

## Members' club or commercial club?



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Making gambling fairer and safer

Published 03/2018



A quick guide for licensing officers

# Members' club or commercial club? – A quick guide for licensing officers

The Gambling Act 2005 created a way of regulating gaming in two distinct types of club: **members' clubs** (including miners' welfare institutes) and **commercial clubs**, both of which must be established and conducted wholly or mainly for purposes other than gaming.

The distinction between the two types of club is important as it reflects the type of gaming that is permitted. Only genuine members' clubs, as defined below, can apply for a club gaming permit or a club machine permit, while commercial clubs can only apply for a club machine permit.

Licensing authorities are responsible for issuing both club gaming permits and club machine permits.



## What is a members' club?

It is a club that:

- ▶ is not established as a commercial enterprise and is conducted for the benefit of its members
- ▶ has at least 25 members
- ▶ is established and conducted wholly or mainly for purposes other than gaming (unless gaming is restricted to bridge and whist)
- ▶ is permanent in nature.

Examples include working men's clubs, branches of the Royal British Legion and clubs with political affiliations.

## What is a commercial club?

It is a club that:

- ▶ is established for commercial gain (whether or not it is making a commercial gain)
- ▶ has at least 25 members
- ▶ is established and conducted wholly or mainly for purposes other than gaming (unless gaming is restricted to bridge and whist)
- ▶ is permanent in nature.

Examples include snooker clubs, clubs established as privately owned companies and clubs established for personal profit.



## How to determine whether a club is a genuine members' club

In determining whether a club is a genuine members' club, the licensing authority takes account of a number of matters, such as:

- ▶ Is the primary purpose of the club's activities something other than the provision of gaming to its members?
- ▶ Are profits retained in the club for the benefit of the members? This is the key difference between a members' club and a commercial club.
- ▶ Are there 25 or more members? This number is the amount a club has to have to qualify.
- ▶ Are there genuine domestic addresses on the register of members?
- ▶ Are domestic addresses listed for every member?
- ▶ Are members local to the club?
- ▶ Do members participate in the activities of the club via the internet? It is less likely to be a genuine members' club if this is the case.
- ▶ Do guest arrangements link a member to every guest?
- ▶ Do guests know the person signing them in?
- ▶ Are guests attending only for the gaming?
- ▶ Is the 48 hour rule between applying and becoming a member properly applied?
- ▶ Are there annual accounts for more than one year? This is an indication that the club is permanent in nature.

The constitution could also indicate whether it is a legitimate members' club. Amongst the things the licensing authority will consider are:

- ▶ Who makes commercial decisions on behalf of the club and what are the governance arrangements?
- ▶ Are there shareholders or members? Shareholders would indicate a business enterprise linked to a commercial club.
- ▶ Is the members' club permanently established?
- ▶ Can people join with annual or quarterly membership?
- ▶ Are there long term membership benefits?

People joining a club to attend and take part in a 'private' event are likely to still be members of the public, particularly if 'club membership' is acquired only a short time before the event. The presence of alcohol is immaterial to the status of the club.

Full details of requirements for member's clubs are included in *Guidance to Licensing Authorities* on our website




## Club gaming permit (available to members' clubs only)

- ▶ can offer equal chance gaming such as poker and bingo
- ▶ no limits on stakes and prizes, except bingo where there is a stakes and prizes limit of £2,000 in any seven day period
- ▶ can offer games of chance (pontoons and chemin de fer only)
- ▶ limit on participation fees per person per day – £20 for bridge and or whist, £3 for other gaming (including poker)
- ▶ can offer up to three gaming machines in total of categories B4, C or D, but only one machine of category B3A.

## Club machine permit (available to members' clubs and commercial clubs)

- ▶ can offer equal chance gaming such as poker and bingo
- ▶ limits on stakes and prizes for bingo is £2,000 in any seven day period
- ▶ limits on stakes for poker – £10 per person per game, within a premises limit of £250 in stakes per day and £1,000 per week
- ▶ limits on prizes for poker – £250 per game
- ▶ limit on participation fees per person per day – £18 for bridge/whist, £1 for other gaming (including poker), £3 where it's a commercial club
- ▶ can offer up to three gaming machines in total of categories B4, C or D (members' clubs can also offer one of these three machines as category B3A)



**We provide advice and guidance to licensing authorities and, on a case by case basis, will undertake targeted collaborations in order to establish principle and precedent and a clear understanding of legal requirements.**

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## Fast-track procedure for getting a permit

There is a fast-track procedure for clubs in England and Wales that hold a club premises certificate (under section 72 of the Licensing Act 2003).

There is no opportunity for objections to be made by the Gambling Commission or the police, and the grounds upon which an authority can refuse a permit are reduced. There are three grounds for refusal by a licensing authority under this procedure, including when the club is established primarily for gaming.



# Licensing authority case studies

## Refusal of a club gaming permit

The club was situated within commercial premises that operated as a snooker club. The commercial premises holds a premises licence under the Licensing Act 2003. The licensing authority found that the club:

- ▶ did not meet the definition of a members' club as it was established for the purpose of gaming
- ▶ did not prove it was established and conducted for the benefit of its members
- ▶ offered activities that could already be accessed through the existing commercial premises on a much larger scale and with no membership fee
- ▶ was trying to circumvent the Licensing Act 2003 by setting up a club within a club
- ▶ did not have a satisfactory constitution with regard to the nomination and election of new members and the committee
- ▶ provided financial documentation that was inadequate and showed that the applicant's main activities constituted gaming (in particular, poker).

The club gaming permit was refused and the applicant did not take up an appeal under Schedule 12 S25(1) of the Gambling Act 2005.



## Review of a club gaming permit

The club was granted a club gaming permit, but intelligence suggested that the club was in breach of several conditions of its permit. After a joint visit to the club with local police, the licensing authority found that the club:

- ▶ was not established and conducted for the benefit of its members
- ▶ appeared to be established and conducted almost solely for the purpose of playing poker.

A letter was sent to the club instructing it to comply with the conditions of its club gaming permit within a set time period.

The club failed to comply and the licensing authority withdrew the club gaming permit. The club appealed the decision and, following the subsequent court case, the appeal was rejected. Costs were awarded to the licensing authority.

Further examples can be found in the **case studies section** of our website.

