

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 6: Exchange of information: persons and bodies

Part Four: Protection of Children and Young Persons

173. Part 4 of the Act creates a number of offences that establish the extent to which children and young people may become involved in gambling, whether in terms of participation in the gambling, entry into gambling premises, or employment in relation to the provision of such facilities.

Section 45: Meaning of child and young person

174. Under the Act, any person aged less than sixteen years is defined as a child. Any person aged sixteen years or more, but who is not yet eighteen, is defined as a young person.

Sections 46 & 48: Inviting children and young persons to gamble; participation by young persons in gambling

175. In broad terms, people aged under eighteen are not to be permitted to gamble. Therefore, it is an offence for a person to invite, cause or permit a person under eighteen to gamble. It is also to be an offence for the young person to gamble (those aged sixteen and seventeen). However, children (those not yet aged sixteen) do not commit an offence if they gamble.
176. There are some exceptions to the general prohibition on gambling by children and young people. Children and young persons may participate in all forms of private or non-commercial gaming and betting. Young persons may participate in lotteries and pool betting on association football. Children and young persons may use the category of gaming machine with the lowest stakes and prizes (Category D). They may also take part in equal chance prize gaming at certain premises, as provided under Part 13 of the Act.
177. The offence of inviting a child or young person to gamble is to include advertising and other actions that bring attention to the facilities available for gambling. A person may be liable to commit the offence where his or her name or contact details are included in the information provided to the child or young person, and that person is someone to whom payment may be made or from whom information about the gambling may be obtained. However, in such a case, the person has a defence if he can prove that the information was provided without his consent or authority. A further defence is also available in a case where information is brought to a child's attention (as opposed to being sent to the child). In those circumstances, the person whose contact details appear in the information will have a defence if he can demonstrate that it was brought to the child's attention incidentally to it being brought to the attention of adults.

Sections 47 & 49: Invitation to enter premises; young persons entering premises

178. Children and young persons may not enter a casino, a betting shop or an adult gaming centre at any time when facilities for gambling are being provided on the premises in reliance on the relevant premises licence. This is subject to the exception that children and young persons may enter the non-gambling area of a regional casino, but they may not enter the gambling area.
179. Under Part 8, a betting premises licence for a track is subject to the condition that children and young persons are excluded from any area where a Category C gaming machine is available for use or any area where facilities for betting are provided. However, the latter restriction does not apply in the case of a dog-race track or a horse-race course on any day on which racing takes place (see section 182).
180. Children are equally not permitted to enter areas of family entertainment centres where Category C gaming machines are available for use.
181. Any person who invites a child or young person to enter these premises, or the parts of the premises described above, commits an offence. Where a young person enters these areas, he too commits an offence.
182. As a consequence of these provisions, a person of any age may enter bingo premises, the betting areas of a horse racecourse or a greyhound track on days on which races are being run, or the non-gambling area of a regional casino. A person of any age may also enter any area of a family entertainment centre where no Category C gaming machines are provided at that place. This does not mean that they can necessarily partake in any gambling on the premises, see sections 46 and 48.

Section 50: Provision of facilities for gambling

183. A young person commits an offence if he provides facilities for gambling, except in connection with private or non-commercial gaming and betting, lotteries, football pools and prize gaming at a travelling fair.

Sections 51 to 55: Employment offences

184. It is an offence to employ children and young persons to provide facilities for gambling, except in the case of private or non-commercial gaming and betting and in relation to prize gaming at a travelling fair. There is a further exception in the case of lotteries and football pool betting. In those cases, the offence only extends to the employment of children and not young persons. The National Lottery is excluded from this provision. Regulations made under the National Lottery etc. Act 1993 already prohibit the sale of National Lottery tickets to those under 16.
185. Restrictions are imposed on the ways in which children and young people can be employed to work on premises where facilities for gambling are provided, even if they are not engaged to perform any gambling activities themselves. This is to ensure that children and young people are not afforded undesirable exposure to gambling.
186. It is an offence to employ children to work in premises at any time when facilities for the playing of bingo are being provided on the premises. It is also an offence to employ children at a club or institute at any time when facilities for gambling are being provided pursuant to a permit (section 53).
187. In relation to any premises where gaming machines of any category are situated, then any child or young person employed may not perform any function that involves the gaming machine. Therefore, for example, a child may be employed in a family entertainment centre to undertake non-gambling activities, although he may not operate or handle the machine or pay customers prizes in the event that the machine has insufficient money in it (and he may not enter the area where the Category C machines are located) (section 54).

188. Generally children and young persons are not allowed to be employed in any capacity in casinos, betting premises and adult gaming centres. This is subject to an exception in the case of regional casinos where children and young persons can be employed in non-gambling areas. It is possible, however, for children and young persons to be employed in adult only gambling premises (small and large casinos, the gambling area of regional casinos, betting offices and adult gaming centres) when no facilities for gambling are being provided. Therefore, for example, a sixteen-year-old apprentice joiner may undertake improvement works on the structure of a bar in a casino when it is closed (section 55).
189. There is also an effective prohibition on children and young persons being employed in the betting areas of certain tracks and the adult-only areas of family entertainment centres. This follows the provisions referred to above which generally prohibit children and young persons from being able to enter such areas (sections 47 and 49).

Section 56: Invitation to participate in lottery

190. This section makes it an offence to invite, cause or permit a child to take part in a lottery, for example, by selling him a ticket. However, this offence does not apply to two types of lottery allowed under the Act, that is, private lotteries and incidental non-commercial lotteries (see Schedule 11, Parts 1 and 2). This means that the section does not, for example, prevent the sale to children of tickets in events such as the tombola at a school or church fete. The National Lottery is also excluded from this provision.
191. The Act does not criminalise the purchase by a child of a ticket in any form of lottery.

Section 57: Invitation to participate in football pools

192. Young people are to be permitted to participate in football pools, and it is, therefore, permissible for the operators of football pools to provide information to young persons, or to direct advertisements to young persons. However, children may not participate in football pools and this section makes it an offence to invite, cause or permit a child to do so.

Section 58: Return of stake

193. Under Part 5, all operating licences for gambling are subject to a condition requiring licence holders to return any money paid to them by children or young persons, where the person concerned is not permitted to participate in the gambling activity (section 83). It also requires the licence holder to withhold any winnings that would otherwise be payable. This section makes it an offence for a licence holder to fail to do so.

Section 59: Age limit for category D machines

194. The Act does not set a minimum age limit for the use of Category D gaming machines. This section gives the Secretary of State power by order to establish one, by creating an offence of inviting, causing or permitting a child or young person below a specified age to use a Category D gaming machine.
195. Before making such an order, the Secretary of State is required to consult the Commission, people who appear to the Secretary of State to represent the interests of gambling businesses and people who have knowledge about problem gambling. An order need not apply to all types of Category D machine, which means that an age limit can be imposed on particular types of Category D machine. Therefore, if the evidence dictates that only certain types of machine require an age limit (as a result of harm), the section ensures that only those machines will be covered by the limit.

Section 60: Temporary use notice

196. Temporary use notices issued under Part 9 may authorise gambling at premises that do not have a premises licence. The same applies in the case of premises subject to an occasional use notice. For the purposes of this Part, the relevant areas of such premises are to be regarded as being subject to the equivalent premises licence. Therefore, where a temporary use notice authorises gaming in one part of a hotel, a young person working in the hotel may not enter that area during the time that the notice has effect.

Section 61: Meaning of employment

197. For the purposes of this Part, employment is to be regarded as having a wide meaning. For example, as well as direct employees of the licence holder, people engaged temporarily through an employment agency are equally to be regarded as employees of the licence holder.
198. Any offence committed under this Part will be treated as a continuing offence which means that a new offence will be committed on each day that the employment continues. This increases the level of penalty that will be available in sentencing.

Section 62: Penalty

199. Offences under this Part are to be punishable on conviction by a maximum term of imprisonment of up to 51 weeks in England and Wales (or 6 months in Scotland), or a fine not exceeding level 5 on the standard scale, or both. Where it is young person who is convicted, imprisonment is not to be available and any fine imposed may not exceed level 3 on the standard scale.

Section 63: Reasonable belief about a person's age

200. Where a person is charged with an offence under this Part of doing anything in relation to a child or young person it is to be a defence for the person to prove that he took all reasonable steps to determine the relevant person's age and he reasonably believed that the person was not a child or a young person.

Section 64: Use of children in enforcement operations

201. This section will enable children and young persons to be used in test purchasing operations for the purpose of assessing whether the provisions in this Part, prohibiting under-age gambling, are being complied with. For example, a constable, enforcement officer or authorised person will not commit an offence under section 46 if, in the course of their duty, they invite a child or young person to gamble. Equally, a young person will not commit an offence under section 48 if he gambles at the request of a constable, enforcement officer or authorised officer who is acting in the course of his functions.