

# FINANCE ACT 2014

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## EXPLANATORY NOTES

### INTRODUCTION

#### *Sections 125–198 and Schedules 27–29: Betting and Gaming Duties*

#### **Details of the Sections and Schedules**

#### **Part 3 – General betting duty, pool betting duty and remote gaming duty**

#### *Chapter 1 General betting duty*

2. *Chapter 1* contains sections 125 to 142 which make provision for general betting duty.
3. Section 126 defines a general bet as one made by any person at a place in the United Kingdom where bets are taken, made with a bookmaker by a UK person, or, made with a bookmaker by a non-UK corporate body and the bookmaker knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Excluded bets are defined at section 187.
4. Section 127 describes how a bookmaker's profits are calculated for the purpose of charging duty on general bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.
5. Section 128 defines a spread bet, describes when such bets are to be treated as "financial spread bets" or "non-financial spread bets", and allows HM Revenue & Customs (HMRC) to provide by secondary legislation whether a bet is or is not to be treated as a financial spread bet.
6. Section 129 provides for general betting duty to be charged on financial spread bets that are made with a bookmaker who is in the United Kingdom. It further describes how a bookmaker's profits are calculated for the purpose of charging duty on financial spread bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.
7. Section 130 provides for general betting duty to be charged on non-financial spread bets that are made with a bookmaker who is in the United Kingdom. It further describes how a bookmaker's profits are calculated for the purpose of charging duty on non-financial spread bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.
8. Section 131 describes how a bookmaker's "ordinary profits" are calculated for the purpose of charging duty under sections 127, 129 and 130. These are stakes that fall due in a period minus amounts paid as winnings) in the accounting period.
9. Section 132 describes a bookmaker's "retained winnings profits" for the purpose of charging duty under sections 127, 129 and 130. These are amounts which have previously been transferred to the account of a person ("P") as winnings under section 140, but which P is subsequently prevented from withdrawing.

10. Section 133 provides that where a person (a “bet-broker”) provides facilities in the course of a business (other than a betting exchange under section 141) that allows a “bettor” to make bets with a “bet taker”, or acts as an agent for the bettor, the bet-broker will be treated as a bookmaker and will have the same liability as the bet taker to account for duty on those bets.
11. Section 134 defines a “Chapter 1 pool bet” as one that relates only to horse racing or dog racing, is made by any person at a place in the United Kingdom where bets are taken, is made with a bookmaker by a UK person, or, made with a bookmaker by a non-UK corporate body and the bookmaker knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Excluded bets are defined at section 187.
12. Subsections 134(5) and (6) divide Chapter 1 pool bets into “pooled stake” and “ordinary” bets and describe pooled stake Chapter 1 bets as bets where the bookmaker assigns some, or all, of the customers’ stake money to a fund from which winnings will be paid.
13. Section 135 describes how a bookmaker’s profits are calculated for the purpose of charging duty on Chapter 1 pool bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.
14. Section 136 describes how a bookmaker’s profits from pooled stake Chapter 1 bets are calculated for the purpose of charging duty under section 135. Subsection (1) describes the steps to be taken in order to calculate the profits. Subsection (2) describes how to calculate the “relevant proportion” if needed for step 2 in Subsection (1). Subsection (3) describes the conditions to be met before a top-up payment can be assigned to a fund and allows the Commissioners to publish a notice to determine the appropriate proportion in relation to a top up payment. Subsection (5) provides a definition of “relevant stake money”.
15. Section 137 describes how a bookmaker’s profits from ordinary Chapter 1 pool bets are calculated for the purpose of charging duty under section 135. These are stakes due in the accounting period minus winnings paid in an accounting period.
16. Section 138 describes a bookmaker’s profits on retained winnings on Chapter 1 pool bets for the purpose of charging duty under section 135. These are amounts which have previously been transferred to the account of a person (“P”) as winnings under section 140 and been included in the duty calculations at sections 136 or 137, but which P is subsequently prevented from withdrawing.
17. Section 139 makes provision about stake money for the purposes of Chapter 1 of this Part. Subsection (3) provides that where a person knows how much they stand to lose when they make a bet, the bookmaker must account for the stake when the bet is made regardless of whether the money has actually been paid; subsection (4) provides that where a bookmaker offers free or cut price bets, the full notional value of the stake will be deemed to be due to the bookmaker at the time the bet is made; subsection (5) provides that any payment that is made by the person who makes a bet shall be treated as stake money unless the bookmaker can prove otherwise; and subsection (6) prevents a bookmaker from making any deductions to reduce the value of dutiable stakes,
18. Section 140 makes provision about winnings for the purposes of Chapter 1 of this Part. Only winnings in the form of money can be taken into account when making duty calculations. Winnings will also include money that is held in an account for a person if that person is free to withdraw it on demand. Subsection (3) allows for HM Revenue & Customs to make regulations about when winnings will be deemed to have been paid.
19. Section 141 defines a betting exchange as a business that allows one person to make a bet with another person but does not provide premises for use by those persons, and

provides that general betting duty will be charged on any commissions from a UK person.

20. Section 142 provides that all general betting duty that is chargeable shall become due at the end of the accounting period, and describes the persons by whom the duty is to be paid and from whom it may be recovered.

### **Chapter 2 Pool betting duty**

21. **Chapter 2** contains sections 143 to 153 which make provision for pool betting.
22. Section 143 defines a Chapter 2 pool bet as one made by any person at a place in the United Kingdom where bets are taken, made with a bookmaker by a UK person, or, made with a bookmaker by a non-UK corporate body and the bookmaker knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Bets made for community benefit are described at section 153, and excluded bets are defined at section 187.
23. Subsections 143 (5) and (6) divide Chapter 2 pool bets into “pooled stake” and “ordinary” bets and describe pooled stake Chapter 2 bets as bets where the bookmaker assigns some, or all, of the customers’ stake money to a fund from which winnings will be paid.
24. Section 144 describes how a bookmaker’s profits are calculated for the purpose of charging duty on Chapter 2 pool bets and provides that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.
25. Section 145 describes how a bookmaker’s profits from pooled stake Chapter 2 bets are calculated for the purpose of charging duty under section 144. Subsection (1) describes the steps to be taken in order to calculate the profits. Subsection (2) describes how to calculate the “relevant proportion” if needed for step 2 in Subsection (1). Subsection (3) describes the conditions to be met before a top-up payment can be assigned to a fund and allows the Commissioners to publish a notice to determine the appropriate proportion in relation to a top up payment. Subsection (5) provides a definition of “relevant stake money”.
26. Section 146 describes how a bookmaker’s profits from ordinary Chapter 2 pool bets are calculated in an accounting period for the purpose of charging duty under section 144. These are stakes due in the accounting period minus expenditure on winnings in the accounting period.
27. Section 147 describes a bookmaker’s profits on retained winnings on Chapter 2 pool bets for the purpose of charging duty under section 144. These are amounts which have previously been transferred to the account of a person (“P”) as winnings under section 149 and been included in the duty calculations at sections 145 or 146, but which P is subsequently prevented from withdrawing.
28. Section 148 makes provision about stake money for the purposes of Chapter 2. Stake money is the aggregate of all amounts due in respect of a bet. Any payment that is made by the person who makes a bet shall be treated as stake money unless the bookmaker can prove otherwise. Subsections (6) and (7) make provision about the timing of when stakes fall due, subject to any regulations made under subsection (8).
29. Section 149 makes provision about winnings for the purposes of Chapter 2. Only winnings in the form of money can be taken into account when making duty calculations. Winnings will also include money that is held in an account for a person if that person is free to withdraw it on demand. Under subsection (3) no account is to be taken of winnings that relate to free bets, and subsection (4) allows for HM Revenue & Customs to make regulations about when winnings will be deemed to have been paid.

- 30. Section 150 provides that specified payments will be treated as bets.
- 31. Section 151 provides that all pool betting duty that is chargeable on Chapter 2 pool bets shall become due at the end of the accounting period, and describes the persons by whom the duty is to be paid and from whom it may be recovered.
- 32. Section 152 provides that notice must be given to HM Revenue & Customs when someone relies on the “community benefit” provisions at section 153 for an exemption from pool betting duty. Subsection (2) allows the Commissioners to publish a notice setting out how and when such notifications are to be made, and it allows the Commissioners to waive the requirement to notify in certain situations.
- 33. Section 153 describes the circumstances under which a pool bet may be regarded as a bet made “for community benefit”. Such bets are excluded from any liability to pool betting duty.

### **Chapter 3 Remote gaming duty**

- 34. **Chapter 3** contains sections 154 to 162 which make provision for remote gaming.
- 35. Section 154 defines “remote gaming”. Subsections (2) and (3) separate it into “pooled prize gaming” and “ordinary gaming” and describe pooled prize gaming as remote gaming where the provider assigns some, or all, of the customers’ gaming payment to a gaming prize fund from which prizes will be provided.
- 36. Section 155 provides that duty will be charged when a “chargeable person” participates in remote gaming. Subsection 2 defines a chargeable person as being any UK person, and any non-UK corporate body if the gaming provider knows that a UK person is a potential beneficiary, subject to exclusions and specified exemptions. Subsections (4) and (5) describe how a provider’s profits are calculated for the purpose of charging duty, and provide that if the calculation produces a negative amount it is to be treated as nil and the negative amount may be carried forward to reduce future profits.
- 37. Section 156 describes how a gaming provider’s profits from pooled prize gaming are calculated for the purpose of charging duty under section 155. Subsection (1) describes the steps to be taken in order to calculate the profits. Subsection (2) describes how to calculate the “relevant proportion” if needed for step 2 in Subsection (1). Subsection (3) describes the conditions to be met before a top-up payment can be assigned to a fund and allows the Commissioners to publish a notice to determine the appropriate proportion in relation to a top up payment. Subsection (5) provides a definition of “relevant gaming payment”.
- 38. Section 157 describes how a gaming provider’s profits from ordinary gaming are calculated for the purpose of charging duty under section 155. These are stakes due in the accounting period minus expenditure on winnings in the accounting period.
- 39. Section 158 describes a gaming provider’s profits on retained prizes for the purpose of charging duty under section 155. These are amounts which have previously been transferred to the account of a person (“P”) as winnings under section 160 and been included in the duty calculations at sections 156 or 157, but which P is subsequently prevented from withdrawing.
- 40. Section 159 provides that any amounts that are paid in connection with, or that entitle a UK person to participate in, remote gaming will be treated as a “gaming payment”. Payments will be treated being made no later than the time when a person begins to participate in the gaming, and, by means of secondary legislation, where a provider offers free or cut-price gaming, the Treasury may require full notional value to be taken into account.
- 41. Section 160 provides that the calculation of expenditure on prizes shall include the payment of winnings to a customer’s account, and also allows for the return of any part

of customers' gaming payments to be regarded as an expenditure on prizes. This section further provides valuation provisions in respect of non-money prizes.

42. Section 161 specifies the circumstances under which remote gaming duty will not apply and provides for additional exemptions to be granted, or existing exemptions to be amended through secondary legislation.
43. Section 162 describes the persons who are liable for the duty, and those from whom it may be recovered.

#### **Chapter 4 General**

44. **Chapter 4** contains sections 163 to 198 which make provision relating to administrative matters, security and enforcement, offences and evidence, reviews and appeals, definitions and supplementary matters.
45. Section 163 provides that the Commissioners are responsible for the collection and management of general betting duty, pool betting duty and remote gaming duty. Commissioners' regulations may: require the manner and time in which the duties are to be accounted for and paid, and; provide as appears necessary for the administration, enforcement of and protection of revenue from the duties.
46. Section 164 provides for registration for the duties. The Commissioners must keep registers, those carrying on relevant businesses or entering into relevant arrangements may not do so without registering and the Commissioners may make regulations about registration. Inter alia, these regulations may provide that: the Commissioners can, in specified circumstances require the appointment of a United Kingdom representative responsible for making returns and/ or discharging liability, and; for the registration of groups including that group members are jointly and severally liable for each others' liabilities for the duties.
47. Section 165 provides that an accounting period is three consecutive months or another period as provided for by Commissioners' regulations. The first day of an accounting period is as directed by the Commissioners. With the agreement of the Commissioners, a person may have accounting periods longer or shorter than three months and/ or periods may begin on days other than that specified in the Commissioners' direction on the matter. The Commissioners may make transitional arrangements by direction.
48. Section 166 provides for Commissioners' regulations about returns for the duties.
49. Section 167 provides for Commissioners' regulations about payment of the duties and that, subject to these regulations, section 12 of the Finance Act 1994 applies in relation to assessments to duty.
50. Section 168 provides for Commissioners' regulations about the provision and display of information and records by specified persons.
51. Section 169 provides for the Treasury to make regulations about when stake money and gaming payments are or are not treated as assigned to a stake fund or gaming prize fund. The Commissioners may, by notice, make provision about stake funds and gaming prize funds.
52. Section 170 provides that the Commissioners, may by notice, require a registrable person to give security or further security in the following circumstances: there is a serious risk that the duty will not be paid, or: the person is in a country or territory with which the United Kingdom does not have satisfactory arrangements for the enforcement of liabilities. The person has at least 30 days from the date of the notice to give security and the notice has no effect if it is under review or appeal.
53. Section 171 provides that the Commissioners may, by notice, require a registrable person to appoint a UK representative, who must be approved by them, in circumstances where the person is in a country or territory with which the United Kingdom does not

have satisfactory arrangements for the enforcement of liabilities. This notice may be combined with a notice under section 170, and the appointment of a representative may remove the need for a security under that section. The person has at least 30 days from the date of the notice to give security and the notice has no effect if it is under review or appeal.

54. Section 172 provides for the review and appeal of a Commissioners' notice requiring a person to give security or to appoint a UK representative.
55. Section 173 provides that a person who does not comply with a notice requiring them to give security or to appoint a UK representative is guilty of a summary offence.
56. Section 174 provides that the fraudulent evasion of general betting duty, pool betting duty or remote gaming duty is an offence and further provision is made in respect of penalties for such an offence.
57. Section 175 makes provision for specified failures and contraventions to attract penalties under the Finance Act 1994.
58. Section 176 makes provision for any interest that may be charged under the Finance Act 2009 on general betting duty, pool betting duty or remote gaming duty may be enforced as if it were an amount of duty.
59. Section 177 introduces Schedule 27 which sets out the process under which the Commission may direct the Gambling Commission to revoke a person's Remote Operating Licence. The process may be begun where the person: is required to register for a duty but has not done so; does not comply with conditions or requirements relating to registration; has not paid a duty, or; is required to give security but has not done so. The Commissioners' decision is subject to review and appeal; following the review and appeal procedures in Finance Act 1994. Provision is made for a Remote Operating Licence to be suspended as a stage before final revocation – a suspended licence may be reinstated if, for example, the Commissioners' decision to seek revocation is upheld at one stage in the appeal process but overturned at a subsequent stage. This Schedule further provides for the Gambling Commission to seek the Commissioners' consent before issuing a licence to the holder of a licence that has been suspended or revoked under the provisions of this Schedule.
60. Section 178 provides that an offence committed by a body corporate is also committed by any officer of that body corporate (except in certain circumstances).
61. Section 179 prevents HMRC officers from committing offences in the course of enforcing these duties under the instructions of the Commissioners.
62. Section 180 provides for the circumstances in which a Commissioners' certificate that something has or has not happened, constitutes evidence of that occurrence until the contrary is proved, and that copies of documents certified by the Commissioners as such are admissible in proceedings.
63. Section 181 provides that, in proceedings, on the question of whether relevant gambling facilities were capable of being used in or from the United Kingdom, the burden of proof lies on the person claiming that the facilities were not capable of being so used.
64. Section 182 provides for certain decisions to be treated as if they were appealable under FA 1994.
65. Sections 183 - 189 define terms used in this Part of the Act.
66. Section 190 provides an index to some of the expressions used in this Part.
67. Section 191 provides that if an amount of money (stake money, gaming payment etc.) is in a currency other than sterling it must be converted into sterling using the London

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closing exchange rate for the previous day. If such an exchange rate does not exist, the rate to be used is that as set out in a Commissioners' notice.

68. Section 193 provides that this Part does not cause anything unlawful to be lawful (except insofar as the Part makes specific provision).
69. Section 196 introduces Schedule 28 which contains consequential amendments to other Acts that flow from this new legislation.
70. Section 197 introduces Schedule 29 provides for transitional arrangements about the tax treatment of bets etc. that are made before 1 December 2014 but where receipts are not due, or winnings are not paid until after that date.
71. Section 198 makes provision for these changes to come into effect on the dates specified.