

G1 GROUP

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Corinthian Clubs Limited are the holders of an operating licence from the UK gambling commission and operate a casino premises which trades as The Cotton Club in Glasgow. This premises operates under the regulation of a Casino licence issued by the local licensing board.

Our casino business employs around 50 staff offering traditional casino leisure activities including table games such as blackjack, poker and roulette, alongside gaming machines all of which are entitlements under our gambling licence.

Our business offers a mixture of machines to our customers which can include Category B, C and D machines. We write in response to the Scottish Government Call for Evidence in relation to "Fixed Odds Betting Terminals" and Betting Premises.

The call for evidence arises from a suggestion by the Scottish Government that the Scotland Bill does not go far enough to meet the proposals in the Smith Commission. We note that a series of amendments to the Scotland Bill were lodged on behalf of the Scottish Government at the House of Commons debate on 6 July 2015 in relation to the proposed Clause 45 of the Bill which in our view was designed to deal with FOBTs on betting premises. These amendments were:

- 31 - leave out "for which the maximum charge for use is more than £10". This would create the power for licensing boards to place limits on machine numbers irrespective of stake and therefore category.
- 32 - this amendment would make the power to introduce these limits retrospective
- 146 - this amendment would to make the power apply to all types of gambling licence not just betting premises
- 163 - this amendment would be to make the limit apply to machines for which "the maximum charge for use is more than £2".



Amendment 163 appears to be in the line with the separate English Private Members Bill on FOBTs which seeks a maximum £2 stake for FOBTs and is being considered separately. However, we note that an appeal by English councils to have the stake capped to £2 was rejected by the UK Government on 16 July 2015, and that the Private Members Bill may not attract Parliamentary time.

We are greatly concerned that the scope of these amendments and the Call to Evidence suggest that Scotland should be given greater powers to limit gaming machine numbers of any type, not just FOBTs, for any premises, not just betting shops, and that this could apply retrospectively. This would mean that casino premises would also be subject to review and possible limitation of our gaming machine entitlements despite the fact that there has been no discussion we are aware of relating to machine use in casino premises.

We run our premises responsibly and our internal policies and procedures are vetted and approved by the U.K. Gambling Commission.

- All casinos, by law, are required to have trained and licensed door staff to monitor entry.
- The National Casino Forum (the trade association for UK casino operators) arranges independent, random and unannounced testing of underage entrance to casinos. The latest testing showed a 98% pass rate.
- Casino staff are fully certificated, and all receive annual Responsible Gambling Training, again subject to independent audit and accreditation.
- Casinos operate a cross-industry, voluntary (for the customer) self-exclusion scheme (SENSE) across the UK.
- The ratio of staff to customers is very high, with dedicated staff monitoring machines and customer behaviour at all times.

These proposals suggest that Scotland could be given powers which would mean our entitlements could be removed. This would create considerable financial uncertainty for a business like ours, given that we would expect around 35% of our net gaming revenues to be generated by slots and electronic gaming. Any significant reduction of these revenues would call into question our ability to trade. The aforementioned 50 jobs would be jeopardised, along with our seven-figure investment in the city's night-time economy. (The marginal nature of the business was clearly demonstrated when the previous international operator withdrew from Glasgow and the UK following a succession of loss-making years).

It seems to us to be disproportionate and at odds with the principle of natural justice that our existing licence could be "called in" so that a licensing board could impose a limit on the number of gaming machines we can offer our customers, especially when there is no evidence presented or indeed available which suggests that there is any alleged harms arising from the use of machines in casino premises.



We are also at a loss to understand how a proposal which was supposed to be about FOBTs on betting premises, a very narrow scope, has somehow become a conduit for the Scottish Government to seek significant powers which would be drastic for the gambling industry in Scotland as whole. As far as we are aware the only type of machine ever discussed by Smith was the FOBT in the context of the proliferation of betting shops. There was no suggestion, and has been no suggestion, that other types of machines should be limited or that other types of gambling premises should be affected. Yet now the Call to Evidence and Scottish Government amendments to the Scotland Bill suggest something completely different. The intent of the Scottish Government amendments, and their aim overall, appears to us to be about making the power to limit gaming machines of any category apply to all licensed gambling premises.

The wording used in the House of Commons debate on 6 July 2015 was: *"This amendment replaces the reference to betting premises with a more general reference to gambling premises, giving full effect to Smith Commission recommendation 74."* In addition, the Call to Evidence document says: *"The Scottish Government's Response to the Interim Report from the Devolution (Further Powers) Committee on the Smith Commission and the UK Government Proposals states the Scotland Bill "does not fully deliver Smith Commission Recommendation 74. The reasoning given for this view is: The powers it provides to Scottish Ministers are limited to betting premises licences only".*

This is confusing. Why does the Scottish Government think it appropriate to widen powers to deal with an alleged issue over FOBTs in betting premises to all gambling premises? Our reading of the Smith Commission report is that it did not intend anything other than restricting FOBTs on betting premises.

If a combination of these proposed amendments were to come to pass, it would mean our business and livelihood of our staff would be subject to significant threat by cutting machine numbers.

We are therefore opposed to any power which removes our existing entitlement to machines in our casino premises which is a right given to us by virtue of the licence. Parliament sought not to give licensing authorities powers over machine numbers which is why the Gambling Act specifically prevents them from imposing a condition about machine numbers. These entitlements are given to us on the face of the Act and underlying that is a significant capital investment based on several years of research and studies which led to an investment based on the machines which were authorised by Government regulations leading up to the Gambling Act 2005. Specifically in the casino market, these proposals could place us at a disadvantage within the national market where customers could travel to casinos in Newcastle, Liverpool or further afield and play machines with larger prizes and under different laws. It is also a proposal which could lead to confusion for the casino industry, customers and indeed regulators when certain machines in the same venue are regulated by "Scottish" law but other machines are regulated by "UK" law. Finally with regards to customer input, it does not seem to



us that the consultation has been sufficiently promoted to the many thousands of people who enjoy gambling as a part of their private leisure time safely and without harm or incident.

The Gambling Act 2005 has sufficiently robust provision to allow anyone to seek a review of a licence if they believe any of the licensing objectives under that Act are imperilled. We do not see why further restrictions or powers are necessary when the existing legislation already provides a mechanism to allow any person to seek a licence review.

We have taken legal advice on this advice and have been advised that section 6(1) of the Human Rights Act 1998 provides that: "It is unlawful for a public authority to act in a way which is incompatible with a Convention right". It was confirmed in *Tre Trektorer Aktiebolag v Sweden (1989) 13 EHRR 309* that an existing licence is a property right and a possession. A licensing authority is a public authority for these purposes. The proposal to limit our licence entitlements appears to us to be at odds with Article 1 Protocol 1, the "Right to peaceful enjoyment of possessions". It is established in Scots law that a licensing decision can engage Article 1 of the first protocol. The denial of a right to use entitlements provided by licence such as gaming machine entitlements is a deprivation of a possession, and by extension the imposition of a condition which restricts trade is an interference with the peaceful enjoyment of our licences.

We understand that prevailing legal advice suggests that a restriction might be where there is some over-riding requirement in the public interest but there is no evidence presented in the Smith Report, Scotland Bill or other consultations which demonstrate that limiting machines numbers in casino premises is in the public interest or that an interference is necessary, justified or proportionate, in order to overcome adherence to Article 1.

The test here for the lawfulness of interference with casino licence entitlements is that of proportionality. It is a higher test than that of reasonableness. Is this proposed interference with our casino licence, by restricting our ability to trade, proportionate, given the absence of adequate material to support the perceived policy stance, and given that no general evidence has been relied upon, nor any specific evidence about these individual premises, operators, localities and machine categories has been presented?

In order to establish a fair basis for a limitation of this nature there must have a comprehensive evidence base in order to be satisfied that the policy is proportionate and that there is no "less restrictive" alternative available. In *Southampton Port Health Authority v Seahawk Marine Foods Ltd [2002] EWCA Civ 54 at [34]-[35]*: "While in some cases it will be possible for a court to reach a conclusion on an issue of proportionality on the basis of commonsense and its own understanding of the process of government and administration, I doubt whether it will often be wise for a court to undertake that task in a case involving technical or professional decision-making without the benefit of evidence as to normal practices and the practicability of the suggested alternatives".



We are an independent business which provides a leisure facility to our local customers and visitors to the city of Glasgow and our premises is a key part of the night time economy of this city. We do so with regard and observance of the Gambling Commission Licence Conditions and Code of Practice (LCCP) as well as the over-arching licensing objectives of the Gambling Act 2005. As an independent casino, our premises is not just a place to bet or play machines but is also a safe and friendly meeting place for people to meet and socialise and we have many customers who like to come to our casino for a meal or beverage, or simply for social interaction, well as to gamble or play a machine. But the business also has to financially viable and gaming machines are a key part of that.

In short, we wish the Committee to note our chief concerns:

- Proposals to limit machine entitlements for casino premises should not be affected or altered and in any event there is no suggestion that any category of machine made available in casino premises are leading to disproportionate harm
- There should be no retrospective application of machine limits to any premises
- If limits are to be taken forward, then these should be focused on the original scope of the Smith Commission which relates only to FOBTs on betting premises.

Yours sincerely,



Director

Corinthian Clubs Ltd