

**EXCERPT FROM DCMS GAMBLING CIRCULAR 13**

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

**INTRODUCTION**

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

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

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

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

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

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

## **PART 1 - Section 34 permits for AWP Machines – Changes as a result of the Licensing Act 2003**

### **1 – Legal framework**

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

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

the “all cash” machine, which has a maximum stake of 30p and a maximum prize of £25. This type is commonly found in pubs, or arcades with an over 18 door policy (section 34(5E)); and

the “coin or token” machine, which has a maximum stake of 30p and a maximum prize of £5 cash or £8 non-cash. This is the type found in take-away restaurants or amusement arcades to which children have access (section 34(1)).

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

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

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

#### ***Q3. Has the Gaming Act 1968 been amended?***

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

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

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

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

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

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

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

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

**2 - Timing of the changes**

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

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

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

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

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

**3 – Alcohol licensed premises**

**Q7. What does “alcohol licensed premises” mean?**

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

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

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

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

***Q9. Do these changes affect clubs?***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Q15. Will these new functions constitute functions under the Licensing Act 2003 or the Gambling Act 1968?**

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

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

**Q16. Will authorities be able to pass resolutions banning AWP machines in alcohol licensed premises?**

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

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

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

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

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

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

Local authorities will not assume any new enforcement powers as a result of this change. Any breach of the s.34 permit is a matter for the police, and only the police have powers of

entry and inspection. Authorities should, of course, report to the police any breaches that come to their attention.

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

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

**5 – Application process and fees**

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

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

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

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

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

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

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

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

**6 - Transitional arrangements**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

between 24 November 2005 and 8 December, they should submit their application to their local authority;

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

## **PART 2 - Prize gaming permits - Section 16 of Lotteries and Amusement Act**

### **1 – Legal framework**

Under s.16 of the Lotteries and Amusements Act 1976, local authorities have responsibility for granting amusements with prizes permits to a range of premises, but licensing justices currently have responsibility for granting such permits to alcohol licensed premises. Schedule 3 to the 1976 sets out the procedure, which is similar to the procedure for s.34 permits, explained in Part 1.

S.16 permits allow the playing of certain games and lotteries for prizes, commercially, within specified money limits. S.16 permits are not intended to be used for authorising gaming machines. The Department plans to issue further guidance on this point shortly.

Amendments made to Schedule 3 to the 1976 Act, by Schedule 6 to the Licensing Act 2003 (at paragraphs 62-67), will transfer the responsibility for s.16 permits in alcohol licensed premises from licensing justices to licensing authorities.

Under the 1976 Act, permits must be issued for at least three years. Most licensing justices have issued permits for three years, and licensees will be accustomed to working on a three year cycle. DCMS recommends that new or renewed permits are issued for three years.

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

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

For the present, nothing in the Gambling Act 2005 affects s.16 permits, and the 1976 Act remains in force.

### **3 – Alcohol licensed premises**

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

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

From the second appointed day of the Licensing Act 2003 (24 November 2005), local authorities will be responsible for issuing new s.16 permits to alcohol licensed premises, or the renewal of permits previously granted by licensing justices where they expire on or after 24 November 2005.

All existing s.16 permits for alcohol licensed premises will remain valid, and continue to operate in tandem with new alcohol premises licences granted under the Licensing Act 2003. This will be so, even if the licensee’s name changes as a result of conversion from

the 1964 Licensing Act alcohol licence, to the 2003 Licensing Act alcohol premises licence. An order will be laid before Parliament making special provision for the automatic transfer of existing permits where there is a change of name on the alcohol premises licence to which the permit is linked. The explanation in Part 1, questions 13 and 14 apply to s.16 permits also. There should, therefore, be no functions for authorities in relation to existing permits.

After 24 November 2005, there will be no legal requirement for local authorities to notify permit holders that they need to renew their permits in the future. LACORS will, however, discuss existing practice at the Magistrates' Court via the Department for Constitutional Affairs Licensing Transitional Working Group.

The grant of permits under s.16 of the Lotteries and Amusements Act 1976 remains a function under that Act. It does not become a function under the Licensing Act 2003.

The only exception to this is that the committee of the local authority established under s.7 of the 2003 Act (the alcohol licensing committee), is authorised to deal with applications for the grant of s.16 permits. But in undertaking this task, the committee must use and abide by the requirements of the 1976 Act to discharge these functions. So, for example, the licensing objectives in the Licensing Act 2003 are not relevant to the grant of s.16 permits.

As with s.34 permits, local authorities should consider dealing with these applications at officer level.

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

No application forms are being set by DCMS for s.16 permits. Authorities will already have forms for their s.16 functions for other premises, and will wish to adapt those for alcohol licensed premises.

Licensing authorities will be able to charge a set fee of £32 for the grant or renewal of any s.16 permit.

## **6 - Transitional arrangements**

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

## **PART 3 - Section 6 Gaming Act 1968**

### **1 – Legal framework**

Section 6 of the Gaming Act 1968 entitles holders of justices' on-licences under the Licensing Act 1964 to apply to licensing justices for authority to play certain games on their licensed premises.

Licence-holders are automatically entitled to play dominoes and cribbage (subject to any conditions the licensing justices may set – see paragraph 3 below). Other games may be authorised by an order under section 6, but such games must be equal chance gaming (e.g. bingo, bridge), and no charges for taking part, or levies on stakes or winnings may be made.

Justices also have the power to impose conditions or restrictions by order, concerning the playing of all games on licensed premises (including dominoes and cribbage), to ensure that:

gaming for high stakes places does not take place; and  
gaming does not become the main inducement for people to attend the premises.

An order has no fixed duration, but can be revoked or varied by the justices if there are lawful reasons for them to do so. These reasons could include breach of any conditions attached to the order relating to the level of stakes or where the gaming has become the main inducement for people to attend the premises.

Amendments made to s.6 of the Gaming Act, by Schedule 6 to the Licensing Act 2003 (at paragraph 49), and Schedule 16 to the Gambling Act 2005 (at paragraph 3(2) (SI 2005/2455)), transfer the responsibility for gaming in alcohol licensed premises to licensing authorities, from licensing justices.

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

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

### **3 – Alcohol licensed premises**

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

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

From the second appointed day for the Licensing Act 2003 (24 November 2005) local authorities will take over responsibility for dealing with applications for an order under s.6, and for imposing any conditions or restrictions by order on games played on alcohol licensed premises.

Where an authority makes an order under s.6, it must send a copy of the notice of the order to the local police. This is required by s.6(6) of the 1968 Act.

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

There are no set application forms for a licensee wishing to apply for an order under s.6. Authorities will wish to develop appropriate forms, and template orders. There is no reason that an application could not be made simply in the form of a letter.

There is no separate fee payable by applicants for these services. Applicants are likely to apply in conjunction with an application for an alcohol licence under the 2003 Act, and authorities should be able to deal with these matters together administratively.

### **6 - Transitional arrangements**

As with s.34 permits, nothing will change until 24 November 2005. Prior to then, applications under, and responsibility for, s.6 orders remain with the licensing justices. They will be able to conclude any applications made to them prior to 24 November.

From 24 November, local authorities will take over the issuing of orders under s.6. All existing orders will remain valid, unless a local authority subsequently revokes or varies them.