

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 7: Relevant offences

352. This Schedule lists the British offences which are “relevant offences” for the purposes of the Act (in England, Wales and Scotland). Under section 126 a relevant offence can also be a foreign offence which is equivalent to an offence listed in Schedule 7.
353. Under Part 5 of the Act, the Commission has power to take relevant offences into account when considering applications for operating and personal licences. Where an offence is a relevant offence, the Commission may consider such offences during the application process, even though they are spent within the terms of the Rehabilitation of Offenders Act 1974.
354. When sentencing a person convicted of a relevant offence, a court in Great Britain may order forfeiture of an operating or personal licence held by that person as part of the sentence. Where the licence held is a personal licence, the court may also disqualify the person from holding a personal licence for a period of up to 10 years, when it is sentencing for a relevant offence.
355. While the Commission may take account of a domestic, unspent conviction for any offence when considering an application for a licence under Part 5 of the Act, it is only those offences listed in this Schedule that attract the particular provisions regarding spent convictions, foreign offences, forfeiture and disqualification.

Part 6 – Personal Licences

356. This Part of the Act deals with personal licences, which certain individuals working in the gambling industry will be required to hold. The Commission will grant these licences, which are of indefinite duration. This regime is also relevant to operating licence holders, who will be required to use personnel who hold a personal licence. Unless the operator is a small-scale operator, the Commission is obliged to use its condition making powers to ensure that, for each operating licence, at least one person occupies a specified management office and holds a personal licence authorising them to perform the functions of the office.
357. [Part 6](#) operates on the basis that many of the provisions contained in Part 5 on operating licences are also relevant to personal licences. So, in relation to many of the procedural requirements which the Commission will need to undertake for the personal licensing regime, the sections in Part 5 are deemed to apply to personal licences under Part 6. Powers are taken for the Secretary of State to make necessary modifications to the Part 5 procedures. This approach has been adopted to avoid repetition of large amounts of material in both Parts 5 and 6. Where particular matters need a self-standing provision for personal licences, Part 6 provides accordingly.

Section 127: Nature of personal licence

358. A personal licence will authorise the holder to perform a specified management office or specified operational function, in connection with either the provision of facilities for gambling or a person who provides such facilities. The definitions of “management office” and “operational function” are set out in section 80.
359. By attaching conditions to operating licences under Part 5, the Commission will identify posts which must be held by a personal licence holder. These fall into the two groups of management offices and operational functions. Therefore, personal licences may need to be held by those directly providing the facilities for gambling, such as a croupier, or those who perform certain functions in a gambling operation but do not actually themselves provide the facilities, such as a compliance officer. Not everyone who works in the gambling industry will need a personal licence. It will be the task of the Commission, in granting operating licences, to determine which posts within any organisation need to be held by someone with a personal licence, and operators must employ people accordingly.

Section 128: Application of provisions of Part 5

360. The personal licensing system under Part 6 is not intended to be a free-standing regime in its own right, but instead sits alongside the regime for operating licences in Part 5. This section specifies that Part 6 is to be read as incorporating the features of the operating licence system, except where:
- it is modified by Part 6, or as necessary; or
 - it is amended by regulations made by the Secretary of State.
361. As a result, the basic procedures for application for, determination of, and review of licences will be the same for both operating and personal licences, except where this Part (or the natural context) demands otherwise. Personal licences may be subject to general or specific conditions imposed by the Commission, or conditions imposed by the Secretary of State in regulations.
362. Personal licences are different to the ten types of operating licence specified in section 65(2).

Section 129: Exemption for small scale operators

363. Part 5 requires that anyone holding an operating licence must have at least one person in a management office holding a personal licence. However, this section exempts small-scale operators from this requirement. This is because, in small operations, the operating licence will achieve the same purpose as a personal licence. For example, an independent on-course betting operator, employing only one or two people is likely to be the sort of operator who will be excused from holding a personal licence under this section.
364. The Secretary of State will define the meaning of “small scale operator” in particular by reference to the size and value of the business, and the number of employees (*subsection (2)*). *Subsection (4)* requires an operator, who benefits from this exemption, to produce his operating licence, as if it were a personal licence. Section 134 sets out the requirements for producing a personal licence.

Section 130: Application

365. The application procedures set by the Commission for personal licences will mirror those set out in Part 5, with suitable modifications. In particular, the licensing objectives, and the applicant’s suitability (including integrity and competence) will be taken into account by the Commission in deciding whether to grant a licence. This section makes it clear that the Commission can require the applicant’s employer

or intended employer to take part in the application process for a personal licence (*subsections (1) and (2)*). However, a person does not have to be employed in order to apply for a personal licence (*subsection (4)*). A person may acquire a licence prior to seeking employment in order, for example, to improve his chances of finding work.

Sections 131 & 135: Duration and Review

366. Subject to surrender, lapse, forfeiture or revocation, all personal licences will be of unlimited duration. The Commission does not have the power to introduce limited durations for personal licences, as it can for operating licences under Part 5.
367. The review procedures for individual licences contained in section 116 will apply to personal licences, with any appropriate modification. However, the power to review classes of licence is not available for personal licences.

Section 132: Fees

368. Personal licences will be subject to an application fee. Under this section the Secretary of State also has power to specify periodic fees to be paid by a personal licence holder to the Commission to maintain his licence. Unlike operating licence maintenance fees, these will not necessarily be annual fees. Instead, the Secretary of State may set the amount and the period for which the fees must be paid. Non-payment can lead to revocation of a personal licence. The maintenance fees will be used by the Commission to cover the costs of regulation.

Section 133: Multiple licences

369. An individual will not be allowed to hold more than one personal licence, but a personal licence can cover a number of management or operational functions. This allows one individual to conduct a number of functions relying upon one licence.

Section 134: Production of licence

370. This section gives police constables and Commission enforcement officers the power to require a personal licensee to produce his licence within a specified period. If the individual is carrying on a licensed activity, or is on licensed premises, then the licence must be produced immediately. This means that a personal licence holder will be required to keep the licence on his person when at work. This is in contrast to the operating licence holder, who, unless they are a “small scale operator” can only be required to produce the operating licence within a specified period. Failing to comply with these requirements will be an offence, attracting a fine not exceeding level 2 upon conviction.

Section 136: Disqualification

371. In addition to being able to order forfeiture of a personal licence as part of the sentence for a relevant offence, this section allows a court to order that the person be disqualified from holding a personal licence for a period of up to ten years. This can be instead of, or in addition to, an order for forfeiture. Relevant offences are defined under section 126 of the Act.

Sections 137 & 138: Notification requirements

372. Where the Commission suspends or revokes a personal licence, or a court orders forfeiture or disqualification, the operating licence holder is entitled to be notified by the Commission of what has happened to the personal licence. Equally, where an operating licence holder is aware that a personal licensee has been convicted of a relevant offence, he must inform the Commission of the fact.

Section 139: Breach of personal licence condition

373. This section makes it an offence for the holder of a personal licence to breach a condition of his licence, when acting in the course of (or in connection with) an activity authorised by an operating licence, which itself requires the personal licence to be held. The holder of the operating licence may also commit an offence, on the same set of facts, under Part 5, but this section provides that the individual personal licence holder can be proceeded against for the offence, irrespective of what steps are taken against the operator. The penalty for the personal licence holder is a maximum period of imprisonment in England or Wales of 51 weeks, and in Scotland of 6 months, and/or a fine not exceeding level 5.

Part 7: Operating and Personal Licences: Appeals

374. **Part 7** provides for the formation and operation of an independent tribunal to deal with gambling matters. It will deal with appeals against decisions taken by the Commission in respect of operating and personal licences (Parts 5 and 6 of the Act), as well as appeals in relation to a decision by the Commission to void a bet under Part 17.

Section 140: The Gambling Appeals Tribunal

375. This section provides for the establishment of the Gambling Appeals Tribunal. The requirements for the foundation and operation of the tribunal are set out in Schedule 8 to the Act. The purpose of the Tribunal is to hear appeals against the decisions of the Commission. The mechanism for appeals against the decisions of licensing authorities are set out in those Parts and Schedules of the Act which deal with the functions of such authorities e.g. Part 8 on premises licences and Part 9 on temporary use notices.

Section 141: Appeal to Tribunal

376. Rights of appeal are available to people affected by the decisions of the Commission. This section sets out the particular circumstances under which holders of, and applicants for, operating and personal licences will have a right of appeal against decisions of the Commission:
- A person who has applied for grant of an operating or personal licence, (or, when relevant, an existing licence holder who has applied for renewal of their licence), will have the right of appeal against the Commission's decision.
 - Where the Commission attach an individual condition to an operating or personal licence, the holder of the licence will have the right of appeal against the decision.
 - An operating licence holder that is a company limited by shares, which has applied for the operating licence to continue to have effect when a new controller takes over, can appeal against the Commission's determination.
 - The holder of an operating or personal licence who has applied to the Commission for variation of the licence by adding, amending or removing an authorised activity; amending another detail of the licence; or adding, amending or removing an individual condition attached to the licence, may appeal against the Commission's decision.
 - The holder of an operating or personal licence can appeal against a decision by the Commission that they are incapable of carrying on their licensed activities by reason of mental or physical incapacity.
 - The holder of an operating or personal licence can appeal against the Commission's use of its regulatory powers in connection with a review: that means that an appeal can be made against the issue of a warning to the licence holder; the variation or removal of a condition or exclusion, or attachment of a new condition or exclusion

to the licence; suspension or revocation of the licence; or imposition of a financial penalty.

Section 142: Timing

377. This section provides for a time limit within which an appeal must be commenced. An appeal must be made within one month of the date of decision or action that is to be appealed against. However, the Tribunal has discretion to permit an appeal to be started after this period.

Section 143: Appeal from Tribunal

378. This section provides that parties to an appeal before the Tribunal may appeal the Tribunal's decision to either the High Court, or, in Scotland, the Court of Session. The right only extends to appeals based on a point of law, and appeals may only be brought with the permission of the Tribunal or, if this is denied, the relevant appeal court. A higher court to which an appeal is brought under this section can affirm or quash the Tribunal's decision, or remit the matter back to the Tribunal for a re-determination. There is no power for the higher court to make a fresh determination based on the facts of the case.

Section 144: Powers of Tribunal

379. This section provides for the Tribunal's powers following an appeal. It allows the Tribunal to either uphold or overturn all of, or part of, the Commission's decision. The Tribunal can also substitute a decision or action taken by the Commission for another. In so doing, it is limited to taking only decisions or actions of a kind which the Commission is empowered to take. For example; if the Commission recommended that a financial penalty be imposed, the Tribunal could rule that a more appropriate decision would be to revoke the licence, or to issue a warning. But the Tribunal cannot order something which the Commission could not have ordered in the first place.
380. The Tribunal can also add to the Commission's decisions, i.e. it could uphold a decision to impose a financial penalty, and add that the licence should also be revoked. This section also allows for the Tribunal to refer a matter back to the Commission for further consideration, following which there will again be the right to appeal to the Tribunal under this Part from the new decision made by the Commission.
381. The Tribunal can also re-instate a lapsed or revoked licence following a successful appeal.
382. When determining an appeal, the Tribunal can take into account evidence that was not previously available to the Commission, and it must ensure that it considers any relevant code of practice issued by the Commission.

Section 145: Stay pending appeal

383. This section provides that a decision or action of the Commission, in relation to an operating or personal licence, will not have effect until either the period for bringing an appeal has expired, or if an appeal is in progress, until the appeal has been finally determined or abandoned. For example, if a financial penalty is imposed, and this is appealed against, the penalty cannot be enforced until the Tribunal decides, following that appeal, whether to uphold the decision to impose the penalty.
384. However, the Commission has the discretion to disapply this stay in a particular case if, for example, it considers that it is necessary that a particular licence is revoked or suspended with immediate effect. In such circumstances, the bringing of an appeal will not prevent the Commission's decision having effect, pending the outcome of the appeal. This power is provided so that the Commission can ensure fairness to players,

protection of children and the vulnerable, and the prevention of crime (the licensing objectives).

Section 146: Rules

385. This section gives the Lord Chancellor the power to make secondary legislation in relation to the regulation of appeals to the Tribunal, and the procedure of proceedings before the Tribunal. In particular, these rules may specify who can be a party to proceedings, including, specifically, for the purposes of an appeal against a decision of the Tribunal. *Paragraph 14* of Schedule 8 gives a non-exhaustive list of matters about which rules can be made. It includes:

- the manner and time in which appeals are instituted;
- determination of ongoing issues during the course of proceedings and other ancillary matters;
- issuing directions to parties;
- disclosure;
- joining the Commission to proceedings;
- suspension of Commission decisions;
- giving evidence and production of documents;
- administration of oaths to witnesses;
- public admission to proceedings;
- representation of parties;
- withdrawal of proceedings;
- recording and declaration of decisions;
- award of costs or expenses;
- variation or revocation of Tribunal decisions.

386. Rules made under this section may make it an offence not to comply with certain requirements.

Section 147: Fees

387. This section enables the Lord Chancellor, through regulations, to set the level of fees to be paid by a person when bringing an appeal to the Tribunal. Different fees for different types of case or circumstance may be charged, and the Tribunal may waive a fee where it deems it appropriate. The Lord Chancellor must consult the Secretary of State before exercising this power.

Section 148: Legal Assistance

388. This section enables the Lord Chancellor, through regulations, to establish a legal assistance scheme to provide financial assistance to appellants who might otherwise be unable to instigate an appeal to the Tribunal. Regulations may specify the kinds of assistance that may be provided and the classes of person by whom assistance may be provided. They may also include provision about applications to the Tribunal for assistance, including a requirement to provide information. The Lord Chancellor may state the criteria to be used by the Tribunal in determining eligibility for legal assistance, and may make provision for an applicant to appeal against a decision to refuse assistance. This section does not apply to Scotland, where different powers for affording legal assistance are available.

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

Section 149: Enforcement of Costs Orders

389. This section enables an award of costs made by the Tribunal to be enforced as though it was an order of the county court. The judgement creditor must apply to the county court for the district in which the debtor resides and payment may be enforced in accordance with Part V of the County Courts Act 1984. This includes the power to call in the bailiffs if necessary.