

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 15: Private gaming and betting

Part 17: Legality and Enforcement of Gambling Contracts

827. This Part deals with the legality and enforcement of gambling contracts. As a result of the sections in this Part, contracts made for gambling purposes are to be treated similarly to other contracts. In particular, any debts that arise from gambling will be capable of enforcement in the same way as any other personal or business debts. All statutory provisions which prevented such contracts from being enforced are repealed by the Act. However, the Commission is given power to void betting contracts in certain circumstances. These powers (set out in this Part) are intended to promote the licensing objectives (under Part 1) and enable the Commission to take specific action if it is satisfied that a bet was substantially unfair.

Section 334: Repeal of provisions preventing enforcement

828. This section repeals all statutory provisions which provide that gambling contracts are unenforceable. The repeals will not apply retrospectively, so any gambling contract made, or right arising from an agreement made, before this section comes into force will not be enforceable.

Section 335: Enforceability of gambling contracts

829. This section expressly provides that a contract will be capable of being enforced irrespective of the fact that it is a contract relating to gambling. This does not, however, override any other rule of law that prevents enforcement on the grounds of unlawfulness. Therefore gambling contracts may be void on the same basis as any other contract (for example, on the basis of lack of intention, mistake or illegality).

Section 336: Power of Gambling Commission to void bet

830. This section provides the Commission with the power to make an order that a bet accepted by, or through, the holder of a general betting operating licence, a pool betting operating licence, or a betting intermediary operating licence, is to be void.

831. Where the Commission exercises this power, any contract or other arrangement relating to the bet will be void, and any money paid in relation to the bet must be returned to the person who paid it. So, for example, a person who places a stake on a bet that the Commission orders should be made void, must have their stake returned to them. Equally, any winnings must be repaid to the person who accepted the bet. Such repayments will be enforceable as a debt.

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

832. The Commission may only make an order under this section where it is satisfied that the bet was substantially unfair. In considering whether a bet is substantially unfair, the Commission must, in particular, have regard to any of the factors listed in *subsection (4)* that apply. These are:
- that one or both of the parties to the bet (whether they made or accepted the bet) supplied information in connection with it that was insufficient, false or misleading;
 - that one or both of the parties to the bet believed, or ought to have believed, that the race or event about which the bet was made was, or would be, conducted in contravention of the industry rules (as defined in section 337(7)) that apply to the event. This might apply where, for example, one party to a bet knew that players in a youth football match were in fact over the legal age for participation, but nonetheless offered a bet on the match;
 - The fact that one or both of the parties to the bet believed, or ought to have believed, that the offence of cheating (as set out in section 42) had been, or was likely to be, committed in relation to the bet. This could apply where, for example, a person connected to a racehorse owner became aware that the horse had been deliberately injured prior to a race in which it was to run and, on the basis of that knowledge, made a bet on that horse through a betting intermediary;
 - The fact that one or both parties to the bet have been convicted of the offence of cheating as set out in section 42 of the Act.
833. The effect of this section is that the Commission will not automatically void a bet where one of the factors listed in subsection (4) applies; it will only cancel a bet where it is satisfied that it was substantially unfair. This will allow for the situation where both parties to the bet knew about the cheating, for example, and so no unfairness arises.
834. The power to void a bet will be available to the Commission for a period of six months from the day on which the result of the bet is determined, except where there has been a conviction for cheating, in which case there is no time limit. Provision is made in section 337 for rights of appeal in relation to orders made by the Commission under this section.

Section 337: Supplementary

835. *Subsection (1)* of this section provides for a right of appeal to the Gambling Appeals Tribunal where the Commission makes an order to void a bet. Either party to the bet, and any other person who was a party to a contract or arrangement relating to the bet, will be able to appeal. This means that, for example, betting intermediaries who may lose money as a result of a bet being void, but who are not a party to the actual bet, are provided with a right of appeal. Further provision is made about the Gambling Appeals Tribunal in Part 7 of the Act.
836. *Subsections (2)* and *(3)* give the Commission power to void any part of a betting transaction, and to determine the consequences for any bets connected with a bet or betting transaction that is made void. Such a determination might, for example, require all the successive bets in an “accumulator” bet to be made void.
837. When investigating whether to order that a bet should be made void, the Commission may require any person by or through whom the bet is made or accepted (such as a party to the bet or a betting intermediary), to provide information or documents in relation to the bet. A person who does not comply with this requirement commits an offence, unless they have a reasonable excuse. The penalty for the offence will be a maximum fine of level 2 on the standard scale. In conducting its investigation, the Commission may also take into account any other information that it receives.

Section 338: Interim Moratorium

838. The Commission will have the power to make an order freezing any obligation to pay money in relation to a bet, where it suspects that it may need to make an order that the bet is void under section 336. The effect of this interim moratorium is to protect any payments that would otherwise have been made in relation to a bet, but which might be difficult to recover if the Commission later decides that the bet should be made void. So, whilst the interim moratorium is in place, a betting operator need not pay a customer any winnings; and the customer will not be required to pay any stake or commission.
839. The Commission need not be certain that a voiding order will be made before imposing the interim moratorium.
840. An interim moratorium will last for a period of 14 days, beginning on the day that it is made. It will be possible for the Commission to extend an interim moratorium by a further period of up to 14 days. There is no limit to the number of interim moratoriums that the Commission may impose in relation to any bet, although the time limit of 6 months for making an order to void a bet will continue to apply during any period when an interim moratorium is in place.
841. The Commission may cancel an order for an interim moratorium before it expires; and must cancel one if it ceases to think that it might want to make an order to void the bet.
842. Where the Commission decides to impose an interim moratorium, but then decides not to void the bet, the Commission will not be liable to make any payment (such as interest on the payments that have been frozen) simply because it has taken such action.