

EXPLANATORY MEMORANDUM TO

No. 2082

THE GAMBLING ACT 2005 (GAMING MACHINES) (DEFINITIONS) REGULATIONS 2007

1. This explanatory memorandum has been prepared by The Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 These Regulations assign a meaning to the terms “domestic computer” and “dual-use computer”, for the purpose of exempting them from the definition of a “gaming machine” under the Gambling Act 2005 (the Act).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These Regulations are the first made under section 235(3)(f) of the Act.

4. **Legislative Background**

4.1 The Act introduces a new system of regulation for gambling in Great Britain, which will replace the system of regulation set out in the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. The formal implementation date for the Gambling Act 2005 will be 1 September 2007. On this date, the majority of permissions issued under existing legislation will expire and be replaced by the new licences and permits prescribed by the Act.

4.2 Part 10 of the Act contains the main provisions relating to gaming machines. It sets out a definition of “gaming machine”, together with the offences relevant to illegal use or manufacture of a gaming machine. Manufacture, supply, maintenance, repair, installation and adaptation of a gaming machine, as well as making a gaming machine available for use, are all regulated activities under the Act, which require specific authorisation (such as an operating licence, premises licence or permit).

4.3 Section 235(1) of the Act defines a gaming machine as a machine that is designed or adapted for use by people to gamble (whether or not it can be used for other purposes). Subsection (3)(b) contains further detail about how the words “designed or adapted” are to be interpreted, particularly in relation to a computer.

4.4 Section 235(2) then sets out a number of exceptions to subsection (1) which ensure that the gaming machine definition does not capture certain specified types of

equipment. One such exception (in subsection (2)(a)) is made for domestic and dual-use computers, which are not to be treated as gaming machines by reason only of the fact that they can be used to participate in remote gambling. These regulations give full effect to the exemption in subsection 2(a) by defining a “domestic computer” and a “dual-use computer”.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The regulation of gaming machines under the Gambling Act 2005 is an entirely new regime. It is due to commence on 1st September 2007.

7.2 Subsection 3(f) of the Act requires the Secretary of State to make regulations to define the meaning of ‘domestic’ and ‘dual-use’ computer. The purpose of such regulations is to exempt internet terminals and home computer equipment, which are not dedicated or specifically configured for gambling activities, from the definition of gaming machine.

7.3 The mere fact that a dual-use or domestic computer can be used to access gambling facilities should not, on its own, render the computer a gaming machine. However, as stated in the Explanatory Notes to the Act, the Government still considers that someone offering the public access to the internet, via terminals, and configuring them to encourage gambling is making a gaming machine available for use (unless other exceptions apply).

7.4 In May 2007, the Department undertook a three month public consultation exercise with draft Regulations which:-

(i) set out the relevant criteria for determining whether a machine is a domestic or dual-use computer (which may refer to matters such as the location of the computer, the purposes for which it is used, the circumstances in which it is used, the software installed on the computer, or any other matter); and

(ii) thereby determined which machines would be excluded from the definition of a gaming machine for the purposes of the 2005 Act, under the domestic and dual use computer exceptions.

7.5 The proposals in the consultation draft Regulations were:-

- That a computer is a dual-use computer if it meets both of the following conditions:

- (i) that it is capable of being used for a purpose that is not related to gambling; and
 - (ii) it is not knowingly adapted or presented by the owner of the computer in such a way as to facilitate, or to draw attention to the possibility of, its use for gambling.
- That there is an exception to condition (ii) where a computer is restricted to ‘private use’.
 - That there is an exception to condition (ii) where a computer is being adapted, repaired or maintained.
 - That this exception applies where the computer is being used in order to be repaired, adapted or maintained, but only if:
 - The computer is otherwise for ‘private use’; and
 - The purpose of the adaptation, repair or maintenance is not to enable the computer to be used for gambling.
 - That there is no exception to condition (ii) where a computer is being manufactured, supplied or installed.
 - That ‘private use’ means use by the owner or, if used by other persons, this is with the owner’s permission, but not under a commercial arrangement.
 - That ‘commercial arrangement’ has a wide meaning and includes any arrangement in which the owner receives payment or benefit in connection with making the computer available for use.
 - That ‘commercial arrangement’ does not include an employment arrangement between an employer and his employee, but does include situations where an employer makes a computer available to employees for mainly recreational purposes, and
 - That domestic computers are computers that are capable of being used for a purpose that is not related to gambling, are located in a private dwelling and used only on domestic occasions.

7.6 In response to the consultation exercise, 16 responses were received from a wide range of interested stakeholders (including trade associations, faith and representative groups and business organisations). All respondents wholly or broadly supported the approach taken to define dual-use and domestic computers set out in paragraph 7.5. Respondents believed this was a sensible and flexible approach to exempt the majority of internet terminals and home computer equipment, which are not dedicated or specifically configured for gambling activities, from the definition of gaming machine. A summary of all the comments received and the Government’s responses are attached at **Annex A**. The Government also consulted the Gambling Commission who are content with the approach adopted by the Government.

7.7 However, three main issues did emerge in relation to (1) clarifying the meaning of ‘presenting’, particularly regarding promotional advertising material located near a computer, (2) dealing with advertising ‘pop-ups’ and gambling advertising over which the owner has no control, and (3) the definition of “*commercial arrangement*” being too narrow to prevent some operators in specified circumstances from providing direct access to remote gambling sites within premises that are licensed for gambling purposes.

- 7.8 On the first issue, the Government understands the concerns about the meaning and practical effect of a computer being “*presented in such a way as to facilitate or to draw attention to the possibility of its use for gambling*”. In response, the Government is still of the view that this will be a question of fact to be determined on the facts of each case, but is in discussions with the Gambling Commission about the possible benefits of issuing general guidance on what constitutes adapting or presenting a computer to encourage gambling. We will keep this matter under review generally. The Government also wants to prevent these Regulations from straying into the area of regulating the general advertising of gambling.
- 7.9 On the second issue, the Government has decided to revise the definition of a dual-use computer (see revised regulation 2(1)(b)) to clarify that it must not be adapted or presented etc ‘*by or on behalf of the owner or a person connected with the owner.*’ This amendment is to deal with two specific issues raised in consultation that are likely to be out of the owner’s control - i) pop-ups or other forms of promotional advertising that may appear on a computer and ii) internet gambling related material/advertising that is left next to a computer without the owner’s knowledge. The Government wishes to prevent an internet ‘pop-up’ that appears on a dual-use computer without the owner’s knowledge and/or outside his control, from causing the computer to become a gaming machine. The Government has also sought to clarify whose knowledge is relevant to the definition of ‘knowingly adapting or presenting’.
- 7.10 On the third issue of defining a ‘*commercial arrangement*’, following consultation with the Gambling Commission, the Government considers that there is a need to tighten the definition to capture the scenario where computers owned by company ‘A’ have dedicated links to the gambling website of company ‘B’, and companies ‘A’ and ‘B’ are in the same group of companies, or one is a subsidiary of the other, and company ‘A’ does not benefit from the arrangement. The definition of ‘commercial arrangement’ needs to capture this circumstance. This is because otherwise it could allow some gambling premises such as casinos to circumvent the regulations and have computers with dedicated links to the websites of parent or sister companies, thereby earning revenue for the group but not the actual owner of the computer. This would also enable such operators to circumvent the limit on their gaming machine entitlement.
- 7.11 As such, the Government has decided to amend the definition of “commercial arrangement” (see revised regulation 1(2) and 1(3)) to include any arrangement in which a person connected to the owner makes or receives a benefit etc. The revised regulation provides that a person is connected with the owner if (a) he/she is one of a list of relations, (b) both the owner and the person are companies and one is the subsidiary of the other or they are both subsidiaries of the same company, or (c) if the person and the owner are carrying on business in common with a view to a profit (which includes partnerships).
- 7.12 In light of the Government’s approach to defining dual-use and domestic computers, it is anticipated that the types of computers that will satisfy the

definitions in the regulations (assuming that they are all capable of being used for a purpose not related to gambling and subject to the relevant exceptions in the regulations) include work computers in the workplace; computers owned by self-employed people; personal computers (PCs or laptops); digital televisions that are also computers; open access computers in internet cafes; computers in libraries and schools; and computers (subject to the relevant exceptions) that are being repaired, adapted or maintained and computers that are being manufactured, installed or supplied, so long as they fulfil the definition in the regulations and not adapted or presented to encourage gambling.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum. Annex A to this Memorandum contains a summary of the responses to public consultation on these Regulations.

9. Contact

9.1 Donald Sproson at the Department for Culture, Media and Sport (Tel: 0207 211 6535 or e-mail: donald.sproson@culture.gsi.gov.uk) can answer any queries regarding the instrument.

ANNEX A TO EXPLANATORY MEMORANDUM

SUMMARY OF RESPONSES TO “GAMBLING ACT 2005 – DEFINITION OF DUAL-USE AND DOMESTIC COMPUTERS – CONSULTATION PAPER”

Contents

• Summary of consultee responses and Government response to Questions 1-11 and on other matters

• Appendix – List of respondents

NB: Please note that where the document refers to a computer being ‘*adapted or presented to encourage gambling*’, for ease of reference this is shorthand for the complete wording in revised regulation 2(1)(b), which is ‘not knowingly adapted or presented... in such a way as to facilitate, or draw attention to the possibility of, its use for gambling..’.

Question 1: Do you agree with the definition of a dual-use computer in regulation 2? If not, please explain why.

Summary of consultee responses

All respondents wholly or broadly support the purpose of Regulation 2 to define a dual-use computer with reference to (i) being capable of being used for a purpose that is not related to gambling; and (ii) not knowingly adapted or presented in such a way as to facilitate, or draw attention to the possibility of, its use for gambling. They believe it is a sensible and flexible approach to exempt the majority of internet terminals which are not dedicated or specifically configured for gambling activities, and home computer equipment, from the definition of gaming machine. However, the following issues were raised:-

- (i) whether the words “*or presented in such a way as to facilitate*” are sufficiently broad, and suggest that consideration be given to incorporating reference to the concept of advertising under section 327 of the Gambling Act, which includes reference to doing anything to encourage one or more persons to take advantage of facilities for gambling, or, with a view to increasing the use of facilities for gambling, brings them or information about them to a person’s attention (which includes entering into an arrangement by way of sponsorship or branding);
- (ii) concern that the definition is too wide and could have unforeseen and negative consequences. Suggest alternative wording like “*not knowingly adapted or presented in such a way as to have as its main purpose or one of its main purposes the facilitation of its use for gambling*”;
- (iii) one respondent on behalf of the betting industry suggested an exception to the definition. They commented that section 235(2)(c) of the 2005 Act, (which exempts from the definition of gaming machine betting machines for future, real events), does not preclude the use of internet terminals. However, because these internet terminals would be pointed at betting websites that offer other forms of gambling, they would not satisfy the proposed dual-use definition and consequently be regarded as gaming machines. To overcome this an exception should be provided by stating in the Regulations that “*Licensed betting premises are allowed to operate internet linked computers which comply with Section 235 (2)(c) of the 2005 Act, irrespective of whether they are or are not considered to be dual-use computers*”

Government response

The Government is pleased that all respondents are either wholly or broadly in support of the definition of a dual-use computer as set out in Regulation 2 and has considered carefully the issues raised.

On the first point, the Government has concluded that it would not be appropriate at this stage to incorporate concepts from section 327 on advertising into the definition of a dual-use computer. This is because it considers the words are sufficiently broad to address the policy aims set out in the consultation. In addition, the Government considers that a dual-use computer should be easily recognizable as such, and that the provisions in section 327 (which are concerned with the wider activities of individuals in relation to advertising) would undermine this approach.

On the second point, the Government is not convinced that the definition will have unforeseen and negative consequences. The respondent did not explain precisely what they meant by this or the concept of 'main purpose', but in the Government's view the concept of a 'main purpose' would (a) introduce too much uncertainty, and (b) create a potential loophole in respect of the overall purpose of the regulations.

On the third point, about providing an exception on the basis of Section 235(2)(c), the Government is of the view that this would not be acceptable in terms of what the definition of dual-use computer is trying to achieve in regulatory terms. Section 235(2)(c) was only ever intended to prevent equipment, such as automated betting terminals, through which people place bets on future real events, from being counted as gaming machines. It was not designed to allow bookmakers to offer computers dedicated to other forms of gambling on the internet. If bookmakers wish to use a computer linked to the internet to take advantage of the Section 235(2)(c) exemption, they must ensure that the computer does not allow access to other forms of gambling. If bookmakers use an internet terminal 'pointed to' their website, and that site enables persons to undertake other forms of gambling (in addition to betting on future real events), the Government takes the view that this fails the test of the definition of a dual-use computer in regulation 2(b) in that the computer will be adapted in such a way as to facilitate its use for gambling. It should also be noted that depending on the type of premises, a licensed operator is entitled to a certain type and number of gaming machines. If the bookmaker adapts a computer in such a way to facilitate its use for gambling, it will be counted towards the number of gaming machines allowed under the Gambling Act 2005.

The Government has decided to revise the definition of a dual-use computer in two areas. First, refer to the Government's response to Question 2 on advertising and promotional material. A revised regulation 2(1)(b) clarifies that a dual-use computer must not be adapted or presented etc *'by or on behalf of the owner or person connected with the owner'*. Second, refer to the Government response to Question 5 on tightening the definition of a commercial arrangement in revised regulation 1(3) to include any arrangement in which a person connected to the owner makes or receives a benefit etc.

Question 2: Do you agree with the Department's approach to promotional or advertising material on or near dual-use computers? If not, please explain why?

Summary of consultee responses

The majority of respondents wholly or broadly support the Government's approach for being pragmatic and sensible, and agree that Regulations under section 235 of the Gambling Act do not and should not seek to regulate the general advertising of gambling. Whether a computer is adapted or presented to encourage gambling is ultimately a question of fact to be determined on the facts of each case, and the proposed wording is sufficient and strikes the right balance in covering material that somehow encourages a computer to be used for internet gambling, and that may be physically attached to a computer, or sufficiently near to where the computer is located. Respondents acknowledged that if required the Government does have a separate power under section 238 of the Gambling Act to make regulations controlling the advertising of gambling.

However, a number of points of concern were raised:

- (i) request for clarification on the positioning of internet promotional material and what is considered 'sufficiently near';
- (ii) bookmakers who wish to provide dual-use computers would struggle with DCMS' conditions. Betting shops have a limited floor area and it would not be practicable to create a 'cordon

- (iii) sanitaire' around a computer so that there was no promotional information nearby; whether "presented to encourage gambling" is sufficiently specific. Suggest that the word "encourage" be replaced with "permit"; and
- (iv) what is the position of 'pop-ups' and other online advertising material over which owners of computers may not have any control. Could they cause the computer to fall foul of regulations?

Government response

The Government is pleased that its overall approach was supported by the majority of respondents, but at the same time understands the concerns raised in relation to the meaning and the practical effect of a computer being '*knowingly presented in such a way as to facilitate, or to draw attention to the possibility of its use for gambling.*' The Government response to the issues raised is as follows:

(i) although it will be a question of fact in each case whether a computer is adapted or presented to encourage gambling, the Government will ask the Gambling Commission to consider whether it would be helpful to issue general guidance on what it considers would constitute adapting or presenting a computer to encourage gambling;

(ii) the Government understand the concern of bookmakers but to comply with the regulations bookmakers will simply have to take a view and remove any material that presents or promotes the computer for gambling. In any event, any plans of bookmakers will be fail the definition of a dual-use computer if they have direct links to their gambling websites;

(iii) the phrase 'adapted or presented to encourage gambling' was only used as short-hand throughout the consultation document. This was highlighted at paragraph 3.8 of the consultation document. The draft regulations were published with the consultation and the revised wording may be seen in full in regulation 2;

(iv) the Government has considered the position of 'pop-ups' and other online advertising material over which owners of computers may not have any control, and concludes that these may have the unintended effect of causing the computer to be presented or adapted to encourage gambling. The Government has therefore revised the definition of a dual-use computer by providing that it must not be knowingly adapted or presented '*by or on behalf of the owner or person connected with the owner*'. A person connected with the owner is defined in revised regulation 1(3), and is either a connected company (if the owner is also a company), carrying on a business in common with the owner with a view to profit, or a spouse, civil partner, sibling, ancestor or descendant of the owner. A company will be connected to the company that owns a computer if one is a subsidiary of the other, or they are both subsidiaries of the same company. The effect of this amendment is that if a pop-up advertising online gambling appears on the screen whilst in use, and the owner or person connected with the owner is not the source of the advertisement, the computer will still be a dual-use computer. The same can be said for material promoting online gambling that is not intentionally placed on or near the computer by or on behalf of the owner or connected person.

The Government has also considered the following points:-

- (i) should the regulations specifically ban material promoting online gambling from being on the same premises as the computer in question?;
- (ii) whether to include and define the concept of advertising and promotional material in the Regulations?;
- (iii) whether a computer should be treated as being presented to encourage gambling only if the promotional material is visible to the user of the computer?; and
- (iv) to issue general guidance on the issue and review the position at a later date.

The Government concluded the following:

- (i) whilst an outright ban on material promoting internet gambling on premises with dual-use computers would create greater certainty, the Government considers that this would be a disproportionate step in light of its policy aims. It will be a question of fact whether a

computer is adapted or presented to encourage gambling, and persons and businesses that make internet terminals available for use are capable of taking a view on the issue without being subject to a complete ban;

- (ii) as mentioned above, the Government has concluded that it would not be appropriate at this stage to incorporate concepts from section 327 on advertising into the definition of a dual-use computer (see Government response to question 1);
- (iii) the concept of what is visible to the person using the computer would not capture cases where owners facilitate, or draw attention to, the computer's use for gambling in another part of the premises that is hidden from view. This would undermine the Government's policy that persons should not be encouraged to gamble on dual-use computers; and
- (iv) see comment above on Gambling Commission guidance.

Question 3: Do you agree with the Department's approach towards digital televisions that are also computers? If not, please explain why.

Summary of consultee responses

There is overall approval of the Government's approach towards digital televisions that are also computers. It is accepted that digital televisions that are not computers are already exempt from the definition of gaming machine under s235(2)(b). However, a number of issues were raised:-

- i) that the test for digital televisions that are also computers should be equivalent to that which has been applied to Fixed Odds Betting Terminals (FOBTs), i.e. if a machine or game appears to be a gaming machine to a consumer it should be seen as a gaming machine;
- ii) that the Department's approach towards digital televisions that are also computers is comparable to licensed gambling operators offering direct access to their remote gambling sites within premises which are licensed for gambling purposes. The latter appears to be ruled out and would urge Government to reconsider and allow, for instance, a licensed betting office operator to provide computers that offer direct links to an internet betting operation that is in the same ownership and which is also licensed by the Gambling Commission; and
- iii) dual-use computers cannot promote interactive gambling services and the same should be true for digital televisions that can be interactive. It is inconsistent to allow them to be directly promoted from the broadcast channel or the operating menu screens.

Government response

The Government is pleased that its overall approach has met with approval from respondents. In response to the points raised:

- (i) the comparison with FOBTs is not a relevant one and is rejected. FOBTs are category B2 gaming machines, and are only available in casinos and betting shops and subject to mandatory and default conditions. The crucial issue is whether or not a digital television that is also a computer satisfies the 'adaptation or presentation' test. If it fails, then it is a gaming machine;
- (ii) please refer to the Government's response to question 1; and
- (iii) the power to make these regulations extends only to 'computers', and does not extend to digital televisions that are not also computers – these are already exempted from the definition of a gaming machine by primary legislation (see section 235(2)(b) of the Act). Televisions that are also computers are, of course, covered by these regulations.

The Government will therefore be adopting the approach towards digital televisions that are also computers as set out in the consultation paper.

Question 4: Do You agree with the Department's proposal that there should not be an exception to the definition in regulation 2 for computers that are supplied, installed or manufactured?

Summary of consultee responses

The Government is pleased that all respondents agree with the proposed definition in regulation 2 for computers that are supplied, installed or manufactured.

Government response

The Government does not intend to make any further changes to regulation 2 for computers that are supplied, installed or manufactured.

Question 5: Do you agree that the regulations meet the Department's intentions that computers in businesses that make computers available for use should not be dual-use computers if they are adapted or presented to encourage gambling and used by others under a commercial arrangement? If not, please explain why?

Summary of consultee responses

There is overall approval of the approach taken by the Government in respect of computers adapted or presented to encourage gambling and used by others under a commercial arrangement. However, a number of issues were raised:-

- (i) whether the definition covers the following scenario: where computers owned by 'A' have dedicated gambling links to the gambling website of 'B', and there is no connection between A and B, and A does not benefit from the arrangement;
- (ii) whether the definition covers the following scenario: where computers owned by company 'A' have dedicated links to the gambling website of company 'B', and A and B are in the same group of companies, or one is a subsidiary to the other, and A does not benefit from the arrangement.
- (iii) the definition is too restrictive and goes further than present arrangements allowed under guidance and with the agreement of the Gaming Board for Great Britain (now the Gambling Commission) in 2005 which allow the provision of computers in casinos with a direct link to an operator's gambling website;
- (iv) the definition of commercial arrangement would require operators to allow customers unrestricted access to the internet, including access to undesirable sites such as those providing illegal gaming, pornography and terrorism; and
- (v) the regulations would deny the industry legitimate commercial opportunity because they prevent casinos from offering terminals on their premises which are linked to remote gaming sites, without them counting towards their total number of gaming machines, and deny the Government the opportunity of conducting controlled research on on-line gambling in a venue over which it has control.

Government response

The Government is pleased that its approach to defining the meaning of 'commercial arrangement' has been met with overall approval. The Government acknowledges the concerns raised and in response:-

- (i) the Government accepts that this scenario would not be caught by the definition of a 'commercial arrangement' if the owner did not in some way make or receive some benefit under the arrangement. However, the Government is currently of the view that this is highly unlikely to occur in practice and some form of benefit will always exist in such circumstances

(and thus be captured by the Regulations). The Government does not consider that there is any incentive for a business to configure its computers so they have dedicated links to gambling websites, without there being some kind of benefit for that business. The Government will monitor the position and review it if necessary;

- (ii) The Government accepts that this scenario would not have been caught by the proposed definition of a commercial arrangement and has therefore decided to amend the definition to capture it. The Government does wish to capture situations in which, although the owner of the computer does not draw any benefit from setting up links to a gambling website, he may nonetheless set up such links to benefit an associated company. The definition of a 'commercial arrangement' in regulation 1(2) has therefore been amended to include any arrangement in which a person connected to the owner makes or receives a benefit etc.. Regulation 1(3) provides that a person is connected with the owner if he is one of a list of relations (see paragraph (3)(b)), carrying on a business in common with the owner with a view to profit, or, if both the owner and the person are companies, one is the subsidiary of the other, or they are both subsidiaries of the same company.
- (iii) the Government rejects the argument that gambling premises such as casinos should be entitled to offer computers with dedicated links to gambling websites without such computers being treated as gaming machines. One of the aims of the Regulations is to ensure that someone offering the public access to the internet, via computer terminals, and configuring them to encourage gambling, is treated as making a gaming machine available for use (unless any other exception applies, such as betting on real events) and the machine will be subject to the regulatory requirements imposed on gaming machines. This is also intended to ensure that operators do not circumvent the limits on numbers and other restrictions relating to gaming machines by providing access to machines that have characteristics of gaming machines, under the guise of dual-use computers;
- (iv) the argument is not accepted that the definition of a commercial arrangement would allow customers unrestricted access to unsuitable sites. The implication is that the definition will somehow allow exposure to these sites, which would not apply in other circumstances. Exposure to undesirable sites can happen in many circumstances where computers have a link to the internet. Many computer programmes now have filters to protect the consumer which block, guard and warn before any such site is viewed. The Government would expect dual-use computers located at gambling premises to have similar protections; and
- (v) with regards to the first point, see the Government response to issue (iii) above. In relation to the second point, the Gambling Commission is already undertaking research into gambling (through prevalence studies) and the Government does not accept that research will be impeded if gambling premises are prevented from making available for use computers with dedicated gambling links.

Question 6: Do you agree with the Department's proposal that there should be an exception to regulation 2(b) (the requirement for a dual-use computer not to be adapted or presented to encourage gambling) for computers that are made available for use, as long as they are only for private use? If not, please explain why?

Summary of consultee responses

All responses agree that the Government's proposal to have an exception to Regulation 2(b) in respect of private use is sensible. A few points of clarification were raised:-

- (i) the recreational use made of the computer by an employee may not involve gambling, even though the computer is deemed to be "adapted or presented to encourage gambling". Suggest that such a computer should only be considered a gaming machine if it contained direct links to gambling websites; and
- (ii) clarification is required regarding the meaning of "private use". Current drafting refers to persons using a computer with the owner's permission without reference to whether such permission is expressed or implied. Believe that clarity would be achieved by referring to

concepts in Part 14 of the Gambling Act.

Government response

The Government is pleased that its approach to the exception to Regulation 2(b) where a computer is being made available for use, and where that use is restricted, or intended to be restricted to private use, is accepted. The Government is satisfied that the regulation as currently drafted is clear for the purpose intended and avoids any confusion, and does not need to be amended by reference to direct links to gambling websites or linked to Part 14 of the Gambling Act.

On the first point, the Government does not see that there is any need to restrict the requirement that a dual-use computer should not be adapted or presented to encourage gambling, where that computer is provided by an employer for recreational purposes.

On the second point, the Government does not intend to specify the type of permission that is required, and is content that, in the absence of any express provision, and for the purpose of the Regulations, such permission may be either express or implied. It is worth noting that the Government has looked at Part 14 of the Act, but in relation to defining a domestic computer. In that respect, the Government has drawn from Schedule 15 to the Act (which defines private betting and gaming for the purposes of Part 14 of the Act) and utilised the provisions in paragraph 2(1) of Schedule 15, which provide that gaming is domestic if it takes place in a private dwelling, and on a domestic occasion. These concepts have been imported into the definition of 'domestic computer' in Regulation 4.

The Government therefore does not intend to make any further changes to the exception to regulation 2(b) in respect of computers that are made available for use, where this is 'private use'.

Question 7: Do you agree with the Department's proposal that there should be an exception to regulation 2(b) for computers that are maintained, adapted, or repaired? If not, please explain why.

Summary of consultee responses

All respondents agree with the proposed exception to regulation 2(b) for computers that are maintained, adapted or repaired.

Government response

The Government does not intend to make any further changes to regulation 2(b) for computers that are maintained, adapted or repaired.

Question 8: Do you agree that such computers that are adapted, repaired or maintained may still be adapted or presented to encourage gambling, as long as they would otherwise be for 'private use', and the purpose of the adaptation, repair or maintenance is not to enable the computer to be used for gambling? If not, please explain why?

Summary of consultee responses

All respondents agree that the purpose behind the exception to regulation 2(b) is sensible in relation to repair, adaptation or maintenance of a computer and its 'private use'. They also support the conditions that would be applied to this exception - (i) the computer is being repaired, adapted or maintained; (ii) at that time, its use is connected to the repair, adaptation or maintenance; (iii) other than whilst it is being adapted, repaired or maintained, the computer would be only for private use; and (iv) the main purpose of the adaptation, repair or maintenance must not be to enable the computer to be used for gambling. However, concern was raised about the meaning of 'private use' being too broad for this purpose and to avoid confusion the definition of 'private use' should be linked to the concept of private use in Part 14 of the Gambling Act 2005.

Government response

The Government is pleased that its definition of 'private use' as set out in the Regulations is considered a sensible approach for the purpose intended and avoids any confusion. For the same reason set out in relation to Question 6 above, the Government does not intend to make a link to Part 14 of the Gambling

Act. The Government therefore does not intend to make any further changes to the exception to regulation 2(b) for computers that are adapted, repaired or maintained.

Question 9: Do you believe there are other circumstances where an exception from the definition in regulation 2 should be made for a computer, but no exception applies under the proposed regulations? If so, please provide details and explain why the computer should not be treated as a gaming machine.

Summary of consultee responses

No respondent identified any other circumstance which would justify an exception from the definition of a dual-use computer in regulation 2.

Government response

The Government does not intend to make any further exceptions to regulation 2.

Question 10: Do you believe there are circumstances in which a computer will satisfy the definition of dual-use computer, but should be treated as a gaming machine? If so, please give details and explain why the relevant computer should be treated as a gaming machine.

Summary of consultee responses

The majority of responses believe that the proposed regulations are sufficient.

Government response

The Government does not intend to make any further changes to the definition of a dual-use computer in regulation 2.

Question 11: Do you agree with the Department's approach for defining the criteria for domestic computers? If not, please explain why.

Summary of consultee responses

All the respondents except one agree with the Government's proposed criteria for defining domestic computers.

One respondent argued that paragraph 3.36(b) of the consultation document lists one of the conditions as being that the computer is 'located in a private dwelling'. This raises a practical difficulty given the increasing use of laptop computers and similar where the users access the internet by wireless technology. It appears that a computer of this kind would be 'domestic' until it was carried out of the home or other private dwelling and would then (see paragraph 3.39 of the consultation document) automatically become a 'dual-use computer'. It is suggested that the condition on the regulations should be modified so that a computer of this kind should continue to be classed as 'domestic' as long as it is purely for private use irrespective of whether it is physically 'in a private dwelling'.

Government response

The Government does not accept that the Regulations should be amended in the way suggested so a laptop computer continues to be classed as 'domestic' irrespective of whether it is physically in a private dwelling. This is because the purpose of the Regulations is to exempt domestic and dual-use computers from the definition of a gaming machine and whether a computer is referred to as a domestic or a dual-use computer, is immaterial to achieving that overall purpose. A laptop within a private dwelling that is not adapted or presented to encourage gambling will also meet the definition of a dual-use computer, without the owner being required to take any specific action. The Government expects that most laptops within private dwellings that *are* adapted or presented to encourage gambling are still likely to be dual-use computers once they are taken out of those dwellings because they are likely to fall within the exception for private use. The Government is of the view that if a laptop that is adapted or presented to encourage

gambling, is made available to others under a commercial arrangement; it should be treated as a gaming machine, regardless of whether it was originally in a private dwelling.

Comments on other aspects of the consultation document

Summary of consultee responses

A number of points were made:-

- (i) irrespective of the potential restrictions set out in these proposed regulations in respect of providing internet access, customers will still be able to access all services using their own mobile phones etc, especially as technology progresses; and
- (ii) because it is a fast changing environment, as technology advances, a number of possible loopholes may develop which could increase the number of machines that can be used for gambling and gaming machines. Who will monitor whether the use of a machine for gambling is being encouraged or not? Will the position be reviewed again in the near future?

Government response

(i) Mobile phones and other communication devices are exempt from the definition of gaming machine under section 235(2)(b) of the Gambling Act 2005. Under the Gambling Act 2005.

(ii) It is the responsibility of the Gambling Commission to ensure that gaming machines are appropriately used within the legal entitlements provided by the Gambling Act. The Commission is also responsible for compliance by machine manufacturers and suppliers, and will advise the Government on possible future changes to these Regulations to take account of technological changes.

Appendix

List of Respondents

1. Association of British Bookmakers
2. BACTA
3. Bingo Association
4. British Casino Association
5. Channel 4
6. Channel Five
7. Federation of Small Businesses
8. Gala Coral Group
9. Gambling Commission
10. ITV plc
11. Methodist Church
12. Museums, Libraries and Archives Council
13. Professor Jim Orford
14. Remote Gambling Association
15. Riley's UK
16. Salvation Army

Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007 – Regulatory Impact Assessment

1. Title

- 1.1. Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007

2. Purpose and intended effect

(a) Objective

- 2.1. Under Section 235(3)(f) of the Gambling Act 2005, the Secretary of State is required to make regulations to assign the meaning of ‘domestic computer’ and ‘dual-use computer’; the purpose of which is to ensure that such computers (which are not dedicated or specifically configured for gambling activities) are not treated as gaming machines, unless they are used by commercial enterprises as a means to enable persons to gamble and sidestep the gambling regulatory regime.
- 2.2. Subsection (4) indicates matters by reference to which the regulations may be classified:
- the location of a computer;
 - the purposes for which a computer is used;
 - the circumstances in which a computer is used;
 - the software installed on a computer; or
 - any other matter.
- 2.3. These Regulations fulfil the Secretary of State’s obligation to define the meaning of domestic and dual-use computers for the purposes of section 235(2) of the Act.

(b) Background

- 2.4. The full background to the regulation of gaming machines under the Act was set out in the Regulatory Impact Assessment (RIA) that was published to accompany the Act in April 2005. The earlier RIA charted the development of policy from the current system of regulation of gaming machines contained in the Gambling Act 2005, which is based around four categories of gaming machine defined according to their stake and prize limits. It also contained the likely impact of the regulatory measures included in the Act.
- 2.5. The Government first set out its substantive proposals for defining the new categories of gaming machine in its response to the First Report of the Joint Committee on the Draft Gambling Bill published in June 2004 (Cm 6253). These proposals were reflected in the RIA for the Gambling Act.
- 2.6. Section 235 of the Act (Gaming machine) provides a definition of a gaming machine for the Act. It is significantly broader than the definition of gaming

machine in section 26 of the Gaming Act 1968, which the Act repeals. The new definition accommodates developments in technology that have taken place since the 1968 Act. It also covers a wide range of gambling activities which can take place on a machine, and includes betting on virtual events.

- 2.7. Subsection (1) defines a gaming machine as a machine that is designed or adapted for use by people to gamble (whether or not it can be used for other purposes). This is a wide definition. Subsection (3)(b) contains further detail about how the words “designed or adapted” are to be interpreted, particularly in relation to a computer.
- 2.8. Subsection (2) then sets out a number of exceptions to subsection (1) which ensures that the gaming machine definition does not capture certain specified types of machine.
- 2.9. The definition at subsection (1) does not depend on any concept of players depositing payments into a machine, or on the gambling activity being generated from within the machine itself (as opposed to being transmitted to the machine from other equipment). Nor is it restricted solely to gaming. To the extent that these were requirements under 1968 Act, they are no longer part of the definition.
- 2.10. These various exemptions prevent the broad definition of gaming machine from capturing equipment unintentionally. The definition in subsection (1) is intended to cover a gaming machine that is used for taking part in virtual gaming, virtual betting or a virtual lottery (where the draw is part of the activity determined by the machine).
- 2.11. The exclusions at subsection (2) provide that the following are not gaming machines although one should refer to the relevant provisions within the Act for the full definitions:
 - A domestic or dual-use computer;
 - A telephone or other communications device;
 - A machine which is designed or adapted for betting only on future real events;
 - A machine upon which someone enters a lottery;
 - A machine for playing bingo;
 - A machine for playing bingo prize gaming, which is used by the holder of a gaming machine general operating licence (for an adult gaming centre or a family entertainment centre);
 - A machine for playing bingo prize gaming used by an unlicensed family entertainment centre, or pursuant to a prize gaming permit.;
 - A machine which is used for playing manual games of chance;
 - A machine which is used for playing automated games of chance in a casino.
- 2.12. In relation to the first exception, the Secretary of State will assign the meaning of “domestic computer” and “dual-use computer” in regulations. The purpose of this exception is to exempt internet terminals and home computer equipment, which

are not dedicated or specifically configured for gambling activities, from the definition of gaming machine. However, the intention is that someone offering the public access to the internet, via terminals, and configuring them to encourage gambling, is making a gaming machine available for use (unless any other exception applies, such as betting on real events).

(c) Rationale for Government intervention

2.13. The rationale for Governmental intervention was again set out in the RIA covering the whole of the Act. The proposals for prescribing the meaning of domestic and dual-use computers from the definition of gaming machine must be viewed against the overall objectives for the regulation of gambling as a whole:

- *ensuring gambling remains crime free;*
- *ensuring that gambling is conducted in a fair and open way; and*
- *protecting children and other vulnerable people from harm.*

2.14. While for many, gambling is a normal leisure activity that many people enjoy, it also brings with it inherent risks of personal and social harm. The proposed definitions of domestic and dual-use computers in relation to the meaning of 'gaming machine' seek to strike the right balance between ensuring that children and adults are not exposed to the risk posed by gambling, whilst also seeking to ensure that personal computers are excluded from the gaming machine definition.

3. Consultation

3.1 The Government issued a 3 month consultation document in February, which ended on 28th May 2007. In response, 16 responses were received from a wide range of interested stakeholders (including trade associations, faith and representative groups and business organisations). All respondents wholly or broadly supported the approach taken to define dual-use and domestic computers set out in the consultation document. Respondents believed this was a sensible and flexible approach to exempt the majority of internet terminals and home computer equipment, which are not dedicated or specifically configured for gambling activities, from the definition of gaming machine. A summary of all the comments received and the Government's responses has been published separately on the Department for Culture, Media and Sport's website at www.culture.gov.uk/Reference_library/Publications/archive_2007/gamb. The Government also consulted the Gambling Commission who are content with the approach adopted by the Government.

- 3.2 However, three main issues did emerge in relation to (1) clarifying the meaning of 'presenting', particularly regarding promotional advertising material located near a computer, (2) dealing with advertising 'pop-ups' and gambling advertising over which the owner has no control, and (3) the definition of "*commercial arrangement*" being too narrow to prevent some operators in specified circumstances from providing direct access to remote gambling sites within premises that are licensed for gambling purposes.
- 3.3 On the first issue, the Government understands the concerns about the meaning and practical effect of a computer being "*presented in such a way as to facilitate or to draw attention to the possibility of its use for gambling*". In response, the Government is still of the view that this will be a question of fact to be determined on the facts of each case, but has also invited the Gambling Commission to issue general guidance on what it considers would constitute adapting or presenting a computer to encourage gambling and will review the position at a later date. The Government also wants to prevent these Regulations from straying into the area of regulating the general advertising of gambling.
- 3.4.1 On the second issue, the Government has decided to revise the definition of a dual-use computer (see revised regulation 2(1)(b)) to clarify that it must not be adapted or presented etc '*by or on behalf of the owner or a person connected with the owner.*' This amendment is to deal with two specific issues raised in consultation that are likely to be out of the owner's control - i) pop-ups or other forms of promotional advertising that may appear on a computer and ii) internet gambling related material/advertising that is left next to a computer without the owner's knowledge. The Government wishes to prevent an internet 'pop-up' that appears on a dual-use computer without the owner's knowledge and/or outside his control, from causing the computer to become a gaming machine. The Government has also sought to clarify whose knowledge is relevant to the definition of 'knowingly adapting or presenting'.
- 3.4.2 On the third issue of defining a '*commercial arrangement*', following consultation with the Gambling Commission, the Government considers that there is a need to tighten the definition to capture the scenario where computers owned by company 'A' have dedicated links to the gambling website of company 'B', and companies 'A' and 'B' are in the same group of companies, or one is a subsidiary of the other, and company 'A' does not benefit from the arrangement. The definition of '*commercial arrangement*' needs to capture this circumstance. This is because otherwise it could allow some gambling premises such as casinos to circumvent the regulations and have computers with dedicated links to the websites of parent or sister companies. This would also enable such operators to circumvent the limit on their gaming machine entitlement.
- 3.4.3 As such, the Government has decided to amend the definition (see revised regulation 1(3)) to include any arrangement in which a person connected to the owner makes or receives a benefit etc. The revised regulation provides that a person is connected with the owner if (a) he/she is one of a list of relations, (b) both the owner and the person are companies and one is the subsidiary of the

other or they are both subsidiaries of the same company, or (c) if the person and the owner are carrying on business in common with a view to a profit (which includes partnerships).

3.5 This is the basis of the Regulations laid before Parliament.

Purpose of Regulation

3.6 The main reasons for assigning the meaning of domestic and dual-use computers for the purposes of section 235(2) are:

- *To set out the relevant criteria for determining whether a computer is a domestic or dual use computer.*
- *To exempt some activities carried out on personal and work computers from the regulatory regime relating to gaming machines.*

Summary of Proposals

3.7 The Government's proposals for the Regulations can be summarised as follows:

- *That a computer is a dual-use computer if it meets both of the following conditions:*

(i) that it is capable of being used for a purpose that is not related to gambling;

and

(ii) either:-

(a) it is not knowingly adapted or presented by or on behalf of the owner or person connected with the owner, in such a way as to facilitate, or to draw attention to the possibility of, its use for gambling; or

(b) it is so adapted or presented, but only in circumstances specified in regulation 2(2) and 2(3)

- *That there is an exception to condition (ii)(a) where a computer is being made available for use.*
- *That this exception only applies where use of the computer is restricted to 'private use'.*
- *That there is an exception to condition (ii)(b) where a computer is being adapted, repaired or maintained.*
- *That this exception applies where the computer is being used in order to be repaired, adapted or maintained, but only if:*
 - *The computer is otherwise for 'private use'; and*
 - *The purpose of the adaptation, repair or maintenance is not to enable the computer to be used for gambling.*
- *That there is no exception to condition (ii) where a computer is being manufactured, supplied or installed.*
- *That 'private use' means use by the owner or, if used by other persons, this is with the owner's permission and otherwise than under a commercial arrangement.*
- *That 'commercial arrangement' has a wide meaning and includes any arrangement in which the owner or any person connected to the owner receives payment or benefit in connection with making the computer available for use.*
- *That 'commercial arrangement' does not include an employment arrangement between an employer and his employee, but does include situations where an employer makes a computer available to employees for mainly recreational purposes.*
- *That domestic computers are computers that are capable of being used for a purpose that is not related to gambling, are located in a private dwelling and used only on domestic occasions.*

Issues considered

- 3.8 The Government considered a number of related issues in deciding upon an approach for assigning the meaning of domestic and dual-use computers, which are excluded from the definition of gaming machine under Act.

Defining a dual-use computer

3.9 The Government considers that the purpose of the Regulations would be met by defining a dual-use computer with reference to meeting the following conditions:

(i) it is capable of being used for a purpose that is not related to gambling; and

(ii) either:-

(a) it is not knowingly adapted or presented by or on behalf of the owner or person connected with the owner, in such a way as to facilitate, or to draw attention to the possibility of, its use for gambling; or

(b) it is so adapted or presented, but only in circumstances specified in paragraph (2) or (3)

3.10 The Government believes that these criteria will meet its purpose of exempting relevant computers from the definition of a gaming machine under the Act, where they are not dedicated or specifically configured for gambling activities. The regulations do not contain a definition of a 'computer'. Computers are not defined in the Act and will have its ordinary English meaning. It will therefore depend on the facts of each case whether a machine is a computer.

3.11 The first condition exists to deliver the Government's policy that a computer that is not capable of being used for any purpose other than gambling should be treated as a gaming machine under the Act and be subject to the full regulatory regime for gambling (unless any of the exceptions in section 235(2) apply).

3.12 With respect to the second condition, it will be a question of fact in each case whether a computer is 'adapted or presented to facilitate or draw attention to the possibility of its use for gambling'. There are, however, numerous ways in which a computer may be adapted or presented to encourage gambling. As explained below, this condition would also have the effect of capturing computers that have, for example, promotional material for internet gambling either attached to or in sufficient proximity to them.

3.13 The Government was pleased that all respondents either wholly or broadly supported the definition of a dual-use computer. However, as explained in paragraphs 3.5 and 3.6 above the Government has decided to tighten the dual-use definition to include any arrangement in which a person connected to the owner makes or receives a benefit etc. The regulations (i.e. regulations 1(3) and 2(i)(b)) have therefore been revised accordingly.

Meaning of 'Presented': Advertising

- 3.14 The majority of respondents wholly or broadly supported the Government's as pragmatic and sensible, and that the Regulations should not seek to regulate in detail the general advertising of gambling. That ultimately it is a question of fact to be determined on the facts of each case, and that the words in the Regulations '*knowingly presented in such a way as to facilitate or draw attention to the possibility of their use for gambling*' are sufficient, strike the right balance in covering material that advertises internet gambling, that is physically attached to a computer, or is inside the premises where a computer is located.
- 3.15 As explained in paragraphs 3.3 and 3.4 above, the Government is still of the view that its overall approach as set out in the consultation document is pragmatic and sensible and is pleased that this overall approach was supported during the consultation exercise. However, the Government has revised the regulations to deal with two specific issues and invited the Gambling Commission to issue general guidance.

Interactive gambling channels, mobile telephones and digital televisions

- 3.18 The Government considered the impact of the Regulations in respect of mobile telephones and digital televisions that offer links to remote gambling sites. Section 235(2) of the Act already excludes telephones or other communications devices from the definition of gaming machine, and so there is no need to make specific provision for telephones.
- 3.19 It emerged during the consultation exercise that there was overall approval of the Government's approach to digital televisions. In summary, digital televisions that are not computers will be exempt under section 235(2)(b). A digital television that is also a computer will not automatically fail the 'adaptation or presentation' test in regulation 2(b)(ii) merely by virtue of the fact that it is capable of linking to an interactive gambling channel, and may still fall within the definition of a dual-use computer, providing it satisfies the relevant 'adaptation' or 'presentation' test set out in the regulations.

Exceptions to Definition of Dual-Use computer

- 3.20 There will be exceptions to the requirement in Regulation 2(b) that a dual-use computer is not adapted or presented to encourage gambling and these are set out in regulation 3. In relation to these and in response to the consultation exercise, the Government has decided the following: (1) The exceptions will only apply where a computer is either being made available for use, or being maintained, adapted or repaired, (not where a computer is being supplied, installed or manufactured). (2) Where a computer is made available for use, the exception will only apply if its use is restricted to 'private use'. (3) Where a computer is maintained, adapted or repaired, the exception will only apply if its use would otherwise be restricted to 'private use', and as long as the purpose of

the repair, adaptation or maintenance is not to enable the computer to be used for gambling.

Meaning of 'private use'

- 3.21 'Private use' is defined in regulation 1, and is use of a computer by
- *the owner; or*
 - *persons using it with the owner's permission, but not under any commercial arrangement in connection with its use.*
- 3.22 The owner is a person who owns or has a right to control who uses the computer (see definition in regulation 1) and there may be more than one owner in respect of a computer.
- 3.23 The intention here is to capture within the meaning of 'private use' a person using his own computer, or lending it to friends or family. That person may choose to allow strangers to use his computer, but its use will only be considered private if he does not stand to gain from allowing them to do so.

Meaning of 'commercial arrangement'

- 3.24 'Commercial arrangement' has a wide meaning which is not exhaustively defined in the Regulations, and will be a question of fact on each case. However, the regulations do clarify that its meaning includes any arrangement in which the owner and any other person who is part to the arrangement:
- *makes or receives any payment or reward (or intends to do so) in connection with making the computer available for use; or*
 - *receives any benefit (or intends to do so) in connection with making the computer available for use, by virtue of it being adapted or presented to encourage gambling.*
- 3.25 The Regulations also clarifies that 'commercial arrangement' does not include an arrangement between an employer and his employee, but does include situations where an employer makes a computer available to employees for mainly recreational purposes. The effect of this is that the meaning of 'private use' extends to situations in which an employee is using a computer at work for purposes connected with his employment; if, however, an employer provides his employees with computers at work that are mainly to be used by employees for recreational purposes, then it will not be treated as 'private use'.
- 3.26 However, as explained in paragraph 3.5, the Government has decided to amend the definition (see revised regulation 1(3)) to include any arrangement in which a person connected to the owner makes or receives a benefit etc.

Making available for use

- 3.27 The Government has decided that a computer will not be treated as a gaming machine and fall under the regulatory regime of the Act if it is only for 'private use', even where it is knowingly adapted or presented to encourage gambling. For example, a private individual who regularly uses his computer to access gambling websites may have specially configured it to provide a direct link to those sites. The computer may be a laptop and if the person lends it to friends or family, he is making his laptop 'available for use' (this could also take place outside the home). The laptop will be adapted or presented to encourage gambling but the Government does not consider that in these circumstances it should be treated as a gaming machine.
- 3.28 The Government has therefore made an exception to the requirement in regulation 2(b) that a dual-use computer should not be adapted or presented to encourage gambling. This exception only applies where a computer is 'being made available for use', and where that use is restricted, or intended to be restricted to private use. The effect is that a computer that is adapted or presented to encourage gambling will still be a dual-use computer if it is only for private use.
- 3.29 The purpose of this exception will ensure that the following machines are still included in the definition of a dual-use computer, even where they are adapted or presented to encourage gambling:
- *Personal computers (including portable laptops) - as long as they are used only by the owner, or with the owner's permission other than for profit or any other benefit to the owner. This will include circumstances in which owners lend their personal computers to friends and family, but will exclude situations in which owners allow others to use their computers and receive any sort of payment or benefit for doing so.*
 - *Work Computers – this is to allow employers to make computers available for use to their employees to be used for work, and for those computers to be adapted or presented for gambling. The Government does not intend that such computers should be treated as gaming machines under the Act. This is particularly pertinent if an employee's work relates in any way to the gambling industry, and his computer may have to be so adapted or presented for reasons connected to his employment. The only exception to this is where a computer is made available by the employer to be used mainly for recreational purposes (see the definition in regulation 1); the Government considers that if an employer were to make available computers for employees to be used mainly for recreational activities, and such computers were adapted or presented to encourage gambling, they should be treated as gaming machines and appropriately regulated under the Act.*

Adapting, repairing and maintaining

3.30 A computer that is adapted or presented to encourage gambling, but that is only for private use, may at times need to be adapted, repaired or maintained, often by someone other than the owner. This may give rise to two situations (for which regulation 2(3) makes provision): –

(a) ‘Making available for use’ and ‘repairing’ are two distinct concepts under the Act. The exception in regulation 2(3)(a) only applies where a computer is ‘made available for use’ and will not apply where a person is repairing the computer. This means that the computer would be treated as a gaming machine and the repair-man would be committing an offence under section 243 unless he has the appropriate operating licence or permit.

(b) A repair-man may ‘repair’ a computer, but may also have to ‘use’ it in connection with that repair job. If the person who repairs the computer also uses it (for example, to check that the repairs are successful), the owner will have ‘made the computer available for use’ to that person. In this case, the exception for making computers available for use will not apply if the repairs were carried out under a commercial arrangement.

3.31 In considering the scenarios at (a) and (b), the Government does not intend that computers for private use that are repaired, adapted, or maintained, should be treated as gaming machines and be subject to regulation under the Act. The Government considers that it would place an undue burden on persons who repair, adapt or maintain computers if they were required to either ensure the computers they work on are not adapted or presented to encourage gambling.

3.32 In carving out the exception, the Government’s intention is to capture persons who repair, adapt or maintain (whether as part of their business or in a non-commercial context) computers that are for private use – some of which may have been adapted or presented by their owners or by other persons. However, it is the Government’s view that any business that repairs, adapts or maintains computers for the purpose of facilitating or enabling their use for gambling – even where they are restricted to private use – should not be entitled to do so other than under the regulatory framework of the Act. To meet these requirements, the exception to regulation 2(b) in relation to repair, adaptation or maintenance of a computer applies subject to the following conditions:

- The computer is being repaired, adapted or maintained;
- At that time, its use is connected to the repair, adaptation or maintenance;
- Other than whilst it is being adapted, repaired or maintained, the computer would be only for private use.
- The main purpose of the adaptation, repair or maintenance must not be to enable the computer to be used for gambling.

Supply, Installation and Manufacture

- 3.33 The Government does not consider that any exceptions to the definition of a dual-use computer in regulation 2 need to be made in relation to computers that are:
- *supplied;*
 - *installed; or*
 - *manufactured.*
- 3.34 The exceptions for maintenance, adaptation and repair of a computer, and making it available for use, take into account the fact that any of these actions may be carried out during the lifetime of a computer, and should not necessarily require express gambling authorisation merely because the computer is for private use and has been configured to encourage gambling. The supply, installation and manufacture of a computer normally take place before that computer is assigned a use, and before a private user has had a chance to configure it. Any attempt by the supplier, installer or manufacturer to adapt or present the computer to encourage gambling, should be strictly regulated under the Act. The Government does not consider that an undue burden would be placed on computer suppliers, installers or manufacturers if they were required either to ensure that the computers on which they undertake those activities are not adapted or presented to encourage gambling, or to obtain a relevant gaming machine authorisation under the Act.
- 3.35 The Government considers that whilst a computer is being supplied, installed or manufactured, it will not need to be adapted or presented to encourage gambling. Persons and businesses who supply, install or manufacture dual-use computers are expected to meet the two limbs of the definition of a dual-use computer if they want their computers to be excluded from the definition of a gaming machine. Moreover, if a computer that is being supplied, installed or manufactured, were to be so adapted or presented, the Government would want, in light of the licensing objectives, for it to fall under the full regulatory regime of the Act and be treated as a gaming machine.

Computers that will not be subject to exceptions

- 3.36 The following are examples of computers that will not be dual-use computers if they are adapted or presented to encourage gambling, (regardless of whether they are adapted, maintained, repaired, supplied, installed, manufactured or made available for use), and to which no exception applies:
- *Computers in internet cafes and other businesses offering computer terminals to paying customers. In practice, such businesses will have a responsibility to ensure that their computers are not set to take users directly to a gambling website, or that that website is not set as the computer's homepage or screen saver for example. They must also ensure that the computer is not promoted for gambling in a wider sense. A computer in an internet café that is only being used*

for gambling by a customer may still fall within the definition of a dual-use computer as long as it is not adapted or presented to encourage gambling.

- *Computers made available to users free of charge, but where the owner or person connected with the owner of the computer makes or receives a payment or benefit in allowing persons to use those computers.*
- *Computers in commercial clubs used by persons under a ‘commercial arrangement’ – A commercial club is defined in section 267 of the Act, and differs from a members’ club because it may operate as a commercial enterprise which benefits a class of people different to the members. These clubs can also be known as proprietary clubs, and an example would be snooker clubs. The Government’s position is that such clubs would have to comply with the full regulatory regime in the Act relating to gaming machines if they allowed persons to use their computers under a commercial arrangement, and those computers were adapted or presented to encourage gambling. On the other hand, if only the club owner or employees of the club were to use those computers (and they were not made available to employees for mainly recreational reasons) they would be dual-use computers and would not be treated as gaming machines under the Act.*
- *Computers that are being repaired, adapted or maintained, and are not for ‘private use’.*

Defining domestic computers

3.37 The Government considers that domestic computers should not be subject to the restrictions on how they are adapted or presented. These are essentially home computers and it is the Government’s policy that they do not need to be regulated as gaming machines, regardless of how they are configured. It is important to note that if such home computers are not configured to encourage gambling, they are likely to be dual-use computers as well.

3.38 In this context, the Government considers that the purpose of the Regulations would be met by defining domestic computers with reference to meeting the following conditions:

That the computer-

(a) is capable of being used for a purpose that is not related to gambling;

(b) is located in a private dwelling; and

(c) if used, is used only on domestic occasions.

- 3.39 This definition of a domestic computer will cover home computers that are being used by their owners or that their owners allow friends and family to use.
- 3.40 The first condition exists for the same reasons that applied to dual-use computers; it is the Government's policy that a computer that is not capable of being used for any other purpose than gambling should be treated as a gaming machine under the Act (unless any of the other exceptions in section 235(2) apply).
- 3.41 The second condition, which relates to the location of the computer, is central to the definition – personal computers outside the home would have to satisfy the test in regulation 2 to be dual-use computers.
- 3.42 The purpose of the condition that it should be used only on 'domestic occasions' is to ensure that computers located within a private dwelling are not then adapted or presented to encourage gambling, and made available for use to members of the public as part of a business. 'Domestic occasion' will have its ordinary English meaning.
- 3.43 The Government has considered whether private dwellings could be used as commercial clubs offering personal computers to gamble. The Government intends that in such cases, the computers should be treated as gaming machines, requiring such clubs to obtain appropriate gambling authorisations. The Government is of the view that the use of computers by commercial clubs does not constitute a domestic occasion, even if they are used in a person's home. Although it is not relevant to the definition of a domestic computer, whether others are permitted to use the computer under a commercial arrangement, it is the Government's view that there is a presumption that a home computer that is used by others under a commercial arrangement is not being used 'on a domestic occasion'.

4 Impact

4.1 In light of the Government's approach to defining dual-use and domestic computers, it is anticipated that the types of computers likely to be affected by the regulations (assuming that they are all capable of being used for a purpose not related to gambling and subject to the relevant exceptions in the regulations) include work computers in the workplace; computers of self-employed persons; personal computers (PCs or laptops); digital televisions that are also computers; computers in internet cafes; computers in libraries and schools; computers that are being repaired, adapted or maintained and computers that are being manufactured, installed or supplied.

4.2 Two options have been considered:

Option 1

- 4.3 Not to make regulations under Section 235.
- 4.4 The Government is required to make these regulations by the Act. Until the Government makes such Regulations, the meaning of the exception of “domestic computer” and “dual-use computer” in relation to the definition of gaming machine, will not be defined. This would compromise a central objective of the Government’s policy of providing an exception from the regulatory definition of gaming machine for internet terminals and home terminals and home computer equipment, which are not dedicated or specifically configured for gambling activities. The Government rejects this option.

Option 2

- 4.5 Implement the policy as set out above in paragraphs 3.1 to 3.43 as amended in light of consultation results (summarised at **Annex A to the Explanatory Memorandum and available on DCMS’ website**). This option would ensure consistency with previously published policy. This is the Government’s preferred option.

5 Costs and benefits

(a) Sectors and groups affected

- 5.1 There are implications for existing and potential operators who manufacture, supply, maintain, repair, install and adapt gaming machines, and make gaming machines available for use, arising from the Government’s wider policy on gaming machines. They require the relevant authorisation - usually in the form of a ‘*gaming machine technical operating licence*’ (which was fully explored in the wider Gambling Act RIA) - but these specific regulations will establish when an operating licence or other gambling authorisation is not required in relation to a computer.
- 5.2 Other groups that will need to know whether their computers are caught by the regulations include:
- Internet cafes and libraries offering computer terminals;
 - Other businesses offering computer terminals by use of their customers (e.g. hotels, airports etc);
 - Computer manufacturers; and
 - the Broadcasting sector.

- 5.3 In addition, the regulations will be of interest to a significant proportion of the population, given that their aim is also to define (and therefore exclude from the definition of gaming machine) work computers, domestic computers and laptops.

(b) Benefits

- 5.4 The proposed regulations will assign the meaning of domestic and dual-use computers, and therefore clarify the definition of gaming machine under the Act. This will avoid some of the potential anomalies that could arise if it were unclear what domestic computers and dual-use computers are excluded from the definition of a gaming machine, and at the same time it will ensure that the regulations do not inadvertently catch computer equipment that should be treated as a gaming machine under the Act.

(c) Costs

- 5.5 It is not expected that assigning the meaning of domestic and dual-use computers will of itself cause any costs to operators or individuals. However, on the one hand it is important that the definitions within these Regulations catch all the dual-use and domestic computers that should be excluded from the gaming machine definition because operators or individuals whose computers are not excluded from the definition of a gaming machine may be required to pay fees to obtain the appropriate gambling authorisations. On the other hand, it is important that the Regulations do not inadvertently catch equipment that should be treated as a gaming machine under the definition in the Act.
- 5.6 There will be no increased administrative costs falling to the public purse as a result of these Regulations. The regulation of gaming machines will be undertaken by the Gambling Commission and licensing authorities, and this will be funded through fees paid by the industry on a cost recovery basis.

6 Small firms impact test

- 6.1 Trade organisations that have both large and small operators as members were consulted on the proposals, but it is considered that these proposals are likely to significantly benefit a number of small businesses that could otherwise be caught by the regulations governing gaming machines. The Small Business Service (SBS) did not respond but the Federation of Small Business (FSB) supported the proposals set out in the Regulations. The Government's objectives, within the overall framework for effective regulation, is to minimise any disproportionate impact on small businesses, and to this end, the Government's preferred option should assist in achieving this objective by ensuring that the definitions of dual-use and domestic computers are adequate to cover relevant businesses.

7 Competition assessment

7.1 A simple competition assessment of this proposal has been undertaken in accordance with Better Regulation Executive/Office of Fair Trade guidance and has concluded that a full assessment is unnecessary. In reaching this conclusion, four questions were specifically asked about the proposals:-

i) Do they directly limit the number or range of suppliers?

ii) Do they indirectly limit the number and range of suppliers?

iii) Do they limit the ability of suppliers to compete? and

iv) Do they reduce incentives for suppliers to compete vigorously?

7.2 To these questions it was concluded that none of the proposals exclude small businesses from the regulations governing gaming machines that might otherwise be covered. They do not impose an administrative burden on those affected and so does not involve administrative costs. In addition, the proposals will apply to all qualifying apparatus equally. It is therefore concluded that the proposals will neither directly nor indirectly limit the numbers of suppliers.

8 Enforcement, sanctions and monitoring

8.1 The operators of gaming machines will require various types of permission to make gaming machines available for use. Many will require operating and the appropriate personal licences from the Gambling Commission, along with a premises licence from their licensing authority. The manufacturers and suppliers of gaming machines will require operating and appropriate personal licences from the Gambling Commission.

8.2 In terms of enforcement of the Regulations, the Commission and licensing authorities will both have a role to play in ensuring that gaming machines are appropriately used within the legal entitlements provided by the Gambling Act. The Commission is also responsible for compliance by machine manufacturers and suppliers.

9 Implementation and delivery plan

9.1 The intention is to bring the Regulations into force on **1 September 2007**.

10 Declaration

10.1 I have read the Regulatory Impact Assessment and I am satisfied the benefits justify the costs.

Signed.....

Date.....

Contact point

Donald Sproson

Gambling and National Lottery Licensing Division

Department for Culture, Media and Sport

2-4 Cockspur Street

London, SW1A 5DH

Tel: 0207 211 6535 or donald.sproson@culture.gsi.gov.uk