



Joint Committee on the Draft Gambling Bill

Further Written Evidence on the Gambling Bill (Additional Clauses) Presented By:

British Beer & Pub Association (BBPA)

The Trade Association representing the interests of owners and operators of over 35,000 public houses throughout the UK

Supported by:

British Institute of Innkeeping (BII)

The professional body providing services & training to managers and licensees in public houses throughout the UK

Federation of Licensed Victuallers Association (FLVA)

Organisation representing self-employed licensees in England

Association of Licensed Multiple Retailers (ALMR)

Represents the interests of smaller independent companies within licensed retailing

The British Beer & Pub Association makes this submission on behalf of public house interests throughout Great Britain; having worked on the many and varied issues relating to gambling through its specialist panel for many years. In recent years it has commissioned independent research and provided detailed responses to the Gaming Board, the Budd Committee, the Home Office and more recently DCMS.

February 2004



1. General Observations

- 1.1 The drafting of the additional clauses as they relate to the grant and regulation of Category 'C' machines in premises licensed for the sale of alcohol is unclear. There needs to be a clear distinction between the licensing authority issuing the 'alcohol and entertainment licence' and the authority responsible for gambling permissions.
- 1.2 The definition of premises which would be allowed Category 'C' machines under the Licensing Act 2003 would allow all those selling alcohol for consumption on the premises (eg restaurants) to be entitled to two machines. This definition needs to be revised in accordance with the Licensing Act 2003.
- 1.3 There is no process for recording the presence of machines in those premises that use their entitlement of one or two machines. It appears that only additional machines in excess of two would be recorded. The absence of such records undermines proper controls. We would argue that it would be more responsible for all machines to be registered on the appropriate licence.
- 1.4 It needs to be clear what fees, if any, are to be paid and by whom. These matters need to be transparent.
- 1.5 We remain unconvinced of the necessity to restrict the exemption for public houses to two machines and remain very concerned that the application for more is dependent upon a decision by the licensing authority who have almost complete discretion since the considerations are not restricted to the licensing objectives (Clause 239(2)).
- 1.6 As in our previous evidence submitted to the committee we cannot see nor understand the need for a statutory Code of Practice governing what are essentially low risk machines. More should be achieved through a voluntary approach working in partnership with local authorities.
- 1.7 We welcome the policy intention to grant grandfather rights for existing machines. As drafted the additional machine permissions are to be attached as a "condition" to the premises licence (under the Licensing Act 2003). This licence is granted in perpetuity for the life of the business, and is therefore not renewable. There should be no question, in the absence of any review of the licence against the licensing objectives, of any renewal of machine permissions.

2. Comments on Specific Clauses

2.1

235 Alcohol licence

- In this Act – 15
- (a) “alcohol licence” means a premises licence under Part 3 of the Licensing Act 2003 (c. 17), and
 - (b) “on-premises alcohol licence” means a premises licence under that Part which authorises the supply of alcohol for consumption on the licensed premises. 20

2.2 The Licensing Act 2003 does not make a distinction as between on and off-licences but rather where alcohol is supplied the licence may cover “consumption on the premises or off the premises or both”. The Gambling Bill could rather choose to define the relevant exemptions as applying to those licences granted under the Licensing Act 2003 where such licences include the ‘supply of alcohol for consumption on the premises.’

2.3 Otherwise, is it the intention to re-define the Licensing Act into licences that are ‘on-licences’ and ‘off-licences’? Such a change could surely only be effected through the Licensing Act, 2003.

2.4 Either way the Bill as drafted would grant the exemption from Sections 21 and 26 to many venues not currently included within the current definition of a full on-licence. Is it the intention therefore to permit Category ‘C’ machines in restaurants and hotels, which currently hold only residential licences and therefore do not currently have such permission?

2.5

236 Exempt gaming

- (6) The fifth condition of gaming for the purposes of subsection (1) is that no charge is made for participation.

2.6 In itself this condition would not cause any problem since pubs do not and would charge a fee to play machines. However, if this is taken to mean any charge made to enter the premises this could be a serious and unnecessary limitation (see comments on Clause 237 Section 236: supplementary below).

2.7 The BBPA has no issue with the other 7 conditions.

2.8

237 Section 236: supplementary

- (3) For the purposes of section 236(6) – 15
- (a) it is immaterial how a charge is described,
 - (b) it is immaterial whether a charge is in money or money’s worth,
 - (c) a charge for admission to premises where gaming takes place shall be treated as a charge for participation in the gaming,
 - (d) a membership subscription is a charge for participation, and
 - (e) a stake is not a charge for participation.

2.9 Section 237(3)(c) appears to rule out the use of Category 'C' machines where a charge is made for admission to the premises. Some public houses impose entrance charges on a regular basis eg. Friday and Saturday nights after 9pm or one-offs like New Year's Eve. Such charges should not be the basis for exclusion of machines.

2.10 Section 237(3)(a) rules out the use of a description to alleviate the effects of 237(3)(c).

2.11 The BBPA would wish to see a revision of these clauses to allow for admission charges. This is particularly relevant where such charges are more often than not made for reasons of control of numbers and therefore directly related to the objective of preventing crime and disorder and on health & safety grounds, both licensing objectives.

2.12

239 Gaming machines

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- (1) Sections 26 and 201 shall not apply to making one or two gaming machines, each of which is of Category C or D, available for use on premises in respect of which an on-premises alcohol licence has effect.

2.13 The BBPA is disappointed that its case for the exemption to be extended to four machines rather than two has been rejected in these draft clauses. Given the de-regulation extended to other areas of gambling in the draft bill and the already noticeable effect of those changes that have already occurred the constraint imposed here is disproportionate to any harm that may be envisaged.

2.14

- (2) A person who applies to a licensing authority for an on-premises alcohol licence or who holds an on-premises alcohol licence issued by a licensing authority may apply to the licensing authority for the addition to the licence of a condition authorising the holder to make available for use on the premises – 20
- (a) a specified number of Category C gaming machines;
 - (b) a specified number of Category D gaming machines;
 - (c) a specified number of gaming machines each of which is of Category C or D. 25

2.15 We acknowledge that 239(2) allows for application for more than two but remain deeply concerned about the provisions made for the decision making process which determines the success or otherwise of such applications.

2.16

- (3) A licensing authority to whom an application is made under subsection (2) shall consider it having regard to the licensing objectives and such other matters as they think relevant and shall – 30
- (a) grant the application,
 - (b) refuse the application, or
 - (c) grant it in respect of a smaller number of machines than that specified in the application.

2.17 We would be less concerned about the process if the decisions made by the licensing authorities were confined to considerations of the licensing objectives. The draft, however, includes the phrase “such other matters as they think relevant”. This is a significant departure from similar provisions in the Licensing Act. In effect it grants the complete use of discretion to licensing authorities in that they can introduce any number of reasons for their decision. The Licensing Act also contains the restraint that such decisions made by licensing authorities only come into effect on receipt of a complaint from an authorised source (as laid down by statute) and such complaints should not be repetitious, frivolous or vexatious. We believe that such provisions are both helpful and necessary and will result in a far less litigious regulatory system.

2.18

- (4) The Secretary of State may make regulations prescribing the procedure to be followed in relation to an application for the addition of a condition under subsection (2) (and the regulations may, in particular, impose an obligation upon an applicant and make provision about the consequences of failure to comply with any obligation imposed). 35

2.19 The BBPA believes that the number of conditions surrounding fruit machines in pubs are limited in scope and fails to see why therefore they should be contained in secondary legislation which is not yet available. The industry is very anxious to examine the scope and extent of such conditions so that it can pass informed comment on them. Since it will be prohibited for under 18 to play machines and the numbers of machines are to be limited it is difficult to see how or what additional conditions need to be applied.

2.20

- (6) Neither subsection (1) nor a condition under subsection (2) authorises a person to make a gaming machine available for use otherwise than in accordance with any relevant provision of a code of practice under section 16 about the location and operation of a gaming machine. 45

2.21 The industry has severe reservations on the powers of the Gambling Commission to produce and enforce Codes of Practice in this area for the same reasons as given above. The BBPA believes that the model to be followed should be that of the Licensing Act, 2003. Machines in pubs and other alcohol-licensed premises are to be regulated and governed by Local Authorities. The BBPA believes that should Guidance be required, it should be discussed and agreed between the parties involved. Ownership by the industry of such Guidance would go a long way to ensure a very high level of compliance with the law.

2.22 We are concerned that the reference to ‘location’ would be extended to location within a premises rather than simply to the location of the premises. The legal obligations on the trade will ensure that the physical location of the machine is taken very seriously by business, since errors here could lead to prosecution and loss of licence. We do not see that legislation or indeed Codes of Practice have much place in what is a matter of common sense and

commercial practice. The law is perfectly able to deal with transgressions, eg. underage play, if that occurs.

2.23

240 Removal of exemption

- (1) The licensing authority who issue an on-licence alcohol licence in respect of premises may, on the issue of the licence or at any later time, disapply section 236 or 239 to the premises.
- (2) A licensing authority may disapply a section under subsection (1) only if they think that –
 - (a) the application of the section to the premises is not reasonably consistent with pursuit of the licensing objectives, 5
 - (b) gaming has taken place on the premises in purported reliance on the section but in breach of a condition of that section, or 10
 - (c) the premises are mainly used or to be used for gaming.

2.24 Section 240(2)(a) granting the power to local authorities to disapply the exemption is too vague here. We do not argue that breaches against the licensing objectives are not prima facie cause to revoke the exemption but the test of ‘not reasonably consistent with pursuit of the licensing objectives’ is not sufficiently robust.

2.25

- (4) The Secretary of State may make regulations prescribing the procedure to be followed in relation to the addition of a condition under subsection (3) (and the regulations may, in particular, impose an obligation upon an applicant for or holder of an alcohol licence and make provision about the consequences of failure to comply with any obligation imposed). 15

2.26 Again we fail to understand the need for such additional powers as may be taken by the Secretary of State under this clause. If conditions are made under the Licensing Act, 2003 the obligations are quite clear and the offence of breaching a condition is equally clear. The penalties for breach of condition are severe and lead to a fine up to £20,000, the suspension of a licence or revocation.

2.27 Were such powers to be granted to the Secretary of State the industry would be very unhappy if such powers were to be granted by ‘negative resolution’. Such strong powers as these would be likely to be should only be realised after proper consultation and debate in both Houses of Parliament.

3. Grandfather Rights

3.1 Paragraph 13 under the Draft Gambling Bill: Policy Note 7 – Transition to the New Regime and ‘Grandfather’ Rights signals the intention to entitle premises licensed for the consumption of alcohol to continue to operate existing machines i.e. Grant grandfather rights.

- 3.2 The industry welcomes this intention and looks forward to seeing the clauses that put this into effect. We do however remain concerned about the possible removal of such rights under Section 240(2)(a) if these provisions are not clarified. We support the revocation of licences where there is clear and evidential breach of the law but such breaches must be serious and demonstrable.