

14 November 2012

GUIDELINES

EXTENSIONS UNDER SECTION 71 (1) (g)

This statement sets out the procedures that will apply to applications for an extension under section 71 (1) (g) of the Gambling Act 2003.

Scope of Section

This subsection gives a wide discretion to the Secretary. The Department's understanding of section 71 (1) (g) when it was drafted, was that it would cover emergency or unforeseen situations that might arise. It has been accepted that it also covers the situation where clubs are rebuilding on the same location as an existing venue in the course of a merger under section 95 or where a new club is moving to a new venue and has applied for an increase in machines under section 96.

Place

If demolition and complete rebuilding is involved will the new building be the same **place**? The class 4 venue is the place used to conduct class 4 gambling. This is the physical location of the venue. If the venue is in a new building the bar (or other business or club) must be in the same physical location as before. There may be some variation in the outline but the new business or club must be on the same (or very nearly the same) physical site as before.

Reasons for Extension

You should ask the society to set out the reasons it is seeking an extension.

Acceptable reasons are:-

- Damage by fire, storm, earthquake, flood, accidental building collapse
- Malicious damage, vandalism, theft
- Other unforeseen circumstances outside the control of the society or venue operator (see next paragraph)
- Rebuilding by clubs who are merging and have received Ministerial approval under section 95
- Building of new premises by a club which has received Ministerial approval under section 96

Other Unforeseen Circumstances

The Secretary has a discretion under this provision and must therefore consider all applications carefully. Where there are unforeseen or unusual circumstances (third bullet point above) the application should be referred to the National Manager, Licensing and discussed with Operational Policy. They will need to consider whether the situation is one which could not be reasonably foreseen and whether that situation justifies an extension.

The Department must carefully consider any arguments advanced by the society for the discretion to be exercised in its favour in the circumstances of the specific case. The circumstances of the case may justify a departure from the ordinary policy.

Timetable for rebuilding

The society must supply a detailed description of the building work, letter from the building owner confirming that work must be carried out and definite timetable for completion. The society must say whether resource or building consents are needed and if those have been applied for and/or granted.

Length of Extension

You should grant an extension for the shortest period possible to complete the work. This should not be longer than a few months. You should not grant an extension which would take the total inactive period beyond 12 months unless there are exceptional circumstances. This would include clubs that have obtained approval under section 95 or 96 where the rebuilding programme may be longer. The total extension period should not usually go beyond the term of the operator's licence but there will be some situations where this is necessary.

Approval Letter

You should warn the society when approving an extension that we would need to be convinced that there were unforeseen and exceptional circumstances before a second extension would be considered. You should tell the society that any application for a second extension must be lodged 5 working days before the expiry date of the first extension. A second extension will not be considered if the application is received after the first application expires.

Second Extension

We should generally not grant a second extension. The application must be referred to the Team Leader, Licensing. There must be special circumstances that are significant and beyond the control of the applicant to justify a second extension.

Subsequent Extension

If a society does apply for a third extension that application should be referred to the National Manager, Licensing and to Operational Policy. There would have to be extraordinary circumstances that occurred during the rebuilding to justify this further extension. These circumstances are more likely to arise with club rebuilding projects. We should aim to keep the extension period within the term of the operator's licence where this is possible. That requirement is particularly relevant where clubs are involved. The club may find it difficult to show financial viability for a renewal where gaming machines have not been operating for some time.

Refusal of Application

It is now accepted that the Act does give a right to appeal against a decision refusing an extension under section 71 (1)(g). The status in Licence Track will be "Refused".

Follow up

You should diary for follow-up on the date the extension expires. At that point you should check the EMS website to see if the gaming machines are now operating. If the machines are not operating, and no subsequent application has been received, then you should pick up and follow the process (but with modified letter(s)) outlined under "Corporate Societies that fail to advise no class 4 gambling for more than 4 weeks"- pick it up at the stage of writing a letter to require the society to surrender the venue immediately.

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