; and
- reasonable in all other respects.

Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures the Board will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. The Board will also expect the licence applicant to offer his/her own suggestions as to way in which the licensing objectives can be met effectively.

The Board will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Guidance.

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

- all such machines are located in an area of the premises 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.

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

The 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. In accordance with the Guidance, the Board 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 Board 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 Act 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.

### ***Door Supervisors***

The Guidance advises 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 premises licence condition to this effect.

Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be SIA licensed or not will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (Guidance, Part 33).

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### **Risk Assessments**

Applicants for new licences and existing licence holders are required to carry out local risk assessments specific to their premises. Further information is contained in the Commission's Licence Conditions and Codes of Practice. Part 6 of the Guidance also sets out reference to risk assessments, as being a matter for consideration by the Board in formulating its policy statement.

The Board expects applicants for new premises licences, and applicants for variation of existing licences, to have due regard to the Commission's Guidance on risk assessments – and the Board will continue to give due consideration to the terms of risk assessments provided by applicants.

The Board will expect licence holders and applicants for new licences to ensure that risk assessments take particular account of local circumstances specific to their premises. Risk assessments should include consideration of appropriate control measures, policies and procedures to reduce or mitigate risks.

The Board will also expect licence holders to ensure that their risk assessments remain up to date and relevant for the particular local circumstances, taking account of the following:-

- changes to local circumstances which are considered to be significant, including changes to the Board's policy
- changes to licence holder's premises such as may affect existing mitigation of risks
- at time of applying for variation to existing licence

Applicants for new licences will be expected to ensure that their risk assessment is lodged with the Board, and updates to assessments lodged when applications for variation of licence are made. The Board continues to emphasise the importance of risk assessments, which become of relevance in connection with review applications, in that the Board can have regard to the extent to which licence holders have taken steps to mitigate risks to the licensing objectives. Premises licence holders should ensure that a copy of their risk assessment is kept available on premises at all times.

The Board considers that premises licence holders will ensure risk assessments are monitored from time to time and reviewed where necessary.

## 2. Adult Gaming Centres

The Board will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the Board that there will be sufficient measures to, for example, ensure that under 18 year olds do not have access to the premises.

The Board may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as Gamblers Anonymous Scotland, GamCare and other support organisations.

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

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## 3. (Licensed) Family Entertainment Centres:

The Board will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the Board, for example, that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

The Board may consider measures to meet the licensing objectives such as:

- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as Gamblers Anonymous Scotland, GamCare and other support organisations.
- Measures / training for staff on how to deal with suspected truant school children on the premises

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

The Board will, in accordance with the Guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. The Board will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

## 4. Casinos

### ***No Casinos resolution***

The Board has not passed a 'no casino' resolution under Section 166 of the Act, but is aware that it has the power to do so. Should the Board decide in the future to revisit the possibility of such a resolution, it would have to first carry out a consultation before making any change to its policy statement.

### ***Licence considerations / conditions***

The Board will attach conditions to casino premises licences according to the principles set out in part 9 of the Guidance, bearing in mind the mandatory conditions listed in part 17 of the Guidance, as updated, and the Licence Conditions and Codes of Practice published by the Gambling Commission.

### ***Betting machines***

The Board will, in accordance with the Guidance, 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 the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

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## 5. Bingo premises

The Board notes that the Guidance, as updated, states:

18.5 Licensing authorities will need to satisfy themselves that bingo can be played in any bingo premises for which they issue 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 ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.

18.7 Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

## 6. Betting premises

### ***Betting machines***

The Board will, in accordance with the Guidance (as updated), 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 the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

## 7. Tracks

The 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. In accordance with the Guidance,

the Board will especially consider the impact upon the third licensing objective (i.e. the protection of children and vulnerable persons from being harmed or exploited by gambling) 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.

The Board will therefore expect the premises licence applicant to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

The Board may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as Gamblers Anonymous Scotland, GamCare and other support organisations

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

### ***Gaming machines***

Where the applicant holds a pool betting operating licence and is going to use the entitlement to four gaming machines, machines (other than category D machines) should be located in areas from which children are excluded.

### ***Betting machines***

The Board will, in accordance with Part 16 of the Guidance, take into account the size of the premises and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator proposes to offer.

### ***Applications and plans***

The Act (section 51) requires applicants to submit plans of the premises with their application, in order to ensure that the licensing authority has the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan will also be used for the licensing authority to plan future premises inspection activity. (Guidance paragraph 20.43).

Plans for tracks do not need to be in a particular scale, but should be drawn to scale and should be sufficiently detailed to include the information required by regulations. (Guidance, paragraph 20.44). Some tracks may be situated on agricultural land where the perimeter is not defined by virtue of an outer wall or fence, such as point-to-point racetracks. In such instances, where an entry fee is levied, track premises licence holders may erect temporary structures to restrict access to premises.

In the rare cases where the outer perimeter cannot be defined, it is likely that the track in question will not be specifically designed for the frequent holding of sporting events or races. In such cases betting facilities may be better provided through occasional use notices where the boundary premises do not need to be defined.

(Guidance, part 15).

The Board appreciates that it is sometimes difficult to define the precise location of betting areas on tracks. The precise location of where betting facilities are provided is not required to be shown on track plans, both by virtue of the fact that betting is permitted anywhere on the premises and because of the difficulties associated with pinpointing exact locations for some types of track. Applicants should provide sufficient information that the Board can satisfy itself that the plan indicates the main areas where betting might take place. For racecourses in particular, any betting areas subject to the “five times rule” (commonly known as betting rings) must be indicated on the plan. (Guidance, paragraphs 20.46-47).

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## **8. Travelling Fairs**

The Board is responsible for deciding whether, where category D machines and / or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

The Board will also consider whether the applicant falls within the statutory definition of a travelling fair.

It is noted that the 27-day statutory maximum for the land being used as a fair applies on a per calendar year basis, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. The Board will work with its neighbouring authorities to ensure that land which crosses its boundaries is monitored so that the statutory limits are not exceeded.

## **9. Provisional Statements**

Developers may wish to apply to the Board for provisional statements before entering 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. There is no need for the applicant to hold an operating licence in order to apply for a provisional statement.

Section 204 of the Act provides for a person to make an application to the Board for a provisional statement in respect of premises that he or she:

- expects to be constructed;
- expects to be altered; or
- expects to acquire a right to occupy.

The process for considering an application for a provisional statement is the same as that for a premises licence application. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and interested parties may make representations and there are rights of appeal.

In contrast to the premises licence application, the applicant does not have to hold or have applied for an operating licence from the Gambling Commission (except in the case of a track) and they do not have to have a right to occupy the premises in respect of which their provisional application is made.

The holder of a provisional statement may then apply for a premises licence once the premises are constructed, altered or acquired. The Board will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account unless:

- they concern matters which could not have been addressed at the provisional statement stage, or
- they reflect a change in the applicant's circumstances.

In addition, the Board may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- which could not have been raised by objectors at the provisional statement stage;
- which in the Board's opinion reflect a change in the operator's circumstances; or
- where the premises has not been constructed in accordance with the plan submitted with the application. This must be a substantial change to the plan and the Board notes that it can discuss any concerns it has with the applicant before making a decision.

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## 10. 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 on the basis of whether the request for the review is relevant to the matters listed below;

- 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 policy statement.

The request for the review will also be subject to the consideration by the Board as to whether the request is frivolous, vexatious, or whether it will certainly not cause the Board to wish to alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.

The Board can also initiate a review of a particular premises licence, or a particular class of premises licence on the basis of any reason which it thinks is appropriate.

Once a valid application for a review has been received by the Board, representations can be made by responsible authorities and interested parties during a 28 day period. This period begins 7 days after the application was received by the Board, who will publish notice of the application within 7 days of receipt.

The Board must carry out the review as soon as possible after the 28 day period for making representations has passed.

The purpose of the review will be to determine whether the Board should take any action in relation to the licence. If action is justified, the options open to the Board are:-

- (a) add, remove or amend a licence condition imposed by the licensing authority;
- (b) exclude a default condition imposed by the Secretary of State or Scottish Ministers (e.g. opening hours) or remove or amend such an exclusion;
- (c) suspend the premises licence for a period not exceeding three months; and
- (d) revoke the premises licence.

In determining what action, if any, should be taken following a review, the Board must have regard to the principles set out in section 153 of the Act, as well as any relevant representations.

Risk assessments – in considering review of premises licences, the Board will have regard to the terms of risk assessments carried out by licence holders, and the extent to which their assessments have identified, and the steps the licence holder will take to mitigate, risk.

The Board may also initiate a review of a premises licence on the grounds that a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.

Once the review has been completed, the Board must, as soon as possible, notify its decision to:

- the licence holder
- the applicant for review (if any)
- the Commission
- any person who made representations
- the Chief Constable; and
- Her Majesty's Commissioners for Revenue and Customs

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## **PART C**

### **PERMITS / TEMPORARY & OCCASIONAL USE NOTICE**

#### **1. Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits - Schedule 10 paragraph 7 of the Act)**

Statement of Principles – the Board will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency and efficacy of such policies and procedures will each be considered on their merits, however, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises. The Board will also expect, in accordance with the Guidance, that applicants demonstrate a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed Family Entertainment Centres; that the applicant has no relevant

convictions (those set out in Schedule 7 of the Act); and that staff are trained to have a full understanding of the maximum stakes and prizes.

## **2. (Alcohol) Licensed premises gaming machine permits - (Schedule 13 paragraph 4(1) of the Act)**

### ***Automatic entitlement: 2 machines***

There is provision in the Act for premises licensed to sell alcohol for consumption on the premises to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the Board.

The Board can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);
- the premises are mainly used for gaming; or
- an offence under the Act has been committed on the premises.

### ***Permits: 3 or more machines***

If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the Board must consider that application based upon the licensing objectives, the Guidance, and “*such matters as they think relevant.*”

The Board considers that “such matters” will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harmed or being exploited by gambling and will expect the applicant to satisfy the Board that there will be sufficient measures to ensure that persons under 18 do not have access to the adult only gaming machines. Measures which are likely to satisfy the Board that there will be no access may include provisions that the adult machines will be in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by persons under 18. Notices and signage may also be help. As regards the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as Gamblers Anonymous Scotland, GamCare and other support organisations.

It is recognised that some alcohol licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would most likely need to be applied as if for, and dealt with as, an Adult Gaming Centre premises licence.

It should be noted that the Board can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

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### 3. Prize Gaming Permits

The Act states that a licensing authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority proposes to consider in determining the suitability of the applicant for a permit”.

The Board has prepared a Statement of Principles which is that the applicant should set out the types of gaming that he or she is intending to offer and that the applicant should be able to demonstrate:

- that they understand the limits to stakes and prizes that are set out in Regulations;
- that the gaming offered is within the law
- that there are steps proposed to protect children from harm.

In making its decision on an application for this permit the Board does not need to (but may) have regard to the licensing objectives but must have regard to any Gambling Commission guidance. (Schedule 14 paragraph 8(3) of the Act).

It should be noted that there are conditions in the Act by which the permit holder must comply, but that the Board cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;
- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

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### 4. Club Gaming and Club Machines Permits

Members Clubs and Miners’ welfare institutes (but not Commercial Clubs) may apply for a Club Gaming Permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance as set-out in forthcoming regulations.

Members Clubs and Miner’s welfare institutes – and also Commercial Clubs – may apply for a Club Machine Permit. A Club Machine permit will enable the premises to provide gaming machines (3 machines of categories B, C or D). NB Commercial Clubs may not site category B3A gaming machines offering lottery games in their club.

The Board has noted part 25 of the Guidance which set out the requirements to be recognised as a Members’ Club.

The Guidance also notes that licensing authorities may only refuse an application on the grounds that:

- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- (b) the applicant's premises are used wholly or mainly by children and/or young persons;
- (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- (d) a permit held by the applicant has been cancelled in the previous ten years; or
- (e) an objection has been lodged by the Commission or the police.

There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

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## **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. Premises that might be suitable for a Temporary Use Notice, according to the Gambling Commission, would include hotels, conference centres and sporting venues.

The Board can only grant a Temporary Use Notice to a person or company holding a relevant operating licence, i.e. a non-remote casino operating licence.

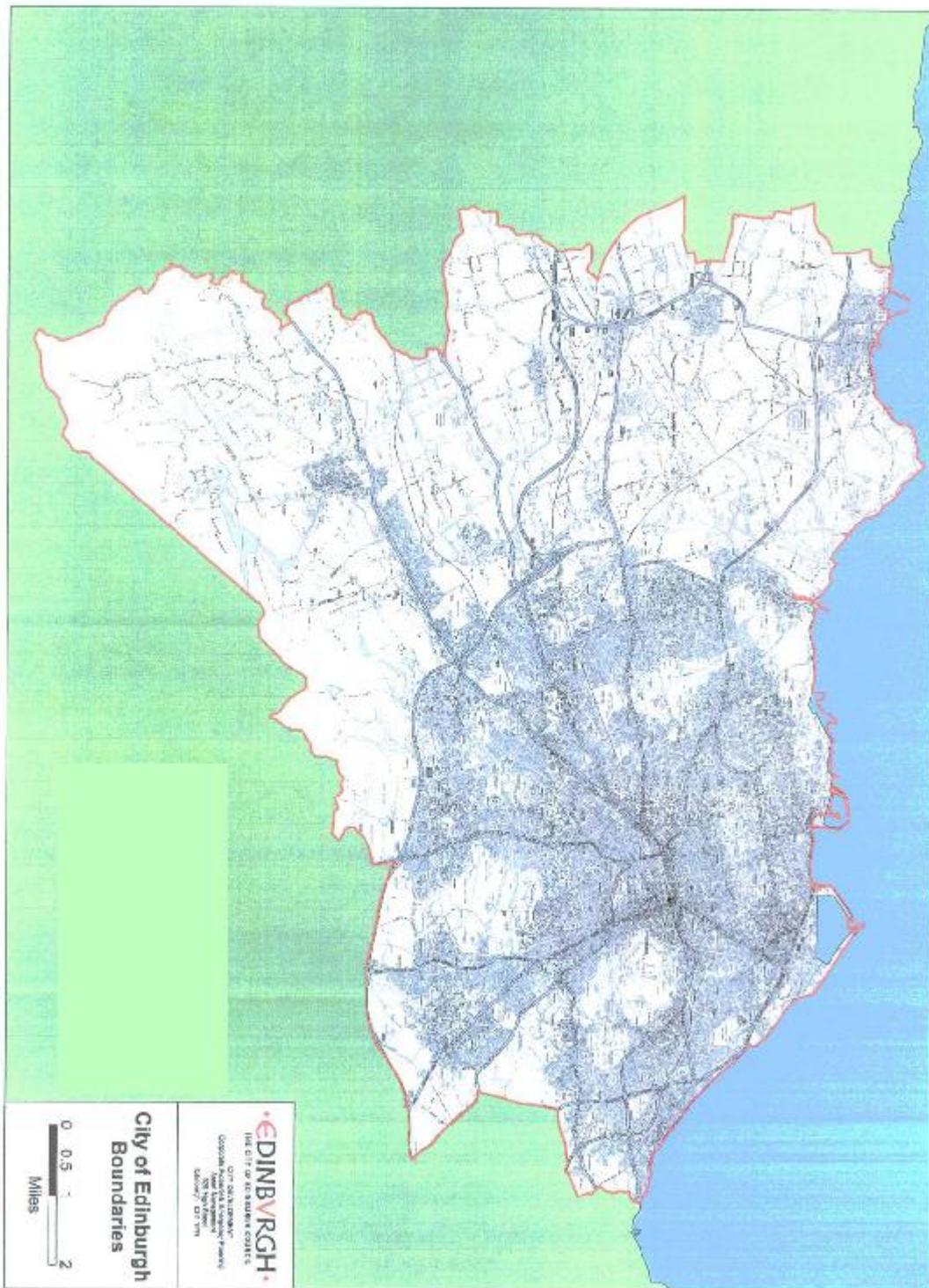
The Secretary of State has the power to determine what form of gambling can be authorised by Temporary Use Notices. The relevant Regulation (SI No 3157: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007) state that Temporary Use Notices can only be used to permit the provision of facilities or equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.

There are a number of statutory limits as regards Temporary Use Notices. The meaning of "premises" in Part 8 of the Act is discussed in Part 7 of the Guidance. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place". In considering whether a place falls within the definition of "a set of premises", the licensing authority needs to look at, amongst other things, the ownership/occupation and control of the premises.

The Board expects to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises, as recommended in the Guidance.

## **6. Occasional Use Notices**

The Board will consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice and will ensure that the statutory limit of 8 days in a calendar year is not exceeded.



**APPENDIX 2**

**CITY OF EDINBURGH LICENSING BOARD**

**Scheme of Delegation made under the Gambling Act 2005**

**Reference page 7 of the Policy Statement**

	<b>Subject Matter</b>	<b>Licensing Board</b>	<b>Clerk of Licensing Board</b>
1	Final approval of three year licensing policy	✓	
2	Policy in respect of casinos	✓	
3	Application for premises licence	Where representations have been received and not withdrawn	Where no representations have been received/representations have been received but thereafter withdrawn
4	Application to vary a licence	Where representations have been received and not withdrawn	Where no representations have been received/representations have been received but thereafter withdrawn
5	Application to transfer a licence	Where representations have been received from the Gambling Commission.	When no representations received from the Gambling Commission or other responsible authority or received but thereafter withdrawn
6	Application for a provisional statement	Where representations have been received and not withdrawn.	Where no representations have been received or representations have been received and thereafter withdrawn
7	Review of a premises licence	✓	
8	Application for a club/gaming machine permit	Where objections have been made and not withdrawn	Where no objections have been made or objections have been made and thereafter withdrawn
9	Cancellation of club gaming/club machine permit	✓	
10	Application for other permits		✓
11	Cancellation of licensed premises gaming machine permit		✓
12	Consideration of temporary use notice		✓
13	Decision to give a counter notice to a temporary use notice (section 224)	✓	
14	Determination of applications for registration of small society lotteries	Where representations have been received and not withdrawn	Where no representations have been received or received but thereafter withdrawn

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