

# **GAMBLING ACT 2005**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT**

#### *Territorial limits – vessels and aircraft*

#### **Part 1: Interpretation of Key Concepts**

29. **Part 1** sets out definitions for the most important expressions and concepts that run through the Act. Part 18 also contains an interpretation section.

#### *Section 1: The licensing objectives*

30. The Act sets out licensing functions to be exercised by the Commission in relation to operating and personal licences, and by licensing authorities in relation to the licensing of premises and the grant of certain permits. In exercising these functions, the Commission and licensing authorities must be guided by the licensing objectives, which underpin the new regulatory regime. The licensing objectives for the Act are:
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
  - Ensuring that gambling is conducted in a fair and open way; and
  - Protecting children and other vulnerable people from being harmed or exploited by gambling.

#### *Section 2: Licensing authorities*

31. This section defines the term “licensing authority” and therefore determines who is to discharge the licensing authority’s functions under the Act. These functions include the licensing of gambling premises under Parts 8 and 9; the issue of permits authorising gaming and gaming machines in other premises under Parts 10, 12 and 13; and the registration of certain lotteries under Part 11. In England and Wales, local authorities are to act as the licensing authority for the purposes of the Act. In Scotland, licensing authorities are to be licensing boards constituted under section 1 of the [Licensing \(Scotland\) Act 1976 \(c.66\)](#).
32. The definition of “licensing authority” mirrors that in the [Licensing Act 2003 \(c.17\)](#), omitting (except in relation to the provisions of Part 12 governing gaming and gaming machines in alcohol-licensed premises) certain bodies who should have functions only in relation to the subject matter of that Act. This will allow licensing authorities in England and Wales to coordinate their functions in relation to alcohol licensing and the licensing of gambling premises, as is already possible in Scotland. Part 8 makes further provision to achieve this.
33. Although there is no specific reference to a “metropolitan council” or a “unitary council” in the list of licensing authorities, these councils are types of district or county council and are therefore already covered in the list.

### ***Section 3: Gambling***

34. This section defines “gambling” as meaning betting, gaming and participating in a lottery (within the meaning of those expressions as defined in subsequent provisions of Part 1). This is the first time that legislation has provided a generic concept of gambling, of which gaming, betting and lotteries are specific kinds. The Act adopts the approach recommended by the Gambling Review Body that there should be a single regulatory system for gambling, with different and distinctive provision for any of its specific forms, as appropriate. Accordingly, a definition of “gambling” is provided which defines the forms of gambling which are to be brought within the system of regulation set out in the Act, and distinguishes them from activities which, although they combine expenditure and the influence of chance, should not be treated as gambling for the purposes of regulation.

### ***Section 4: Remote gambling***

35. The Act contains specific provisions concerned with the regulation of the various technological means by which gambling activities can now be conducted. The Act adopts the concept of “remote gambling” to cover gambling where the participants are not face to face on the same premises.
36. This section defines “remote gambling” to mean gambling where people are participating by means of “remote communication”. The types of remote communication by which people may participate in remote gambling are:
- the internet;
  - telephone;
  - television;
  - radio; or
  - any other kind of electronic or other technology for facilitating communication.
37. This list encompasses modern means of communication such as interactive television and mobile telephony, and is able, by virtue of *subsection (2)(e)*, to ensure that the definition keeps pace with future developments in this field. However, in order to ensure clarity as well as flexibility for the regulation of gambling, the Secretary of State may specify in regulations that a specified system or method of communication is, or is not, to be treated as a form of remote communication for the purpose of the definition.

### ***Section 5: Facilities for gambling***

38. The fundamental concept in the Act is the provision of facilities for gambling. It underpins the offences in Parts 3 and 4, and the requirements for licensing in Parts 5, 6 and 8. There are many ways in which individuals and organisations can provide gambling activities, or take part in them, whether through remote communication or in more traditional ways. This section defines the activities which are subject to regulation under the Act.
39. *Subsection (1)* sets out the circumstances in which a person is to be treated as providing facilities for gambling.
40. The list in *paragraphs (a) to (c)* of subsection (1) is aimed at different levels and aspects of the operation of gambling. Paragraph (a) is aimed at people and companies who are in the business of providing gambling. Any person who offers the opportunity for people to gamble, whether at a casino or licensed betting premises or through a website, will expressly or by implication be inviting people to gamble in accordance with arrangements made by them.

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41. In paragraph (b), the reference to providing arrangements for gambling carries a general flavour of causing facilities to be available. The reference to operating arrangements for gambling is apt for mechanical arrangements such as a roulette wheel. Administering arrangements for gambling is a wide concept carrying a general flavour of control.
42. Paragraph (c) is concerned with those people who are directly involved in the gambling operation itself. People who participate in the operation of gambling by others will include those who actually play a part in the gambling transaction. An example might be a croupier at a gaming table. People who participate in the administration of gambling will include those who, whilst they do not actually operate the gambling, nevertheless provide direct administrative back-up to the gambling transaction. An example would be a person who hands out betting slips for the completion of a betting transaction.
43. *Subsection (2)* restricts the scope of subsection (1) by providing for certain exceptions. The exceptions cover:
- the supply of goods (other than a gaming machine) to a person who intends to use them to provide facilities for gambling (*paragraph (a)*), e.g. the supplier of gaming chips to a casino;
  - the supply of goods to a person who may use them for gambling (but not where the supply is in the course of any of the activities referred to in subsection (1)(b) or (c)) (*paragraph (b)*), e.g. a retailer supplying a pack of playing cards to a person for domestic use; and
  - electronic communications providers who do nothing more than act as a carrier of information for people providing facilities for gambling or consumers partaking in gambling (*paragraph (c)*), e.g. an internet service provider or mobile telephone operator.
44. *Subsection (3)* sets out the circumstances in which, despite the exception in subsection (2)(c), making available a means of remote communication will be providing facilities for gambling under the Act. This will be so where, because of the way in which the facilities have been adapted or presented, either they cannot reasonably be expected to be used for purposes other than gambling, or they are intended to be used wholly or mainly for gambling. This might include, for example, where an internet connected personal computer is adapted so that it has a home page menu dedicated to providing links to gambling websites. It would also cover the situation where an internet connected personal computer was surrounded by signs indicating that it was available for use for gambling, and giving details of specific web pages where gambling was available.
45. *Subsection (4)* adds to the provision in subsection (3). It confers an order making power on the Secretary of State to clarify those cases where facilities for remote communication can or cannot reasonably be expected to be used for purposes other than gambling; or where facilities are to be taken as being intended, or not intended, to be used wholly or mainly for gambling.

***Section 6: Gaming and game of chance***

46. This section defines “gaming” for the purposes of the Act as playing a game of chance for a prize, and then further defines the meaning of a “game of chance” and the concept of playing. The definitions are based on the relevant provisions in section 52 of the Gaming Act 1968, revised for the requirements of the Act. In particular, *subsection (3)* provides that a person can play a game of chance even if there are no other players, or the actions of a computer stand in for another player. This ensures that gaming on a machine or with virtual games is brought within the scope of the Act.
47. *Subsection (6)* provides the Secretary of State with the power to prescribe whether a particular activity (or an activity carried on in specified circumstances) does or does not amount to:

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- a game;
- a game of chance; or
- a sport,

for the purpose of defining gaming under this section. The purpose of subsection (6) is to cater for circumstances, which might arise in the future, where either a new product or activity is introduced and there is doubt as to its treatment under this section, or where the interpretation being given to this section means it would be prudent to put beyond doubt the proper classification of a particular activity in relation to the definition of gaming.

### **Section 7: Casino**

48. This section provides a statutory definition of a “casino” for the first time in British law.
49. The definition establishes that a casino is an arrangement (whether on premises or via remote communication such as the internet) where people can participate in casino games. *Subsection (2)* defines “casino games” as games which are not equal chance games. This means that any games which involve playing or staking against a bank, or where the chances are not equally favourable to all the players, will be casino games.
50. *Subsection (3)* enables the Secretary of State to provide in regulations for a specified activity to be, or not to be, treated as a casino game for the purposes of the definition of casino. This power is not the same as specifying what kinds of casino games (e.g. roulette or blackjack) may be played in a licensed casino. Separate powers to specify such matters are provided in Part 5 on operating licences, specifically section 90.
51. The Act regulates casinos in different ways, depending on their size and the facilities they provide. *Subsection (5)* provides for four categories of casino, to be defined in regulations made by the Secretary of State; and *subsection (6)* specifically enables casinos to be classified by reference to a number of different matters. These include:
  - the number of gaming tables at which casino games (or classes of casino games) are made available;
  - the location and concentration of gaming tables; and
  - the use and designation of floor areas for particular purposes.
52. In making such regulations, the Secretary of State can include provisions for determining what is and is not to be treated as a gaming table for the purposes of the casino definition, and for calculating when a floor area is to be treated as being used or designated for a particular purpose (see *subsection (7)*).
53. The three categories of casino to be licensed under the Act are: regional, large, and small. A regional casino will have the largest floor space requirements, followed by large casinos, and then small casinos. There is a fourth class of casino, which is a casino below the minimum size for a licensed casino (*subsection (5)(d)*). Casinos which have been licensed under the Gaming Act 1968, and which are too small to comply with the minimum requirements specified for regional, large or small casinos will fall into this fourth category. Transitional arrangements, under Part 18 of the Act, will be made to permit this fourth class of casino to continue in operation.
54. The Regulatory Impact Assessment published alongside the Act contains full details of the proposed specifications for regional, large and small casinos.
55. [Sections 90, 166, 174, 175, 176](#) and Schedule 9, while not an exhaustive list, all contain particular provisions relevant to the regulation of casinos under the Act.

### ***Section 8: Equal chance gaming***

56. Under the Gaming Act 1968, the distinction is drawn between games of equal chance and games of unequal chance (including bankers' games). The Act maintains this distinction, and offers different degrees of regulation and control depending on which types of facilities for gaming are being offered. This section provides a definition of equal chance gaming.
57. At a number of places in the Act rights to conduct equal chance gaming are granted. See, for example, Part 12 on clubs, and the provisions of Part 14 on private and non-commercial gaming. By contrast, unequal chance gaming or bankers' games may only be made available, under the Act, in limited circumstances, the main example being that of a licensed casino.

### ***Section 9: Betting: general***

58. This section defines "betting" for the purposes of the Act. The present law contains no statutory definition of "betting" as an activity. In broad terms it is taken to mean the staking of money or other value on the outcome of a doubtful issue. Betting can be at fixed odds, by means of a spread, or by way of pool betting.
59. By virtue of this section (which is subject to the qualification in Section 10) betting covers making, accepting or negotiating a bet in relation to:
- the outcome of any race, competition or event,
  - the likelihood of anything occurring or not occurring, or
  - whether something is true or not.
60. *Subsections (2) and (3)* extend the meaning of the term to include bets on races, competitions, or events that have occurred in the past.

### ***Section 10: Spread bets &c.***

61. Spread bets or other bets, which are subject to regulation under section 22 of the Financial Services and Markets Act 2000, are excluded from the definition of betting in this Part. Section 22 of the 2000 Act provides for regulated activities under that Act to be specified in an order. The relevant order is the [Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#). Article 85 of that Order specifies as a regulated activity investments in rights under:
- a contract for differences, or
  - any other contracts the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the price or value of property, or fluctuations in an index or other factor specified in the contract,
- and spread bets are accepted as falling within this description.
62. If a class of bet ceases to be subject to such regulation as a result of an order under section 22 of that Act, it automatically becomes subject to regulation under the Act. *Subsection (2)* enables transitional provisions to be included in any such order under section 22 to ensure that the switch to regulation under the Act happens in an orderly way.

### ***Section 11: Betting: prize competitions***

63. Schemes purporting to be prize competitions will fall within the definition of betting in this Part, even though they may not involve the deposit of a stake in the way normal to betting, if they satisfy specified conditions. One of the conditions is a requirement to pay to enter; and Schedule 1 defines what amounts to "payment to enter".

64. The effect of making such schemes subject to regulation as betting is to ensure that all the relevant protections provided by the Act in respect of betting apply. Therefore, schemes such as “fantasy football” competitions or the Racing Post’s “Ten to Follow” competition will be regulated in the same way as bets placed on single events. However, the definition is intended to exclude prize competitions (such as prize crosswords) where the elements of prediction and wagering are not both present.

### ***Section 12: Pool betting***

65. This section defines “pool betting”. It is based on the definition in section 10 of the [Betting and Gaming Duties Act 1981 \(c.63\)](#), and has been amended to remove those various elements which are no longer relevant to the definition for the purposes of the Act.

### ***Section 13: Betting intermediary***

66. A person who provides a service for others to make or accept bets is called a “betting intermediary” in the Act. Such a person does not, himself, partake in the bet. The definition includes betting exchanges. There is a separate class of operating licence for betting intermediaries.

### ***Section 14: Lottery***

67. This section provides a definition of a lottery. It is intended to give statutory effect to the broad definition which the courts have evolved over recent years, while making specific additional provision in relation to arrangements whose status under the current law has proved problematic or uncertain.
68. The definition of lottery recognises that a lottery may involve more than one process for determining who the prize winners are. Where an arrangement involves more than one process then it fulfils the definition of a lottery if the first of those processes relies wholly on chance; and this is so even if subsequent processes require the lottery entrant to exercise skill or judgment. Conversely, where the first of these processes does not rely wholly on chance, the arrangement will not be a lottery, even if subsequent processes do not require any skill or judgment to be exercised whatsoever.
69. An arrangement will only be a lottery if the participants are required to pay to enter. Schedule 2 gives further detail on what amounts to “payment to enter” for the purposes of this section.
70. The definition of lottery also contains provisions which replace section 14 of the Lotteries and Amusements Act 1976. Section 14 of that Act made provision about the level of skill required for a legal prize competition. There is no direct equivalent of section 14 in this Act. Instead, competitions that do not require a minimum level of skill (according to the test in *subsection (5)*) are treated as relying wholly on chance, and therefore fall within the definition of a lottery (provided the other elements of the definition are satisfied).
71. Genuine prize competitions are not prohibited. So, under subsection (5), a process is not to be treated as relying wholly on chance if it contains a requirement to exercise skill and judgement, or knowledge that is reasonably likely to:
- a) prevent a significant proportion of people who wish to participate from doing so;  
or
  - b) prevent a significant proportion of people who participate from receiving a prize.
72. If either one of these barriers to entry or success can be shown, the process will not be deemed to rely wholly on chance, and the arrangement will not be a lottery.

73. The test in subsection (5) is intended to be a practical one. So, for example, the level of skill or judgement required to win or go forward to the next round in a children's competition should be set at an appropriate level for the age of the children at which the competition is aimed. Equally, a competition in a specialist magazine needs to be suitably challenging for the specialists likely to read the magazine and enter the competition. The requirements of subsection (5) are not, therefore, necessarily satisfied by requiring a level of skill or judgment that could be expected to challenge the public at large.
74. *Subsection (7)* gives the Secretary of State power to provide in regulations whether a particular arrangement or a particular kind of arrangement is, or is not, to be treated as a lottery. The purpose of subsection (7) is to cater for circumstances which might arise in the future, such as where a new product or activity is introduced and there is doubt as to its treatment under this section. This enables the matter to be put beyond doubt.

### ***Section 15: National Lottery***

75. This section ensures that participating in lotteries forming part of the National Lottery is not regulated as gambling under the Act. This is subject to two exceptions: section 42, which creates the offence of cheating; and section 335, which concerns the enforceability of gambling contracts.

### ***Section 16: Betting and gaming***

76. Gambling transactions where there is an overlap between betting and gaming will be treated as gaming for the purposes of the Act, unless the betting in question constitutes pool betting. This ensures, amongst other things, that activities which are available in licensed gaming premises are not also available on licensed betting premises because, like roulette, they involve placing bets.

### ***Section 17: Lotteries and gaming***

77. Where gambling transactions satisfy the definitions of both games of chance and lotteries, then the arrangements fall under the controls on gaming unless they constitute a lawful lottery. The exception to this rule is transactions that require a person to participate, or be successful, in more than three processes. In that case, regardless of whether the transaction satisfies the definition of a lottery, it is always gaming. This broadly maintains the position in the current law (section 52 of the Gaming Act 1968).

### ***Section 18: Lotteries and betting***

78. Transactions that satisfy both:
- the definition of pool betting or a betting prize competition, and
  - the definition of entering a lottery,
- are to be treated as betting unless they form part of a lawful lottery. This section does not apply to lotteries forming part of the National Lottery which are excluded from being betting for the purposes of the Act by section 15(4).

### ***Section 19: Non-commercial society***

79. This section defines the circumstances in which a society is to be treated as non-commercial for the purposes of Part 11 and Schedule 11. It also contains the definition of "private gain" for the purpose of Part 14.
80. Societies that are established for cultural or sporting purposes are deemed to be non-commercial societies under *subsection (1)*. This is so, even if they provide benefits to individuals (*subsection (3)*).

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81. Societies other than those with charitable or sporting purposes will only be non-commercial if their purposes are for something other than private gain. Therefore, these societies will be considered commercial, if their purpose is to provide benefit to a particular individual or individuals.
82. To illustrate, genuine societies that are set up to provide a child with medical care or sports sponsorship are likely to be non-commercial societies under this section. However, a society set up for political purposes would need to be set up to promote the party or group as a whole, rather than to have as its purpose the payment of sums to the benefit of particular individuals, for their own benefit.