



# Gambling Act 2005

## 2005 CHAPTER 19

### PART 5

#### OPERATING LICENCES

##### *Conditions*

#### **75 General conditions imposed by Commission**

- (1) The Commission may specify conditions to be attached to—
  - (a) each operating licence, or
  - (b) each operating licence falling within a specified class.
- (2) For the purposes of subsection (1)(b) a class may be defined wholly or partly by reference to—
  - (a) the nature of the licensed activities;
  - (b) the circumstances in which the licensed activities are carried on;
  - (c) the nature or circumstances of the licensee or of another person involved or likely to be involved in the conduct of the licensed activities.
- (3) Where the Commission issues an operating licence it shall attach to the licence any condition specified under subsection (1) as a condition to be attached to operating licences of a class within which the licence falls.

#### **76 General conditions: procedure**

- (1) The Commission may amend or revoke a condition specified under section 75; and a reference in this section to the specification of a condition includes a reference to the amendment or revocation of a condition.
- (2) Before specifying a condition the Commission shall consult—
  - (a) one or more persons who in the Commission's opinion represent the interests of operating licensees who may be affected by the condition, and

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- (b) such of the persons specified in section 23(5) as the Commission thinks appropriate (if any).
- (3) The Commission shall publish any specification as soon as is reasonably practicable.
- (4) Where the Commission proposes to specify a condition—
  - (a) at least three months before making the specification the Commission shall give notice of it to the holder of each licence which—
    - (i) has effect at that time, and
    - (ii) is within a class affected by the specification,
  - (b) if the Commission issues, after that time but before the specification is made, an operating licence of a class affected by the specification, the Commission shall give the licensee notice of the proposed specification, and
  - (c) on the making of the specification an existing licence shall by virtue of this paragraph be subject to the condition specified.
- (5) If the Commission thinks it necessary by reason of urgency to make a specification without giving the notice required by subsection (4)(a)—
  - (a) the Commission shall give as much notice as it thinks possible in the circumstances to the persons mentioned in that provision,
  - (b) subsection (4)(b) shall have effect after the time when notice is given under paragraph (a) above, and
  - (c) subsection (4)(c) shall have effect.
- (6) Subsection (4)(c), in its application to the amendment or revocation of a condition (by virtue of subsection (1)), shall be treated as—
  - (a) making existing licences subject to the condition as amended, or
  - (b) relieving existing licences from the condition revoked.

#### **77 Individual condition imposed by Commission**

Where the Commission issues an operating licence it may attach a condition to the licence.

#### **78 Condition imposed by Secretary of State**

- (1) The Secretary of State may by regulations provide for a specified condition to be attached to operating licences falling within a specified description.
- (2) Transitional provision of regulations under this section (made by virtue of section 355(1)(c)) may, in particular, apply a condition (with or without modification) to licences issued before the regulations are made (or come into force).

#### **79 Scope of powers to attach conditions**

- (1) Without prejudice to the generality of the powers conferred by sections 75, 77 and 78, a condition attached under any of those sections may, in particular, do any of the things specified in this section.
- (2) A condition may have the effect of restricting the activities that may be carried on in reliance on the licence by reference to—
  - (a) the nature of the activities,

- (b) the circumstances in which they are carried on, or
  - (c) their extent.
- (3) A condition may make provision wholly or partly by reference to—
  - (a) the nature of the licensed activities;
  - (b) the circumstances in which the licensed activities are carried on;
  - (c) the nature or circumstances of the licensee or of another person involved or likely to be involved in the conduct of the licensed activities.
- (4) In regulating the licensed activities a condition may make provision about—
  - (a) the facilities that may or must be provided in connection with the licensed activities;
  - (b) the manner in which facilities are provided;
  - (c) the number of persons that may or must be employed in the provision of facilities;
  - (d) the financial resources available for particular purposes to the person providing facilities;
  - (e) any other matter.
- (5) A condition may relate to the financial circumstances of the licensee or of another person involved or likely to be involved in the conduct of the licensed activities; in particular, a condition may make provision about the maintenance of reserves in respect of potential liabilities.
- (6) A condition of a remote operating licence may restrict the methods of communication that may be used in the course of the licensed activities.
- (7) A condition may make provision about how facilities for gambling are advertised or described.
- (8) A condition may make provision about the provision of assistance to persons who are or may be affected by problems related to gambling.
- (9) A condition may make provision about—
  - (a) establishing the identity of users of facilities;
  - (b) recording the identity of users of facilities;
  - (c) restricting facilities to persons registered in respect of the facilities in advance.

## **80 Requirement for personal licence**

- (1) The Commission shall use its powers under sections 75 and 77 to ensure that in respect of each operating licence at least one person—
  - (a) occupies a specified management office in or in respect of the licensee or in connection with the licensed activities, and
  - (b) holds a personal licence authorising the performance of the functions of the office.
- (2) A condition under either of those sections may impose requirements which relate to a management office and are in addition to any required by subsection (1).
- (3) A condition attached to an operating licence by virtue of section 75, 77 or 78 may, in particular, provide that if a specified management office is held in or in respect of

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- the licensee or in connection with a licensed activity (whether or not in pursuance of another condition)—
- (a) it must be held by an individual who holds a personal licence authorising the performance of the functions of the office, and
  - (b) anything done in the performance of the functions of the office must be done in accordance with the terms and conditions of the personal licence.
- (4) A condition attached to an operating licence by virtue of section 75, 77 or 78 may, in particular, provide that if a specified operational function is performed in connection with a licensed activity it must be performed—
- (a) by an individual who holds a personal licence authorising performance of the function, and
  - (b) in accordance with the terms and conditions of the personal licence.
- (5) In this section “management office” in relation to a licensee means—
- (a) if the licensee is a company, the office of director,
  - (b) if the licensee is a partnership (including a limited liability partnership), the office of partner,
  - (c) if the licensee is an unincorporated association, any office in the association, and
  - (d) in any case, any position the occupier of which is required, by the terms of his appointment, to take or share responsibility for—
    - (i) the conduct of a person who performs an operational function in connection with a licensed activity, or
    - (ii) facilitating or ensuring compliance with terms or conditions of the operating licence.
- (6) In this section “operational function” means—
- (a) any function which enables the person exercising it to influence the outcome of gambling,
  - (b) receiving or paying money in connection with gambling, and
  - (c) manufacturing, supplying, installing, maintaining or repairing a gaming machine.
- (7) Provision by virtue of subsection (1) may be general or may relate only to specified—
- (a) kinds of operating licence,
  - (b) cases, or
  - (c) circumstances.
- (8) The Secretary of State may by order amend the definition of “management office” or “operational function” for the purposes of this section.
- (9) In relation to a bingo operating licence issued to a members' club, a commercial club or a miners' welfare institute—
- (a) subsection (1) shall not apply, and
  - (b) a condition attached by virtue of section 75, 77 or 78 may not—
    - (i) require that a person hold a personal licence, or
    - (ii) operate by reference to whether a person holds a personal licence.

## **81 Credit and inducements**

- (1) A condition attached to an operating licence by virtue of section 75, 77 or 78 may, in particular, restrict or otherwise make provision about—
  - (a) the giving of credit in connection with the licensed activities;
  - (b) the making of offers designed to induce persons to participate, or to increase their participation, in the licensed activities;
  - (c) participation in arrangements for inducing, permitting or assisting persons to gamble.
- (2) A non-remote casino operating licence or a non-remote bingo operating licence shall by virtue of this subsection be subject to the condition that the licensee may not—
  - (a) give credit in connection with gambling, or
  - (b) participate in, arrange, permit or knowingly facilitate the giving of credit in connection with gambling.
- (3) But the condition in subsection (2) shall not prevent the licensee from permitting the installation and use on the premises of a machine enabling cash to be obtained on credit from a person (the “credit provider”) provided that—
  - (a) the licensee has no other commercial connection with the credit provider in relation to gambling,
  - (b) the licensee neither makes nor receives any payment or reward (whether by way of commission, rent or otherwise) in connection with the machine, and
  - (c) any conditions about the nature, location or use of the machine attached by virtue of section 75, 77 or 78 are complied with.
- (4) In this section “credit” includes—
  - (a) any form of financial accommodation, and
  - (b) in particular, the acceptance by way of payment of a fee, charge or stake of anything other than—
    - (i) cash,
    - (ii) a cheque which is not post-dated and for which full value is given, or
    - (iii) a debit card payment which is not post-dated and for which full value is given.
- (5) In subsection (4)(b)(iii) “debit card payment” means a payment—
  - (a) debited against a person’s banking account, and
  - (b) made by means of a card which is not a credit-token within the meaning of section 14 of the Consumer Credit Act 1974 (c. 39).

## **82 Compliance with code of practice**

- (1) An operating licence shall by virtue of this section be subject to the condition that the licensee ensures compliance with any relevant social responsibility provision of a code of practice issued under section 24.
- (2) In subsection (1)—
  - (a) the reference to a licensee includes a reference to anyone employed or engaged by a licensee to perform an operational function within the meaning of section 80, and
  - (b) the reference to a social responsibility provision of a code is a reference to a provision identified by a code as being included in pursuance of section 24(2).

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- (3) This section does not prevent compliance with a provision of a code, other than a social responsibility provision, from being made the subject of a condition under section 75, 77 or 78.

### **83 Return of stakes to children**

- (1) An operating licence shall by virtue of this section be subject to the condition that if the licensee becomes aware that a child or young person is using or has used facilities for gambling provided in reliance on the licence, the licensee—
- (a) must return any money paid in respect of the use of those facilities (whether by way of fee, stake or otherwise) by the child or young person as soon as is reasonably practicable, and
  - (b) may not give a prize to the child or young person.
- (2) But subsection (1) does not apply to—
- (a) the use of a Category D gaming machine, or
  - (b) participation in equal chance gaming at a licensed family entertainment centre.
- (3) The condition in subsection (1)—
- (a) shall have effect despite any contract or other agreement and despite any rule of law, and
  - (b) shall not enable a licensee to demand repayment of, and shall not require a child or young person to return, a prize paid before the licensee becomes aware that the participant is a child or young person.
- (4) In this section—
- (a) a reference to a licensee includes a reference to anyone employed or engaged by a licensee to perform an operational function within the meaning of section 80, and
  - (b) in relation to participation in a lottery or football pools a reference to a child or young person shall be treated as a reference only to a child.
- (5) In this section “prize” includes both a prize provided by a person organising gambling and winnings of money staked.

### **84 Premises**

- (1) An operating licence—
- (a) may not include a condition (whether attached by virtue of section 75, 77 or 78)—
    - (i) requiring that the licensed activities be carried on at a specified place or class of place,
    - (ii) preventing the licensed activities from being carried on at a specified place or class of place, or
    - (iii) specifying premises on which the licensed activities may be carried on, but
  - (b) may include a condition about—
    - (i) the number of sets of premises on which the licensed activities may be carried on;
    - (ii) the number of persons for whom facilities may be provided on any premises where the licensed activities are carried on.

- (2) An operating licence of any kind may authorise activities carried on in more than one place.

## **85 Equipment**

- (1) A condition attached to an operating licence by virtue of section 75, 77 or 78 may make provision about equipment used in connection with the licensed activities.
- (2) In particular, a condition attached by virtue of this section may—
- (a) make provision about the number of pieces of equipment, other than equipment for playing bingo, that may be used to provide facilities for gambling;
  - (b) make provision about the specification of equipment used to provide facilities for gambling.
- (3) For the purposes of this section “equipment” includes—
- (a) a computer,
  - (b) a device for the playing of a casino game, and
  - (c) any other piece of equipment.
- (4) But a gaming machine is not equipment for the purposes of this section.

## **86 Gaming machines**

- (1) An operating licence may not include a condition (whether attached by virtue of section 75, 77 or 78)—
- (a) about the number or categories of gaming machine that may be made available for use in accordance with the licence,
  - (b) that contradicts a provision of regulations under section 236, 240 or 241, or
  - (c) of a kind prohibited by regulations under any of those sections.
- (2) An operating licence may be subject to a condition (whether imposed by virtue of section 75, 77 or 78) that a specified gaming machine may not be made available for use in reliance on the licence if the Commission has notified the licensee in writing that the manufacture, supply, installation, adaptation, maintenance or repair of the machine—
- (a) was not carried out in reliance on a gaming machine technical operating licence, or
  - (b) did not comply with standards established under or by virtue of section 96.

## **87 Membership**

An operating licence may not be subject to a condition (whether by virtue of section 75, 77 or 78)—

- (a) requiring facilities to be provided by, or used in the course of the activities of, a club or other body with membership, or
- (b) restricting the provision or use of facilities wholly or partly by reference to membership of a club or other body.

## **88 Information**

- (1) A condition attached to an operating licence by virtue of section 75 or 78 may require the provision of information of a specified kind to—
  - (a) the Commission, or
  - (b) another specified person or class of person.
- (2) A condition attached by virtue of this section may, in particular—
  - (a) relate to information about the use made of facilities provided in accordance with the operating licence;
  - (b) require a person to provide any information that he suspects may—
    - (i) relate to the commission of an offence under this Act,
    - (ii) relate to a breach of a rule applied by a sporting or other body, or
    - (iii) lead to the making of an order under section 336.