

Is a prize machine a gaming machine?

July 2010

1 Introduction

- 1.1** The Gambling Commission (the Commission) is frequently asked whether a particular prize machine is, or is not, a gaming machine (most commonly the question is asked in respect of a machine marketed as a skill with prizes machine (SWP)). The answer to that question depends upon whether any of the games offered on the machine amount to 'gaming' as defined in section 6 of the Gambling Act 2005 (the Act).
- 1.2** This advice note sets out the framework which the Commission applies when deciding whether it considers that a particular game played on a prize machine amounts to gaming.
- 1.3** The interpretation of the Act is, of course, ultimately a matter for the courts. Nevertheless, the Commission hopes that it will be helpful to the manufacturers and suppliers of machines, and those who make machines available for use, for it to set out how it approaches the question of whether a game falls within the scope of section 6 of the Act.
- 1.4** The Commission issued a joint statement with HM Revenue & Customs (HMRC) in December 2009, which set out our views in respect of games presented as recognised games of chance. This note builds on that statement.
- 1.5** This note should be read in conjunction with the characteristics published by HMRC on 30 Jul 2010. The characteristics set out in more detail what features SWPs should or shouldn't have, to help answer the questions set out in this document. This version of the advice note replaces the version dated May 2010 to reflect the HMRC SWPs and taxation review.
- 1.6** The Commission may update this advice note from time to time to reflect developments in the market.

2 Is the game played on the machine a game of chance?

- 2.1** The Commission applies a series of questions to determine whether it considers that a particular game played on a machine is a game of chance or skill. These questions are based on the framework set out in the Act. Annex A sets out the questions as a flow chart.

Question 1: Is the game played for a prize?

In the Act a 'prize' in relation to a gaming machine includes any money, article, right or service won, whether or not described as a prize. The opportunity to play the machine again is not a prize.

If the game is played for a prize then it may amount to gaming for the purposes of the Act, depending on the answers to the questions below¹.

Question 2: Does the outcome of the game depend entirely on chance?

If the answer is 'yes' then the game is clearly a game of chance and, if played by means of a machine, that machine is a gaming machine. An example of a game whose outcome is determined entirely by chance is Roulette.

¹ Where a machine on which a game is played does not offer a prize, other considerations will determine whether it is nevertheless a gaming machine requiring those who manufacture, supply, adapt, repair or maintain it to be licensed.

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If the outcome does not entirely depend on chance then it is necessary to proceed to question 3.

Question 3: Does the game contain an element of chance as well as an element of skill?

Subject to question 4, a game in which the outcome or result can be influenced to any appreciable extent by chance is, in the Commission's view, a game of chance for the purposes of the Act. It follows that the machine on which the game is played is a gaming machine.

It does not matter for these purposes whether the element of chance / luck predominates over the element of skill. Nor does it matter whether the element of chance can be eliminated by superlative skill.

An example of a game which contains both an element of chance and an element of skill is Poker.

Question 4: Is the element of chance involved in the game so small that it should be disregarded?

The Commission recognises, however, that there comes a point where the element of chance is so small that it should be disregarded.

An example of a game where the element of chance should be disregarded is Chess, where the element of chance introduced by determining who is to play as white and black is so small as to be likely to be considered irrelevant.

Question 5: Is the game presented as involving an element of chance?

This question pre-supposes that the game does not in fact involve an element of chance (other than one which would be disregarded under question 4). A game may be considered to be presented as involving an element of chance when it is fraudulently presented as a game of chance (for example 'chase the lady' or the 'three card trick') but the question of presentation applies more widely. In considering whether a game is presented as involving an element of chance the Commission will take into account the following matters:

- How the game appears to the player.
- What the game is called and whether it contains language associated with gambling games.
- The livery of the machine and whether it contains symbols or graphics associated with gambling games.
- The appearance of the game itself and whether it contains symbols or graphics associated with gambling games, including (but not limited to) the turn of a wheel, the spin of a coin, the roll of a dice, reel bands, or the random selection of numbers.
- Whether the game involves the player in actions associated with gambling games including (but not limited to) placing chips or markers on numbers, or engaging in prediction.
- Any contextual indications such as advertising signage or marketing material.

It is important to note that any one of these factors by itself may not be sufficient to classify a particular machine as a gaming machine. For example, the depiction of dice in a game may not by itself necessarily indicate that a game is a gaming machine.

Question 6: Does an exemption apply?

Section 235 (2) of the Act sets out a number of exemptions that can apply to a machine which is designed or adapted for use by individuals to gamble. For example, equipment designed to play bingo would be exempt provided it is used in accordance with a condition attached to a bingo operating licence.

2.2 If the answers to the above questions indicate that the game in question is 'gaming' as defined in the Act, then a person must hold an appropriate licence to manufacture, supply, install, adapt, maintain or repair the gaming machine, or make it available for use.

2.3 Please consult the Commission's website (www.gamblingcommission.gov.uk) or contact the enquires line (0121 230 6666) if you require further information about licences.

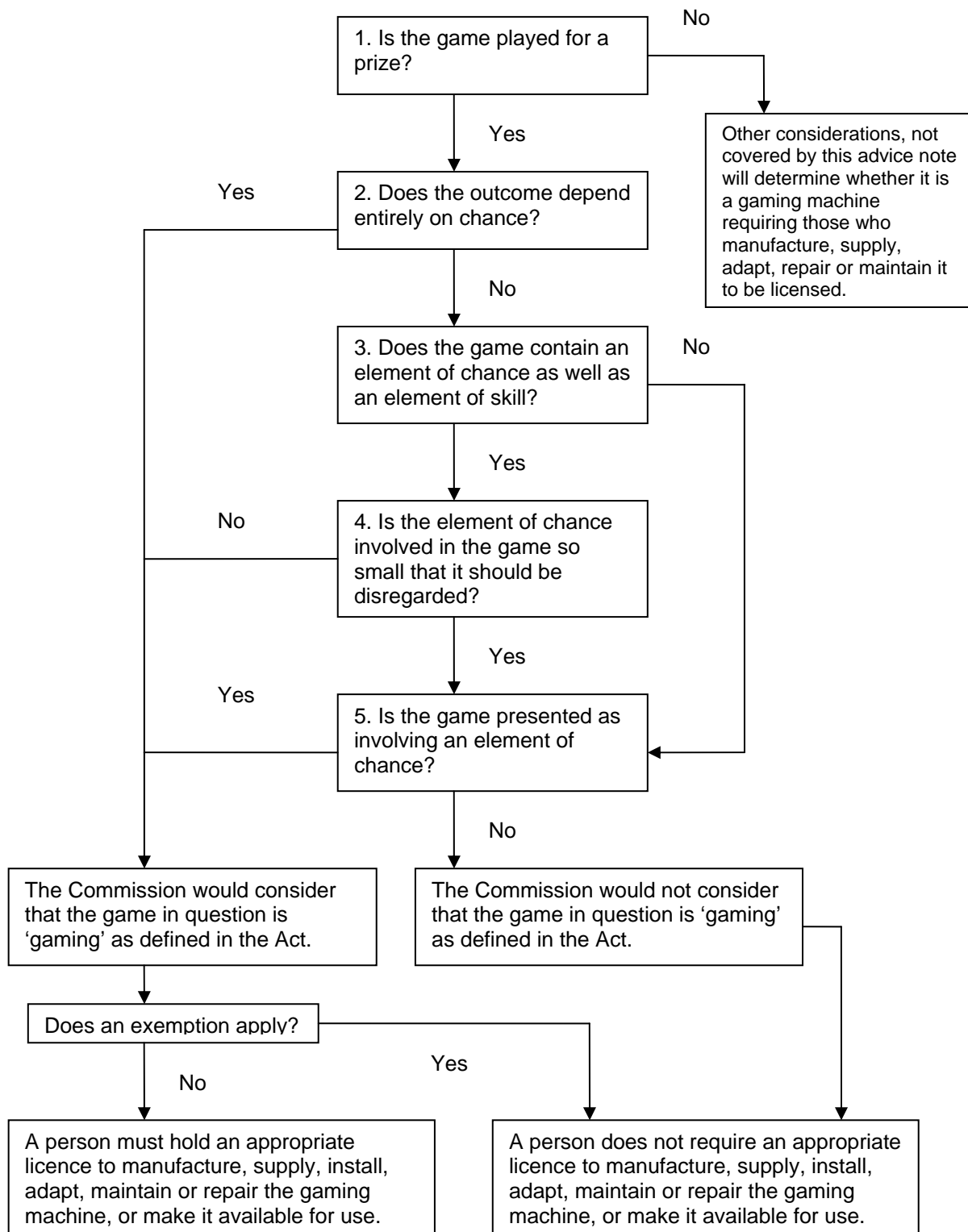
3 Compensation

- 3.1** Many prize machines have a compensation mechanism within them. In broad terms ‘compensation’ affects payout; it can alter the chances of winning, or of winning an advertised prize, depending on the circumstances (for example the amount of money a machine has already taken and paid out). Compensation can also result in the outcome of a game which is presented as random or dependant on chance being, in fact, predetermined.
- 3.2** There are many different types of compensation mechanism. It is not possible to generalise as to their legal effect. Each case needs to be considered on its individual facts. However, the operation of compensation is clearly a relevant factor which the Commission will take into account, when considering the questions in Part 2 of this document.
- 3.3** Where a compensation mechanism introduces a random element into the game, this may result in the game being one of chance, but it does not necessarily follow in every case. If a player’s achievement during the game or the game’s outcome depends to any appreciable extent on chance / luck, the Commission takes the view that the game is a game of chance for the purposes of the Act. However, not every random or unpredictable element in a game necessarily leads to the conclusion that the game is a game of chance, because the Commission recognises that there will be cases where the unpredictable or random element is present for the very purpose of testing the skill or knowledge of the player. For example, the random element, such as that introduced by certain types of compensation mechanism, may be present solely for the purpose of challenging a player’s use of skill, whether manual dexterity / hand-eye co-ordination or knowledge / judgement.
- 3.4** It follows that compensators that vary the degree of skill required to win a prize, without introducing an appreciable element of chance, will not necessarily, in and of themselves, make a game a game of chance, provided that compensation does not prevent a suitably skilful player from being able to win any of the published prizes.

4 Skill based prize games

- 4.1** The Commission’s approach to the status of a particular prize machine will be informed by the answers to the questions in Part 2 of this document.
- 4.2** However, in relation to games which purport to test a player’s skill in order for them to win a prize, if any of the factors set out below are present at any time, whether or not the machine would otherwise be considered a gaming machine, the Commission considers it likely that the game in question will contain an appreciable element of chance and the prize machine would therefore be a gaming machine. For this purpose it does not matter whether the factors, or any of them, are present at all times, or whether they are introduced by means of a compensation mechanism. The factors are:
- A prize game does not allow a suitably skilful player a sufficient minimum time to exercise their skill.
 - An outcome based on a player’s reactions is not genuinely achievable.
 - A prize game based on memory does not give the player the opportunity for all the necessary information to be retained and recalled.
 - A prize game where the player controls operates in an inconsistent manner, for example where a pressure sensitive button does not give the same output for the same applied pressure in each go on that machine.
- 4.3** The Commission considers that it becomes increasingly difficult to manufacture an SWP machine that does not contain an appreciable element of chance, but is economically viable, as you offer prizes beyond £50, the prize limit set by the industry trade body following discussion with the Commission. The Commission is more likely to raise questions of machines with prizes above this range. Finally, if it is not possible for all of the advertised prizes to be won, then it appears to the Commission that the game may be a fraud, in which case the Commission would draw it to the attention of other agencies.

Annex A: Questions as a flow chart



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Keeping gambling fair and safe for all

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www.gamblingcommission.gov.uk

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