



Briefing for the Public Petitions Committee

Petition Number: [PE1439](#)

Main Petitioner: Jonathan McColl

Subject: Betting and loan shops in deprived communities

Calls on the Scottish Parliament to urge the Scottish Government to urgently review the correlation between the prevalence of betting shops and cheque cashing / pay day loan type shops on our high streets and in our communities, and high levels of poverty and deprivation and to use any evidence found in such a review to support the introduction of new planning powers for councils and other empowered authorities to refuse permission for premises of these types on the grounds of overprovision; when supported by robust statistical evidence of high levels of deprivation in communities to be served by such establishments.

Background – current licensing arrangements

The petition is looking to examine two separate types of establishment – both betting shops and “cheque cashing/pay day loan type shops”. The current rules governing licences etc for both types of establishment are set out below

Betting shops

Devolved competency and general framework

Betting, gaming and lotteries are all matters reserved to Westminster (see schedule 5, head B9 of the Scotland Act 1998). The Scottish Parliament therefore has no power to act in this area but [Scottish Ministers have been granted certain powers under UK legislation.](#)

The Gambling Act 2005 controls all forms of gambling in the UK. It set up a regime of operating, personal and premises licences required in relation to a gambling business. Operating and personal licences are granted by the Gambling Commission. Premises licences are granted by local authorities, through licensing boards (as established by the Licensing (Scotland) Act 2005) – although they are required to follow guidance issued by the Gambling Commission.

The 2005 Act sets out three objectives for the licensing regime, to which licensing authorities have to have regard. These are:

- preventing gambling from becoming a source of crime or disorder
- ensuring that gambling is conducted in a fair and open way
- protecting children and other vulnerable people from being harmed or exploited by gambling.

Current licensing regime

The general thrust of the Gambling Act 2005 is that licences should be granted unless there is a statutory basis for refusing to grant one. Guidance from the Gambling Commission follows this direction.

In the licensing regimes which existed before the 2005 Act, demand for gambling facilities was an important consideration. Licences were often objected to (and refused) on the basis that the applicant could not demonstrate unmet demand for their services. This links with the concerns expressed in the petition because it would have been possible to argue that, where a number of bookmakers already operated in an area, no unmet demand that would justify opening a new shop existed.

However, following a recommendation in the [“Gambling Review Report” \(2001\)](#), a policy decision was made to specifically remove requirements in relation to demonstrating demand in the 2005 Act. As a result, the 2005 Act contains provisions preventing both the Gambling Commission (see section 72(b)) and licensing boards (see section 153(2)) considering demand when making a decision on an application. This appears to have led to a situation where proliferation of bookmakers is difficult to prevent.

In its [“Guidance to Licensing Authorities – Third Edition”](#) (2009), the Gambling Commission sets out some relevant limits to local authority discretion when considering gambling premises licences. Local authorities must follow this guidance when reaching decisions. The guidance states that the Gambling Commission will have primary responsibility for considering the licensing objectives in relation to the prevention of crime and ensuring that gambling is conducted in a fair and open way.

The guidance also specifically states that, in relation to the licensing board’s role in the prevention of disorder (paragraph 5:16): “disorder is intended to mean activity that is more serious and disruptive than mere nuisance”. It is further suggested that disorder is likely to require police assistance. This prevents licensing boards from regarding the proliferation of betting shops alone as creating disorder.

The guidance also places limits on a licensing board’s consideration of the objective of protecting children and vulnerable people from being exploited or harmed by gambling. It states that this means protecting children from taking part in gambling and restricting advertising so it does not appeal to children (paragraph 5.20). This prevents licensing boards from considering the proliferation of betting shops on its own as posing a risk to children. In relation

to vulnerable adults, the guidance states that the Gambling Commission has not defined this group, but generally considers it to include people with problem gambling habits and those who may not be able to make informed decisions in relation to gambling (for example, because of learning disability). When making licensing decisions, the licensing board is limited to considering whether there are risks for these types of people, rather than for the population generally.

It should be noted that it may still be possible for a licensing board to refuse to grant a licence on the basis that there are too many bookmakers in a particular area. However, this would have to be on the basis of evidence of specific disorder or risk to children or vulnerable groups.

Pay day loan shops

Devolved competency and general framework

Payday lending is covered by the provisions of the Consumer Credit Act 1974, including the requirement to have a consumer credit licence issued by the Office of Fair Trading (OFT). The subject matter of the Consumer Credit Act 1974 is reserved to Westminster under Schedule 5, Head C7 Of the Scotland Act 1998. Neither the Scottish Parliament nor the Scottish Government have any power to act in this area.

Current licensing regime

Consumer credit licences can be valid indefinitely or for a fixed period. A licence applicant must satisfy the OFT that they are a “fit person” to carry out the type of business they are proposing. In judging whether someone is a fit person, the OFT will consider their skills, knowledge and experience in relation to carrying out a consumer credit business. They will also look at whether the applicant, or any person involved in the business has:

- committed an offence involving fraud, dishonesty or violence
- previously contravened any provisions of the 1974 Act or other legislation governing similar financial relationships
- practiced discrimination in the way they have carried out any previous business
- engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not).

The OFT publishes guidance ([“Irresponsible Lending – OFT Guidance to Creditors” 2011](#)) in relation to how it determines whether an applicant is a fit person.

The Consumer Credit Act 1974 contains a number of other protections for customers of consumer credit businesses, including payday lenders. These include information and advertising requirements (for example that the APR

rate, representing the annual cost of credit, is clearly displayed) and protection for the debtor where any aspect of their relationship with the creditor is considered unfair.

Overprovision under the Licensing (Scotland) Act 2005

The Licensing (Scotland) Act 2005 deals with the licensing of premises which sell alcohol. It contains requirements in relation to “overprovision” which the petitioner would like to see extended to applications for betting shops and payday loan shops.

Local licensing boards are required to produce statements every three years detailing how they will exercise their functions, known as “licensing policy statements”. The licensing policy statement must contain a statement as to whether there is “overprovision” of licensed premises in any locality within the licensing board’s area. Overprovision can relate to licensed premises generally or a particular type of premises (for instance late night opening premises), and it is up to the licensing board to decide what constitutes a locality for the purposes of the assessment. Overprovision is one of the grounds on which a licensing board can refuse a licence.

The licensing board has a duty to carry out wide-ranging consultation prior to the formulation of an overprovision assessment. Factors which the licensing board may take into account in determining if overprovision exists include information from the chief constable, evidence of noise complaints or anti-social behaviour and data from health bodies, for example local accident and emergency departments.

Scottish Government/ Scottish Parliament Action

Much action in both Scotland and at a UK level has focussed on betting shops specifically.

In September 2012, John Mason MSP led a [Members’ debate on the “Gambling Proliferation”](#), the motion for which was—

“That the Parliament notes the recent comments made by the former Leader of the House of Commons, Harriet Harman MP, when she said that the previous UK administration had made a mistake by allowing an increase in the number of betting shops on the UK’s High Streets; further notes the study by Professor Jim Orford of the University of Birmingham, which suggests that, on average, richer areas have around five betting shops for every 100,000 people, whereas less well-off areas have up to twelve; believes that many forms of gambling are effectively a tax on the poor; understands that money spent on buying lottery tickets in poorer areas is considerably higher than that being invested back into these communities, and would welcome a review of the legislation on gambling in order to protect vulnerable people in Glasgow Shettleston and the rest of Scotland.”

In summing up the debate, Roseanna Cunningham MSP, Minister for Community Safety and Legal Affairs, set out the Government's position—

“I have mentioned our limited scope for action in Scotland, but ... I can confirm that the Scottish Government has already called on the UK Government to fund research, examine specifics such as the clustering of shops and take any necessary action. I am happy to provide an assurance that we will work with the Gambling Commission and others on those occasions where we do have a locus or simply to ensure that agencies work together to ensure better enforcement.”

The Answer to PQ S4-093356 also set out the legal position—

“Gambling is a reserved matter and the Scottish Government has no power to set limits on betting shop numbers.

Decisions about premises licences for betting shops must be made in accordance with the criteria set out in the Gambling Act 2005 and with regard to statutory guidance. Whilst the Civic Government (Scotland) Act 1982 offers the local authority the ability to designate an appropriate number of sex shops for a locality (and for that number to be zero), neither the Gambling Act 2005 or the Civic Government (Scotland) Act 1982 allows the same in relation to betting shops.”

UK Government/UK Parliament action

As noted in the Scottish Parliament motion above, Harriet Harman MP has recently raised the issue of betting shops in the publication, [“Blighting High Streets and Communities in Low-Income Areas”](#). In terms of the issue of over-proliferation of betting shops, she states that—

“Under current planning laws, bookmakers have the same use class as banks, credit unions and estate agents, despite their very different socio-economic impact. This means that a betting shop can open in any premise that was previously a bank, credit union or estate agent without the need for planning permission. This takes away the power of the local community to have a say over the look and feel of their high streets and to prevent clustering of these shops.”

This issue has been prominent at a UK level for some time, leading on from [The Portas Review: “An independent review into the future of our high streets”](#), which stated that—

“I also believe that the influx of betting shops, often in more deprived areas, is blighting our high streets. Circumventing legislation which prohibits the number of betting machines in a single bookmakers, I understand many are now simply opening another unit just doors down. This has led to a proliferation of betting shops often in low-income areas.

Currently, betting shops are oddly and inappropriately in my opinion classed as financial and professional services. Having betting shops in their own class would mean that we can more easily keep check on the number of betting shops on our high streets.”

However, [the UK Government response to the report](#) appeared to reject this proposition—

“The planning system also provides a tool (Article 4 directions), to help local authorities and communities control certain uses, such as betting shops, by removing permitted development rights, and requiring a planning application to be made. Article 4 directions no longer need to be approved by the Secretary of State, making them more responsive to the needs of the local community.

The Government is committed to deregulation and we have undertaken a wider review of how change of use is handled in the planning system. **We worked with external partners and published an issues paper during 2011, which invited views and evidence from a range of organisations and individuals. This review will also form part of our thinking. We intend to consult on the emerging findings shortly.**”

In the Scottish context, planning is devolved, and the Scottish Government is currently [consulting on its National Planning Framework 3](#).

In terms of payday loan stores, while a lot of research appears to have been done on the loans and products offered by the companies, for example Consumer Focus’s report, [Keeping the Plates Spinning](#) and the OFT’s report, [Review of High Cost Credit](#), there appears to be limited research specifically on the location of payday loan stores.

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17 October 2012

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