

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 15: Private gaming and betting

Part 15: Inspection

763. **Part 15** deals with the powers of entry to and inspection of premises. It sets out the different kinds of inspection and the people who may carry them out, the powers available to such people, both in relation to the circumstances of entry, and activity once on the premises, and the offences for non-compliance with the provisions of this Part. The provisions contain safeguards to ensure that any invasion of privacy is minimised and is proportionate to the purpose for which entry is made. For example, it will not be possible to enter a dwelling under this Part for any reason without a judicial warrant.

Section 303: Enforcement officers

764. The Commission will have power to appoint enforcement officers whose powers are set out in this Part. Enforcement officers may be, but need not be, employees of the Commission.

Section 304: Authorised persons

765. This section makes provision for persons to be “authorised persons” for the purposes of the Act. Authorised persons are given various powers and functions under the Act in relation to inspection of premises in particular when someone is applying for a premises licence. Designated officers of licensing authorities and officers of other authorities who are authorised to exercise certain statutory functions in a particular area are “authorised persons” in relation to premises wholly or partly situated within that area. *Subsection (4)* provides for certain people to be “authorised persons” in relation to any premises wherever situated.

766. An “authorised local authority officer” is a person designated as such by a licensing authority for a purpose relating to premises within the area of the licensing authority.

Section 305: Compliance

767. This section confers express powers on constables, authorised persons and enforcement officers to undertake activities to assess whether a provision of the Act is being complied with or whether an offence is being committed. This provision is connected to section 64. That section provides for the actions of a constable, enforcement officer or authorised person (or those of a child or young person acting at his request) not to be unlawful under Part 4 if done in performance of his functions under the Act.

Section 306: Suspected offence

768. Under this section a constable or enforcement officer may enter premises if it is reasonably suspected that an offence under this Act has been, is being or is about to be committed on the premises. Where it is suspected that the offence is being or is about to be committed entry can be made without a warrant (unless the premises is a dwelling). In cases regarding the past commission of an offence, a constable or enforcement officer may only enter the premises under the authority of a judicial warrant. An application must be made to a justice of the peace or the sheriff in Scotland to issue a warrant to enter the premises. A warrant can only be issued where the justice of the peace or sheriff is satisfied there are reasonable grounds for suspecting that an offence has been committed and that evidence of the offence may be found on the premises. The justice of the peace or sheriff must also be satisfied that one of the following conditions listed in *subsection (3)* is met:
- Admission to the premises has previously been refused;
 - Admission is likely to be refused without a warrant;
 - A search may be frustrated or endangered if immediate entry is not secured; and
 - There is likely to be no-one present to grant admission to the premises.
769. If a warrant is to be granted for reasons in subsection (3)(a) or (b), the justice of the peace or sheriff must be satisfied that notice of the intention to apply for a warrant has been given to the appropriate person (i.e. the occupier of the premises or the person with responsibility for their management). Where no notice has been given, he must be satisfied that the giving of notice would seriously prejudice the purpose of the search.
770. *Subsection (5)* provides that a warrant under subsection (2) will have effect for 28 days from the date of issue.

Section 307: Inspection of gambling

771. A constable, enforcement officer or authorised person has the power to enter premises if it is reasonably suspected that facilities for gambling are being, are about to be or have been provided on the premises. This does not apply if the suspected gambling is private or non-commercial gaming or betting.
772. This power to enter will apply for the following purposes: to establish whether facilities for gambling are, were or are about to be provided; to ascertain whether there is an appropriate licence in force; or to determine whether the terms and conditions of the licence are, have been or will be complied with.

Section 308: Operating licence holders

773. A constable or enforcement officer has the power to enter premises where it is reasonably believed to be in use by the holder of an operating licence partly or entirely for purposes connected with the licensed activities. This provision is intended to provide a power of entry to premises where the gambling itself may not necessarily take place, but which are being used in connection with licensed activities, such as the head office of a business running a casino. A constable or enforcement officer may only exercise powers of entry under this section to determine whether the terms and conditions of the operating licence are being met.

Section 309: Family entertainment centres

774. Where an application for a family entertainment centre gaming machine permit has been made, a constable, enforcement officer or authorised local authority officer may enter the premises for a purpose connected with the consideration of the application. Once the permit is in effect, the same may enter the premises to determine whether the

gaming machines and the arrangements for their use comply with the requirements of the Act and any regulations made under it. Although constables, enforcement officers and authorised local authority officers have powers of entry under this section, it is anticipated that local authority officers will be primarily involved in the continuing inspection and enforcement of these types of premises. This is because it is the local authority which is responsible for issuing permits for these premises.

Section 310: Premises licensed for alcohol

775. **Part 12** and Schedule 13 make provision for Category C or D gaming machines to be made available on certain premises which are licensed to supply alcohol for consumption on the premises. This includes making gaming machines available under a licensed premises gaming machine permit. This section enables an enforcement officer or authorised local authority officer to enter premises in respect of which an application for such a permit has been made for a purpose connected with the consideration of the application.
776. *Subsection (2)* specifies other circumstances in which a constable, enforcement officer or authorised local authority officer may enter premises which are subject to a licence to supply alcohol for consumption on the premises. Entry may be made to determine whether the gaming taking place satisfies the conditions for exempt gaming under Part 12; whether the terms and conditions of any relevant operating licence are being complied with where bingo is played on the premises; or whether section 281 applies (which is concerned with high turnover bingo). Entry may also be made to ascertain the number and category of gaming machines being made available for use on the premises.

Section 311: Prize gaming permit

777. This section allows a constable, enforcement officer or authorised local authority officer to enter premises in respect of which an application for a prize gaming permit has been made. Once such a permit has effect, the same persons are given the power to enter the premises to determine whether the prize gaming complies with the requirements of the Act or regulations made under it.

Section 312: Clubs

778. This section allows authorised local authority officers to enter premises, where an application for a club gaming or club machine permit has been made, for a purpose connected with the application.
779. The section also specifies the purposes for which a constable or enforcement officer may enter premises which are reasonably believed to be used by a members' club, a commercial club or a miners' welfare institute. These are to determine whether gaming is taking or is about to take place, or whether any gaming that is or is about to take place is in accordance with the provisions for exempt gaming under Part 12, a club gaming permit or a club machine permit.

Section 313: Licensed premises

780. This section gives the right of entry to a constable, enforcement officer or authorised person, to premises in respect of which an application for a premises licence has been made. This is to assess the likely impact of a licence being granted, in light of the licensing objectives. Once a licence is in force, there is also a power to enter the premises for a purpose connected with a review of the licence under Part 8.

Section 314: Lotteries: registered societies

781. An enforcement officer or an authorised local authority officer may enter premises owned or used by a society registered with a local authority for the purpose of making inquiries about a lottery being promoted on behalf of the society. It is likely that

*These notes refer to the Gambling Act 2005 (c.19)
which received Royal Assent on 7 April 2005*

authorised local authority officers will primarily exercise this power to enter. This is because the local authority is responsible for the registration of societies under the provisions for registered society lotteries.

Section 315: Temporary use notice

782. This section allows a constable, enforcement officer or authorised person to enter premises for which a temporary use notice has effect to determine whether the activities being carried on are in accordance with the terms of the notice. The right of entry will also apply where a notice has been given, but before it has effect. This will enable an assessment to be made of the likely effects of the premises being used for this purpose, in the light of the licensing objectives.

Section 316: Authorisations: production on demand

783. This section allows a constable or enforcement officer to require an operating licence holder who has given a written authorisation, or the person to whom the authorisation has been given, to produce a copy of the authorisation. Failure to comply, without reasonable excuse, is an offence. The maximum penalty for the offence is a fine not exceeding level 2 on the standard scale.

784. The types of authorisation which can be demanded under this section are:

- In relation to a pool betting operating licence, where the licence holder has authorised a person to accept bets on his behalf on a horserace course or dog track;
- In relation to a pool betting operating licence where the licence authorises the provision of facilities for football pools, where the licence holder has authorised a person to receive payments or entries on his behalf;
- In relation to a pool betting operating licence where the licence authorises horserace pool betting, where the licence holder has authorised a person to provide facilities for horserace pool betting; and
- In relation to a casino premises licence, where the licence holder has authorised a person or persons to use that premises for providing betting, bingo or both.

Section 317: Powers

785. This section sets out the powers which a constable, enforcement officer or authorised person may exercise when entering premises under this Part.

786. Those exercising powers of entry may inspect any part of the premises and any machine or other thing on them. There is also power to question any person on the premises, to access any written or electronic record on the premises, and to request copies. Those entering will also have the right to seize and retain material, but only where the person entering believes that it contains or constitutes evidence of an offence under the Act or a breach of licence conditions. Through regulations the Secretary of State will have the power to set rules concerning the treatment of copies of written or electronic records supplied, and items removed as evidence of an offence (past or present) or breach of licence condition. Regulations may also include provision regarding the retention, use, return or destruction of items supplied or removed and the conferring of a right of appeal.

787. Restrictions are imposed on the extent to which a person entering premises can have access to and seize records without a warrant. It is only where a record (whether written or electronic) relates entirely to the matters to which the power of entry relates that it can be accessed or seized without a warrant. This is dealt with in further detail below in the note on section 319.

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788. A constable, enforcement officer or authorised person when exercising powers under this Part is not entitled to take any action in relation to anything of a kind specified in section 9(2) of the Police and Criminal Evidence Act 1984 (for example, legally privileged material). This restriction only applies in England or Wales.
789. A constable, enforcement officer or authorised person must have regard to any relevant provision of a code of practice under the Police and Criminal Evidence Act 1984 in exercising any powers under this Part. This requirement does not apply in Scotland.

Section 318: Dwellings

790. A person exercising a power of entry under this Part may only enter a dwelling where authorised to do so by judicial warrant. A justice of the peace or the sheriff in Scotland may only issue a warrant if he is satisfied that, but for the requirement for a warrant, the person would be able to enter the premises in reliance on a provision of this Part. The justice of the peace or sheriff must also be satisfied that one of the following conditions listed in *subsection (3)* is met:
- Admission to the premises has previously been refused;
 - Admission is likely to be refused without a warrant;
 - A search may be frustrated or endangered if immediate entry is not secured; and
 - There is likely to be no-one present to grant admission to the premises.
791. If a warrant is to be granted for reasons in subsection (3)(a) or (b), the justice of the peace or sheriff must be satisfied that notice of the intention to apply for a warrant has been given to the appropriate person (i.e. the occupier of the premises or the person with responsibility for their management). Where no notice has been given, he must be satisfied that the giving of notice would seriously prejudice the purpose of the search.
792. *Subsection (5)* provides that a warrant issued under this section is to have effect for 28 days from the date of issue.

Section 319: Records

793. A person entering under this Part may only inspect or seize records (whether written or electronic) without a warrant where the records relate entirely to the matters to which the power of entry relates. Where records also contain information which is not relevant to those matters (i.e. where they are “mixed” records), then they may only be inspected or seized under the powers in *paragraphs (c) to (e)* of section 317(1) under the authority of a judicial warrant. For example, “mixed” records may contain information relating to personnel matters or may be commercially sensitive material irrelevant to the matters for which the powers of entry have been exercised. A justice of the peace may only issue such a warrant if he is satisfied that it is necessary to allow inspection of mixed records. The justice of the peace must also be satisfied that one of the following conditions is met:
- Notice has been given to a person in control of the records of the intention to apply for a warrant, or
 - The purpose of exercising the power may be frustrated or seriously prejudiced by the giving of such a notice.

Section 320: Timing

794. A power under this Part can only be exercised at a reasonable time. Reasonable time may depend on the circumstances. If the reason for the entry requires it to be made at a time that would generally be perceived as an unreasonable time, then that time might nevertheless be reasonable in the circumstances of a particular case. For example, in a case where the person making the entry suspects that an offence is or is about to be

committed and there is a strong likelihood that any evidence of the offence will be lost if entry is not made during night time hours.

Section 321: Evidence of authorisation

795. An enforcement officer or authorised person wishing to exercise a power under this Part is required to produce evidence of identity and authority to a person (if there is one) who appears to be occupying the premises or to have responsibility for their management.

Section 322: Information

796. This section requires the Secretary of State to make regulations about the information to be provided by those entering premises in reliance on a power under this Part. The regulations are to make provision about the nature of the information to be provided. They are also to prescribe the form and manner in which the information is to be provided, the person to whom it is to be provided and the timing of its provision. *Subsection (3)* imposes a duty on a constable, enforcement officer or authorised person exercising a power under this Part to comply with any relevant provision of regulations made under this section.

Section 323: Use of force

797. A constable has the authority to use reasonable force to enter premises when exercising powers under this Part. An enforcement officer has the authority to use reasonable force to enter premises where the entry is because he suspects that an offence under the Act has been, is being or is about to be committed on the premises. An authorised person or enforcement officer has the authority to use reasonable force to enter premises if he suspects that gambling (other than private or non-commercial gaming or betting) is taking place.

Section 324: Person accompanying inspector, &c.

798. This section allows a constable, enforcement officer or authorised person to be accompanied by others when exercising a power to enter premises under this Part.

Section 325: Securing premises after entry

799. A constable, enforcement officer or authorised person who enters premises under this Part is required to take reasonable steps to ensure that premises remain as secure as they were when they entered.

Section 326: Obstruction

800. This section makes it an offence to obstruct or fail to cooperate with a constable, enforcement officer or authorised person exercising a power under this Part. For example, it will be an offence to block the doorway to premises where an enforcement officer has requested entry. The maximum penalty for the offence is a fine not exceeding level 3 on the standard scale.