

# GAMBLING ACT 2005

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT

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

#### *Schedule 9: Applications for casino premises licences*

458. *Schedule 9* sets out the process by which an operator may obtain a casino premises licence where there is a limit on the number of the particular category of casino.
459. As a first step a licensing authority must comply with regulations made by the Secretary of State about inviting competing applications. Where that leads to a number of applications, which is greater than the number of available premises licences, a two-stage process is to take place in accordance with *paragraphs 4 and 5*. Under paragraph 4, the first stage of the process is for the licensing authority to undertake a regulatory test on all the applications to ensure that they all satisfy the regulatory premises licensing requirements already contained in Part 8 of the Act. The second stage of the process, described in *paragraph 5*, only applies if more applicants pass this test than the number of available premises licences. In those circumstances, the licensing authority will run a competition to determine which of the competing applications, if successful, would offer the greatest benefits to the local area. *Paragraph 6* requires licensing authorities, in running this competition, to comply with any code of practice issued by the Secretary of State. *Paragraph 7* enables any commitments entered into by the successful applicant during the competition to be attached as conditions to the premises licence.
460. *Paragraph 8* makes provision for appeals against decisions of licensing authorities under paragraph 4. By virtue of *paragraph 8(4)* no appeal may be brought against a decision of a licensing authority under paragraph 5. *Paragraphs 9 and 10* make provision for the issuing of provisional statements, including allowing licensing authorities to set a time limit on the duration of a provisional statement.

#### *Section 176: Casino premises licence: access by children*

461. Under section 47 it is an offence to invite or permit children and young people to enter small or large casinos or the gambling area of a regional casino. Under this section the Commission must issue one or more codes of practice with respect to the arrangements which the holders of casino premises licences are to take to ensure that children and young people do not enter any areas where access is prohibited by virtue of section 47.
462. The codes or codes must also require that each entrance to prohibited areas is supervised (by one or more persons required to ensure compliance with the code of practice); and, unless the person supervising the entrance is reasonably certain that a person wishing to enter is an adult, must require arrangements to be put in place which require the person seeking to enter to show evidence of their age. The type of evidence that is acceptable for proof of age is also to be set out in the code or codes of practice.
463. *Subsection (3)* makes it a condition of all casino premises licences that the licensee ensures compliance with a code of practice issued in accordance with *subsection (1)*.

**Section 177: Credit**

464. **Section 81** contains restrictions on the holders of bingo and casino operating licences giving, arranging, permitting or knowingly facilitating credit in connection with the facilities for gambling they provide. This section contains equivalent provisions for the holders of casino and bingo premises licences. This ban on credit extends to any gambling facilities offered on the premises, because the holder of the premises licence must not permit or knowingly facilitate the giving of credit to take place on those premises. This therefore covers, for example, the provision of facilities for betting in a casino, pursuant to a betting operating licence and section 174(3). It will be a breach of the premises licence for credit to be offered in contravention of this section.
465. **Subsection (3)** contains an exception for cash withdrawal machines operated by credit card, located on the premises, in similar terms to the exception set out in section 81(3) and described in the note for that section.

**Section 178: Door supervision**

466. Where the Secretary of State or a licensing authority places a condition for door supervision on a premises licence, this will require entry to the premises to be supervised in order to prevent unauthorised access or occupation, outbreaks of disorder, or damage. Where such a condition is imposed, it is a requirement of this section that the person undertaking the door supervision is licensed under the [Private Security Industry Act 2001 \(c.12\)](#), where his conduct is licensable under that Act.
467. **Schedule 16**, at paragraph 17 makes minor amendments to the 2001 Act, which preserve the exemption from licensing afforded to bingo and casino operators under that Act.

**Section 179: Pool betting on track**

468. Under the Betting, Gaming and Lotteries Act 1963, occupiers of licensed dog-tracks and the Totalisator Board (“the Tote”) at approved horse racecourses enjoy certain exclusive rights to conduct pool betting on the races taking place there. These are the only tracks where pool betting is permitted. This section replaces those provisions in the 1963 Act.
469. Under **subsection (1)** the only tracks where pool betting is permitted, pursuant to a track betting premises licence, are dog tracks and horse racecourses. However, the Secretary of State may amend this by order, and add further types of track, or remove them (**subsection (3)**). So, for example, football stadium could be added to the list, by order.
470. On licensed dog tracks and horse racecourses, the holder of the track betting premises licence is given the exclusive right to offer pool betting on dog-racing or horse-racing respectively. He may authorise other people to conduct such pool-betting on his behalf. In all cases a relevant operating licence will be required. Track betting premises licences for dog tracks and horserace courses will be subject to mandatory licence conditions requiring access to be offered at the track-side to general betting operators. A licence condition will also be imposed for a transitional period, limiting the admission fee that can be charged to five times the public admission fee.
471. There is no longer any special procedure for the licensing of inter-track betting schemes for dog racing (section 16A of the 1963 Act). Pool betting operating licences (which may be held for remote operations) and the track premises licence will cover, between them, all the activities that could be carried on under an inter-track licence.

**Section 180: Pool betting on dog races**

472. This section contains a transitional measure for holders of dog-track betting premises licences. Holders of all betting premises licences (other than for a dog-track) may not permit pool betting on dog races to take place on their premises, unless it is in accordance with arrangements made with the occupier of the dog track on which the races take place. This means that a high street betting office cannot be used for pool

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betting on dog racing, unless it is covered by arrangements made between that office, and the relevant dog-track.

473. The Secretary of State can repeal this measure, and, in any event, the section lapses after 31<sup>st</sup> December 2012.

***Section 181: Betting machines***

474. Conditions attached to betting premises licences and casino premises licences may relate to the number of machines on the premises used for making or accepting bets; the nature of those machines and the circumstances of their use.
475. This provision is relevant to machines used for making or accepting bets on real events. Such machines are excluded from the definition of gaming machine in Part 10 of the Act. Another section in this Part imposes restrictions on the number of gaming machines that may be made available for use on licensed premises, and this section enables similar restrictions to be imposed on machines used for making or accepting bets on real events. Likewise, there is an express regulation making power for controlling the use of gaming machines in Part 10, and this section enables similar controls to be imposed on real betting machines.

***Section 182: Exclusion of children from track areas***

476. It is a mandatory condition of premises licences in relation to a track that children and young people are to be excluded from any area where betting facilities are provided, or gaming machines, other than Category D machines, are made available for use. The exclusion from an area where betting facilities are provided does not apply to a dog-racing track or horse-racing track on a day on which racing takes place or is expected to take place. For the purposes of this section, an area where facilities are provided or a machine is situated is a place where it is possible to take advantage of the facilities or to use the machine.
477. The Secretary of State has the power to alter the places that children and young people are excluded from, and the circumstances in which they may be permitted access.

***Section 183: Christmas Day***

478. This section imposes a condition on all premises licenses that the premises shall not be used to provide facilities for gambling on Christmas Day.

***Section 184: Annual fee***

479. A premises licence holder must pay a fee to the licensing authority upon the grant of the licence, and annually thereafter. The Secretary of State (and, in Scotland, the Scottish Ministers) will prescribe in regulations the amount of the fee, and the period within which the initial fee must be paid. Such regulations may make different provisions for different classes of licences and different circumstances. Further provision for the setting of premises licence fees in England and Wales is made later in this Part.
480. The section also makes provision for the Secretary of State, or in Scotland, the Scottish Ministers, to set fees for circumstances where a premises licence is altered (following, for example, a change of circumstances, a variation, transfer or review) and, as a consequence, a different annual fee (either more or less than the original) is applicable.

***Section 185: Availability of licence***

481. Holders of premises licences must keep a copy of their licence on the premises and make it available to a police constable, a Commission enforcement officer or an authorised local authority officer. Failure to present the licence without reasonable excuse when requested by such people is an offence, for which the maximum penalty will be a fine of level 2 on the standard scale.

***Section 186: Change of circumstance***

482. The licence holder commits an offence if he fails to inform the licensing authority if his home or business address (on the licence) changes, or where another change of a type specified in regulations by the Secretary of State takes place. If, because of the change, information on the licence is rendered incorrect then the licence holder must send, with his notification, his licence (or an application for a copy of it under section 190), and the prescribed fee. The licensing authority will then alter the licence and send it back, or issue a copy in a form that reflects the change in circumstance. If a person fails to comply with the requirements of this section, or the regulations made under it, he commits an offence. The penalty is a fine not exceeding level 2.

***Section 187: Application to vary licence***

483. Licensees may apply to the licensing authority for a variation to their licence which will alter the authorised activities, change the conditions of the licence, or alter some other detail of the licence. A licence may not be varied so that it relates to premises to which it did not previously relate.
484. The procedures in this Part for licence applications will apply to procedures for variation; however, the Secretary of State may make regulations providing for different procedures, including different procedures for different types of variation. These powers may be used to provide that a different fee applies for applications for variation from that which applies in respect of applications for a licence.
485. An application for variation must be accompanied by the licence and a statement of the variation requested. If the licence cannot be provided, a statement explaining why the licence cannot be provided and an application for a copy must accompany the application.

***Sections 188 & 189: Transfer***

486. Unlike operating licences, premises licences can be transferred, provided the transfer is to another operating licence holder (except in the case of betting premises licences in respect of tracks, where the transfer can be to any person). The procedures under this Part for premises licence applications will apply to applications for transfer with any necessary modifications. A different fee may be prescribed in relation to applications for transfer to that which applies in relation to an application for a licence.
487. Where a licensing authority grants the application for transfer, it must alter the licence so that the applicant for transfer becomes the licensee; specify in the licence the time at which the transfer takes place; and make any alteration that appears to them to be required. This includes an alteration to attach or remove any condition.
488. Where a licence has a condition attached in order to give effect to an agreement made for the provision of services by the licensee in the context of a competition for a casino premises licence under Schedule 9, that licence cannot be transferred unless the transferee enters into a new agreement that appears to the licensing authority to have substantially the same effect as the original agreement. The condition of the licence to which the agreement relates must then be altered to reflect the new agreement.
489. Applications for transfer must state when the transfer is to take place and be accompanied by a written statement from the existing licence holder consenting to the transfer. It is possible for a transfer application to proceed without such a statement if the applicant has been unable to contact the existing licence holder, having taken all reasonable steps to do so. In such circumstances the licensing authority may disapply the requirement for consent from the licence holder and take all reasonable steps to notify the existing licence holder of their decision.

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490. The licence or an application for a copy of the licence must accompany the application. Where the existing licensee is not contactable, the licence will be treated as being lost, stolen or damaged and the applicant must apply for a copy under section 190.
491. If the application for transfer so requests, the applicant will be treated as though he were the licensee from the point that the application is received by the licensing authority to the determination of the application by the licensing authority.
492. Regulations can be made to require an applicant for transfer to publish or give notice of his application to responsible authorities and other people specified. A responsible authority may make representations about the application to the licensing authority.
493. A licensing authority will grant an application for transfer, unless they think it would be wrong to do so having regard to any representations that have been made. Decisions made under this section will be subject to rights of appeal by the licensee or the applicant for transfer.

***Section 190: Copy of licence***

494. Where a premises licence, or summary of the terms and conditions, is lost, stolen or damaged, then the licence holder may apply to the licensing authority for a copy of the licence. The licensing authority must grant a copy if it is satisfied that the licence or summary has been lost, stolen or damaged and that the loss or theft has been reported to the police. A fee is payable, which will be set by the Secretary of State (and Scottish Ministers) in regulations. A copy of the licence or summary issued under this section shall be treated as though it were the original.

***Section 191: Initial duration***

495. Premises licences are of unlimited duration, unless:
- the Secretary of State exercises powers under this section to impose a time limit on premises licences, or a class of premises licences, by secondary legislation.; or
  - the licence ceases to have effect in accordance with other provisions in this Part.
496. Regulations made by the Secretary of State under this section may have retrospective effect, and can make provision about renewals

***Section 192: Surrender***

497. Licensees may surrender their licences by writing to the licensing authority to give notice of their wish to do so, and enclosing the licence, or a written explanation of why it is not possible to provide the licence. The licensing authority must notify the surrender to the Commission, the police, and Her Majesty's Commissioners of Customs and Excise.

***Section 193: Revocation for failure to pay fee***

498. A premises licence will be revoked if the licence holder fails to pay the relevant annual fee (required under section 184), unless the failure to pay can be explained by an administrative error.

***Section 194: Lapse***

499. Where the licensee dies, becomes (in the opinion of the licensing authority) incapable of carrying out the licensed activities due to physical or mental incapacity; or becomes bankrupt; insolvent; ceases to exist; or goes into liquidation, then the licence will lapse. A lapsed licence may be reinstated under sections 195 and 196.

500. When a licensing authority becomes aware of the lapse of a licence, it must, as soon as reasonably practicable, notify the Commission, the police, and Her Majesty's Commissioners of Customs and Excise.

***Sections 195 & 196: Reinstatement***

501. For a period of 6 months beginning with the day on which the premises licence lapses, a person may apply for the licence to be reinstated in their name, instead of the person whose name is on the lapsed licence. The licence, or a statement of why the licence cannot be provided (along with an application for a copy of the licence), must accompany the application. The person seeking reinstatement must hold a relevant operating licence (except in the case of betting premises licences in respect of tracks) in order for the licensing authority to be able to grant transfer. The requirements for licence applications are set out in section 159.
502. Regulations may be made requiring the applicant for reinstatement to publish or give notice of his application to certain specified (but not all) responsible authorities. A responsible authority may make representations about the application to the licensing authority.
503. The provisions in this Part relating to applications for premises licences apply to applications for reinstatement with any necessary modifications. The licensing authority will grant the application for reinstatement, unless they conclude that it would be wrong to do so, taking account of representations made by responsible authorities. On grant of the application, the licensing authority must alter the licence so that the applicant becomes the licensee; must specify that reinstatement take effect at the time when the application is granted; and must make any other alteration to the licence that they deem necessary.
504. An applicant shall be treated as being the licensee during the period between the application for reinstatement being received by the licensing authority and the determination of that application.
505. There is a right of appeal against the decision of the licensing authority to accept or reject an application for reinstatement under section 206.

***Section 197: Application for review***

506. Under this Part, a premises licence may be reviewed:
- in response to an application to the licensing authority by a responsible authority or interested party (section 197); or
  - on the initiation of the licensing authority (section 200).
507. This section deals with applications by responsible authorities or interested parties. Applications must be in the form and manner prescribed by regulations made by the Secretary of State and Scottish Ministers. Regulations may also require an applicant to give notice of the application in a prescribed form and manner, to the licensee, and/or the responsible authorities in relation to the premises. In addition, the licensing authority may be required to publish notice of the application in the prescribed form and manner. Such notice must specify a period of time within which the licensee, a responsible authority or an interested party can make representations about the application.

***Sections 198 & 199: Consideration of application***

508. **Section 198** specifies the grounds on which a licensing authority may reject an application for a review made by a responsible authority or an interested party. They include that the application is frivolous or vexatious, or that it does not raise any new grounds to those previously raised during the original consideration of the grant of relevant premises licence, or on a previous application for review of that licence. An

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application for review can also be rejected because it does not raise any issue which is relevant to the principles which the authority is required to consider in granting a premises licence application.

509. In determining whether to reject an application for a review, the licensing authority must consider the length of time that has elapsed since the last review and/or the grant of the relevant premises licence.
510. If the licensing authority thinks that some of the grounds on which an application for a review may be rejected apply, they may reject the relevant parts of the application for the review. To the extent that a licensing authority does not reject an application for review, they must, under section 199, accept it.

***Section 200: Initiation of review by licensing authority***

511. Where a review is initiated by a licensing authority, the authority may:
- review a particular class of premises licences, to assess the use of those premises or the arrangements made to ensure compliance with licence conditions (*subsection (1)*); or
  - review a particular premises licence, where it suspects that the premises have not been used in accordance with a condition of a licence, or if it thinks that a review would be appropriate for any other reason. Before conducting such a review, the licensing authority must give notice of its intention to review the licence to the affected licensee, and also publish its intention.
512. The Secretary of State may specify the form and manner of the notice of intention to review, and also the period of time within which notice is to be given. Where such regulations are made, they must specify a period of time within which representations about the review may be made by the licensee, a responsible authority or an interested party.

***Sections 201 to 203: Review***

513. Where a licensing authority has granted an application for a review, or has given notice of its intention to initiate a review, it must review the licence as soon as reasonably practicable (after the period for giving representations has expired) in order to determine what, if any, action should be taken under this Part.
514. In conducting the review, the licensing authority must hold a hearing unless the applicant for the review and any person who made representations has consented to the hearing being waived; or the licensing authority considers that all the representations made following notice of the review are frivolous, vexatious or will not influence their decision.
515. When determining what, if any, action under section 202(1) to take, the licensing authority must take into account representations made before or during the hearing, and the grounds specified in any application for a review made by a responsible authority or an interested party.
516. Following a review, a licensing authority may:
- suspend (for a period not exceeding 3 months) or revoke a licence; or
  - amend, add or exclude the conditions attached to the licence. This includes reinstating a condition imposed under section 168 that they excluded under section 169.
517. After completing a review of a licence, the licensing authority must notify the licensee, the applicant for a review (if any), the Commission, any person who made

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representations, the police and Customs and Excise of their decision as soon as possible after it has been made. Notification must give reasons for the decision.

518. A right of appeal is provided against a determination by the licensing authority to take, or not to take, action under these sections. An appeal may be made by the licensee; any person who made representations in relation to a review; the person (if any) who applied for the review; and the Commission.

***Sections 204 & 205: Provisional statement***

519. Where a person expects premises to be constructed or altered, or expects to acquire a right to occupy premises, he may apply for a provisional statement from the licensing authority, in advance of a full premises licence.
520. Subject to any necessary modifications, the provisions relating to applications for premises licences under this Part apply to applications for provisional statements. A person does not require a right to occupy the premises, or an operating licence in order to be granted a provisional statement.
521. An application for a provisional statement must include plans, and information in relation to the construction, alteration or acquisition of property as may be prescribed by the Secretary of State in regulations.
522. Where granted, the provisional statement offers a degree of certainty to the applicant when he comes to apply for a premises licence because, unless the property has not been constructed or altered in accordance with the plans submitted to the licensing authority, when considering the application for the premises licence:
- the licensing authority must disregard any representations made, except where they relate to matters that could not have been addressed in relation to the application for a provisional statement; or where they reflect a change of circumstances relating to the applicant; and
  - the licensing authority may only refuse the application for the premises licence or impose conditions not included in the provisional statement, by taking into account matters which are valid representations (as defined above) or where there has been a change in the circumstances of the applicant.
523. An example of a change in an applicant's circumstances that might be relevant may be where the applicant has been convicted of a relevant offence following his application for a provisional statement; such that the applicant is now unable to get an operating licence.
524. If the property in respect of which the application has been made has been altered or constructed in a way that is not in accordance with the plans that were submitted with the application for a provisional statement, the licensing authority are not limited in their consideration of the application for the premises licence in the ways outlined above.
525. Where a provisional statement is granted in respect of a casino premises, under Schedule 9, *paragraphs 9 and 10*, the licensing authority may specify a time period for which it is to have effect. In such a case, the period may be extended by the licensing authority on application by the holder.

***Sections 206 to 209: Rights of Appeal***

526. These sections set out which licensing authority decisions under this Part are subject to appeal, and by whom. They include a decision to reject or grant an application (including rejection or grant of an application to reinstate a licence, and an application for a provisional statement); a decision whether to take action as a result of a review; and a decision whether to transfer a licence. In addition, Schedule 9 provides that an

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applicant may appeal against a decision to impose a time limit on the period for which a provisional casino premises licence applies.

527. Appeals under this Part must be made, in England and Wales, to the magistrates' court within 21 days of the relevant decision. Unless he is the appellant, the licence holder or applicant, as the case may be, must be joined as a respondent in addition to the licensing authority.
528. The magistrates may dismiss the appeal, substitute a new decision that could have been made by the licensing authority, remit the case back to the licensing authority, and also make an order about costs. Where the case is remitted, there is a further right of appeal on the same terms. In Scotland, appeals will be made to the sheriff on the same terms, except that there will be no right for the sheriff to substitute his own decision.
529. Any determination or action under this Part will be stayed during an appeal, or during the period within which an appeal could have been brought, unless the licensing authority, when making a determination or taking action, directs otherwise (in which case the magistrates' court or sheriff may make any appropriate order). There is a further right of appeal on a point of law to the High Court in England and Wales, or the Court of Session in Scotland.

***Section 210: Planning permission***

530. This section makes it clear that a licensing authority is not to have regard to planning or building law matters when considering an application under Part 8. It also provides that any decision on the application by a licensing authority is not to constrain a later decision by the authority under planning or building law.

***Section 211: Vessels and vehicles***

531. This section provides that premises licences may be granted to passenger vessels, but may not be granted to vehicles. The interpretation section in Part 18 contains provisions for defining vessels and vehicles, and this section contains rules for determining where vessels are located for the purpose of applying for a premises licence. Section 359 defines the territorial limitations on the Act in relation to vessels.
532. Where an application for a premises licence is made in respect of a vessel, the bodies listed in *subsection (4)* will be responsible bodies, with the same rights as responsible authorities generally under this Part.
533. The effect of this section (together with other provisions in the Act in relation to vehicles) is that gaming and betting on vehicles is unlawful under the Act, unless the gambling constitutes private gaming or betting within the meaning of Part 14 and Schedule 15. Section 360 defines the territorial limitations on the Act in relation to aircraft.
534. [Schedule 11](#) contains rules on the lawful promotion of exempt lotteries on vessels. Permits under Schedules 10, 12 and 14 may not be granted to vessels or vehicles. Authorisations under Schedule 13 will be available for vessels and vehicles to the same extent that they are available to them under the Licensing Act 2003.

***Section 212: Fees***

535. At a number of sections in this Part, provision is made for fees to be payable to licensing authorities, and for those fees to be set by the Secretary of State, or Scottish Ministers. Under this section, the Secretary of State may devolve to licensing authorities in England and Wales the freedom to set fees for premises licence applications relating to their area, subject to any constraints specified in the regulations.
536. Where licensing authorities are given power to determine a fee:

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- they may set different fees for different classes of case specified in the regulations e.g. for different types of licence (but not otherwise); and
  - they must aim to ensure that the income from the fees they set equals (as nearly as possible) the costs of providing the particular services to which the fee relates. In determining whether this cost recovery principle is being met, licensing authorities may make a comparison between costs and fees over whatever period it considers to be appropriate. The Secretary of State may issue guidance to licensing authorities on the appropriate periods for comparison. Where she does so, the licensing authority must take account of that guidance.
537. This permits the Secretary of State to set bands of minimum or maximum fees, within which a licensing authority can set its individual charges. Alternatively, the Secretary of State can give an authority complete discretion to set its own fees, subject always to the cost recovery principle.
538. Regulations under this section need not apply to all licensing authorities in England and Wales and may, in particular, apply only to categories of authority. In England, such categorisation could be achieved by reference to categories assigned under section 99 of the [Local Government Act 2003 \(c.26\)](#) (Comprehensive Performance Assessment).
539. This section does not apply to Scotland.

### **Part 9: Temporary Use of Premises**

540. [Part 9](#) makes provision for the use of premises for gambling where there is no premises licence in respect of those premises, but an operating licence holder wishes to use the premises, temporarily, for providing facilities for gambling.
541. Temporary use notices, endorsed by licensing authorities, will authorise the provision of gambling activities temporarily on specific premises. The nature of the gambling activities that can be provided under such notices will be controlled by the Secretary of State in regulations. Examples of premises which could be subject to a temporary use notice are hotels, exhibition centres or entertainment venues.
542. [Part 1](#) defines the licensing authorities which will consider temporary use notices, and [Part 18](#) requires licensing authorities to make a licensing policy statement in relation to their functions under this Part.

### ***Sections 214 to 218: Temporary use notice***

543. Where an operating licence holder wishes to provide facilities for gambling temporarily on premises, he may give notice in writing (a “temporary use notice”) that he intends to use the premises for the provision of facilities for gambling. Only a holder of an operating licence may give a temporary use notice, and the activity that he wishes to provide must be the same activity that he is authorised to provide facilities for under the terms of his operating licence.
544. The temporary use notice must be in the form prescribed by the Secretary of State, and must specify the information listed in section 216(1).
545. A temporary use notice cannot authorise any gambling activities. It can only authorise such gambling activities as the Secretary of State may specify in regulations, and which are set out in the notice. These regulations may also specify combinations of activities that may not be provided together under a temporary use notice. For example, if facilities for poker, blackjack and pool betting were to be authorised by the Secretary of State, a temporary use notice could not permit the provision of such facilities at the same time, on the same premises.
546. [Section 218](#) provides that a set of premises cannot be subject to a temporary use notices for more than 21 days in any 12 month period. This means that, while several different

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temporary use notices may have effect for a set of premises over a period of time, the aggregate period of these notices cannot exceed 21 days in a 12 month period. This is the case even if the gambling activities taking place under the notices are different activities. The maximum period of 21 days applies to all gambling carried on pursuant to notices, not merely one type of gambling.

547. These sections set out procedures for the licensing authority to ensure that these time periods are complied with. If any notice is served which is in breach of these requirements, the authority must serve a counter-notice which prevents the temporary use notice authorising gambling for anything over the permitted 21 days.
548. A valid (i.e. endorsed) temporary use notice, which complies with the requirements of this Part, will authorise gambling carried on pursuant to it, and no offences under Part 3 of the Act will be committed.

***Sections 219 & 220: Giving notice: procedure***

549. A temporary use notice must be served upon a licensing authority for the area in which the premises are situated. It must be given at least three months before it is proposed to have effect. It must arrive with both the licensing authority and any other person entitled to receive it within 7 days of the date on which it is stated to have been given.
550. A number of procedural requirements must be followed, including the payment of any fee that is prescribed by the Secretary of in regulations. In England and Wales this fee setting power may be devolved to licensing authorities in accordance with section 212. In addition, the person giving notice must also give a copy of it to the Commission, the police, and Her Majesty's Commissioners of Customs and Excise. This allows these people to object to the proposed notice, as outlined below.
551. The licensing authority receiving a notice must acknowledge its receipt as soon as practicable thereafter.

***Sections 221 to 223: Objections and modification by agreement***

552. The licensing authority or anyone else entitled to receive a copy of a notice may object to it. The grounds for objections are that, having regard to the licensing objectives set out in Part 1 of the Act, the notice should not have effect, or should only have effect with modifications. A notice of objection must be served upon the person seeking to make the facilities for gambling available (i.e. the server of the temporary use notice) within 14 days of the date of the temporary use notice, and must state the reasons for the objection. A copy must also be given to the licensing authority.
553. Where objection notices have been served, the licensing authority must hold a hearing at which representations may be made by the person who gave the temporary use notice, the people who objected, and any other people who were entitled to receive a copy of the notice. This requirement may be waived if the licensing authority, and each person who would be entitled to make representations, agree in writing that a hearing is unnecessary.
554. Where an objection has been made to a temporary use notice, but a hearing has not taken place (either because it has not yet happened, or because it has been dispensed with), anyone who has raised objections under these sections may propose a modification to the notice. If the modifications are agreed, a new temporary use notice, incorporating the modifications, can be served and the original notice will be treated as withdrawn. In these circumstances, the three-month time limit and fee will not apply to the new temporary use notice. If all objections are dealt with by modifications then this will dispense with the further need to hold a hearing in relation to the notice. If not, then those with objections outstanding can continue to contest the notice.

***Sections 224 to 226: Counter-notices and dismissal of objections***

555. Where:

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- an objection notice has been served;
  - modification has not removed the objection; and
  - either a hearing has taken place, or been dispensed with,
- the licensing authority may determine that the temporary use notice should not have effect, or should only have effect with modifications. The principles it must apply in reaching a view are the same as those it applies when determining premises licence applications. Therefore, it should aim to permit the temporary use of premises for gambling, in so far as it thinks that permission:
- accords with relevant Commission codes of practice and guidance;
  - is reasonably consistent with the licensing objectives; and
  - is in accordance with the authority's three-year licensing policy (established by the authority under section 349 of the Act).
556. If the authority concludes that the temporary use notice should not have effect, or should only have effect with modifications, it must serve a counter-notice upon the person who served the temporary use notice. This counter-notice may provide that the temporary use notice:
- will not have effect;
  - will have effect only in respect of a certain activity;
  - will only have effect in relation to an activity for a certain period of time or during certain hours of the day; or
  - will be subject to a condition.
557. A counter notice must be in the prescribed form and state the licensing authority's reasons for giving it. A copy must be given to any person who was entitled to receive a copy of the temporary use notice under section 219.
558. If the authority concludes that it will not give any counter-notice, then it must inform all relevant parties of this fact. The effect is that any objection notices have been dismissed by the authority.
559. Rights of appeal are available following an authority's decision to issue a counter-notice or to dismiss objections under these sections. The person who gave the temporary use notice, and any person entitled to receive a copy of it, may appeal. An appeal lies to the magistrates' court, and must be made within 14 days of receiving notice of the licensing authority's decision. In Scotland, the appeal will be to the sheriff in whose area the premises are located. If the appeal is against the decision of the licensing authority not to issue a counter notice, then the person giving the temporary use notice will also be a respondent in the case.
560. Where the decision to appeal may be made by a person entitled to receive a copy of the notice under section 219, they must decide whether to appeal, and to institute any appeal as soon as is reasonably practicable.
561. The magistrates' court or sheriff may, on hearing an appeal, dismiss it; direct the licensing authority to take some specified action; remit it back to the licensing authority to decide in accordance with a direction of the court; and make an order as to costs (or expenses). Where the decision is remitted to the licensing authority, the same rights of appeal will flow from their new decision as applied to their original one.
562. A further right of appeal exists to the High Court or Court of Session on a point of law.

***Section 227: Endorsement of notice***

563. If no objections are raised to a temporary use notice during the 14-day period after it is made, then the licensing authority will return the notice to the person who gave it, endorsing it as valid. The Secretary of State may prescribe the precise method of endorsement in regulations.
564. If a notice of objection was served, but did not result in a counter-notice being served (i.e. the objections were dismissed) then the temporary use notice must similarly be endorsed and returned, as soon as reasonably practicable, to the person who gave it.
565. An endorsed temporary use notice provides authorisation for the specified facilities for gambling to be provided at the relevant premises, in accordance with its terms.

***Section 228: Consideration by licensing authority: timing***

566. Licensing authorities will have six weeks from the date of the temporary use notice to complete proceedings on the notice. This includes proceedings to consider whether to give a notice of objection; holding a hearing or agreeing to dispense with one, and giving a counter notice or a notice dismissing any objections.

***Sections 229 & 230: Miscellaneous provisions***

567. An endorsed temporary use notice must be displayed on the premises to which it relates at any time when it is being relied upon. It must also be made available on request to a police constable, a Commission enforcement officer, an authorised local authority officer, or an officer of Her Majesty's Customs and Excise. If a person fails to display or produce his notice as required, he will commit an offence for which he will be liable to a fine not exceeding level 2 on the standard scale.
568. A person who has given a temporary use notice to a licensing authority may withdraw it at any time. It will then cease to have effect and any proceedings relevant to it will cease, except in relation to a matter which arose during, or in relation to, any time during which it was in effect.

***Section 231: Vehicles and vessels***

569. A temporary use notice may be given in respect of a passenger vessel, but may not be given in relation to a vehicle. The interpretation section in Part 18 contains provisions for defining vessels and vehicles, and this section contains rules for determining where vessels are located for the purpose of a licensing authority's functions under this Part. See also the note on section 211.

***Section 232: Delegation of licensing authority functions: England and Wales***

570. This section provides that the provisions of Part 8 of the Act, in relation to the delegation of functions to a licensing committee established under the Licensing Act 2003, and further delegation to officers of the authority under sections 154 and 155, apply similarly to this Part. The only matter that may not be sub-delegated under this Part is the decision under section 224 to issue a counter notice. That decision must be made by the licensing committee.

***Section 233: Delegation of licensing authority functions: Scotland***

571. This section provides that the provisions of Part 8 of the Act, in relation to the delegation of functions of Scottish licensing authorities, apply similarly to this Part. The decision to issue a counter-notice under this Part may not, however, be delegated to the clerk of the authority, or a person appointed to assist him.

### **Section 234: Register**

572. This section makes provision for licensing authorities to maintain a register of temporary use notices in a form and manner specified by the Secretary of State in regulations. The register must be available for inspection by members of the public at all reasonable times, and a copy must be provided to a member of the public on request. A charge may be made for copies.
573. The Secretary of State may also, in regulations, require licensing authorities to provide information about temporary use notices to the Commission in a specified fashion. The Commission may then be required to keep its own register of the information provided to it, and may relieve licensing authorities from the need to maintain a register under this section.

### **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 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:

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- 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 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

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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;
  - The rollover of stakes or prizes (i.e. the carry over of amounts paid or won to a subsequent use of the machine);

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- 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.
600. Exceptions from this offence exist:
- for those holding a single machine supply and maintenance permit under this Part;

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