

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

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 15: Private gaming and betting

Part 18: Miscellaneous and General

843. **Part 18** contains a number of miscellaneous provisions. It provides powers for transitional arrangements to be made for implementation of the various new licensing and permit regimes established by the Act. It covers matters such as application of the Act to the Crown, and the prosecution powers of licensing authorities. It sets out a comprehensive interpretation section, and it provides for repeals and consequential amendments and the general extent of the Act.

Section 339: Prize competitions

844. Participating in competitions in which there is a prize is not to be regarded as gambling as long as the activities involved in the competition do not amount to betting, gaming or participating in a lottery as defined in the Act.

Section 340: Foreign Betting

845. This section repeals sections 9 to 9B of the [Betting and Gaming Duties Act 1981 \(c.63\)](#), which imposes prohibitions on certain activities relating to overseas betting, for the protection of the revenue. The provisions of Part 16 will provide a complete regime for the regulation of advertising, and as a result, these sections of the 1981 Act are no longer required.

Section 341: Offence committed by body

846. If a body (such as a company) commits an offence under the Act, persons of authority in the body (known as officers) may be prosecuted if the offence resulted from their consent, connivance or their negligence. The body may be prosecuted also. Officers can include directors, managers, secretaries and members of a body. Where a body is a partnership then each partner is individually responsible for offences arising in these circumstances. Unincorporated bodies and their officers may also be prosecuted in the same way.

847. *Subsection (7)* allows the Secretary of State to make regulations dealing with the application of this section to bodies formed outside the United Kingdom.

Section 342: False information

848. Any person giving false or misleading information to the Commission or to a licensing authority, without a reasonable excuse, commits an offence. If convicted, the person may be imprisoned for up to 51 weeks in England and Wales, or 6 months in Scotland,

and may also be fined an amount up to level 5 on the standard scale. If the Commission or a licensing authority have taken a decision on the basis of false information they may do whatever in their judgement is necessary to alter or remedy the effects of that decision.

Section 343: Value of Prize

849. This section is concerned with determining how the value of a prize is to be calculated. A number of provisions in the Act give powers to the Secretary of State to prescribe the maximum value of a prize that may be won at gambling. This section allows such regulations to include provision for determining what is meant by the value of a prize, where they are non-monetary prizes.
850. *Subsection (3)* authorises a practice commonly known as “trading-up”. This is where a person who has won two or more separate prizes from a gaming machine can swap the prizes won for another, different, prize. In the exchange, the value of the prize received must not be greater than the total value of the prizes that could have been won by the player from his winning turns on the machine. Thus, if a person wins two small toys from a Category D machine (and the maximum value of each prize is £8 under the Category D classification), then the two small toys can be swapped for one big toy provided the value of the big toy does not exceed £16 (2 x £8 prizes). The swap must also comply with any rules about the nature or type of prize that could have been delivered by the machine.

Section 344: Participation Fees

851. This section provides a definition of “participation fee” for the purposes of the Act. Under various Parts of the Act, powers are taken to prescribe maximum participation fees for gambling (e.g. under Parts 5 and 12), or participation fees are prohibited in relation to certain forms of gambling (e.g. private gaming under Part 14). This section describes the matters which may or may not count as a participation fee. It gives the Secretary of State power to provide that a membership subscription is to be treated as a participation fee, as an exception to the general rule set out in *subsection (1)*.
852. *Subsection (4)* allows the Secretary of State to deal with the apportionment of participation fees where the fee covers both gambling and non-gambling activities. An example of when this could be used is where a participation fee limit is set for the admission charge to premises where gambling takes place (see *subsection (1)(b)*), but some of that sum is referable to non-gambling activities. In such circumstances the fee could be apportioned, and only the gambling element of it limited. This power applies to all participation fee powers under the Act.

Section 345: Forfeiture

853. Courts may order the forfeiture of items, like gaming machines, which are involved in the commission of offences under the Act. Items will be surrendered to the police. Persons who have not been convicted may make representations about any items that are the subject of a forfeiture order, where they believe they have an interest in the article, and the court may order that the article be given to that person.
854. It will be an offence to fail to co-operate with a forfeiture order, the maximum penalty upon conviction being a maximum term of imprisonment of 51 weeks in England and Wales, or 6 months in Scotland, and/or a fine up to level 5.

Section 346: Prosecution by licensing authority

855. Local authorities have general powers to prosecute and defend legal proceedings, but this section provides power for them to institute proceedings with respect to specified offences under the Act. The section identifies those matters for which licensing authorities have express power to prosecute. This section does not apply to Scotland.

Section 347: Prosecution: time limit

856. This Section disapplies section 127(1) of the [Magistrates' Courts Act 1980 \(c.43\)](#). That section limits the time for bringing a prosecution in the Magistrates' court to six months from the date upon which the offence was alleged to have been committed. *Subsection (1)* imposes a longer time limit, of 12 months from the date upon which the offence was alleged to have been committed.

Section 348: Excluded premises

857. The Act generally applies to gambling on any premises in Great Britain, including vessels and vehicles. However, this Section provides an exception to this general provision by excluding from the Act premises which are subject to a national security certificate, issued by the Secretary of State or the Attorney General, or premises which are otherwise of a kind specified by the Secretary of State by order.

Section 349: Three-year licensing policy

858. Licensing authorities perform a number of different functions under the Act. They issue premises licences under Part 8, temporary use notices under Part 9, and a range of permits, under Parts 10, 12 and 13 and Schedules 10, 12, 13 and 14. To assist them in this task, and to provide transparency for those wishing to apply to a licensing authority for a permission under the Act, all authorities are required to prepare a licensing policy, covering all their functions.
859. This section sets out the procedures authorities must follow in preparing such a policy. Following widespread consultation, licensing authorities will publish a licensing policy statement describing the principles they intend to apply in exercising their various functions. The policy will have effect for three years, but the authority may review and alter the policy during that period. Regulations may be made by the Secretary of State (or Scottish Ministers in relation to Scotland) about the form of statements, the procedure to be followed in relation to them and their publication. An order of the Secretary of State will fix the first day of the initial three year period.

Section 350: Exchange of information

860. Part 2 of the Act contains provisions which enable the Commission to exchange information with the bodies listed in Schedule 6. This section allows the bodies listed in Part 1 of that Schedule to exchange information amongst themselves for use in the exercise of a function under the Act. It also allows those bodies to provide information obtained in the course of functions under the Act to Her Majesty's Customs and Excise. The provision of information under this section may be made subject to conditions.

Section 351: Power to amend Schedule 6

861. This section confers power on the Secretary of State by order to amend the lists of bodies in Schedule 6. In particular, it allows entries to be added to or removed from a list, and for entries to be moved from one list to another.

Section 352: Data protection

862. The Act contains various provisions enabling bodies, including the Commission, to provide information to other organisations. This section makes it clear that nothing in the Act is to be taken as authorising a disclosure of information which would contravene the [Data Protection Act 1998 \(c.29\)](#).

Section 353: Interpretation

863. This section provides the general definitions and meanings of expressions for the Act. Particular definitions of substance, in *subsection (1)*, are provided for:

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- Director;
- EEA State;
- Football pools;
- Premises;
- Stake;
- Track (and dog tracks and horse-race courses);
- Vehicle; and
- Vessel.

864. *Subsection (2)* contains a number of interpretative provisions for references in the Act. *Subsection (3)* provides a definition of what is meant by “virtual game, race or other event or process”, and *subsection (4)* covers what is meant by giving notice under the Act.

Section 354: Crown application

865. The Act applies to the Crown, which includes government departments and crown servants. However, the Act has no effect in relation to anything done on premises occupied by the armed forces.

866. *Subsection (3)* ensures that a reference to “fire and rescue authority” in the Act will be substituted with a reference to “Her Majesty’s Fire Inspectorate” in relation to premises for which Her Majesty’s Fire Inspectorate is the proper fire authority. In particular, in respect of those properties for which they have responsibility, Her Majesty’s Fire Inspectorate will be a responsible authority under Parts 8 and 9 and will be required to be notified of any application for a premises licence in relation to those premises.

Section 355: Regulations, orders and rules

867. This section contains provisions governing the form and procedure for regulations, rules and orders made by the Secretary of State (or the Lord Chancellor) under the Act. Similar provision is made for regulations made by Scottish Ministers.

868. Most **regulations** made under the Act are to be made by statutory instrument, pursuant to the negative resolution procedure. However, *subsection (4)* lists particular regulation-making powers which must be made pursuant to the affirmative resolution procedure (where made by the Secretary of State) or be approved by resolution of the Scottish Parliament (where made by the Scottish Ministers). **Orders** (with the exception of those listed in *subsection (7)*) are to be made by statutory instrument subject to the affirmative resolution procedure. By virtue of *subsection (8)* commencement orders under section 358 are not subject to any Parliamentary procedure except as provided in that subsection.

Section 356: Amendments and repeals

869. As a result of the substantive provisions in the Act, there need to be consequential amendments made to provisions in other legislation and repeal of other Acts, in part or in their entirety. This section lists the major enactments repealed by the Act.

870. *Schedule 16* contains the minor and consequential amendments arising from provisions of the Act. The minor amendments in Part 1 of Schedule 16 include amendments to the Gaming Act 1968. The amendments relate to the provisions of that Act concerned with gaming and gaming machines in premises licensed to supply alcohol. They also affect premises licensed under that Act, including in particular casinos. The amendments

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to the 1968 Act will apply until the repeal of that Act by this Act. *Schedule 17* lists provisions repealed by the Act, and the extent of their repeal.

Section 357: Money

871. This section makes provision for expenditure and receipt of sums by a Minister of the Crown under the Act.

Section 358: Commencement and Schedule 18

872. This section makes provision for the commencement of the Act. It provides for the preceding provisions of the Act to be brought into force by commencement order made by the Secretary of State. It is the Government's intention that the Act be brought into effect in stages. This section makes this possible by allowing different parts of the Act to be brought into force at different times and in relation to different classes of activity under the Act.
873. *Subsection (2)(e)* specifically allows a commencement order to be made for the purposes of establishing the Commission so that it can carry out preparatory work prior to the repeal of the existing licensing regimes. *Subsection (2)(f)* makes it possible for provisions to be brought into force so that people who wish to provide facilities for gambling may make advance applications for a licence or permit under the Act, and for those advance applications to be considered and determined.
874. *Subsections (4) to (6)* enable savings, modifications and transitional arrangements to be made in the context of the Horserace Betting and Olympic Lottery Act 2004. This will enable provisions to be made that ensure the new licensing regime under the Act is compatible with that legislation.
875. This section and, in particular, *Schedule 18* provide powers to effect transition to the new regulatory regime and also allow effect to be given to what have become known as "grandfather rights". This means making provision whose effect is to require relevant authorities to grant new permissions to people making applications if they held equivalent permissions under the previous law.
876. *Part 1* of Schedule 18 deals with the transitional continuation of old licences and permissions. In particular, *paragraph 3* allows particular provision to be made for casinos which are below the minimum licensable size, as defined by regulations pursuant to section 7 of the Act. This will allow such casinos to continue to operate, with controls, but without requiring them to meet the minimum size requirements.
877. *Part 2* of this Schedule deals with advance and interim applications, and the need for licences to be converted from old licences to new licences in certain circumstances. The Government intend that these conversion powers will be used primarily in relation to applications for premises licences under Part 8, family entertainment centre gaming machine permits under Schedule 10, lottery registrations under Schedule 11, prize gaming permits under Schedule 14, and in relation to the gaming activities of clubs and pubs under Part 12. There is to be no automatic conversion for operating and personal licences.

Sections 359 & 360: Vessels and Aircraft: Territorial limitation

878. The Act applies to vessels and vehicles. See, for example, sections 211 and 231. Sections 359 and 360 establish the territorial limitation to the Act's regulation of vessels and aircraft.

Section 361: Extent

879. The Act applies to Scotland, England and Wales, but not generally to Northern Ireland. There are three exceptions to this. The offence of chain gifting in Part 3 and that of

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advertising foreign gambling in Part 16 apply to Northern Ireland, as does the repeal of sections 9 to 9B of the Betting and Gaming Duties Act 1981 contained in this Part.