

2007 No. 505

BETTING, GAMING AND LOTTERIES

**The Licensed Premises Gaming Machine Permits (Scotland)
Regulations 2007**

Made - - - - *1st November 2007*

Coming into force - - *2nd November 2007*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 285(1) and 355(1) of the Gambling Act 2005(a) and all other powers enabling them to do so.

In accordance with section 285(1) of that Act, the Regulations are made with the consent of the Secretary of State.

In accordance with section 355(9) of that Act, a draft of the Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007 and come into force on the day after the day on which they are made.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations, except where the context otherwise requires—

“the Act” means the Gambling Act 2005;

“the 1976 Act” means the Licensing (Scotland) Act 1976(b);

“existing operator” means a person who makes a relevant application for a permit under regulation 3(1) and who, on the date on which the application is made, holds a permit which—

(a) has been issued under section 34 of the Gaming Act 1968(c) by an authority mentioned in sub-paragraph (c) or (d) of paragraph 1 of Schedule 9 to that Act;

(b) authorises the applicant to make available 3 or more gaming machines; and

(c) is due to expire in accordance with paragraph 24(1) or (2) of Schedule 4 to the Order;

“Licensing Board” means a Board continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005(d);

(a) 2005 c.19.

(b) 1976 c.66; this Act is wholly repealed by the Licensing (Scotland) Act 2005 (asp 16), schedule 7 but as yet only the repeal of certain sections from the 1976 Act is in force.

(c) 1968 c.65; this Act was wholly repealed (subject to savings made by order) by the Gambling Act 2005, Schedule 17.

(d) 2005 asp 16.

“the Order” means the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006(a);

“permit” means a licensed premises gaming machine permit;

“relevant alcohol licence” means any licence granted under section 9(1) of the 1976 Act provided it is not an off-sale licence;

“relevant application” means an application for a permit in respect of premises made before the date on which the section 34 permit for the same or substantially the same premises is due to expire in accordance with paragraph 24(1) or (2) of Schedule 4 to the Order; and

“section 34 permit” means a permit such as is referred to in paragraph (a) of the definition of “existing operator” above.

Making of application

3.—(1) A person who applies to a Licensing Board (in its capacity as a licensing authority under the 1976 Act) for a relevant alcohol licence or who holds a relevant alcohol licence issued by a Licensing Board (in that capacity) may apply to that Board (in its capacity as a licensing authority under the Act) for a licensed premises gaming machine permit.

(2) An application may not be made under this regulation if a licence under Part 8 of the Act has effect in relation to the premises.

(3) An application under paragraph (1) may also be made to a Licensing Board by a person who holds a relevant alcohol licence issued by the board constituted under section 1 of the 1976 Act(b) of which that Licensing Board is the successor.

Form and manner of application

4.—(1) An application for a permit must—

- (a) be made in such form and manner as the Licensing Board may direct;
- (b) specify the premises in respect of which the permit is sought;
- (c) specify the number and category of gaming machines in respect of which the permit is sought; and
- (d) contain or be accompanied by such other information or documents as the Licensing Board may direct.

(2) An application for a permit made by an existing operator must be accompanied by a fee of £100.

(3) An application for a permit made by any other person must be accompanied by a fee of £150.

Delegation of functions

5. Section 155 of the Act has effect in relation to the functions of a Licensing Board under these Regulations as it has effect in relation to functions of a Licensing Board under Part 8 of the Act.

Consideration of application

6.—(1) A Licensing Board to which an application is made under these Regulations is to consider it having regard to the licensing objectives, any relevant guidance issued by the Commission under section 25 of the Act and such other matters as it thinks relevant.

(2) On considering an application for a permit a Licensing Board is to—

- (a) grant the application;
- (b) refuse the application; or

(a) S.I. 2006/3272, amended by S.I. 2007/1157 and 1527.

(b) Section 1 was repealed on 1st May 2007 by virtue of S.S.I. 2007/129.

- (c) grant it in respect of–
 - (i) a smaller number of machines than that specified in the application;
 - (ii) a different category of machines from that specified in the application; or
 - (iii) both.
- (3) A Licensing Board may not attach conditions to a permit.

Action following grant or refusal of application

7.—(1) As soon as is reasonably practicable after granting an application, a Licensing Board is to issue a permit to the applicant.

(2) As soon as is reasonably practicable after refusing an application, a Licensing Board is to notify the applicant of–

- (a) the refusal; and
- (b) the reasons for it.

Grant and refusal of application

8.—(1) A Licensing Board may grant an application under these Regulations only if the applicant holds a relevant alcohol licence.

(2) A Licensing Board may not refuse an application, or grant an application in respect of a different category or smaller number of gaming machines than that specified in the application, unless it has–

- (a) notified the applicant of its intention to take such a decision; and
- (b) given the applicant an opportunity to make representations.

(3) A Licensing Board may satisfy paragraph (2)(b) by giving the applicant an opportunity to make–

- (a) oral representations;
- (b) written representations; or
- (c) both.

(4) Paragraph (2)(b) does not apply in respect of a refusal by virtue of paragraph (1).

Form of permit

9.—(1) A permit must be in the form set out in the Schedule.

(2) If a person to whom a permit is issued has a change of name or wishes to be known by another name, that person may send the permit to the Licensing Board with–

- (a) a fee of £25; and
- (b) a request that a new name be substituted for the old name.

(3) A Licensing Board receiving a request in terms of paragraph (2) is to comply with that request and return the permit to the holder.

Permit to be kept on premises

10. The holder of a permit must keep it on the premises to which it relates.

Annual fees

11.—(1) The holder of a permit–

- (a) must pay a first annual fee of £50 to the issuing Licensing Board in accordance with paragraph (2) or (3); and

(b) must pay an annual fee of £50 to the issuing Licensing Board before each anniversary of the issue of the permit.

(2) Where a permit comes into effect on the issue date, the first annual fee for the permit shall be paid within 30 days after that date.

(3) Where a permit specifies that it is to come into effect on a date after the issue date, the first annual fee for the permit shall be paid within—

- (a) the relevant period, or
- (b) 12 months,

after the issue date, whichever is sooner.

(4) In this regulation—

“the issue date” means the date on which a permit is issued, and

“the relevant period”, in relation to a permit, means the period which is equal to the sum of—

- (a) the period between the issue date and the date specified in the permit as that on which it is to come into effect, and
- (b) 30 days.

Failure to produce permit

12.—(1) An occupier of premises in respect of which a permit has effect commits an offence if without reasonable excuse that person fails to produce the permit on request for inspection by—

- (a) a constable;
- (b) an enforcement officer; or
- (c) an authorised local authority officer.

(2) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Permit lost, stolen or damaged

13.—(1) Where a permit is lost, stolen or damaged, the holder may apply to the Licensing Board for a copy.

(2) An application under paragraph (1) must be accompanied by a fee of £15.

(3) A Licensing Board must grant an application under this regulation if satisfied—

- (a) that the permit has been lost, stolen or damaged; and
- (b) where the permit has been lost or stolen, that the loss or theft has been reported to the police.

(4) As soon as reasonably practicable after granting an application under this regulation, a Licensing Board is to issue a copy of the permit certified by it as a true copy.

(5) A copy of a permit issued under paragraph (4) is to be treated as if it were the permit.

Duration of permit

14.—(1) A permit is to continue to have effect unless and until it ceases to have effect in accordance with a provision of these Regulations.

(2) A permit ceases to have effect if—

- (a) a relevant alcohol licence ceases to have effect with respect to the premises to which it relates; or
- (b) the permit holder ceases to be the holder of a relevant alcohol licence.

(3) A permit ceases to have effect if the permit holder gives to the Licensing Board—

- (a) notice of surrender; and

- (b) either–
 - (i) the permit; or
 - (ii) a statement explaining why it is not reasonably practicable to produce the permit.

Variation

15.—(1) The holder of a permit may apply to the Licensing Board to vary the number or category (or both) of gaming machines authorised by the permit.

(2) An application under paragraph (1) is to be accompanied by a fee of £100.

(3) Regulations 3, 4(1), 6 to 8 and 21 are to have effect (with any necessary modifications) in relation to an application for variation under this regulation as they have effect in relation to an application for the issue of a permit.

Cancellation and variation of permit

16.—(1) The Licensing Board which issued a permit may cancel it, or may vary the number or category (or both) of gaming machines authorised by it, if the Board thinks that–

- (a) it would not be reasonably consistent with pursuit of the licensing objectives for the permit to continue to have effect;
- (b) gaming has taken place on the premises in purported reliance on the permit but otherwise than in accordance with the permit or a condition of the permit;
- (c) the premises are mainly used or to be used for making gaming machines available; or
- (d) an offence under the Act has been committed on the premises.

(2) Before cancelling or varying a permit under this regulation, a Licensing Board must–

- (a) give the permit holder at least 21 days' notice of the Board's intention to consider cancelling or varying the permit,
- (b) consider any representations made by the holder; and
- (c) hold a hearing if the holder requests one.

(3) If a Licensing Board cancels or varies a permit under this regulation, it shall as soon as is reasonably practicable give notice of the cancellation or variation and the reasons for it to–

- (a) the permit holder; and
- (b) the Commission.

(4) A cancellation or variation under this regulation is not to take effect until–

- (a) the period specified in regulation 21(2)(b) has expired without an appeal being brought; or
- (b) any appeal brought has been determined.

Cancellation of permit – non-payment of annual fee

17.—(1) The Licensing Board which issued a permit is to cancel it if the holder fails to pay the annual fee in accordance with regulation 11.

(2) A Licensing Board may disapply paragraph (1) if it thinks that a failure to pay is attributable to administrative error.

Forfeiture of permit

18.—(1) Where a permit holder, or the officer of a permit holder, is convicted of a relevant offence, the court by or before which that person is convicted may order forfeiture of the permit.

(2) Forfeiture under this regulation is to be on such terms (which may include terms as to suspension) as may be specified by—

- (a) the court which orders forfeiture; or
- (b) the High Court in a case where an appeal against the conviction, or against any order made on the conviction, has been made.

(3) Subject to any express provision made under paragraph (2), a permit is to cease to have effect on the making of a forfeiture order under this regulation.

(4) The terms on which forfeiture is ordered under this regulation are, in particular, to include a requirement that the permit holder deliver to the Licensing Board within such time as the order may specify—

- (a) the permit; or
- (b) a statement explaining why it is not reasonably practicable to produce the permit.

(5) As soon as is reasonably practicable after making or suspending an order for forfeiture under this regulation, a court must notify the Licensing Board.

Transfer of permit

19.—(1) A person may apply for the transfer of a permit to him or her if—

- (a) that person is applying for the transfer of a relevant alcohol licence to him or her in accordance with subsection (1) or (2) of section 25 of the 1976 Act^(a); and
- (b) a permit has effect in respect of the same premises.

(2) An application under paragraph (1) is to be accompanied by a fee of £25.

(3) Regulations 3, 4(1), 6 to 8 and 21 are to have effect (with any necessary modifications) in relation to an application for the transfer of a permit as they have effect in relation to an application for the issue of a permit.

(4) A person must supply with an application under paragraph (1)—

- (a) the permit; or
- (b) a statement explaining why it is not reasonably practicable to produce the permit.

(5) A Licensing Board may not approve an application for the transfer of a permit under this regulation unless the transfer of the relevant alcohol licence is approved under section 25 of the 1976 Act.

(6) Where a Licensing Board refuses an application for the transfer of a permit by virtue of paragraph (5), the provisions of regulation 8(2)(b) are not to apply to the refusal.

Temporary transfer of permit

20.—(1) This regulation applies where—

- (a) the transfer of a relevant alcohol licence is to be given temporary effect under section 25 (1A) of the 1976 Act^(b); and
- (b) the applicant has also made an application under regulation 19.

(2) A permit in respect of the premises in question is to have effect for the period during which the licence is temporarily transferred as if the applicant for the transfer of the permit were the permit holder.

^(a) Section 25(1) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 51(2)(b).
^(b) Section 25(1A) was substituted by the Licensing (Amendment) (Scotland) Act 1992 (c.18), section 1(1)(b).

Appeal

- 21.**—(1) The applicant for or holder of a permit may appeal if the Licensing Board—
- (a) rejects an application for a permit;
 - (b) grants an application for a permit in respect of a smaller number of machines than that specified in the application or a different category of machines from that specified in the application (or both); or
 - (c) gives a notice under regulation 16(3).
- (2) An appeal under this regulation must be instituted—
- (a) before a sheriff within whose sheriffdom the premises are wholly or partly situated; and
 - (b) within the period of 21 days beginning with the day on which the applicant or holder receives notice of the decision against which the appeal is brought.
- (3) On an appeal the sheriff may—
- (a) dismiss the appeal;
 - (b) substitute for the decision appealed against any decision that the Licensing Board could have made (with effect from such date and on such transitional or other terms as the sheriff may specify);
 - (c) restore a permit (with effect from such date and on such transitional and other terms as the sheriff may specify);
 - (d) remit the case to the Licensing Board to decide in accordance with a direction of the sheriff;
 - (e) make an order about expenses.
- (4) Paragraph (1) applies to a decision of a Licensing Board following remittal under paragraph (3)(d).

Power of entry

22. An enforcement officer or an authorised local authority officer may enter premises in respect of which an application has been made under these Regulations for a purpose connected with the consideration of the application.

Register

23.—(1) A Licensing Board must—

- (a) maintain a register of permits issued by the Board;
- (b) make the register available for inspection by members of the public at all reasonable times; and
- (c) make arrangements for the provision of a copy of an entry in the register to members of the public on request.

(2) A Licensing Board may refuse to provide a copy of an entry unless the person seeking it pays a reasonable fee specified by the Board.

KENNY MACASKILL

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
31st October 2007

I consent,

G SUTCLIFFE

Minister of State, Department for Culture, Media and Sport

1st November 2007

SCHEDULE

Regulation 9(1)

FORM OF PERMIT

This form is prescribed by regulation 9(1) of the Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007

Licensed Premises Gaming Machine Permit

No:.....(*insert licensed premises gaming machine permit number*)

This licensed premises gaming machine permit authorises

.....

.....

.....(*name of permit holder*)

to make gaming machines, of the category and number specified below, available for use on the following premises

.....

.....

.....

.....

(*address of premises, including postcode*)

Number of Category C gaming machines authorised by this permit: (*if no machines of this category are authorised, insert '0'*)

Number of Category D gaming machines authorised by this permit: (*if no machines of this category are authorised, insert '0'*)

Date on which this permit takes effect:

.....

This permit is issued by

.....

.....

.....

..... (*Name and address of Licensing Board issuing permit*)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to a licensed premises gaming machine permit where the applicant for or holder of the permit holds a licence granted under section 9(1) of the Licensing (Scotland) Act 1976 (licence for sale by retail or supply of alcoholic liquor) provided it is not an off-sale licence.

Provision is made as to the making of applications for a permit (regulations 3 and 4), dealing with such applications (regulations 6 to 8), the form of a permit (regulation 9 and the Schedule) and annual fees (regulation 11). Regulation 14 deals with the duration of permits and regulations 15 to 20 with their variation, cancellation, forfeiture and transfer. Regulation 21 makes provision as to appeals and regulation 22 gives a power of entry in certain circumstances.

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