

## SCHEDULE 4

### Transitional provisions

## PART 5

### Advance applications for operating licences by existing operators

#### Meaning of existing operator

**39.**—(1) This paragraph specifies the circumstances in which a person making an advance application for an operating licence is to be treated for the purposes of this Part as an existing operator.

(2) Where the advance application is for a remote or non-remote casino operating licence, a person is an existing operator if on the date on which the advance application is made—

- (a) he holds a certificate of consent issued under paragraph 4 of Schedule 2 to the 1968 Act<sup>(1)</sup> for the purposes of the grant of a casino licence; or
- (b) he is applying for such a certificate and the application has not been withdrawn or refused.

(3) Where the advance application is for a remote or non-remote casino operating licence, a person (referred to in this sub-paragraph as “the first person”) is also an existing operator if on the date on which the advance application is made—

- (a) another person holds a certificate of consent issued under paragraph 56 of Schedule 2 to the 1968 Act<sup>(2)</sup>, and the certificate relates to the transfer to the first person of a casino licence; or
- (b) that other person is applying for such a certificate and the application has not been withdrawn or refused.

(4) Where the advance application is for a remote or non-remote bingo operating licence, a person is an existing operator if on the date on which the advance application is made—

- (a) he holds a certificate of consent issued under paragraph 4 of Schedule 2 to the 1968 Act for the purposes of the grant of a bingo club licence; or
- (b) he is applying for such a certificate and the application has not been withdrawn or refused.

(5) Where the advance application is for a remote or non-remote bingo operating licence, a person (referred to in this sub-paragraph as “the first person”) is also an existing operator if on the date on which the advance application is made—

- (a) another person holds a certificate of consent issued under paragraph 56 of Schedule 2 to the 1968 Act, and the certificate relates to the transfer to the first person of a bingo club licence; or
- (b) that other person is applying for such a certificate and the application has not been withdrawn or refused.

(6) Where the advance application is for a remote bingo operating licence, a person is also an existing operator if on the date on which the advance application is made—

- (a) he holds a multiple bingo certificate issued under the Schedule to the Gaming (Bingo) Act 1985<sup>(3)</sup>, or

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(1) Paragraph 4 of Schedule 2 to the 1968 Act was amended by the Gaming (Amendment) Act 1982 (c. 22), section 1 and paragraph 2 of Schedule 1, and by the Gaming Amendment Act 1990 (c. 26), section 1 and paragraph 7 of the Schedule to that Act.

(2) Paragraph 56 of Schedule 2 to the 1968 Act was amended by the Gaming Amendment Act 1990, section 1 and paragraph 8 of the Schedule to that Act.

(3) 1985 c.35.

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- (b) he is applying to the Gambling Commission for such a certificate and the application has not been withdrawn or refused.
- (7) Where the advance application is for a remote or non-remote general betting operating licence, a person is an existing operator if on the date on which the advance application is made—
- (a) he holds a bookmaker's permit or a betting agency permit issued under Schedule 1 to the 1963 Act; or
  - (b) he is applying to the appropriate authority for such a permit, and the application (including any appeal) has not been withdrawn or finally determined.
- (8) Subject to sub-paragraph (9), where the advance application is for a remote or non-remote pool betting operating licence, a person is an existing operator if on the date on which the advance application is made—
- (a) he is registered as a pool promoter under Schedule 2 to the 1963 Act; or
  - (b) he is applying to be so registered, and the application (including any appeal) has not been withdrawn or finally determined.
- (9) Where the advance application is for a non-remote pool betting operating licence to authorise the provision of facilities for pool betting in connection with dog-racing, a person is an existing operator if on the date on which the advance application is made any of sub-paragraphs (10) to (12) applies.
- (10) This sub-paragraph applies where the applicant for the non-remote pool betting operating licence—
- (a) holds a track betting licence issued under that Schedule; or
  - (b) he is applying to the appropriate authority for such a licence, and the application (including any appeal) has not been withdrawn or finally determined.
- (11) This sub-paragraph applies where—
- (a) another person who holds a track betting licence is applying for the transfer of that licence to the applicant for the non-remote pool betting operating licence, and
  - (b) the application has not been finally determined.
- (12) This sub-paragraph applies where the applicant for the non-remote pool betting operating licence operates a totalisator under the written authority of the occupier of a track given under section 16(1) of the 1963 Act<sup>(4)</sup>.
- (13) Where the advance application is for a remote pool betting operating licence to authorise the provision of facilities for pool betting in connection with dog-racing, a person is an existing operator if on the date on which the advance application is made—
- (a) he holds a licence for an inter-track betting scheme granted under Schedule 5ZA to the 1963 Act<sup>(5)</sup>; or
  - (b) he is applying for such a licence, and the application (including any appeal) has not been withdrawn or finally determined.
- (14) Where the advance application is for a gaming machine general operating licence in respect of an adult gaming centre or a family entertainment centre, a person is an existing operator if on the date on which the advance application is made—
- (a) he holds a permit under section 34 of the 1968 Act—

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(4) Schedule 5ZA was inserted by [S.I. 1995/3231](#).

(5) Section 16 was amended by the Betting, Gaming and Lotteries (Amendment) Act 1985 (c. 18), section 2(2) and the Schedule to that Act, and by [S.I. 1995/3231](#).

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- (i) granted by one of the authorities mentioned in paragraph 1(b) or (d) of Schedule 9 to that Act(6) in respect of amusement machine premises; and
  - (ii) which is expressed to be granted for the purposes of subsection (5E) of that section(7); or
- (b) he is applying to the appropriate authority for such a permit, and the application (including any appeal) has not been withdrawn or finally determined.
- (15) Where the advance application is for a remote or non-remote lottery operating licence of the kind described in section 98(2)(c) of the 2005 Act (a lottery manager's operating licence), a person is an existing operator if on the date on which the advance application is made—
- (a) he holds a lottery manager's certificate granted under Schedule 2A to the 1976 Act(8); or
  - (b) he is applying for such a certificate, and the application has not been withdrawn or finally determined.

### **Interim operating licences**

**40.**—(1) This paragraph applies where—

- (a) an advance application for an operating licence is made by a person who is an existing operator in respect of one or more of the kinds of operating licence to which the application relates;
- (b) the application is made before 28th April 2007; and
- (c) the application complies with section 69(2)(g) and (3) of the 2005 Act.

(2) This paragraph also applies where—

- (a) a person makes an advance application for an operating licence and the application is for, or includes an application for—
  - (i) a betting intermediary operating licence,
  - (ii) a gaming machine technical operating licence where the activity specified in the application is restricted to the manufacture of gaming machines or parts of gaming machines,
  - (iii) a gaming machine technical operating licence where the activities specified in the application are restricted to the installation, adaptation, maintenance or repair of gaming machines or parts of gaming machines otherwise than for valuable consideration, or
  - (iv) a gambling software operating licence;
- (b) the application is made before 28th April 2007; and
- (c) the application complies with section 69(2)(g) and (3) of the 2005 Act.

(3) The Gambling Commission must determine any such application within a period of four months beginning on the date on which the application is made.

(4) If the application is not finally determined within the period referred to in sub-paragraph (3), the applicant is to be treated, from the day immediately following that period until such time as the application is finally determined, as if he had been issued with an operating licence of the same description as that being applied for.

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(6) Sub-paragraph (b) of paragraph 1 was partially repealed by the Local Government Act 1972 (c. 70), Schedule 30. Sub-paragraph (d) of paragraph 1 was amended by the Local Government (Scotland) Act 1973 (c. 65), Schedule 24, paragraph 32, and by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 78(4).

(7) Subsection (5E) was inserted by S.I. 1996/1359.

(8) Schedule 2A was inserted by the National Lottery etc. Act 1993 (c. 39), section 50(2) and Schedule 9.

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(5) Where—

- (a) the application is for an operating licence of more than one of the kinds described in section 65(2) of the 2005 Act, and
- (b) the applicant is an existing operator in respect of one or more, but not all, of the kinds of licence for which the application is made,

sub-paragraph (4) only has effect to provide for the grant of an operating licence of those kinds in respect of which the applicant is an existing operator.

(6) For the purposes of sub-paragraph (5), a person who makes an application to which sub-paragraph (2) applies is to be treated as an existing operator in relation to any part of the application falling within sub-paragraphs (i) to (iii) of paragraph (a) of that sub-paragraph.

(7) An operating licence granted by virtue of sub-paragraph (4) is referred to in this Schedule as an interim operating licence.

(8) Sub-paragraphs (3) and (4) are not to apply where a permit, registration or certificate, by virtue of which a person making an application for an operating licence qualifies as an existing operator, is revoked or cancelled before the end of the period referred to in sub-paragraph (3).

(9) Where such a permit, registration or certificate is revoked or cancelled after the end of that period but before the application for the operating licence is determined, any interim operating licence deemed to have been issued to the applicant by virtue of sub-paragraph (4) is to lapse.

(10) For the purposes of sub-paragraphs (8) and (9), a permit or registration is not to be treated as being revoked or cancelled until any period for appealing against that decision has elapsed; and, if an appeal is made, it is not to be treated as being revoked or cancelled unless and until the appeal is dismissed or abandoned.

(11) Sub-paragraphs (8) and (9) are subject to sub-paragraphs (12) and (13).

(12) Where in a case to which sub-paragraph (8) or (9) applies—

- (a) the application is for an operating licence of more than one of the kinds described in section 65(2) of the 2005 Act, and
- (b) the applicant is an existing operator in respect of more than one of the kinds of operating licence to which the application relates,

sub-paragraphs (8) and (9) are not to apply to the application, or any interim operating licence issued on the application, to the extent that the application is for a kind of operating licence where the applicant qualifies as an existing operator otherwise than by virtue of the permit, registration or certificate referred to in sub-paragraph (8).

(13) Sub-paragraphs (8) and (9) are not to apply where, notwithstanding the revocation or cancellation of a permit or certificate, the person making the application for an operating licence qualifies as an existing operator by reason of holding the same kind of permit or certificate in respect of different premises.

### **Modifications where the applicant qualifies as an existing operator because he is applying for a permission under the existing legislation**

**41.**—(1) This paragraph applies where a person qualifies as an existing operator in relation to a particular kind of operating licence only by reason of the fact that—

- (a) on the date on which the application for an operating licence is made—
  - (i) he is applying to the Gambling Commission for a certificate of consent for the grant of a casino or bingo club licence, or
  - (ii) another person is applying under paragraph 56 of Schedule 2 to the 1968 Act for a certificate of consent to the transfer of a casino or bingo club licence to him;

- (b) on that date he is applying to the Gambling Commission for a lottery manager's certificate under Schedule 2A to the 1976 Act;
- (c) on that date he is applying to the Gambling Commission for a multiple bingo certificate under the Schedule to the Gaming (Bingo) Act 1985;
- (d) on that date he is applying for—
  - (i) a bookmaker's or betting agency permit under the 1963 Act,
  - (ii) registration as a pool promoter under the 1963 Act, or
  - (iii) a permit under section 34 of the 1968 Act; or
- (e) on that date—
  - (i) he is applying under Schedule 3 to the 1963 Act for a track betting licence, or
  - (ii) another person is applying for the transfer of such a licence to him.

(2) Sub-paragraphs (3) and (4) of paragraph 40 are not to apply where the application referred to in sub-paragraph (1) ("the application under the existing legislation") is withdrawn or refused before the end of the period referred to in sub-paragraph (3) of that paragraph.

(3) Where, in any other case, the application under the existing legislation is withdrawn or refused before 1st September 2007, or is not determined by that date, any interim operating licence deemed to have been granted to the applicant by virtue of sub-paragraph (4) is to lapse.

(4) Sub-paragraphs (5) and (6) apply in relation to any application for an operating licence falling within paragraph (d) or (e) of sub-paragraph (1).

(5) The applicant must notify the Gambling Commission in writing if the application under the existing legislation is granted, and the notification must be given before the end of the period of 14 days beginning on the day on which the application is granted.

(6) Where the applicant fails to notify the Gambling Commission within the period specified in sub-paragraph (5), paragraph 40(4) is to cease to apply in relation to the application for the operating licence after the end of that period.

### **Application of the Gambling Act 2005 to interim operating licences**

**42.**—(1) Section 74(2) of the 2005 Act (which requires the Gambling Commission to notify the applicant and issue the operating licence as soon as reasonably practicable after its grant) is not to have effect in relation to an interim operating licence.

(2) In exercising its powers under section 75 of the 2005 Act (powers of Gambling Commission to impose general conditions on operating licences), the Gambling Commission must specify any conditions which are to apply to an interim operating licence or an interim operating licence falling within a specified class.

(3) Where an interim operating licence has effect before the date on which the Commission publish in accordance with section 76(3) of the 2005 Act the specification of any condition which applies to the licence, the licence is to be subject to the condition on and after that date.

(4) Where an interim operating licence has effect on or after the date on which the Commission so publish the specification of any condition which applies to the licence, the licence is to be subject to the condition as soon as it has effect.

(5) Regulations under section 78 of the 2005 Act (which allows conditions to be imposed on operating licences by the Secretary of State) may specify conditions which are to apply to each interim operating licence or to interim operating licences falling within a specified description.

(6) In subsection (2) of section 78 of the 2005 Act, the reference to licences issued before regulations under that section are made is to include a reference to interim operating licences having effect before such regulations are made.

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- (7) The following provisions of the 2005 Act are not to apply to interim operating licences—
- (a) section 100 (which provides for the payment of an annual fee by the holder of an operating licence);
  - (b) sections 104 to 107 (which make provision respectively for applications to vary operating licences, amendments to licences, registration of licences, copies of licences and production of licences); and
  - (c) section 111 (which provides for the Gambling Commission to have power to limit the duration of operating licences) and section 112 (which makes provision about the renewal of operating licences).

(8) Section 110 (which provides for the duration of operating licences) is to have effect in relation to an interim operating licence as if it provided for the licence to cease to have effect when the advance application made by the existing operator is finally determined, unless and until it ceases to have effect before that date in accordance with section 113, 114, 115, 118 or 119 of the 2005 Act (which provide respectively for the surrender, lapse, forfeiture, suspension and revocation of operating licences).

#### **Premises restriction applying to certain dog racing interim pool betting operating licences**

**43.**—(1) This paragraph applies where—

- (a) a person holds a non-remote interim pool betting operating licence which authorises the provision of facilities for pool betting in connection with dog-racing, and
- (b) he holds that licence by reason of the fact that, on the date on which he made the advance application for the relevant operating licence, he was authorised in writing under section 16 of the 1963 Act by the occupier of a track to operate a totalisator on the track.

(2) Subject to the following provisions of this paragraph, section 84 of the 2005 Act (which makes provision about the conditions attached to operating licences about the provision of the licensed activities on specified premises) is to have effect in relation to the interim operating licence as if it provided for the licence to have effect subject to a condition requiring the holder to carry on the activities authorised by the licence only at the track referred to in sub-paragraph (1)(b).

(3) Sub-paragraph (4) applies where, on the date on which the holder of the interim operating licence made the advance application for the relevant operating licence, he was authorised under section 16 of the 1963 Act to operate a totalisator at more than one track.

(4) Where this sub-paragraph applies, section 84 of the 2005 Act is to have effect in relation to the interim operating licence as if it provided for the licence to have effect subject to a condition requiring the holder to carrying on the activities authorised by the licence only at those tracks where he was authorised under section 16 of the 1963 Act to operate a totalisator on the date on which he made the advance application for the relevant operating licence.