

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

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 6: Exchange of information: persons and bodies

Part 3: General Offences

132. **Part 3** contains general offences concerning the provision of facilities for gambling and the use of premises for that purpose. It also contains specific gambling related offences, such as the offences concerned with cheating at gambling and chain gift schemes. In addition to the offences in this Part, the Act contains specific offences concerning particular forms of gambling e.g. making gaming machines available for use (Part 10) or promoting or facilitating a lottery (Part 11) and specific offences relating to gambling involving children and young people (Part 4).
133. All offences under the Act are summary offences, with the exception of the offence of cheating in section 42.

Sections 33 to 35: Provision of facilities for gambling

134. These sections establish the general principle that the provision of facilities for gambling (as defined in section 5) is unlawful unless it is either:
- authorised by an operating licence, or
 - covered by a specific exception.
135. The specific exceptions relate to activities which do not require an operating licence under the Act, but which either depend on the issue of a permit or other authorisation, or fall within a category of gambling which may be carried on under the Act without the need for a specific authorisation or permission.
136. There are two further exceptions. The offence does not apply to the provision of facilities for a lottery; and the offence does not apply to making a gaming machine available for use. Specific offences concerning providing facilities in relation to these are contained at Parts 11 and 10 of the Act respectively.
137. *Subsections (4) and (5)* of section 33 provides for the offence to be a summary offence, with a maximum penalty on conviction of imprisonment for 51 weeks for England and Wales (or six months in Scotland), a level 5 fine on the standard scale, or both.

Section 36: Territorial application

138. This section makes provision with respect to the territorial application of the offence of providing facilities for gambling. It provides that, where a person is providing facilities for gambling, it is immaterial whether the facilities are provided wholly or partly by means of remote communication, or inside, outside or partly inside and partly outside

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the UK. However, where what is involved is remote gambling (defined in section 4 to mean gambling in which those participating do so by means of remote communication), the offence will only apply if at least one piece of remote gambling equipment used in providing the facilities is located in Great Britain.

139. This means that, where gambling takes place remotely, the person providing the facilities for gambling will not fall within the scope of the offence if he does not have relevant equipment within Great Britain. This is so even if people within Great Britain can receive the gambling he is providing (e.g. over the internet). On the other hand, where at least one piece of remote gambling equipment is located in Great Britain, a person providing facilities for remote gambling will come within the scope of the offence. Therefore, a person commits the offence if any part of his remote equipment is located in Great Britain and he does not have the required authorisation or is not covered by one of the exceptions. This is so regardless of whether the gambling facilities are provided to people in Great Britain or outside.
140. *Subsection (4)* defines “remote gambling equipment” for the purposes of the Act:
- *Subsection (4)(a)* captures equipment which stores information e.g. a computer database or server, about a person’s participation in gambling. This includes the “game history” of a player, including the player’s identity and records of their wins and losses. Equipment used for storage of information for general promotional purposes would not be caught by the definition, unless the information relates to someone’s participation in gambling;
 - *Subsection (4)(b)* captures equipment used for generating and presenting virtual gambling;
 - *Subsection 4(c)* captures equipment used by the person providing the gambling (or on his behalf) for determining the result or the effect of the result of the particular transaction. This covers random number generators used in virtual gaming, or the equipment for calculating whether someone has won or lost a bet on a real event;
 - *Subsection 4(d)* captures equipment used to store information relating to a result. This is different to equipment under subsection 4(c) which covers the act of generation of a result, not its subsequent retention.
141. *Subsection (5)* excludes equipment used by a person who is participating in the remote gambling (i.e. the computer keyboard and screen), provided that the equipment has not been provided by the supplier of the remote gambling.
142. This section does not restrict the Commission from attaching licence conditions to remote operating licences about the collection and retention of information generally by an operator (under its powers in Part 5). The purpose of this section is to establish whether a remote operator is within the jurisdiction for the purposes of the offence in section 33.
143. In the case of non-remote gambling (i.e. where remote communication is not used by those participating in the gambling), then the offence will apply if anything done in the course of the provision of the facilities for gambling is done in Great Britain.

Sections 37 & 38: Use of premises

144. This section makes it an offence to use premises, or cause or allow premises to be used, for the gambling activities set out in *subsection (1)* unless such use is:
- authorised by an appropriate licence or other permission obtained under the Act; or
 - covered by an exception provided in the Act.
145. The principal authorisations which prevent a person committing an offence under this section are:

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- a premises licence under Part 8;
 - a temporary use notice under Part 9;
 - an occasional use notice under this Part;
 - premises used in connection with the provision of facilities for football pools in accordance with an authorisation under this Part;
 - a family entertainment centre gaming machine permit under Part 10;
 - a club gaming or gaming machine permit, or licensed premises gaming machine permit under Part 12; or
 - a prize gaming permit under Part 13.
146. In addition, there are express exceptions which permit premises to be used for the provision of specified facilities for gambling without the need for a licence or permit, including the provision of gaming machines in premises with an alcohol licence and travelling fairs, and gaming at non-commercial events.
147. *Subsection (4)* provides an exception for people who are accepting bets on a track, where that track is covered by a premises licence issued under Part 8. In these circumstances the person accepting bets does not himself have to hold a premises licence. This subsection accommodates on-course betting operations, preventing each on-course operator from requiring a separate premises licence, provided the track itself is subject to the appropriate premises licence.
148. *Subsection (5)* ensures that casino operators can provide betting and (in the case of regional and large casinos) bingo under their casino premises licences without the need for a separate premises licence relating to those facilities.
149. *Subsection (6)* ensures that no offence is committed where premises are used to provide the facilities listed in subsection (1), provided that those facilities are used only by people who are not on the premises. An example of this is where premises house a server used for the purposes of remote gambling. *Subsection (6)* also exempts premises which are used only by people acting in the course of business. For example, a telephone call centre set up by a betting operator to accept telephone bets.
150. This is a summary offence with a maximum penalty on conviction of imprisonment for a term not exceeding 51 weeks for England and Wales (or 6 months in Scotland), a level 5 fine on the standard scale, or both.
151. [Section 38](#) confers power on the Secretary of State to vary, by order, the gambling activities to which the section 37 offence applies. This includes the power to add or remove a gambling activity to the list provided, or to vary the entry for a gambling activity. The purpose of this provision is, in particular, to ensure that it is possible to bring within the scope of the offence any gambling activities which may be invented in the future, but which are not covered by the list in *subsection (1)*. Where a new gambling activity is added, the Secretary of State may make consequential amendments to Part 8, to provide for an appropriate premises licence, and matters such as machine entitlements.
152. In particular, an order may have the effect of extending the offence to spread bets or other bets which are subject to regulation under the Financial Services and Markets Act 2000. Spread betting, which is regulated under the 2000 Act, is generally excluded from the scope of this Act (see section 10). The effect of section 38 is to allow the scope of this Act to be extended so that the use of premises to provide facilities for spread betting is also regulated under this Act. In these circumstances, amendments would also be required to Part 8 to enable premises licences to be granted under the Act, authorising premises to be used for the provision of facilities for spread betting.

Section 39: Exception: occasional use notice

153. This section provides a means for tracks to be authorised for the provision of facilities for betting, where the use (for betting) will be for no more than 8 days a year: the occasional use notice. This notice, when in operation, excepts people on the track from committing the offence of using premises unlawfully for the provision of facilities for gambling. Tracks are defined in the interpretation section in section 353 as a racecourse, dog track or any other premises used or intended for races or other sporting events. The purpose of the section is to ensure that point-to-point racecourses which are used for only a few days a year, and tracks such as golf courses where betting facilities are provided for major competitions, but not otherwise, do not have to obtain a full premises licence in order to avoid the main offence in this Part.
154. *Subsections (2) to (6)* specify the procedure for serving an occasional use notice. An occasional use notice must be served by an occupier of the track, or a person who is responsible for the administration of races or sporting events on the track. It must be sent to the licensing authority with a copy sent to the police force for the area, and must specify the day on which it is to have effect. An occasional use notice cannot be given for a day in a calendar year if eight occasional use notices have already been given for days in that year. Therefore, a track that is used more frequently for betting will need a premises licence, or temporary use notice, under Parts 8 or 9.
155. Any person providing betting facilities pursuant to an occasional use notice will still require the appropriate authorisation to act as a betting operator: in general this will be a betting operating licence, or (in the case of pool betting) authorisation by the holder of a pool betting licence under Part 5.

Section 40: Exception: football pools

156. Holders of a pool betting operating licence, under section 93, can authorise people who are not their employees to dispense coupons, collect entries and stakes, and pay winnings, on football pools competitions. Collectors can operate, for example, door to door, or from ordinary retail premises such as newsagents.
157. This section provides an exception for such people from the premises offence in this Part. Collectors can therefore use premises to accept football pools entries, or pay out winnings without committing that offence. *Subsection (2)* gives the Secretary of State power to make regulations, to disapply this concession to particular types of premises.

Section 41: Gambling software

158. The Act places controls on people who wish to provide facilities for gambling by means of remote communication. This section concerns computer software for gambling that is used in connection with such facilities, but not software designed for use in a gaming machine.
159. It is an offence under *subsection (1)* to manufacture, supply, install or adapt, in the course of a business, computer software for remote gambling, unless an operating licence is held for such activity. The purpose of this offence is to ensure that people responsible for generating gambling software do so in a regulated environment, to ensure, in particular, fairness for players. While an operating licence for remote gambling covers someone offering gambling, for example by means of the internet, it does not, itself, cover someone who is manufacturing the gambling software that will be used in providing such facilities (i.e. the software supplier to a remote gambling operator). This section covers this latter situation.
160. The maximum penalty for the offence is a maximum term or imprisonment of 51 weeks in England and Wales (or 6 months in Scotland), and/or a fine up to level 5 on the standard scale.

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161. Computer software for gambling for use in a gaming machine is expressly excluded from this offence (in *subsection (2)(b)*) because the definition of gaming machine in Part 10 already includes such computer software. Someone manufacturing computer software for a gaming machine would therefore be subject to the provisions (and the offences) contained in Part 10.
162. *Subsection (3)* ensures that a communications service provider, who enables someone to download or send gambling software to another person, is not treated as himself supplying or installing that gambling software. This is an exception for “mere carriers” of the software.

Section 42: Cheating

163. This section creates a criminal offence for cheating at gambling, and repeals the old offence of cheating in section 17 of the [Gaming Act 1845 \(c.109\)](#). The word “cheating” is not defined but has its normal, everyday meaning. The offence is committed by both cheating directly or by doing something for the purpose of assisting or enabling another person to cheat. A person who does something inadvertently which enables another person to cheat, will not, therefore, commit an offence.
164. *Subsection (2)* provides that a person will commit the offence irrespective of whether he actually wins anything as a result of the cheating, or whether the cheating has the effect of improving the cheat's chances of winning. This means that an inept cheat, or one who cheats for another person's benefit, will still commit an offence. *Subsection (3)* provides that, in particular, cheating may include actions that involve actual or attempted deception or interference with the processes involved in the conduct of gambling, or with any other game, race or other event or process to which gambling relates. Events can be either real or virtual. *Subsection (3)* does not provide an exhaustive definition of cheating. It is made expressly without prejudice to the general meaning of cheating established in *subsection (1)*.
165. *Subsections (4) and (5)* provide for penalties that may be imposed upon conviction of the offence. Unlike other offences created under the Act, this offence is capable of being tried either summarily or on indictment. On summary conviction the penalty is a maximum term or imprisonment of 51 weeks (or 6 months in Scotland), and/or a fine up to level 5 on the standard scale. On conviction on indictment the maximum penalty is imprisonment for a term not exceeding two years, an unlimited fine, or both.

Section 43: Chain-gift schemes

166. This section makes provision for the prohibition of chain-gift schemes. The offence extends to Northern Ireland, as well as England, Scotland and Wales.
167. A chain-gift scheme is an arrangement in which, in order to join, people must pay a joining fee to one or more of the other participants in the scheme. People who take part in the scheme are required or invited to encourage other people to join. A person who participates in the arrangement does so having been encouraged to believe that he will receive back more than his initial joining fee, from the fees paid by other participants. The joining fee must be a payment of money or money's worth, but it does not include goods or services.
168. *Subsection (1)* makes it an offence to invite another person to join such a scheme. It is also an offence to knowingly participate in the promotion of the scheme. It will not, however, be an offence for a person merely to join the scheme. People who participate unwittingly in the promotion of a chain gift scheme, such as the host of an internet discussion forum upon which a posting promoting a chain-gift scheme has been made, will not commit an offence, provided they are unaware that the posting promotes a chain-gift scheme. People who knowingly participate in the administration or management of the scheme will also commit an offence.

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169. *Subsection (3)(b)* provides that the offence is committed irrespective of whether the joining fees are paid directly between the participants in the scheme or through a person responsible for managing or administering the scheme. The penalty is a maximum term or imprisonment of 51 weeks in England and Wales (or 6 months in Scotland and Northern Ireland), and/or a fine up to level 5 on the standard scale.

Section 44: Provision of unlawful facilities abroad

170. This section gives the Secretary of State power to specify countries or places as prohibited territories, with the result that it will be an offence for a person to invite or enable a person in a prohibited territory to participate in remote gambling, where the person making the invitation or enabling the activity does anything in Great Britain or uses any remote gambling equipment in Great Britain so to do.
171. The Secretary of State's decision whether or not to exercise this power could depend on matters such as: the development of the global gambling market; the laws which other countries establish to permit, constrain or prohibit the use of remote gambling; the practical measures employed by those countries to secure compliance with such laws; and the extent to which it is possible to reach international agreements about the cross-border use of the internet for gambling.
172. In the event that the Secretary of State makes an order designating countries or places as prohibited territories the order must also prescribe the mode of trial and maximum penalty for the offence.