

*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 8: Gambling Appeals Tribunal

390. This schedule sets out the provisions for the establishment, constitution, and procedure of the Gambling Appeals Tribunal, and should be read in conjunction with this Part.

Paragraphs 1 and 2: President, deputy and members

391. The Lord Chancellor will appoint a President and has the authority to appoint other members to the Tribunal. Only those with appropriate legal qualifications can be appointed. The Lord Chancellor can also appoint one or more members of the Tribunal to be its deputy President, who will act when the President is absent, and will undertake other duties delegated by the President.

Paragraph 3: Tenure

392. The duration of post of the President or other members of the Tribunal is dependent upon the terms and conditions of appointment. Resignation must be in writing to the Lord Chancellor. The Lord Chancellor has the power to dismiss Tribunal members, including the President and deputy President, for misbehaviour, or if they are unable or unwilling to undertake their duties. The retirement provisions contained in the Pensions and Retirement Act 1993 will apply to all tribunal members.

Paragraph 4: Staff

393. The Lord Chancellor can appoint staff for the Tribunal.

Paragraphs 5 to 8: Money

394. The Lord Chancellor has the power to pay Tribunal members, including the President and deputy President, and staff. He also has the power to pay other expenses of the Tribunal. Money received by way of appeal fees is to be paid into the Consolidated Fund. The President of the Gambling Appeals Tribunal qualifies for a pension under the Judicial Pensions and Retirement Act 1993.

Paragraph 9 to 11: Sitings

395. The Tribunal President will direct when and where the Tribunal sits and will decide which members are to be present at each sitting. This is in line with general arrangements made by the Lord Chancellor. At each sitting of the Tribunal, the President or a Tribunal member must be present. It will also be possible for the President to sit with two Tribunal members, for example, in a case which is considered to be particularly complex. The arrangements may provide that in some cases, a three member Tribunal may be obliged to continue sitting with only one or two members.

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In such a case, if sitting with just one other member, the arrangements may include provision for the President to have a casting vote.

396. The President will determine the constitution of the Tribunal and the times and places at which it will sit, in accordance with the general arrangements made by the Lord Chancellor. The Lord Chancellor must consult the President before making general arrangements. Arrangements made by the Lord Chancellor will be published.

Paragraphs 12 to 14: Procedure

397. Tribunal decisions are to be taken by a majority vote. The President is empowered to give directions about the practice and procedure of the Tribunal, as long as these do not conflict with the rules made by the Lord Chancellor.

Paragraph 15: Council on Tribunals

398. The Gambling Appeals Tribunal will be subject to the scrutiny of the Council on Tribunals, which is responsible for the supervision, constitution and working of Tribunals and Inquiries in England, Scotland and Wales, under the [Tribunals and Inquiries Act 1992 \(c.53\)](#).

Paragraph 16: Disqualification

399. This paragraph disqualifies any member of the Tribunal from being a member of the House of Commons and prevents the President of the Tribunal from practising as a solicitor or barrister whilst in post.

Part 8: Premises Licences

400. Part 8 of the Act describes the new regime for the licensing of premises where facilities for gambling may be provided. Premises licences are the third main category of licence (operating and personal licences being the other two) that will be issued under the Act. Premises licences will be granted by licensing authorities (as defined in section 2), not the Commission.
401. In England and Wales licensing authority functions are conferred on local authorities, and in Scotland upon licensing boards, as defined in Part 1 of the Act. Scottish Ministers will exercise a number of powers under this Part, prescribing procedures and fees for the premises licensing system in Scotland.
402. Premises licences can authorise the provision of facilities on:
- Casino premises;
 - Bingo premises;
 - Betting premises, including tracks and premises used by betting intermediaries;
 - Adult Gaming Centres (for Category B,C and D machines); and
 - Family Entertainment Centres (for Category C and D machines)
403. However, premises licences are not the only form of authorisation for the use of premises for providing gambling facilities. Under the Act, permission may also be obtained through:
- Occasional use notices or football pools authorisations under Part 3 of the Act;
 - Temporary use notices under Part 9 of the Act;
 - Permits for family entertainment centres (Category D machines only) under Part 10 of the Act;

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- Authorisations for alcohol licensed premises; clubs and miners' welfare institutes and travelling fairs, all under Part 12 of the Act;
 - Permissions for prize gaming under Part 13 of the Act; and
 - Authorisations for private and non-commercial gaming and betting under Part 14 of the Act.
404. Applicants for premises licences are required to hold a relevant operating licence before being granted a premises licence under this Part, except in the case of tracks, where an operating licence need not be held in all cases. This is to enable trackside betting operators (also known as on-course bookmakers) with operating licences to benefit from the track premises licence held by the occupier of the track. Pool-betting on a track, by the track occupier, will require a pool betting operating licence to be held. The definition of a "track" is contained in section 353.
405. Premises licences, unlike operating licences, are transferable between occupiers (who hold operating licences), on application to the licensing authority. Conditions on premises licences can be set by the licensing authority, and by the Secretary of State, or Scottish Ministers. Licensing authorities have powers to review licences, with associated regulatory powers. A provisional statement may be obtained from a licensing authority, in advance of a premises licence, where premises are to be constructed or altered, or where someone has yet to acquire the right to occupy premises.
406. [Part 8](#) provides appeals mechanisms for people affected by the decisions of licensing authorities.
407. [Part 18](#) contains provisions requiring all licensing authorities to set three-year licensing policies in respect of all of their functions under the Act, including premises licences. It also provides prosecution powers for licensing authorities in relation to their licensing functions.
408. [Part 10](#) contains provisions concerning gaming machines, and the categorisation of machines by the Secretary of State. A reference to a Commission code of practice in this Part is a reference to a statutory code of practice issued under Part 2 of the Act.

Section 150: Nature of licence

409. This section describes, in *subsection (1)*, the premises licences that may be issued by a licensing authority. They are:
- A licence for the operation of a casino;
 - A licence for the provision of facilities for playing bingo;
 - A licence for making Category B gaming machines available for use (an adult gaming centre);
 - A licence for making Category C gaming machines available for use (a family entertainment centre); and
 - A licence for the provision of facilities for betting, including betting intermediary facilities
410. Under Part 1 of the Act, the Secretary of State will make regulations defining classes of casinos. As a result, casino premises licences are divided into three types:
- Regional casino premises licences;
 - Large casino premises licence;
 - Small casino premises licence

Section 151: Form of licence

411. Premises licences must include the information described in this section. The Secretary of State may make further regulations about the form and content of the licence. These regulations may, in particular, specify how conditions, including mandatory conditions specified by the Secretary of State, are to appear on the licence.
412. In Scotland, the powers of the Secretary of State in relation to the form of the licence are to be carried out by the Scottish Ministers.

Section 152: Combined licence

413. The general position for premises licensing is that premises may only be subject to one premises licence at a time. *Subsection (1)* provides for this. The effect of this requirement is to limit the principal activity on the premises to the provision of facilities for a particular type of gambling activity.
414. However, there are some exceptions to this approach. One exception is set out in this section. *Subsections (2) and (3)* provide that a betting track may be subject to more than one premises licence, but that no more than one premises licence can operate in relation to any area of the track. *Subsection (4)* provides that where a particular area of a track is already subject to a premises licence, and a person wishes to apply for a licence to offer another type of gambling activity in that area, an application must be made to vary the original licence under section 187. The new licence for the track can only be granted at the same time as, or after, the original licence has been varied. Other sections in this Part give permission for particular kinds of premises licence to authorise more than one type of activity.

Section 153: Principles to be applied

415. This section sets out the principles that licensing authorities should apply when exercising their premises licensing functions under this Part. They must aim to permit the use of premises for gambling, in so far as the authority thinks that permission:
- accords with relevant Commission codes of practice and guidance under sections 24 and 25;
 - is reasonably consistent with the licensing objectives; and
 - is in accordance with the authority's three-year licensing policy (established by the authority under section 349 of the Act).
416. Under legislation repealed by this Act, it has been a requirement that the grant of certain gambling permissions should take account of whether there is unfulfilled demand for the facilities. This is the case, for example, for a casino licence under Part II of the Gaming Act 1968 or a bookmaker's permit under the Betting, Gaming and Lotteries Act 1963. Unmet demand is not to be a criterion that a licensing authority is permitted to take into account when considering an application for a premises licence, and *subsection (2)* provides for this.

Section 154: Delegation to licensing committee

417. With respect to England and Wales, this section provides that, with three exceptions, the functions of licensing authorities under Part 8 are delegated to the licensing committees established under section 6 of the [Licensing Act 2003 \(c.17\)](#). The three exceptions are:
- Functions relating to resolutions by the licensing authority not to issue casino licences under section 166;
 - Formulation of the three year licensing policy under section 349; and
 - Determination of premises licence fees under section 212.

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The first two matters are not, and cannot be, delegated to a licensing committee, and must be taken by the authority as a whole. Decisions on fees are not automatically delegated, but can be.

418. Section 10(4) of the Licensing Act 2003 limits the matters that may be delegated to an officer of the authority. In relation to gambling functions, *undersubsection (4)* the matters that may not be delegated to an officer are:
- Determination of an application for a premises licence or a provisional statement in respect of which representations have been made under section 161 and have not been withdrawn;
 - Determination of an application for of a premises licence in respect of which representations have been made under section 161 by virtue of section 187 and not withdrawn; or of an application for transfer of a licence following representations by the Commission;
 - Review of a premises licence.

Section 155: Delegation of functions under Part 8: Scotland

419. This section provides that, in relation to Scotland, the functions of licensing authorities may be delegated to a committee of the authority, a member or members of the authority, the clerk of the authority, or any person appointed to assist the clerk.
420. The three exceptions to this are:
- Resolutions by the licensing authority not to issue casino licences under section 166;
 - Formulation of the three year licensing policy under section 349; and
 - The matters listed in *subsection (4)* of section 154.
421. The first two matters may not be delegated at all, but the third matter may be delegated to a committee of the authority, or to a member or members of the authority.
422. In Scotland, licensing authorities are licensing boards established under section 1 of the Licensing (Scotland) Act 1976. The procedures that apply to the proceedings of licensing boards in the exercise of their functions under that Act apply to the proceedings of those boards in relation to their functions under this Part. Regulations made by the Scottish Ministers dealing with the proceedings of licensing boards may make separate provision for the functions of the boards under the Licensing (Scotland) Act and under this Part.

Section 156: Register

423. Under this section, licensing authorities must maintain a register of premises licences they have granted in their area, together with such other information as may be prescribed in regulations made by the Secretary of State. This register and information must be made available for inspection by the public. Licensing authorities must also provide a copy of an entry to the register, or of information, to a member of public on request, although they may charge for this service.
424. The section also provides that the Secretary of State may, by regulations, require licensing authorities to give the Commission specified information about premises licenses issued by them; and may require the Commission to maintain a register and grant public access to it. Regulations made under this section may also excuse licensing authorities from part or all of their duties to maintain a register and provide access to it.

Section 157: Responsible authorities

425. This section lists the people who are to be regarded as responsible authorities for the purposes of this Part. As responsible authorities they have particular rights to be involved and/or consulted in relation to applications for premises licences and other procedures under this Part. The Commission is a responsible authority, as are the police.

Section 158: Interested party

426. In addition to responsible authorities, a wider group of people may play a role in the premises licensing process under this Part. These people are called “interested parties”, and are defined in this section. Interested parties are:
- people who live sufficiently close to premises in respect of which a premises licence has been granted or applied for, that they are likely to be affected by activities authorised by the licence; and
 - those with business interests who might be affected by the authorised activities; or
 - representatives of either of these groups.

Sections 159 to 161: Applications

427. These sections prescribe the procedure for making an application for a premises licence. Only people with a right to occupy premises are eligible to apply for a premises licence. The notes relating to prize gaming permits under Part 14 expand upon the meaning of “occupy” for these purposes. Applicants must have an operating licence, or have made an application for one. A premises licence will not be issued until to an applicant until he holds an operating licence. The exception to this is an applicant for a premises licence that authorises a track to be used for accepting bets. These applicants do not need to hold, or have applied for, an operating licence.
428. Applications for premises licences must be made to the licensing authority in whose area the premises are wholly or partly situated; and must be in the prescribed form and manner, accompanied by the prescribed fee. Other sections in this Part describe the fee-setting powers relevant to premises licences.
429. The Secretary of State is given the power to make regulations which require an applicant for a premises licence to publish notice of his application, to give notice of it to responsible authorities and other people.
430. Responsible authorities and interested parties may make representations in writing to a licensing authority about a particular application. The period of time within which representations must be made will be prescribed in regulations.
431. Scottish Ministers exercise the powers of the Secretary of State under these sections in relation to Scotland.
432. Additional procedures apply in the case of applications for a casino licence. These are provided for in section 175 and Schedule 9.

Sections 162 to 165: Determination of application

433. These sections set out the procedure for determining an application. The procedures vary, depending on whether representations have been made, and what the licensing authority proposes to do with regard to licence conditions.
434. Where representations have been made by a responsible authority or an interested party (and not been withdrawn); or the licensing authority proposes to impose conditions on the licence, or exclude default conditions, a licensing authority is required to hold a hearing. The licensing authority may determine the application without a hearing, however, if either the applicant or any interested party has consented; or if the licensing

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authority considers that the representations made are vexatious, frivolous, or concern matters that will not influence their decision. Where the authority proposes to determine an application without a hearing, it must notify any person who made a representation as soon as reasonably practicable.

435. Following the grant or rejection of a premises licence, the authority must notify the applicant, the Commission, any person who made representations, the police, and HM Customs and Excise of their decision as soon as reasonably practicable.
436. Where the licensing authority determines to grant the licence, they must give reasons for the attachment or exclusion of any conditions. The premises licence issued by the licensing authority must be accompanied by a summary of the terms and conditions attaching to it. Where the licence is refused, the licensing authority must give reasons for their decision.
437. [Sections 206 to 209](#) set out the appeal rights in relation to a decision of a licensing authority to grant or reject an application for a premises licence. Where the licensing authority rejects an application for a licence, the applicant may appeal. Where the licensing authority grants an application, a person who made representations may appeal.

Section 166: Resolution not to issue casino licence

438. [Part 8](#) requires licensing authorities to permit the use of premises for gambling, in so far as the authority thinks that permission accords with relevant Commission codes of practice and guidance, is reasonably consistent with the licensing objectives, and is in accordance with the authority's three-year licensing policy (established by the authority under Part 18 of the Act).
439. This section provides an exception to this requirement. Licensing authorities are given the power to decide not to issue further casino premises licences in their area. This decision is to be taken by the licensing authority as a whole, and may not be delegated to the licensing committee under sections 154 and 155. The licensing authority may take into account any principle or matter in making its decision, and may pass a resolution giving effect to their decision at any time. Such a resolution must be published as part of the authority's licensing policy statement made under Part 18, and lasts for 3 years from the date it takes effect.
440. There are a number of restrictions on the scope of a resolution, as follows:
- A resolution can only apply to the grant of future applications for casino premises licences;
 - It cannot have any effect on casino licences that have already been granted, (including licences that have been converted into casino licences or issued under transitional provisions under Part 18);
 - It cannot have effect in relation to a provisional statement that has already been granted for a casino;
 - A resolution must apply to all types of casino premises licence (e.g. regional, large and small); and
 - A resolution may not be taken into account when reviewing a casino licence.
441. [Subsections 7 and 8](#) provide the Secretary of State with the power to order a particular licensing authority, or class of licensing authority to consider whether to issue a resolution under this section. Such an order may require, amongst other things, the authority to consult people likely to be affected by the resolution.

Sections 167 to 171: Conditions

442. These sections provide the Secretary of State, Scottish Ministers and licensing authorities with powers to place conditions on premises licences.
443. The Secretary of State and the Scottish Ministers have power to issue **mandatory** conditions on premises licences, for England and Wales, and Scotland respectively. Such conditions will be specified in regulations, and must be included in all premises licences, or classes of premises licence, to which they apply. These powers can apply to all premises licences, or classes of licence or to licences in specified circumstances.
444. The Secretary of State and Scottish Ministers have further powers to impose **default** conditions by regulations, for England and Wales, and Scotland respectively. These conditions are ones which apply to a licence unless the licensing authority decides to exclude them (in which case the authority can impose alternative conditions relating to the same matter). These powers can apply to all premises licences, or classes of licence, or to licences in specified circumstances.
445. In addition, licensing authorities have power to set individual conditions for a premises licence when they grant it. In doing so, they may impose a condition on a licence, or exclude default conditions (in which case they may impose alternative conditions relating to the same matter). Their power to impose conditions is subject to the matters listed below.
446. A premises licence not may be subject to a condition imposed by a licensing authority:
- that would prevent compliance with a condition on an operating licence which authorises the gambling activity (section 169(4));
 - that requires the premises, or any part of it, to operate as a club or another body requiring membership (section 170);
 - that imposes limits on stakes, fees, winnings or prizes (except in relation to fees for admission to a track) (section 171).

Section 172: Gaming machines

447. Part 10 of the Act defines a gaming machine, and gives the Secretary of State power to make rules about their categorisation and use or manufacture and supply. This section contains the gaming machine entitlements which apply to the different types of premises licence issued under this Part. Licensing authorities may not vary these entitlements.
448. The entitlements are:
- Adult gaming centres: up to four Category B machines and any number of Category C and D machines;
 - Licensed family entertainment centres: any number of machines of Category C or D;
 - Casinos:
 - Small casinos: 2 machines per gaming table used in the casino, up to a maximum of 80 machines. Machines may be of Category B,C or D;
 - Large casinos: 5 machines per gaming table used in the casino, up to a maximum of 150 machines. Machines may be of Category B, C or D;
 - Regional casinos: 25 machines per gaming table used in the casino, provided there are at least 40 tables, and up to a maximum of 1250 machines. Machines may be of Category A, B, C or D. If a regional casino has fewer than 40 tables, its entitlement is that of a large casino.

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- Bingo premises: up to 4 Category B gaming machines, and any number of machines of Category C and D;
- Betting premises: up to 4 gaming machines of Category B, C or D;
- Tracks: Where the track licensee is permitted to offer pool betting: up to 4 machines of Category B, C or D.

449. The Secretary of State may amend these entitlements in secondary legislation.
450. In relation to casino entitlements, the Secretary of State can make regulations defining “gaming table”, and, in particular may specify when a gaming table is to be treated as being used in a casino. These regulations could cover matters such as whether appropriate numbers of staff are trained to operate the tables, and the extent to which such staff (and therefore tables) are available for use.
451. These regulations can also specify when tables, which are linked together by electronic means for example, are to count as a single table for the purpose of machine entitlements under this section. This could be the case where one roulette wheel is operated by a croupier, but a number of associated banks of terminals allow players to take part in the game. The regulations will determine whether the banks of terminals count as a table in their own right. Part 10 of the Act contains provisions on when such equipment counts as a gaming machine.

Section 173: Virtual gaming

452. This section authorises the provision of facilities for “virtual” betting in casinos and on betting premises. Section 353(3) contains a definition of “virtual” for these purposes.

Section 174: Casino premises licence

453. Casino premises licences will be available for “small”, “large” and “regional” casinos and will authorise the playing of casino games and equal chance games on the premises. Relevant definitions of these terms are set out in Part 1.
454. A casino premises licence will also authorise the provision of facilities for betting, where the licensee or a person authorised in writing by the licensee holds a relevant betting operating licence. Large and regional casino premises licences also authorise the provision of facilities for bingo, again, provided there is a valid bingo operating licence held by the person providing the activity. Provision of facilities for bingo may not be made in a small casino, but the Secretary of State has power to repeal this restriction by order.
455. *Subsection (6)* allows the Secretary of State to make regulations that impose mandatory conditions on casino premises licences in relation to equipment used for playing automated games of chance. Such equipment, which neither involves nor is linked to a game requiring human operation, is not a gaming machine provided it is used in accordance with Commission licence conditions set under this subsection (section 235(2)(i)). An example of this equipment is a roulette wheel which is completely mechanised, and works without the need for any croupier to rotate the wheel, spin the ball or accept stakes. Conditions may, in particular, limit the number of machines that may be provided in a casino and the number of player positions that may be provided for use of the machines.
456. *Subsection (7)* allows the Secretary of State to use her powers via regulation to control the non-gambling facilities provided in casinos by attaching licence conditions. This does not prevent the licensing authority imposing conditions on such matters under section 169, subject to any mandatory conditions which the Secretary of State may prescribe under section 167.

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Section 175: Casino premises licence: overall limits

457. This section sets an initial limit of 1 regional casino, and 8 small and 8 large casinos. The Secretary of State will, by order, determine the locations of the new casinos after consulting Scottish Ministers and the Welsh Assembly. The Secretary of State may by order vary the limits on the numbers of different categories of casino, or lift the limits altogether. Orders under this section are subject to the affirmative resolution procedure.