

CMD LAW EXAMINATION 2008

MARKING GUIDE

Question 1

Location of gaming machines (compulsory compliance or permit could be revoked):

- gaming machines situated on the premises must be located in a place within the premises so that their use can be supervised, either by staff whose duties include such supervision (including bar or floor staff) or by other means. 1
- permit holders must have in place arrangements for such supervision 1
- gaming machines shall be located in a place that requires a customer who wishes to use any ATM made available on the premises to cease gambling at the gaming machine in order to do so. 1

Access to gambling by children and young persons (recommended best practice):

- permit holders should put into effect procedures intended to prevent under age gambling. 1
- only members and their guests may play the machines; under 18's may not 1
- procedures should include for checking the age of apparently under age customers, and 1
- refusing access to anyone who appears to be under age and who tries to use Category B or C gaming machines and cannot produce an acceptable form of identification 1
- permit holders should also take all reasonable steps to ensure that all relevant employees understand their responsibilities for preventing under age gambling 1
- permit holders should only accept identification which
 - contains a photograph from which the individual can be identified: 1
 - is valid, legible and has no visible signs of tampering or reproduction 1
- acceptable forms of identification include: those carrying the PASS logo, driving licence, and passport 1
- procedures should be in place for dealing with those cases where a child or young person repeatedly attempts to gamble on category B or C machines, including warnings, reporting the offence to the Gambling Commission and the police, and making available information on problem gambling 1

Self-exclusion (recommended best practice)

- permit holders should put in place procedures for self-exclusion and take all reasonable steps to refuse service or to otherwise prevent an individual who has entered into a self-exclusion agreement from participating in gambling 2
- permit holders should implement procedures designed to ensure that an individual who is self-excluded cannot gain access to gambling and include:
 - a register of those excluded with appropriate records
 - photo identification
 - staff training to ensure staff are able to enforce the systems and;
 - the removal of those self-excluded persons found in the gambling area or attempting to gamble from the premises 3
- permit holders should take all reasonable steps to ensure that the self-exclusion period is a minimum of six months and give customers the option of extending this to a total of five years 2

- a customer who chooses not to renew and makes a positive request to begin gambling again should be given a one day cooling off period before being allowed access to the gambling facilities. 1

Question 2

a)

- know the club rules and advise the chairman and the committee as required 1
- maintain books 1
- make necessary returns on time 1
- produce made up bank statements regularly 1
- see that no breach of the law takes place 1
- be the executive officer between meetings 1
- ensure insurances are in order 1
- the secretary will be personally liable to third parties where s/he orders goods without the authority of the club committee. For this reason, all orders should be placed on club notepaper or order forms clearly indicating in what capacity the secretary is acting 2
- a secretary is liable to the club where, as a direct and foreseeable result of failure to carry out his/her duties, causes loss to the club. 1

b)

- motion is put by a proposer 1
- motion must have a seconder who may speak, but only when seconding the motion 1
- If no seconder, the motion is lost 1
- the first amendment may be put which qualifies the motion and does not negate it 1
- the amendment must be seconded 1
- the second amendment may be put which, again, qualifies the motion or first amendment, but must not negate either 1
- the Chairman should deal with the amendments in turn in reverse order in which they were put 1
- should either amendment succeed it becomes the substantive motion. In this event the original motion is lost. 1
- this procedure continues until a motion is before the floor with no amendments outstanding 1
- a vote is taken on the motion in its final form 1

Question 3

a)

- a TEN should be sent to the relevant licensing authority and the relevant police at least 10 working days before the day on which the event begins 3

b)

- no more than 499 people (including staff and organizers) attending at any one time 1
- an individual is limited to giving 5 TENs in a calendar year, unless they are a personal license holder for the sale of alcohol, in which case they can give 50 1
- a limit of 12 TENs may be given in respect of any particular premises in a calendar year 1
- an event may last for no more than 96 hours 1
- the maximum aggregate duration of the periods covered by TENs on any individual premises is 15 days 1

- c)
- the supply of alcohol by or on behalf of the club to, or the order of, members of the club (off premises supplies to members) 1
 - the sale by retail of alcohol by or on behalf of the club to a guest of a member (including associates) for consumption on the premises where the sale takes place 1
 - the provision of regulated entertainment (where that provision is by or on behalf of a club for members of the club or members of the club and their guests) 1
- d) The descriptions of entertainment in the Act are:
- performance of a play 1
 - exhibition of a film 1
 - indoor sporting event 1
 - boxing or wrestling 1
 - performance of live music 1
 - playing of recorded music 1
 - performance of a dance 1
 - entertainment of a similar description to live music, recorded music or dance. 1

(20 marks for a full answer)

Question 4

- a) The Food Premises (Registration) Regulations 1991
- The Regulations provide that any premises used for storing, selling, distributing or preparing food to be registered with the local authority. (Only certain types of premises are exempt). 2
- Where a club has two or more premises, a separate registration must be made for each one to the club's local authority. 1
- Any changes in the nature of the business or the address must be notified to the local authority. 1
- New businesses must register at least 28 days before trading commences 2
- An application form can be obtained from the local authority, there is no fee, and the application cannot be refused. 1
- b) Environmental Health Officers/Trading Standards Officers powers under the Food Safety Act 1990
- Enter food premises at all reasonable hours, without notice, for the purpose of carrying out the authority's functions under the Act. If admission is refused, or the premises are unoccupied or the occupier is temporarily absent, the authority can issue a warrant for entry, by reasonable force if need be. 2
- Inspect the premises, processes and records, seize and detain any records which might be required as evidence. Inspect food to see it is safe. 2
- Take samples of food, any article or substance that may be needed for the purposes of legal proceedings or food examination. 2
- If food fails to comply with food safety requirements order that it is not used for consumption, removed or not removed from the premises or condemned 1
- c) Improvement Notice
- If an officer believes that a club does not comply with the Food Safety Act 1990 or hygiene regulations he may issue an Improvement Notice requiring the club to put

matters right, it being an offence to fail to do so. If the club is dissatisfied with the notice, it can appeal to the Magistrates' Court. 2

Prohibition Order

If a club fails to comply with an Improvement Notice, the local authority can take proceedings for breach of the legislation. If a court decides that the business puts health at risk, it must issue a Prohibition Order, which closes all or part of the club. 2

Emergency Prohibition Notice

If the local authority believes that a club gives an imminent risk to health, he/she may close it by using an Emergency Prohibition Notice and s/he then puts the breaches before the court. 2

Question 5

a) Bingo

- **played as a club activity (*)** 1
- no limit on stakes or prizes 1
- participants must be members or their bona-fide guests or associate members and, if the club rules allow, their guests also 1
- maximum participation fee of £1 per person, per day (or £3 plus VAT where a club gaming permit is held) 1
- games cannot be linked to other premises 1
- no deduction from sums staked or won 1
- under 18's cannot participate 1

- **played at a non-commercial event** 1
- no private gain; participants must be told that the object is to raise funds for club or other non-commercial cause 1
- maximum payment by way of participation fee, stake or other charge is £8 per game 1
- value of prizes for all games at the event not to exceed £600 1
- if a series of events are held on the same premises the value of prizes at the final event is not to exceed £900 1

(*) Clubs that wish to offer high turnover bingo i.e. where stakes or prizes exceed £2000 per week) will require a bingo operating licence from the Gambling Commission.

b) Private Lottery

- can only be promoted by one of its members 1
- sale of tickets to members only and other persons on the premises used for the administration of the society 1
- may only be promoted for a purpose for which the society is conducted 1
- advertising on club premises only 1
- tickets are sold or supplied only by or on behalf of the promoters 1
- tickets must state the name and address of the promoter and the persons to whom the promoter can sell or supply the ticket 1
- tickets are not transferable 1
- the price of each ticket must be the same and be shown on the ticket and must be paid to the promoter before any person is given a ticket. There can be no rollover 1

Question 6

a) Insurances

- property (includes fire, theft, water damage and subsidence) 1
- contents 1
- business interruption 1
- money/fidelity insurance of officials 1
- personal accident for committee, members and employees – not compulsory 1
- employer's liability 1
- public and products liability 1

(10 marks for a full and detailed answer)

b) Performing Right Society

- protects the interests of the owners of musical copyright 2
- PRS in an association of authors, composers, publishers and other owners of musical copyright 2
- PRS was established to protect and enforce their rights to restrain unauthorised use of their works and to collect fees for permission to perform such works in public 2

Phonographic Performance Limited

- gives protection to the maker of the recording as distinct from and in addition to the protection given to the composer or copyright owner of the music recorded 2
- was formed for the purpose of issuing licences for the public performance of records, CDs, tapes and other recording media 2

Question 7

a)

- The Licensing Act 2003 makes it a condition under a club's rules that persons may not (a) be admitted to membership, or (b) be admitted, as candidates for membership, to any of the privileges of membership without an interval of at least two clear days between their nomination or application for membership and their admission. In addition, under the rules of the club, persons becoming members without prior nomination or application may not be admitted to the privileges of the membership without an interval of at least two clear days between their becoming members and their admission 3

b)

- a club can restrict membership e.g. to members of a political party. However, a club cannot refuse membership on the grounds of race (Race Relations Act 1976). There is no similar provision in the Sex Discrimination Act 1975, e.g. a group of females could form a female only club 3

c)

- the committee should deal with the matter in the absence of the member and advise the member that they intend to do so 2
- secretary to read out the charge 1
- the committee may call witnesses in support of the case against the member 1
- witnesses may remain in the room after giving evidence until all submissions have been made 1

- after all submissions have been made all witnesses should leave the room 1
- committee should decide, by a simple majority, if the member is guilty or not guilty (model rules) 1
- if guilty, a two-thirds majority is required to carry through the sentence (model rules) 1
- the member on being found guilty can be reprimanded, suspended for a period of up to 12 months or be expelled (model rules) 1
- member should be informed of the decision in writing and advised that s/he can appeal against the decision 1
- if suspended or expelled the member must hand over her/his membership and Associate cards 1
- if the member is an associate the club's Branch should be advised of any suspension or expulsion 1

(20 marks for a full answer)

Question 8

a)

- The secretary should advise that no steward or permanent employee should be a member of the club s/he serves, or on the committee of the club as this can and often does result in disorder in the club and difficulties for the committee. 2
- before an appointment is made it should be laid down that s/he should not be a member of the club, or if already a member, that s/he shall resign 1
- s/he may join another club and be an Associate 1

b)

- consult the employee's contract of employment and the club's disciplinary procedure. If there is no written disciplinary procedure or it does not comply with the Statutory disciplinary procedure then the employer must follow the minimum 3 step process (the Statutory Dispute Resolution Procedure introduced in October 2004) 2
- disciplinary action should not be taken by the club until the case has been fully investigated 1
- the club secretary must put the reasons why the club is considering disciplinary action or dismissal in writing and summon the employee to appear before the management committee giving reasonable notice 2
- an employee has the right to be represented by a Trade Union representative or by a colleague at any stage of the procedure 1
- the employee must be given all the relevant information in advance of the meeting 1
- the meeting must allow both the employer and the employee to explain and present their cases and either party may bring witnesses 2
- before a penalty is imposed the reasons for such and imposition should be explained to the employee 1
- usual steps are: oral warning, written warning, final written warning indicating that repetition would result in dismissal 2
- depending on the seriousness, stages could be jumped – this includes previous warning 1
- warnings must be time bound i.e. will only stay on record for so many months 1
- if dismissal, statutory /contract periods of notice must be complied with. 1
- the employee should be given a right of appeal in respect of any disciplinary matter 1