The Highland Licensing Board

Meeting – 11 August 2015

Agenda Item	**6**
Report No	**HLB/078/15**

Call for evidence by the Local Government and Regeneration Committee on devolution of legislative powers relating to Fixed-Odds Betting Terminals

Report by the Clerk to the Licensing Board

Summary

This Report invites the Board to consider a draft response to the call for evidence by the Local Government and Regeneration Committee of the Scottish Parliament on the UK and Scottish Governments' proposals in relation to Clause 45 of the Scotland Bill which deals with the devolution of powers to control the number of Fixed-Odds Betting Terminals in gambling premises.

1. Background

1.1 The Smith Commission Report on further devolution of powers to the Scottish Parliament, published in November 2014, includes a recommendation that "The Scottish Parliament will have the power to prevent the proliferation of Fixed-Odds Betting Terminals." (FOBTs). This is Recommendation 74 in the Smith Report.

1.2 FOBTs are gaming machines which contain a variety of games, including roulette, which accept bets of amounts up to a pre-set maximum and which pay out according to fixed odds on the simulated outcomes of games. The maximum stake on a single bet is currently £100 and the maximum prize is £500. In terms of the Gambling Act 2005 and The Categories of Gaming Machine Regulations 2007 they are classed as category B2 gaming machines.

1.3 Under the current provisions of the Gambling Act, the holder of a betting premises licence is automatically entitled to make up to four gaming machines available for use on the premises. All four may be FOBTs. Casino premises licences (regional, large or small) also carry with them an automatic entitlement to gaming machines. The maximum number permitted in casinos is calculated on the basis of the number of gaming tables made available but, again, all of the gaming machines made available may be FOBTs. (Other types of gambling premises licences also carry with them automatic entitlement to gaming machines, but these are restricted to categories other than FOBTs.)

1.4 In May 2015 the UK Government published The Scotland Bill (the "Bill") setting out its proposals on the form of legislative clauses to implement the Smith Commission Recommendations.

1.5 Clause 45 of the Bill is intended to take forward Recommendation 74 of the Smith Commission Report. It would devolve legislative competence in relation to the number of FOBTs authorised by a betting premises licence. The Gambling Act 2005 would be amended to give power to Scottish Ministers to vary the number of FOBTs allowed on betting premises, but the power would only apply to applications for new betting premises licences. A copy of the UK Government's proposed Clause 45 is attached at **Appendix 1**.

1.6 The Scottish Government's Response to the UK Government's proposed Clause 45 is that it does not fully deliver Smith Commission Recommendation 74 in that:

- The powers it provides to Scottish Ministers are limited to betting premises licences only, and
- The powers would only apply to future applications for betting premises licences.

This response is attached at **Appendix 2**.

1.7 The Scottish Government has accordingly proposed an alternative Clause 45, replacing the references to "betting premises" with a more general reference to "gambling premises" and removing the exclusion of existing premises. This alternative proposed Clause 45 is attached at **Appendix 3**.

1.8 The Local Government and Regeneration Committee of the Scottish Parliament have now launched a "Call for Evidence" as part of its inquiry into the proposals for Clause 45. It seeks submissions addressing the following questions.

1.9

1. What would be the benefits and disadvantages for you as a consequence of the UK Government's proposed provision in the Scotland Bill 2015?
2. What would be the benefits and disadvantages for you as a consequence of the proposed alternative provision suggested by the Scottish Government?
3. Which of these approaches do you prefer, and why?
4. Are there any changes in this area of law you would like to see which are not covered by either proposal, and why?
5. Please make any further comment you feel is relevant to Committee's inquiry into FOBTs.

1.10 The closing date for receipt of submissions is 5 pm on Friday 28 August 2015.

1.11 On the assumption that the Board will wish to make submissions on this issue to the Local Government and Regeneration Committee, draft responses to the questions are attached at **Appendix 4**. The Board is invited to consider these and to agree any amendments it wishes made.

2.0 Recommendation

2.1 That the Board:
(a) consider the draft response (attached at Appendix 4) to the call for evidence on the UK and Scottish Governments' proposals in relation to Clause 45 of the Scotland Bill on the devolution of powers in respect of numbers of FOBTs;
(b) agree any amendments it wishes made to this response; and thereafter
(c) authorise the Clerk to the Board to submit this to the Local Government and Regeneration Committee of the Scottish Parliament as the submission of The Highland Licensing Board.

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Appendix 1 – UK Government's proposed Clause 45
Appendix 2 – Scottish Government's response
Appendix 3 – Scottish Government's proposed Clause 45
Appendix 4 – Draft response by The Highland Licensing Board

APPENDIX 1

UK GOVERNMENT'S CLAUSE 45.

45 Gaming machines on licensed betting premises

(1) In Section B9 in Part 2 of Schedule 5 to the Scotland Act 1998 (betting, gaming and lotteries) at the end insert—

"*Exception*
In the case of a betting premises licence under the Gambling Act 2005, other than one in respect of a track, the number of gaming machines authorised for which the maximum charge for use is more than £10 (or whether such machines are authorised)."

(2) Section 172 of the Gambling Act 2005 (gaming machines) is amended as follows.

(3) In subsection (11) for "Secretary of State" substitute "appropriate Minister".

(4) After that subsection insert—

"(12) In subsection (11) "the appropriate Minister" means—

(a) the Scottish Ministers, so far as, in the case of a betting premises licence in respect of premises in Scotland and not in respect of a track, the order varies—

(i) the number of gaming machines authorised for which the maximum charge for use is more than £10, or

(ii) whether such machines are authorised;

(b) otherwise, the Secretary of State."

(5) In section 355 of that Act (regulations, orders and rules)—

(a) in subsection (1) after "the Secretary of State" insert "or the Scottish Ministers", and

(b) for subsections (9) and (10) substitute—

"(9) Subsection (3) does not apply to regulations made by the Scottish Ministers (see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010: functions exercised by Scottish statutory instrument).

(10) Regulations made by the Scottish Ministers under a provision specified in subsection (4), or under section 285, and an order made by the Scottish Ministers under section 172, shall be subject to the affirmative procedure.

(11) Any other regulations made by the Scottish Ministers under a provision of this Act shall be subject to the negative procedure."

(6) The amendments made by this section do not apply in relation to a betting premises licence issued before this section comes into force.

PART 5

OTHER EXECUTIVE COMPETENCE

46 Gaelic Media Service

(1) In section 183A of the Broadcasting Act 1990 (membership of the Gaelic Media Service)—

APPENDIX 2

SCOTTISH GOVERNMENT'S RESPONSE

Gaming machines on licensed betting premises

Clause 45 of the Scotland Bill does not fully deliver Smith Commission Recommendation 74: "The Scottish Parliament will have the power to prevent the proliferation of Fixed-Odds Betting Terminals". It fails to do so for two key reasons:

- The powers it provides to Scottish Ministers are limited to betting premises licences only; and
- The powers would only apply to future applications for a betting premises licence.

The Smith Commission recommendation refers to the proliferation of Fixed-Odds Betting Terminals without qualification as to where these are found. To limit the power to those found in betting premises would mean that the number of those machines found in other premises (such as casinos), currently or in the future would not be subject to the limit set by Scottish Ministers.

The Smith Commission did not recommend the exclusion of existing premises. Limiting this power to new licences would mean that Scottish Ministers would not be able to address the proliferation in Fixed-Odds Betting terminals that has already occurred. This would not amount to a meaningful devolution in practical terms and would therefore be at odds with the intention of the Smith Commission.

The Scottish Government's proposed alternative clause replaces the references to betting premises with a more general reference to gambling premises, thus giving effect to the Smith Recommendation 74. The alternative clause does not limit the exercise of the power to new license applications.

APPENDIX 3

SCOTTISH GOVERNMENT'S PROPOSED CLAUSE 45

45 Gaming machines on licensed betting premises

(1) In Section B9 in Part 2 of Schedule 5 to the Scotland Act 1998 (betting, gaming and lotteries) at the end insert—

"*Exception*

The number of relevant gaming machines which may be authorised (if any) in respect of premises licences under the Gambling Act 2005.

Interpretation

A "relevant gaming machine" is a gaming machine (within the meaning of section 235 of the Gambling Act 2005) for which the maximum charge for use is more than £10."

(2) Section 172 of the Gambling Act 2005 (gaming machines) is amended as follows.

(3) In subsection (11), for "Secretary of State" substitute "appropriate Minister".

(4) After that subsection insert—

"(12) In subsection (11) "the appropriate Minister" means—

(a) the Scottish Ministers in respect of premises in Scotland in so far as the order varies the number of gaming machines authorised (if any) for which the maximum charge for use is more than £10, or

(b) otherwise, the Secretary of State."

(5) In section 355 of that Act (regulations, orders and rules)—

(a) in subsection (1) after "the Secretary of State" insert "or the Scottish Ministers", and

(b) for subsections (9) and (10) substitute—

"(9) Subsection (3) does not apply to regulations made by the Scottish Ministers (see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010: functions exercised by Scottish statutory instrument).

(10) Regulations made by the Scottish Ministers under a provision specified in subsection (4), or under section 285, and an order made by the Scottish Ministers under section 172, shall be subject to the affirmative procedure.

(11) Any other regulations made by the Scottish Ministers under a provision of this Act shall be subject to the negative procedure."

APPENDIX 4

Submissions by The Highland Licensing Board to the Local Government and Regeneration Committee of the Scottish Parliament in response to its call for evidence on inquiry on Fixed-Odds Betting Terminals

1. What would be the benefits and disadvantages for you as a consequence of the UK Government's proposed provision in the Scotland Bill 2015

The UK Government's proposed Clause 45 would have the benefit of enabling Scottish Ministers to reduce the number of FOBTs which are currently automatically permitted on premises with betting premises licences but only in respect of applications for new licences.

Reduction in the number of FOBTs permitted in betting premises would be welcomed by The Highland Licensing Board (the "Board"). The Board's powers to refuse a betting premises licence application are very restricted under the Gambling Act 2005 and, as a result, the Board has very little control over the proliferation of FOBTs in its area. Moreover, where a number of betting premises are situated in a particular small locality, the total number of FOBTs available for use within that locality can be high. For example, in a particular part of Inverness, which incidentally is close to an area of social deprivation, there are now three betting premises within 200 m of each other, each with entitlement to make up to four FOBTs available for use. Each of them has elected to use their full entitlement, giving a total of 12 FOBTs within a 200 m radius.

The principle disadvantage of the UK Government's proposed clause 45, however, is that it would apply only to applications for new betting premises licences. The Highland Licensing Board would wish it also to apply to existing betting premises licences so that the existing number of FOBTs, particularly in parts of Inverness, can be reduced.

The other disadvantage is that the devolved power will relate only to betting premises licences. Casino licences also carry with them an automatic entitlement to make FOBTs available. Under the current legislation, even a small casino would be entitled to make up to 80 FOBTs available for use, depending on the number of gaming tables it offers. While The Highland Licensing Board area is not an area in which casino premises licenses may be issued, the Board would support a restriction on FOBT numbers in casinos in the interest of reducing FOBT numbers generally.

2. What would be the benefits and disadvantages for you as a consequence of the proposed alternative provision suggested by the Scottish Government?

The benefits of the Scottish Government's proposed alternative Clause 45 are that it would apply to both betting premises licences and casino premises licences and both to new licence applications and existing licences, with the effect that the disadvantages identified in answer 1. above in relation to the UK Government's proposed Clause 45 would be avoided.

The Highland Licensing Board can identify no disadvantages as a consequence of the Scottish Government's proposed alternative provision.

3. Which of these approaches do you prefer and why?

The Scottish Government's proposed alternative approach, for the reasons stated above.

4. Are there any changes in this area of law you would like to see which are not covered by either proposal and why?

The Highland Licensing Board would like to see amendment to the Gambling Act 2005 to enable Licensing Boards to refuse an application for a betting premises licence in the relevant locality of their area if the Board considers that the number of betting premises in that locality at the time the application is made is equal to or exceeds the number which the Board considers is appropriate for that locality. The Highland Licensing Board would also wish the Gambling Act amended to entitle Boards to determine that, for the purpose of refusal on this ground, the appropriate number of betting premises in any particular locality may be nil.

It is anomalous that local authorities have powers to restrict numbers of other types of licensed premises in particular localities (eg. premises licensed for the sale of alcohol, houses in multiple occupation, sex shops and, shortly, sexual entertainment venues) on this or similar grounds (such as overprovision), but has no power to do so in respect of betting premises.

As mentioned at answer 1 above, it is the experience of The Highland Licensing Board that operators have set up betting premises in or close to urban areas of greatest social deprivation resulting in clusters of betting premises in close proximity to one another. The Board would wish power to prevent this.

5. Please make any further comment you feel is relevant to Committee's inquiry into FOBTs

None.