

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 9: Applications for casino premises licences

Part 10: Gaming Machines

574. **Part 10** contains the main provisions of the Act on gaming machines. It sets out a definition of “gaming machine” together with the offences relevant to illegal use or manufacture of a gaming machine. Parts 5 and 8 of the Act deal with certain authorisations and entitlements to use gaming machines that arise from operating or premises licences respectively. This Part provides general provisions which apply to the use of any gaming machine, and includes regulation-making powers for the Secretary of State to set categories of machine and rules on use.
575. Manufacture, supply, maintenance, repair, installation and adaptation of a gaming machine are all regulated activities under this Part.
576. This Part applies to any gaming machine situated in Great Britain, or anything done in Great Britain in relation to a gaming machine, wherever that machine is situated (section 251). For example, a gaming machine manufactured in Great Britain, for export to another country, will be covered by the provisions in Part 10. Accordingly, a gaming machine technical operating licence under Part 5 of the Act will be available to manufacturers and suppliers who wish to cater for the overseas market. Such machines need not comply with the categorisation regulations under section 236 if the machines are for export. Machines supplied for use in Great Britain will need to comply with the requirements of Part 10, even if manufactured abroad.

Section 235: Gaming machine

577. This section provides a definition of a gaming machine for the Act. It is significantly broader than the definition of gaming machine in section 26 of the Gaming Act 1968, which the Act repeals. The new definition accommodates developments in technology which have taken place since the 1968 Act. It also covers a wide range of gambling activities which can take place on a machine, and includes betting on virtual events.
578. *Subsection (1)* defines a gaming machine as a machine that is designed or adapted for use by people to gamble (whether or not it can be used for other purposes). This is a wide definition. *Subsection (3)(b)* contains further detail about how the words “designed or adapted” are to be interpreted, particularly in relation to a computer.
579. *Subsection (2)* then sets out a number of exceptions to subsection (1) which ensure that the gaming machine definition does not capture certain specified types of machine.
580. The definition at subsection (1) does not depend on any concept of players depositing payments into the machine, or on the gambling activity being generated from within the

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machine itself (as opposed to being transmitted to the machine from other equipment). Nor is it restricted solely to gaming. To the extent that these were requirements under the 1968 Act, they are no longer part of the new definition.

581. The exclusions at subsection (2) provide that the following are not gaming machines:
- A **domestic or dual-use computer** which can be used for participating in remote gambling. The Secretary of State will prescribe the meaning of “domestic computer” and “dual-use computer” in regulations. The purpose of this exception is to exempt internet terminals and home computer equipment, which are not dedicated or specifically configured for gambling activities, from the definition of gaming machine. The mere fact that a home computer can be used to access gambling facilities should not render the computer a gaming machine. However, someone offering the public access to the internet, via terminals, and configuring them to encourage gambling, is making a gaming machine available for use (unless any other exception applies, such as betting on real events). The regulations to be made under this power will set out the relevant criteria for determining whether equipment is a domestic or dual use computer, and can refer to matters such as the location of the computer, the software installed on the computer, and the circumstances in which the computer is used (*subsections (2)(a), (3)(f) and (4)*);
 - A **telephone or other communications device** that can be used for remote gambling (other than a computer). The fact that, with modern technology, a telephone or interactive television can be used to participate in gambling will not render the equipment a gaming machine (*subsection (2)(b)*). This exception does not apply to computers;
 - A **machine which is designed or adapted for betting only on future real events**. This exemption is designed to prevent equipment, such as automated betting terminals, through which people place bets on real, not virtual, events, from being counted as gaming machines. The event must be a future event at the time the machine is used, meaning that betting on pre-recorded activities, where the result is already known, is not exempt. The exempt equipment is not unregulated. Making it available as part of a business will be providing facilities for betting, and will require the relevant operating licences under the Act. However, in regulatory terms, these machines are not to be treated as gaming machines (*subsection (2)(c)*).
 - A **machine upon which someone enters a lottery**. Provided that the machine does not determine the result of the lottery, or announces it only after a specified period, then such a machine is not a gaming machine. This means that if a machine only dispenses lottery tickets (for a draw that takes place completely independent of the machine), or vends lottery paper scratchcards, then the machine is outside the definition of a gaming machine. If the machine announces the results of the lottery, as well as selling tickets to it, then the machine will not be a gaming machine provided a prescribed interval has elapsed between the sale of the ticket and the announcement of the result. The Secretary of State will determine the duration of the period by order. In no circumstances can the machine determine the result of the lottery (*subsection (2)(d)*).
 - A **machine for playing bingo** which is used by the holder of a bingo operating licence, in accordance with conditions attached by the Commission. This is designed to exempt what is known as “mechanised cash bingo equipment which is used for playing real bingo games, but whose degree of computerisation or mechanisation means that it would otherwise be caught by the definition of gaming machine. The need for it to comply with Commission conditions ensures that the exemption is construed narrowly and not extended to any machine on which a virtual bingo game could be played (*subsection (2)(e)*);
 - A **machine for playing bingo prize gaming** which is used by the holder of a gaming machine general operating licence (for an adult gaming centre or a family

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entertainment centre), in accordance with conditions attached to those licences by the Commission. This is designed to exempt equipment used for playing real prize bingo, in accordance with the terms of Part 13 of the Act. The need for it to comply with Commission conditions ensures that the exemption is construed narrowly and not extended to any machine on which a virtual bingo game could be played (*subsection (2)(f)*);

- A **machine for playing bingo prize gaming** which is used by an unlicensed family entertainment centre or pursuant to a prize gaming permit, in accordance with any Commission code of practice. This exemption is similar to that at subsection (2) (g), but applies to different types of operator who have prize gaming rights under Part 13 (*subsection (2)(g)*);
- A **machine which is used for playing manual games of chance**. This is a machine which:
 - is controlled or operated by someone employed to do so (e.g. a croupier spinning a roulette wheel); or
 - is used in connection with a real game of chance which is controlled or operated by an individual (e.g. a computer terminal for staking on the outcome of a roulette wheel that is spun by a croupier) (*subsection (2)(h)*).

In both these instances the equipment could be construed as a gaming machine under the broad definition, but the fact that it is operated as part of a real game of chance means that it is not to be regulated under the gaming machine provisions. Such equipment and activities will be regulated under other parts of the Act.

- A **machine which is used for playing automated games of chance in a casino**. This is equipment used for playing a real game of chance, pursuant to a casino operating licence, but which has no human involvement from the organisers of the casino game, and which is not linked to a game which does have such human involvement. For example, apparatus such as a roulette wheel which is completely mechanised, and works without the need for any croupier to rotate the wheel, spin the ball or accept stakes. This equipment is not a gaming machine provided it is used in accordance with Commission licence conditions. Section 174(6) contains further provisions in relation to this equipment in casinos.

582. These various exemptions prevent the broad definition of gaming machine from capturing equipment unintentionally. The definition in subsection (1) is intended to cover a gaming machine that is used for taking part in virtual gaming, virtual betting or a virtual lottery (where the draw is part of the activity determined by the machine).
583. *Subsection (3)* provides clarification about the characteristics of a gaming machine. Reference to part of a gaming machine includes computer software to be used in a gaming machine, but does not include a component of a gaming machine which does not influence the outcome of the gambling (*subsection (3)(c)*). This means that where a gaming machine technical operating licence is required for the manufacture, installation etc. of gaming machines, computer software intended for use in the machine is included within the licensing requirement. However, the plywood from which the machine is constructed is not. References to installing part of a gaming machine include installing computer software (*subsection (3)(d)*). This is required because machines can be configured or changed by the downloading of gambling software, without any need to physically interfere with the machine.
584. *Subsection (5)* allows the Secretary of State to make regulations concerning the subdivision of apparatus into individual gaming machines. It is no longer the case that a gaming machine will take the form of a stand-alone machine in the form of a traditional “fruit-machine”. A single computer can be linked to a number of player positions and offer each player the experience of playing a gaming machine, although the apparatus forms one large whole. To tackle the possibility of evasion of the Act’s regulation for

gaming machines, this power allows rules to be made for calculating when a single piece of apparatus counts as more than one machine, and, in particular, can focus on the number of player positions available. These regulations will supplement other parts of the Act, where numerical limits are placed on the entitlements to make gaming machines available for use.

Section 236: Gaming machines: Categories A to D

585. Gaming machines will be divided into categories, with different entitlements set out in the Act to use the various categories. This section requires the Secretary of State to define, in regulations, four classes of gaming machine, to be known as categories A, B, C and D. Category B may also be sub-divided into further sub-categories, and these regulations may identify to which sub-category of B machine an entitlement relates (*subsections (1) and (2)*).
586. The categorisation will refer to the particular facilities for gambling which are offered on the machine. In particular, *under subsection (4)*, the regulations can specify:
- the maximum amounts that can be paid to use the machine;
 - the value or nature of the prize delivered as a result of its use;
 - the nature of the gambling for which the prize is used; or
 - the types of premises on which it can be used.
587. These matters can be combined so that, for example, one category of machine could have different maximum use charges dependent on the nature of the prize offered by the machine.
588. Details of the proposed A to D categorisation of gaming machines is set out in the Regulatory Impact Assessment published alongside the Act. The intention is that Category D will have the lowest levels of charge and prizes, and that these will increase in value, up to Category A, which will be a machine with no limits as to charges and prizes.
589. Part 8 of the Act contains the principal commercial entitlements for different types of licensed gambling premises to use different categories of machines. Different permissions are also available under Part 12 of the Act, for clubs, miners' welfare institutes, alcohol licensed premises and travelling fairs, and, also, pursuant to this Part, for family entertainment centres.

Sections 237 to 239: Other definitions

590. These sections set out definitions for an adult gaming centre, a family entertainment centre, (including a licensed family entertainment centre), and a "prize" in relation to a gaming machine.

Sections 240 & 241: Use and supply of machines

591. The Secretary of State can make regulations about the way in which gaming machines can operate. It will be an offence to make a gaming machine available for use if the machine does not comply with such regulations.
592. *Under subsection (2)*, the regulations may provide, in particular, for rules about:
- The method by which payment may be made for use of machine (i.e. whether coins, banknotes, smartcards, tokens or other methods can be used). It is a separate offence, under this Part, to supply, install or make a machine available which can be paid for by a credit card;
 - The nature of, and arrangements, for receiving or claiming prizes;

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- The rollover of stakes or prizes (i.e. the carry over of amounts paid or won to a subsequent use of the machine);
 - The proportion of stakes or sums paid for use which must be returned as prizes;
 - The display of information on or around the machine (e.g. information on minimum age of use); or
 - Any other matter relating to the way that the machine works (e.g. whether it must operate randomly or not).
593. The Secretary of State may also make regulations about the supply, installation, adaptation, maintenance or repair of a gaming machine.
594. The penalty for making a machine available for use, in breach of these regulations, is a maximum term of imprisonment of 51 weeks in England and Wales, or 6 months in Scotland, or a fine up to level 5, or both.
595. Regulatory steps taken by the Commission, and any licence conditions it sets, must not conflict with these regulations. The Secretary of State can also identify matters about which licence conditions cannot be made in relation to machines. The Commission is empowered in Part 5 to set standards for gaming machines under section 96, and regulation of gaming machines is therefore a dual function of both the Secretary of State, and the Commission.

Section 242: Making machine available for use

596. The principal offence of making a gaming machine available for use unlawfully is set out in this section. A person will commit an offence if he makes any gaming machine available for use unless:
- He holds an operating licence which permits such use;
 - He holds a family entertainment centre permit;
 - He holds a club gaming permit or a club machine permit under Part 12;
 - He has appropriate permission for alcohol licensed premises under Part 12;
 - He makes gaming machines available at a travelling fair as permitted by Part 12, or;
 - The machine offers no, or a limited, prize (as defined in this Part).
597. Under Part 3 of the Act it is a separate offence for a person to use premises for making a gaming machine available for use without the necessary authorisation or exemption, such as a premises licence or a Category D gaming machine permit. It will also be an offence under this section to make a gaming machine available for use if the machine does not comply with regulations made by the Secretary of State under section 240.
598. The penalty for this offence is a maximum term of imprisonment of 51 weeks in England and Wales, or 6 months in Scotland, and/or a fine up to level 5.

Section 243: Manufacture, supply etc.

599. As well as setting requirements about the use of machines, the Act stipulates that various activities concerning the manufacture or supply of a gaming machine must also be regulated by the Commission. Under Part 5 of the Act, gaming machine technical operating licences are available for those wishing to manufacture, supply, install, adapt, maintain or repair a gaming machine. Failure to hold such an operating licence, when undertaking any of these activities, is an offence under this section. The penalty is a maximum term of imprisonment of 51 weeks in England and Wales, or 6 months in Scotland, and/or a fine up to level 5.

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600. Exceptions from this offence exist:
- for those holding a single machine supply and maintenance permit under this Part;
 - for machines exempted by regulations under section 248(2) (no prize);
 - where the activities relate to a gaming machine that is for scrap; or
 - where the supply is incidental to the sale or letting of a property.
601. This means that no operating licence is required where a machine is being broken up and no further use is made of it for gaming machine purposes, and where the machines are ancillary to the sale of a business which uses gaming machines. Any use, after sale, will continue to be subject to the other requirements of the Act.

Section 244: Linked machines

602. It is an offence, under this section, for gaming machines to be linked so that they operate together, and the value of the prize available on one machine is determined to any extent by use of the other machine. There is one exception to this, which is that *subsection (2)* permits machines to be linked at licensed casino premises provided that all of the machines are situated on the same premises. Linkage of gaming machines in this way does not authorise casino licensees to offer maximum prizes in excess of those allowed for the category of machine being used.
603. No linking between licensed casino premises is permitted, but *subsection (3)* gives the Secretary of State power to lift this prohibition, subject to appropriate Parliamentary approval.
604. The penalty, upon conviction for this offence, is a maximum term of imprisonment of 51 weeks in England and Wales, or 6 months in Scotland, or a fine up to level 5, or both.

Section 245: Credit

605. It is an offence for a person to supply, install or make available a gaming machine which allows payment to be made by means of a credit card. The penalty, upon conviction for this offence, is a maximum term of imprisonment of 51 weeks in England and Wales, or 6 months in Scotland, or a fine up to level 5, or both.

Section 247: Family entertainment centre permits

606. Family entertainment centre (“FEC”) gaming machine permits allow certain gaming machines to be made available for use without an operating or premises licence. These permits are issued by licensing authorities using the procedure set out in Schedule 10. They relate to the lowest category of machine. If an FEC wished to use Category C and D machines, it would require an appropriate operating and premises licence, under Parts 5 and 8 of the Act. The permits provided for here only relate to Category D machines.
607. Only premises which are wholly or mainly used for making gaming machines available for use may hold an FEC gaming machine permit. This is a change from the position prior to the Act, when any premises could apply for a permit allowing them to use an “amusements with prizes” gaming machine (the nearest equivalent to a Category D machine). The intention is that gaming machines in certain non-gambling premises, like those now sometimes located in fish and chip shops and taxi cab ranks, should be removed. Once these provisions are commenced, permits previously granted under Schedule 9 to the Gaming Act 1968 will no longer be available under the Act, except to the extent that they relate to premises wholly or mainly used for making gaming machines available for use. Transitional provisions, under Part 18, will give effect to this change, and allow existing permits to continue after the repeal of the relevant provisions of the 1968 Act, until the date on which they would otherwise have expired if those

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provisions had continued in force. The position of premises holding an alcohol licence is dealt with separately in Part 12.