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## **BETTING, GAMING, LOTTERIES AND AMUSEMENTS (AMENDMENT) (NI) ORDER 2022**

### **Response to Department for Communities' Consultation on draft Codes of Practice**

Prepared on behalf of the All Party Group by the Secretariat on 25/02/2022

Approved for submission by the All Party Group on 25/02/2022

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#### **Introduction**

The All Party Group on Reducing Harm Related to Gambling is delighted to have the opportunity to submit a response to the Department's Consultation on a Code of Practice for Gambling Operators in Northern Ireland.

Our submission to this consultation is informed in part by findings of the APG's inquiry into the Future Regulation of Gambling in Northern Ireland. During this seven-month inquiry, the APG heard from a wide range of witnesses from across the UK and Ireland, as well as experts from Australia and New Zealand. We outlined 38 practical policy recommendations, aimed at protecting people in Northern Ireland from gambling harm. Our inquiry report can be reviewed [here](#).

The APG supports the proposal to introduce Codes of Practice for gambling operators and the timeline proposed for their implementation. As we said in our submission to the Assembly Committee for Communities Call for Evidence on the Gaming, Betting, Lotteries and Amusements (Amendment) Bill,

“A mandatory code of practice is an appropriate regulatory tool. The gambling industry is constantly and rapidly changing. As such, regulation needs to be sufficiently flexible to be able to offer appropriate protections to people here. Regulating operators using mandatory codes of practice will allow the Minister and her Department to be more responsive to emerging issues than relying on regulation through legislation.”

While we broadly welcome the draft Codes of Practice and in particular the focus on harm prevention, we have some concerns with content of them. These are outlined below.

#### General Comments on the draft Codes of Practice – use of language

There are three instances in the draft Codes of Practice where the term 'problem gamblers' is used. This language suggests that “gambling is a fundamental characteristic of the individual's identity”.<sup>1</sup> People can move in and out of risk from gambling harm, experiencing varying levels of harm before reaching the problem gambling stage.<sup>2</sup> It is therefore unhelpful to suggest that individuals experiencing problems with gambling are part of a homogeneous group.

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<sup>1</sup> [Moving from 'problem gamblers' to 'people with a gambling problem'](#), Royal Society for Public Health, 3 November 2021.

<sup>2</sup> During the course of our inquiry into the Regulation of Gambling in NI, we heard consistent evidence from experts in the field on how everyone is potentially vulnerable to gambling products.

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*We recommend the draft Codes of Conduct should instead refer to ‘individuals with a gambling problem’.*

### **Gambling Code of Practice – General Application**

We are concerned at the phrasing in the final paragraph of the ‘General Application’ part of the Codes document. This paragraph reads

“The Codes **may** [our emphasis] also be used by gambling licensing, certifying, permitting and enforcing authorities as an additional aid in assessing the fitness of any persons, companies or other bodies to hold a gambling license, certificate or permit.”

*Given that these are intended to be mandatory Codes of Practice, we recommend that the word ‘may’ in the above sentence be substituted for ‘should’.*

### **Gambling Code of Practice (01/2022) – Gambling Securities and Credit**

This Code is aligned to recommendation 3 in our inquiry report:

“A ban on credit cards (in place in GB since April 2020) should be officially extended to NI, and loopholes which allow de facto credit card spending e.g. through bill pay phone credit should be closed.”<sup>3</sup>

*As such, we very much welcome this Code and its provisions.*

### **Gambling Code of Practice (02/2022) – ATMs and Reverse Withdrawals**

#### Automated Teller Machines

We welcome provision that no ATMs or cash dispensing machine should be located in land-based gambling premises in Northern Ireland. While members of the NI Turf Guardians Association – who represent nearly all the betting shops in Northern Ireland – already employ this measure voluntarily, the position of ATMs in bingo halls and arcades is less clear.

#### Reverse Withdrawals

The APG welcomes the provisions of this Code relating to Reverse Withdrawals, which we called for in recommendation 8 of our recent inquiry report. Gambling operators in GB are already required to prevent reverse withdrawals, following guidance issued by the Gambling Commission in May 2020. Reverse withdrawal use by gambling consumers is [widely considered an indicator of gambling harm](#). We believe that this measure is a positive step.

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<sup>3</sup> [Inquiry Report - Future Regulation of Gambling in Northern Ireland](#), APG on Reducing Harm Related to Gambling, October 2021

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## **Gambling Code of Practice (03/2022) - Protection of Children and Young People**

### Access by Children and Young People

We agree with the principle of a standard approach which aims to tackle underage access to gambling services. In terms of the 'Think 21 policy', we understand that is modelled on the 'Challenge 21' policy adopted by on-trade licensed businesses selling alcohol for consumption on-premises. During the APG's first Inquiry, we heard that this measure is currently standard practice across betting shops and other gambling venues throughout Northern Ireland, as well as in GB.

However, during our first inquiry, there was some concern that this policy may not have been as effective as had been hoped. In the GB Gambling Commission's Young People Gambling Report 2019, the Commission reported that 66% of young people aged 11-16 said that they had never been stopped from gambling because they were too young.<sup>4</sup> While this data does not cover Northern Ireland, it does at least demonstrate that there is a risk that this policy on its own may not be sufficient.

*Given that this policy has already been de facto in place for some time, we recommend that the Department review the effectiveness of 'Think 21' policy in preventing young people from gambling. The outcome of this can be used to determine whether improvements can be made to the draft Code of Practice - Protection of Children and Young People.*

### Reason to believe a person has attained legal age

It is not immediately apparent under what circumstances a gambling operator could have good reason for believing that a person had attained the relevant legal age for gambling. Should there be any reason for doubt about whether an individual had attained the relevant age, we would expect a responsible operator to ask to see a form of ID as proof of age.

*We would welcome more clarity from the Department on what types of circumstance they would deem to constitute 'good reason'.*

## **Gambling Code of Practice (04/2022) - Marketing**

### Customer Inducements

In our inquiry report, we called for a ban on VIP schemes and 'free Bets', based on evidence that shows that industry practices both fuel and take advantage of addiction. As such, we don't believe the current language used in this section goes far enough.

*We recommend that the final sentence in the section read: "Therefore these must be avoided."*

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<sup>4</sup> Ipsos MORI, 'Young People and Gambling Survey 2019' (UK Gambling Commission, October 2019) 25

## UK Advertising Standards Authority

The ASA does not have any control over the interpretation of the gambling operator licensing objectives in GB. For example, advertising of credit offers was investigated by the Competition and Markets Authority, and found to be breach of consumer protection laws. By any rational interpretation, this advertising was also in breach of the GB “fair and open” licensing objective. However, the ASA failed to investigate the advertising from that perspective.

If the Codes of Practice document does not spell out what “fair and open” means, then it is impossible for advertisers to know if they are in breach of that objective, even if not in breach of ASA regulations.

The following is a simple illustration:-

An advert reads “£10 wins £30 on team X today”. The £30 could be the total return including stake as the actual odds could be 2 to 1. If so, the correct terminology should be “£10 pays £30 on team X today” or “£10 wins £20 on team X today”

It should not be the function of a gambler to consider if a gambling advert is fair and open, whether to complain to the ASA and how the ASA might resolve such a complaint.

Complying with the ASA/Committee of Advertising Practice (CAP) codes and Betting Gaming Council/ Industry Group for Responsible Gambling (IGRG) codes does not necessarily mean that all advertising is in compliance with the Codes of Practice objectives.

*We recommend that the Codes of Conduct document provide a concise definition of what is meant by ‘fair and open’ as set out in the Objectives of the Codes.*

## **Gambling Code of Practice (05/2022) - Customer Care: Problem Gambling**

### Customer Care/Duty of Care – General

In this section, we would suggest that the language should be amended to avoid potentially stigmatising words or phrases. Describing individuals as “dangerously compulsive and unhealthy gamblers” is a problematic phraseology. It appears to characterise the harm suffered by an individual as being the result of a failing of willpower on their part. This sort of language is rejected by many harm reduction advocates, who argue that individuals who suffer gambling harm do so because they are victims of industry practices.

### Customer Care – Environment

We are happy to see the requirement that betting premises have problem gambling warnings ‘on prominent public display’. However, we would encourage the Department to consider placing more emphasis on the type of warning message displayed. During the call for written evidence, as part of our first inquiry into the regulation of gambling here, we received evidence from a group of academics from Warwick University, UCL and CQ University Melbourne, Australia who had

conducted research into the efficacy of different gambling warning labels. In their submission, the academics explained that, in large-scale experiments (involving over 2,500 participants), the most common warning label in use in the UK ('When the FUN stops, stop') had no effect on the rate at which study participants gambled. The academics went to say that there was a degree of evidence for what they described as "a small backfire effect", such that the slogan might actually encourage some participants to gamble more.<sup>5</sup>

*We encourage the Department take a more considered approach to warning labels – if it is worth insisting that warning labels are displayed, it is surely worth insisting that those labels can be shown to be effective in addressing harm. It is recommended therefore that the Department, as regulator, in consultation with the Department of Health and other stakeholders, determine the content of warning messages displayed.*

### Customer Care – Spending

We are pleased to see this section in the draft Codes of Practice, as it directly addresses one of the 38 recommendations in our inquiry report. However, we are concerned that the application of the affordability checks as set out in this section will not be practicable for gambling operators here.

While we fundamentally believe that affordability checks are a valuable tool in addressing and minimising gambling related harm, we do not believe that the checks as currently described are practicable. Implementing an unworkable system risks the integrity of the Codes as a whole.

Our inquiry into the regulation of gambling heard from individuals and groups affected by gambling harm who recommended the introduction of an affordability card to be used across all land-based and online operators. Data protection regulations would require that this be legislated for, potentially with a central database held by an independent gambling regulator or ombudsman here. NITGA told inquiry that if data protection issues could be enacted to allow this, "the industry would have no issues adopting such a card".

*In in the absence of legislation to regulate online gambling in NI, we recommend as first step that the Department explore the creation of a central database covering all licensed land based gambling operators in NI. This would be done in collaboration with the industry. The database would used to administer an affordability card for consumers gambling in land based bookmakers, racecourses and on gaming machines, and used to check the affordability of their gambling, taking into account all premises visited. This system could also be used to manage a region-wide self exclusion scheme*

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<sup>5</sup> [Submission for All Party Group on Reducing Harm Related to Gambling](#), Lukasz Walasek and Elliot A. Ludvig, Department of Psychology, University of Warwick; Phillip W. S. Newall, Experimental Gambling Research Laboratory, School of Health, Medical and Applied Sciences, CQUniversity, Melbourne; Henrik Singmann, Department of Psychology, UCL.

## **Gambling Code of Practice (06/2022) - Gaming Machines**

### Gaming Machines – General

We welcome that so-called Fixed Odds Betting Terminals (FOBTs) are explicitly categorised as gaming machines in the Code. We also welcome that the Code reaffirms the statutory limit of two gaming machines that are permitted in bookmakers. However, we are concerned that field research undertaken found that seven of the fourteen licenced bookmakers visited in Belfast city centre operated more than two so-called FOBTs.<sup>6</sup>

There is no prescribed limit on the number of gaming machines that can be in operated in the other types of locations set out in the draft Codes of Practice, where they are allowed to operate. Though the draft Code does makes clear that the Department can impose general limits by regulation.<sup>7</sup>

There is also some confusion on the role of district councils in the granting of permits to amusement arcades and similar premises, which are not referenced in Table 2 of the draft Code of Practice. Clarity is needed here.

We also have concerns that the Code does not set out the stake and prize limits that each type of machine can employ under the 1985 Order. This would be welcome, since it is well understood that the so called FOBT gaming machines, which are in common use in Northern Ireland, offer stakes and prizes well in excess of those permissible under the law.

Evidence from the Institute of Public Health Ireland (IPH) stresses the link between social deprivation and increased risk of gambling harms associated with so called FOBTs. The average discretionary income in NI is the lowest of any UK region,<sup>8</sup> yet the average gambling spend is 15% higher.<sup>9</sup> Serious consideration should be given in the second phase of planned legislation to the harms associated with FOBTs, described as “the crack cocaine” of gambling addiction, and the appropriateness of their continued existence in pubs, bingo clubs and betting shops here. We cannot however afford to wait until 2026 - the earliest date that we can expect this legislation to make it on to statute books – to effectively regulate these ‘addictive by design’ machines.

*We recommend that the Department specify the limit on number of gaming machines that can be operated in all types of locations set out set out in legislation. These limits should set out in Table 2 of the draft Code of Practice.*

*We recommend therefore that the Department urgently address the current issue of non-compliance within the current regulatory framework governing gaming machines. This may involve dialogue with the industry, secondary legislation and, if necessary, the courts . Failure to act here will serve to undermine the effectiveness of this Code of Practice. How can we effectively regulate the online*

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<sup>6</sup> Gaming machines categorised as B2 or B3 gaming machines by the Gambling Commission in GB.

<sup>7</sup> The licensing court may also specify individual limits.

<sup>8</sup> [Asda Income Tracker Report: December 2020](#)

<sup>9</sup> [Detailed household expenditure by countries and regions: Table A35](#), 9. Recreation & Culture, ONS, Jan 2019

*gambling industry, if we are unable to get the basics right when it comes to the regulation of land based gambling.*

Operation of jackpot and higher limit machines

We very much welcome the inclusion of provisions within this section to regulate cycle and spin speed on machines. This issue is consistently highlighted by academics and harm reduction advocates as an important step in addressing the addictiveness of these machines.

*We recommend that the Department consider the limits placed on these numbers closely. We recommend that the Department consult with other regulators and stakeholders on appropriate spin and cycle speeds.*