

# GAMBLING COMMISSION

## Section 16 Machines

This note provides information to licensing authorities dealing with applications for permits under section 16(1)(a) of the 1976 Lotteries and Amusements Act, for equipment known as “section 16 machines” which typically offer prizes of up to £500.

### Key points for Licensing Authorities

- The gaming machine industry has developed equipment which it calls a “Section 16 machine”. Permission for use of this equipment is being sought via permits under section 16 of the Lotteries and Amusements Act 1976.
- DCMS and the Gambling Commission are concerned by the development of this equipment.
- Licensing authorities have always had a broad discretion on whether to grant or renew a Section 16 permit.
- The Gambling Commission’s advice is that it is undesirable for Section 16 machines to be located in any premises frequented by, or environments attractive to, under 18 year olds, or in premises where supervision of the machines is inadequate.
- In addition, authorities should scrutinise carefully applications from premises which already have gaming machines authorised under section 34 of the Gaming Act 1968, e.g. pubs with gaming machines, and consider the desirability of allowing further machines in such surroundings.
- Every application should be considered on its merits.
- From 1 September 2007, any doubt about the status of these machines will be removed: they will be classed clearly as gaming machines, subject to the same limits on stakes and prizes, and numbers and locations as other gaming machines, and they will not attract grandfather rights.

### Background

The Department for Culture, Media and Sport (DCMS) does not consider that section 16 of the 1976 Lotteries and Amusements Act was intended to authorise the use of gaming machines.

In the Department’s view, section 16 should provide a mechanism for authorising low stake and prize amusements which constitute the playing of a game or a lottery. Gaming machine arcades with a permit under section 34 of the 1968 Gaming Act, and travelling pleasure fairs, may offer amusements with prizes by virtue of section 16(1)(b) & (c), subject to certain financial limits. It is also possible for premises of any description to apply for a permit under section 16(1)(a) to provide amusements with prizes (subject to the same financial limits). Such permits are issued by local authorities, and the procedures for their grant and renewal are set out in Schedule 3 to the 1976 Act. This note relates solely to permits under section 16(1)(a), and not arcade premises or pleasure fairs relying upon section 16(1)(b) or (c).

Equipment has been developed which has all the appearance of a gaming machine, but which, it is argued, falls outside the legal definition of a gaming machine in Part III

of the 1968 Act. It is further argued that such equipment can as a result be authorised under section 16 of the 1976 Act, and that the financial limits in section 16 apply, rather than the limits which would normally apply to gaming machines.

DCMS and the Gambling Commission are concerned about the use of these so-called "section 16 machines". DCMS is clear that when the Gambling Act 2005 comes into force in September 2007, all such equipment will be classified as a gaming machine. This means it will be subject to the same limits on stakes and prizes, and rules on numbers and locations, as other gaming machines.

DCMS has also made it clear to the industry that under the Gambling Act these machines will not attract "grandfather rights". Any section 16 machine will have to comply with the new rules from 1 September 2007. There will be no special or separate treatment for them. Operators may be investing in significant numbers of these machines, before the Gambling Act comes into force in September 2007, but this does not mean that they will be able to offer machines in numbers that exceed the limits provided for in the Gambling Act, or with higher stakes and prize limits than are permitted for the class of premises.

For the present time local authorities who receive applications for a permit under section 16 should consider carefully whether or not to grant it. The application may, or may not, be in respect of a section 16 machine. It may relate solely to amusements with prizes for which the section was intended e.g. live games of prize bingo, and authorities may wish to enquire about the intended use that will be made of the permit, before determining an application.

Generally authorities have a broad discretion on whether to grant or renew a section 16 permit, as set out in paragraph 7(2) of Schedule 3 to the 1976 Act. A more limited discretion applies in relation to pleasure fairs (paragraph 7(1))<sup>1</sup>. Subject, of course, to the normal principles of good decision-making applicable to all public bodies (i.e. principles developed under judicial review), this general discretion is unfettered. It can include consideration of whether it is desirable that amusements with prizes (in whatever form proposed) be provided on the premises. In the event that authorities consider it undesirable, whether by reference to the purposes for which the premises are used, or the people by whom they are used, or the circumstances in which they are used, authorities may turn down an application.

The Gambling Commission's advice is that it is undesirable for Section 16 machines to be located in any premises frequented by, or environments attractive to under 18 year olds, or in premises where supervision of the machines is inadequate.

In addition, authorities should scrutinise carefully applications from premises which already have gaming machines authorised under section 34 of the Gaming Act 1968, e.g. pubs with gaming machines, and consider the desirability of allowing further machines in such surroundings. Section 16 machines present the public with a gambling experience that is identical to a gaming machine authorised by section 34, but with higher stake and prize limits (a typical section 16 machine will offer prizes of up to £500, compared to the maximum AWP prize of £25). Authorities may wish to consider the desirability of the increased opportunities to gamble offered by a section 16 permit, in light of the use already made of s.34 gaming machines, or any limits imposed by the section 34 gaming machine permit.

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<sup>1</sup> A pleasure fair in this context has a wider meaning than the "travelling showmen's pleasure fair", and extends to all premises used in the way of business wholly or mainly for amusements with prizes.

Authorities should consider all applications on their individual merits, exercising the discretion outlined above, and seeking legal advice as appropriate.

Authorities also have the discretion to resolve not to issue section 16 permits for classes of premises as set out in paragraph 2 of Schedule 3. Authorities should note that such a resolution would stop permits being granted or renewed for all purposes under section 16. Authorities should seek advice from their legal team in the event that they are contemplating passing a resolution. There are limitations on the types of premises which can be subject to a resolution. In particular, local authorities cannot pass a resolution in relation to alcohol licensed premises, or in relation to pleasure fairs.

The Gambling Commission has agreed voluntary guidelines with BACTA (the relevant trade association) governing the use of equipment under section 16 by their members. The guidelines cover a range of issues, including player transparency and speed of play. The guidelines are available on the Commission's website at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk) and BACTA's site at [www.bacta.org.uk](http://www.bacta.org.uk).

DCMS is continuing to monitor the situation, and will be considering what further action may be warranted, in advance of the new Gambling Act.