

CMS 220838/np/21-12

Mr David Stewart  
Convener of the Committee  
Public Petitions Committee  
c/o Public Petitions Clerks  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP



department for  
culture, media  
and sport

Dear Mr Stewart,

5 February 2013

Thank you for your letter of 3 December 2012 to my parliamentary colleague, the former Minister for Tourism and Heritage, John Penrose MP, seeking the UK Government's views about the issues raised in petition 1439 to the Scottish Parliament on the prevalence of betting shops and cheque cashing / pay day loan type shops:

*"Calling 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."*

I am sorry for the delay in replying, as the composite parts of the response were needed from other Government Departments. I should explain at the outset, that I assumed Ministerial responsibility in September 2012 from John Penrose MP for policy relating to the regulation of gambling. However, it is important to note that the issues are relevant to several different areas of policy across government. This response therefore also draws together contributions from the Department for Communities and Local Government, in relation to planning in England and Wales, and the Department for Business, Innovation and Skills in relation to consumer credit regulation.

## **Gambling regulation – betting shops**

The Government takes seriously the issues raised in relation to betting shops in this petition. Through the regulatory regime in place, betting shops are subject to strict rules and compliance requirements, including around access by under-18s and how to approach problem gambling, to ensure that the three licensing objectives are promoted:

- keeping gambling crime free;
- making sure that gambling is fair and open; and
- protecting children and vulnerable adults.

Where there are local concerns about betting shops or other gambling premises, and their potential impact on communities, then the decision making powers to resolve such issues should rest with local communities. Under the Gambling Act 2005, licensing authorities (which will be licensing boards in Scotland) are responsible for deciding whether a particular premises, such as a betting shop, is suitable for a premises licence.

Licensing authorities can refuse applications that do not comply with the Act, or impose individual conditions to licences to reflect the demands of local circumstances. Licensing authorities also have the power to review licences, to ensure that the premises are being used, in accordance with the licence conditions and other provisions of the Act. In deciding whether to grant a licence or in making any decisions following a review of a premises licence, the local authority will take into account of the codes of practice and guidance issued by the Gambling Commission, the three licensing objectives of the Gambling Act 2005, and the local authority's own three year licensing policy statement.

Local people may apply to the licensing authority for a review by the authority of a particular premises licence, if they have concerns about the use of that premises and its impact on the licensing objectives. Following a review, licensing authorities may revoke or suspend the licence, or make amendments to the conditions attached to the licence, if these actions prove appropriate in the circumstances. For example, if there is evidence of crime associated with a betting shop, the licensing authority can review the licence and potentially consider a number of sanctions, such as restricting closing times, requiring security measures, such as CCTV and security staff, or even suspending the licence.

We would encourage licensing authorities to make use of the powers available to them if they have evidence that a betting shop or any other gambling premises is causing problems in their area.

In the petition, Mr McColl's evidence to the Public Petitions Committee of the Scottish Parliament on 13 November 2012, he noted that one of the common areas of concern relating to betting shops is the availability of category B2 gaming machines, which are sometimes referred to as Fixed Odds Betting Terminals, in betting shops.

The Government is aware of the concerns that have been raised about these types of gaming machines. Currently, the causal links between these machines and problem gambling, which are poorly understood. Without better evidence of harm we risk introducing disproportionate and untargeted regulation that fails to tackle the causes.

The Responsible Gambling Trust recently announced the largest programme of academic research into gaming machines ever undertaken in Britain, which should provide a much better understanding of problem gambling behaviour. This will help develop evidence for better targeted and more cost-effective regulation, plus better education and treatment of problem gambling.

In addition, the Government is currently calling for evidence on any link between problem gambling and B2 machines, as part of a consultation to review the maximum stake and prize limits for gaming machines. We are seeking the views from the gambling industry, problem gambling groups and others, on how a change to the level of stake and/or prize for B2 machines would have an effect socially, in terms of gambling related harm, or economically, such as the impact on high street betting shops, investment and employment.

The consultation runs from 15 January to 9 April 2013, and will allow the Government to undertake an evidence based review on the impacts of these machines and ensure that any changes to regulations around B2 machines are based on sound and firm evidence. The consultation can be found on the DCMS website:

<http://culture.gov.uk/consultations/9656.aspx>

### **Introduction of an overprovision element**

Your letter asks how viable it would be to introduce an 'overprovision' element into the gambling legislation similar to that in place for alcohol licensing in Scotland. I understand that, in relation to alcohol licensing, the Licensing (Scotland) Act 2005 requires Licensing Boards in Scotland to publish a licensing policy statement, to which they must have regard when making licensing decisions. Each policy statement must include a statement of the extent to which the Board considers there to be an overprovision of licensed premises in an area, taking into account the number and capacity of the premises.

This means that for premises serving alcohol, such as pubs and clubs, Licensing Boards can establish a policy that further applications for this type of premises will be refused. However, it is important to note that each application must be considered case by case, and if it can be shown that a particular premises would not undermine the licensing objectives then the licence can be granted.

It is worth noting that before the implementation of the Gambling Act 2005, the previous legislation included a "demand test", along similar lines to that proposed, whereby the grant or renewal of a betting office licence could be refused, where there was considered to be insufficient unmet demand. However, there were no uniform

criteria for approving applications and an independent Gambling Review Group recommended its removal from the licensing requirements, as part of part proposals resulting in the Gambling Act 2005.

To introduce an overprovision consideration within the gambling regulatory system would require a further change to the primary legislation. Whilst we recognise the genuinely held concerns that have been expressed about the numbers and locations of betting shops, it is important that any changes to regulation are based on sound evidence that a harm exists, which cannot be sufficiently addressed through existing powers.

There can be good reasons why, in some areas, the cumulative impacts of additional premises selling alcohol may undermine licensing objectives, for example by exacerbating problems such as attracting a higher volume of drinkers to an area, exerting competitive downward pressure on prices and promotions, and increasing the movement of intoxicated customers between premises. However, I am not aware of evidence that the provision of additional betting shops in an area has similar cumulative effects on the objectives of the Gambling Act.

### **Payday loan shops**

There are no official estimates of the number of payday loan shops operating in the UK, nor of the pattern of their distribution. The Office of Fair Trading (OFT) set out in the interim report of their ongoing compliance review of payday lenders, that they were aware of around 240 payday lenders. Whilst some of these lenders operate exclusively online, of the remainder, some will be sole traders and some will be multiple traders with many retail outlets.

Consumer credit regulation is reserved for Scotland and Wales but transferred for Northern Ireland. Many companies have long established separate arrangements for negotiating and working in Northern Ireland and Great Britain, but to devolve matters for Scotland would require further changes.

The UK Government is of course concerned with the evidence of problems with payday lending, both online and retail, that consumers across the UK are experiencing. Government is therefore taking coordinated action to tackle detriment in this market, including agreeing revised voluntary codes with industry, the OFT's ongoing compliance review, and strengthening OFT enforcement with new powers to suspend the license of consumer credit providers not complying with OFT guidance.

Furthermore, we have announced our intention to transfer the regulation of consumer credit from the OFT to the new Financial Conduct Authority (FCA) in 2014, and took powers in the Financial Services Act 2012 to do so. The FCA will have a diverse range of regulatory powers to address problems across all consumer credit markets, including being able to ban products or specific product features, levy fines and determine consumer redress.

## Planning

In Mr McColl's evidence to the Public Petitions Committee he appears to be seeking to use planning controls as the means with which to address his concerns. It is important to note that a separate legislative framework operates in Scotland, to that in England and Wales. It may be useful, however, for me to explain some of the important provisions in England and Wales.

Under the Town and Country Planning Act 1990, development control for England and Wales extends not only to building work, but also to changes in the use of buildings or land. Planning permission is usually required for material changes of use. What constitutes a material change of use is a matter of fact and degree, to be determined in each case by the local planning authority.

However certain uses are so similar in planning land use terms, that to require planning permission to change would be unnecessarily burdensome. To relieve the planning system of such unnecessary applications, the legislation excludes from the definition of development any change, where both the existing and the proposed use fall within the same class within the Town and Country Planning (Use Classes) Order 1987 (as amended). There is a similar, but different set of Use classes in Scotland.

In England and Wales uses fall within four main categories:

- Class A covers shops and other retail premises, such as restaurants and bank branches;
- Class B covers offices, workshops, factories and warehouses;
- Class C covers residential uses; and
- Class D covers non-residential institutions and assembly and leisure uses.

There are subsets within each class. In addition, there are also uses that are sui generis i.e. in a class of their own. **Copy of the full table is attached for reference.**

Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended), grants a general permission for specified changes of use between some use classes in the Use Classes Order. It achieves this by classifying certain changes between the use classes as permitted development i.e. planning applications are not required.

Change of use can be a contentious issue locally. Therefore there is scope for local planning authorities both to go beyond, and to restrict, the operation of the national use classes order and its associated permitted development. Local development orders and the forthcoming neighbourhood development orders allow local authorities to extend the types of permitted development that do not require a planning application. To restrict national permitted development rights, local planning authorities can issue an Article 4 direction, although this can attract compensation liabilities. Both measures need to be tested through local consultation.

Both payday loan shops and betting shops will generally be classed as A2 uses - that is Financial and Professional Services, banks, building societies, estate and employment agencies, professional and financial services and betting offices.

This is on the assumption that the payday loan shop's activity was money lending, and that it was not also a retail shop. While there have been issues raised in respect of the change of use to betting shops and payday loan shops, there are currently no plans to amend planning legislation in respect of these uses.

In considering whether to grant planning permission for a change of use a local planning authority will consider how an application conforms with national planning policy, and the local plan. The focus will be on land use impacts and a local planning authority would have to consider whether 'overprovision' was a material consideration.

The Government is grateful for the opportunity to contribute to the Scottish Parliament's consideration of the issues raised in this petition.

Thank you, again, for writing, with all my very best wishes.

**RT HON HUGH ROBERTSON MP**  
**Minister for Sport and Tourism**

<b>SUMMARY GUIDE TO USE CLASSES ORDER AND PERMITTED CHANGES OF USE</b>		
<b>Use Classes Order 1987 including Amendments</b>	<b>Description</b>	<b>Conditions</b>
A1 Shops	Shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices, pet shops, sandwich bars, showrooms, domestic hire shops, funeral directors etc.	No permitted change except to mixed use as a shop and single flat (see note 2) and vice versa
A2	Financial and Professional Services Banks, building societies, estate and employment agencies, professional and financial services, betting offices	Permitted change to A1 where a ground floor display window exists. Also as above to a mixed use as a single flat and A2 use and vice versa (see note 2)
A3 Restaurants and Cafes	Restaurants, snack bars, cafes	Permitted change to A1 or A2
A4 Drinking Establishments	Pubs and bars	Permitted change to A1, A2, A3
A5 Hot Food Takeaways	Hot food takeaway	Permitted change to A1, A2, A3
B1 Business (a)	Offices, not within A2	Permitted change to B8 where no more than 235m <sup>2</sup>
(b)	Research and development, studios, laboratories, high technology	Permitted change to B8 where no more than 235m <sup>2</sup>
(c)	Light Industry	Permitted change to B8 where no more than 235m <sup>2</sup>
B2 General Industry	General Industry	Permitted change to B1 or B8 B8 where no more than 235m <sup>2</sup>
B8 Storage or Distribution	Wholesale warehouses, repositories	Permitted change to B1 where no more than 235m <sup>2</sup>
C1 Hotels	Hotels, boarding and guest houses	No permitted change
C2 Residential Institutions	Residential schools and colleges, hospitals and convalescent/nursing homes	No permitted change
C2A Secure Residential Institution	Use for a provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks	No permitted change
C3 Dwelling Houses	Use as a dwelling house (whether or not as a sole or main residence by: a) a single person, or by people forming a single household; b) not more than 6 residents living together as a single household where care is provided for residents: or c) not more than 6 residents living together as a single household where no care is provided (other than a use within C4)	Permitted change to C4
C4 Houses in Multiple Occupation	Use of a dwelling house by not more than 6 residents as a house of multiple occupation (see note 4).	Permitted change to C3
D1 Non-residential Institutions	Places of worship, church halls, clinics, health centres, crèches, day nurseries, consulting rooms, museums, public halls, libraries, art galleries, exhibition halls, law court, Non residential education and training centres	No permitted change
D2 Assembly and Leisure	Cinemas, music and concert halls, dance, sports halls, baths, skating rinks, gymnasiums. Other indoor and outdoor sports and leisure uses, bingo halls	No permitted change
Sui Generis	Theatres, houses in multiple paying occupation, hostels providing no significant element of care, scrap yards. Petrol filling stations and shops selling and/or displaying motor vehicles. Retail warehouse clubs, nightclubs, launderettes, dry cleaners, taxi businesses, amusement centres Casinos	No permitted change  Permitted Change - Sui Generis to D2