

Class 4 Licensing

Operating gaming machines outside casinos is categorised under the Gambling Act 2003 as Class 4 gambling because it is high-risk. It is therefore subject to higher level of controls than most other forms of gambling.

The Act aims to control the growth of gambling. There are strict licensing criteria for organisations wanting to run gaming machines and for the venue at which they operate.

These criteria are aimed at:

- Preventing and minimising harm caused by gambling including problem gambling
- Facilitating responsible gambling
- Ensuring the integrity and fairness of games
- Ensuring that money from gaming machines benefits the community
- Ensuring that gaming machines operate at suitable venues
- Limiting the opportunity for crime and dishonesty associated with gaming machines
- Ensuring that gaming machines are run by responsible, accountable societies.

General information

In summary, under the Gambling Act, the Department must refuse to grant a licence unless satisfied that an applicant can meet a range of requirements specified in the Act. The Department is also required to carry out more thorough checks of organisations and individuals. Details of these can be found on the Department's website: www.dia.govt.nz

To operate Class 4 gambling under the Act, all operators (including clubs) must have two different kinds of licences:

- A Class 4 operator's licence; and
- A Class 4 venue licence for each venue that hosts its machines.

An application must be made by a corporate society on the applicable forms and be accompanied by any necessary fees. The forms and information guides about what is required are available on the Department's website.

Corporate society

Only a corporate society can conduct Class 4 gambling.

Late or expired licences

If renewal applications for Class 4 operator's licences are not received before the existing licence expires, the licence is no longer valid and all of the corporate society's gaming machines at all of its venues must be turned off. If any of them are not turned off, the corporate society can be prosecuted for operating illegal gambling.

The Act allows the Department to return incomplete applications, along with any accompanying documents and application fees. The Department's practice is to return an incomplete application promptly and explain to the corporate society that if it does not file a complete application before the current licence expires, the licence will no longer be valid and all its machines must be turned off from that date.

To summarise, a society's licence continues in force after its expiry date if:

- It has applied for renewal before the expiry date; and
- The Department has not declined the application.

Investigating societies, venues and grant recipients

The Department may, to the extent necessary to determine compliance with the Act, investigate and audit not only societies but also grant recipients and businesses operating at Class 4 venues (section 117).

This means, for example, that the Department may question grant recipients about the legality of grants, or request financial statements from venue businesses in order to determine whether gambling is the primary activity at the venue.

Staggering of gaming machine licence dates

Licence expiry dates are staggered to ensure that the processing of licensing is as efficient as possible and that the majority of renewals are not due at the same time. Section 107 of the Act requires each corporate society to provide an annual report, including its financial information, no later than three months after the end of its financial year.

For the vast majority of corporate societies, the audit of their financial accounts has been or will be accomplished within a two or three month period of their balance date. In general this means that their 'new' licence renewal month can be at the expiry of two or three months after their balance date.

Class 4 venues

Territorial authorities

A corporate society must apply for territorial authority consent if it proposes to:

- Establish new gaming machine venues; or
- Increase the number of machines operated at existing venues.

A territorial authority's decision to grant territorial authority consent must be made in accordance with its Class 4 (gambling) venue policy.

Where territorial authority consent is required it should accompany the corporate society's application for a Class 4 venue licence.

Grounds for granting venue licenses

The Department must refuse to grant a Class 4 venue licence unless the Department is satisfied that:

- The applicant holds a Class 4 operator's licence
- The possibility of persons under 18 years old gaining access to Class 4 gambling at the venue is minimal
- The venue manager is an individual and any investigations carried out do not cause the Department to be dissatisfied about his or her suitability, to supervise the conduct of Class 4 gambling at the venue and venue personnel
- Any investigations carried out by the Department do not cause the Department to be dissatisfied about the suitability of any other key person
- If the application relates to a venue that is licensed to another corporate society, the other corporate society has surrendered its venue licence for the venue
- The territorial authority has provided a consent (if required)

- On issue of the licence, the applicant will own any gambling equipment (except for electronic monitoring systems) that it proposes to operate
- On issue of the licence, the applicant will not operate any gambling equipment that is financed by the manufacturer, distributor, or vendor of the equipment
- All gambling equipment to be operated at the venue meets relevant minimum standards
- The venue agreement (if required):
 - enables the Class 4 gambling conducted at the venue to comply with the Gambling Act and the proposed venue licence; and
 - includes the information specified.
- For a venue that is not established before the commencement of this section, the venue is not to be part of a place at which another Class 4 venue or a casino is located
- No person will be both a key person in relation to the relevant Class 4 operators' licence and a key person in relation to the venue licence
- If the New Zealand Racing Board is the applicant, the venue is either:
 - owned or leased by the New Zealand Racing Board and used mainly for racing betting or sports betting; or
 - a racecourse.
- If the applicant is a racing club, the venue is a racecourse
- The risk of problem gambling at the venue is minimised
- The proposed venue is suitable in all other respects to be a Class 4 venue
- There are no other factors that are likely to detract from achieving the purpose of this Act
- Any other requirement set out in regulations or licence conditions is, or will be, met.

The venue is not used mainly for operating gaming machines

This will be assessed on a case-by-case basis and may for example include:

- An assessment of the financial records relating to the venue
- Examination of the venue floor plans.

And in the case of new venues:

- Requesting evidence that the venue has been operating as a successful business without gaming machines.

Venue agreements

Under the Gambling Act a venue agreement remains in force for up to three years and ends immediately the corporate society no longer holds a Class 4 operators' licence or no longer holds the Class 4 venue licence for that venue.

A venue agreement must:

- Include the full name, date of birth and contact details of the venue manager, and list the manager's gaming-related duties
- Include an itemised list of all costs associated with the operation of gaming machines at the venue, which must comply with any limits or exclusions imposed by Gazette notice (section 116)
- An expiry date of no later than three years after the date of the agreement.

The Department must approve the form and content of venue agreements. The Department will check that venue agreements contain the following statements. These are the minimum requirements needed to ensure the venue operator is accountable to the society for compliance with the Act:

- Venue operator will comply with the requirements of the Gambling Act, regulations, game rules, licence conditions and procedures relating to the operation of gaming machines and any directions issued by the Department
- The way in which the venue will prevent persons under 18 having access to the gaming machines
- Venue operator will display the venue licence in a prominent place in the venue and will display the information about the licence (as required by section 82 of the Gambling Act)
- Only persons authorised by the society may service, modify or have access to the interior of gambling equipment
- Venue operator will keep records of venue staff used in the gaming machine operation
- Venue operator must keep and supply the society with records relating to gaming machine profits
- Venue operator will provide the cash float for operation of the gaming machines
- Venue operator must carry out meter readings, operate gaming machine float, bank gaming machine funds in accordance with the procedures specified in the Gambling Act and game rules
- Venue operator will not enter into any agreement or activity where any party stands to benefit commercially from any gaming machine profits

- An agreement to pay expenses to the venue must comply with the Department's rulings or any notice issued under section 116 of the Gambling Act
- Venue operator will cooperate with the Department, its Gambling Inspectors and other employees
- Venue operator will cooperate with the society's auditor
- Venue operator will take all necessary steps to comply with and assist the society to comply with any conditions that the Department has added to the venue licence.

Venues moving between societies

In relation to a society application for a venue licence, the Department requires evidence from the applicant that the previous society has voluntarily surrendered its venue licence or intends to do so (section 67(1)(e)). A venue licence is not transferable (section 80). The agreement for a venue to move from one society to another is entirely a matter between the two societies and the venue concerned. The Department is not responsible for obtaining the surrender documentation from the previous society.

No gambling for four weeks

If a society has not conducted gambling at a venue for more than four weeks, it must surrender its venue licence unless the Department agrees that the venue can remain inactive for a specified period (section 71(1)(g)). Circumstances in which the Department might agree to the continuation of a venue licence will be looked at case-by-case but might include, for example, major renovations taking place at the venue. It is unlikely that the Department will agree to an inactive venue continuing to be licensed if the society simply does not wish to release it.

Disposal of gaming machines

If a society intends to sell, destroy or otherwise dispose of a gaming machine it must notify the Department within 20 working days of how the machine was disposed of, and the name and contact details of the person who acquired the machine (obligations regarding disposal of gaming machines is found in section 83). There is no statutory requirement to advise the Department if machines are simply removed from a venue, but retained by the society (e.g. placed in storage).

However, societies are asked to provide the Department with this information because it will assist in keeping track of machines and preventing miscommunication between the Department and the society.

Class 4 operators

Grounds for granting operator's licenses

The Act provides that the Department must refuse to grant a Class 4 operator's licence unless the Department is satisfied that:

- The gambling to which the application relates is Class 4 gambling
- The applicant's purpose in conducting Class 4 gambling is to raise money for authorised purposes
- The applicant's proposed gambling operation is financially viable
- The applicant will maximise the net proceeds from the Class 4 gambling and minimise the operating costs of that gambling
- The net proceeds from the Class 4 gambling will be applied to or distributed for authorised purposes; and the applicant is able to comply with applicable regulatory requirements
- The applicant will minimise the risks of problem gambling
- Any investigations carried out do not cause the Department to be dissatisfied about the suitability of the applicant or any key person
- There are no other factors that are likely to detract from achieving the purposes of the Gambling Act
- A key person is not a key person in relation to a Class 4 venue licence held, or applied for, by the applicant (except in the case of a club that operates gaming machines on its own non-commercial premises).

Clubs

The Gambling Act treats clubs that operate gaming machines differently from societies that operate gaming machines at pubs.

Is it a club?

As the requirements for clubs are less onerous than those for other gaming machine societies, the Department must be satisfied that the organisation is genuinely a club, and is not a commercial enterprise calling itself a 'club'.

The Department will expect there to be rules about membership, election of officers, and purposes and operations of the club. It would also be usual that a club has been in existence before an application is made for a gambling licence.

Authorised purposes

Club authorised purpose statements can include:

- The provision and maintenance of facilities and equipment for the use and enjoyment of the club's members, including the repayment of mortgages
- Assistance to adjuncts within the club to further their non-commercial aims and objects
- Grants to bona fide community and charitable groups and the provision of scholarships to needy students and welfare of members
- Payment of capitation and affiliation fees to the club's national body
- Provision and maintenance of a suitable vehicle associated with welfare, sports and services to members
- Payment of wages and salaries of staff employed for the purposes of assisting the club to meet its non-commercial aims and objectives
- Other general running costs in relation to the club's non-commercial activities including but not restricted to rates, insurance, publicity, communication systems, electricity, stationery, computers, laundry and cleaning.

The Department's interpretation of items that do not fit within the definition of authorised purpose referred to in section 4 of the Gambling Act are:

- Expenditure related to the gambling operation, including but not limited to the cost of any gambling equipment, training, attendance at conferences, affiliation with gambling related organisations, and advertising
- The purchase of liquor or anything intended to be sold
- The purchase of buildings or property for commercial or investment purposes
- Any other commercial enterprises
- Expenditure associated with operating the bar, including construction, refurbishment and maintenance of the bar and bar equipment, and wages and salaries of bar staff
- The use of a club vehicle as a courtesy coach.

Commercial venues

Some clubs purchase commercial venues, usually pubs, to use as clubrooms. The Department has to be satisfied that the operation was entirely non-commercial before it can licence such an organisation as a club. Where the 'clubrooms' are operating, in effect, as a pub, it is unlikely that a licence will be issued.

Clubs hosting a society's machines

Where a club hosts gaming machines owned by another society, it is treated as a venue hosting gaming machines. The club could be paid for the actual, reasonable and necessary expenses it incurs from hosting the machines (subject to limits under section 116).

However, it could not receive grants from that gaming machine society and people who work there are not exempt from the venue key persons provisions of the Act (sections 113 and 118). For instance, key persons of the club could not be key persons of the society that owns the machines.

The Department requires societies operating gaming machines at clubs to explicitly exclude those clubs from their authorised purpose statements.

Club mergers

Section 95 of the Act gives Ministerial discretion to permit more gaming machines in the case of club mergers. The section applies to two or more corporate societies that are clubs and:

- Two or more of which hold Class 4 venue licences that can each demonstrate a significant history of:
 - Operating as clubs for club purposes
 - Operating the number of machines specified in any Class 4 venue licences held immediately before making an application to the Minister
- Can each demonstrate that they intend to merge into a single club operating at an existing Class 4 venue
- Can demonstrate to the Minister's satisfaction that the proposed Class 4 venue is not a commercial premises
- Can demonstrate to the Minister's satisfaction that the merged club will have a substantial active membership
- Have obtained a territorial authority consent for the venue, either without a condition on numbers of gaming machines or with a condition on numbers that is consistent with the number of gaming machines that it is proposed to operate at the venue.

The corporate societies may apply jointly to the Minister for approval to operate up to the number of gaming machines consented to by the territorial authority at the proposed venue.

The Minister's approval must specify the number of gaming machines that may be operated, but the number:

- Must not exceed the number of gaming machines specified in a territorial authority consent and must not in any case exceed the lesser of:
 - 30; or
 - the sum of the number of gaming machines specified in all of the corporate societies' Class 4 venue licences at the time of the application.

The corporate societies may then apply jointly to the Secretary for a Class 4 venue licence for the proposed venue in accordance with section 65, but the Secretary must not issue a Class 4 venue licence until the corporate societies have:

- Merged;
- Obtained a Class 4 operator's licence.

On issue of the Class 4 venue licence:

- The Secretary must cancel the previous Class 4 venue licences held by the corporate societies, and there is no right of appeal against that cancellation;
- The Secretary must not consider an application for a Class 4 venue licence for any of the venues for which the corporate societies held Class 4 venue licences within six months after the cancellation.

The limits in subsection (4) may be reduced by regulations made under section 314(1)(a).

Venue agreements

A club that has a 'Class 4 operator's licence' for gaming machines at its own clubrooms:

- Does not have to have a venue agreement (section 65)
- Is not subject to the restrictions on venue key persons in section 113.

Numbers of machines

The Act includes two provisions that could allow some clubs to have more gaming machines than the 18 or nine that would otherwise be their maximums (sections 95 and 96).

Section 95 applies to club mergers and, in some circumstances, might allow up to 30 machines.

Section 96 applies to individual clubs that would otherwise be allowed up to nine machines and, in limited circumstances, allows them up to 18 machines.

Refer to 'Club mergers' above.

While reasonable measures have been taken to ensure the quality and accuracy of the information contained in this Fact Sheet it does not replace information contained in the Gambling Act 2003 or the Racing Act 2003 or any provisions pursuant to these Acts. This Fact Sheet is for general information only and is not a substitute for independent, professional legal or financial advice.