



EXPLANATORY NOTES

Gambling (Licensing and Advertising) Act 2014

Chapter 17

£6.00

GAMBLING (LICENSING AND ADVERTISING) ACT 2014

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Gambling (Licensing and Advertising) Act which received Royal Assent on 14 May 2014. They have been prepared by the Department of Culture, Media and Sport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act extends the scope of the regulatory regime governing remote gambling under the Gambling Act 2005. It gives power to the Secretary of State to make regulations to secure that the liability for payment of the horserace betting levy includes all bookmakers who are required to hold a remote operating licence under the 2005 Act. The Act also introduces an offence of advertising unlicensed remote gambling which will only apply in Northern Ireland.

BACKGROUND

4. The 2005 Act introduced a new regulatory regime to govern the provision of gambling in Great Britain and created a single regulator, the Gambling Commission.
5. The general approach adopted under the 2005 Act is that a person who provides facilities for gambling must hold an operating licence from the Gambling Commission, unless otherwise exempted. A person who provides facilities for gambling without a licence as required commits an offence under section 33 of the 2005 Act.
6. The 2005 Act regulates both 'non-remote' and 'remote' gambling.
7. Remote gambling means gambling in which persons participate by the use of 'remote communication'. This includes the internet, telephone, television, radio, or any other kind of electronic or other technology for facilitating communication.

8. A ‘remote operating licence’ is required to provide facilities for remote gambling if (and only if) at least one piece of ‘remote gambling equipment’ used in the provision of the gambling facilities is located in Great Britain. The effect of this is that remote gambling operators who locate all of their remote gambling equipment overseas do not need a remote operating licence from the Gambling Commission, whether or not their remote gambling facilities are used by British consumers.
9. The 2005 Act also regulates advertising of gambling services in Great Britain. Section 328 of the 2005 Act empowers the Secretary of State to make regulations controlling the advertising of gambling. To date no such regulations have been made. In addition to the advertising offences in the 2005 Act (see further below), licensed operators must comply with the Code of Practice issued by the Gambling Commission under section 24 of the 2005 Act. The Code requires operators to comply, as appropriate, with the Broadcast Committee of Advertising Practice, the Committee of Advertising Practice codes issued under the auspices of the Advertising Standards Authority, and the gambling industry’s own *Gambling Industry Code for Socially Responsible Advertising*.
10. There are two general advertising offences in the 2005 Act: sections 330 and 331.
11. Section 330 makes it an offence to advertise unlawful gambling, by remote or non-remote communication. For the purposes of section 330, advertised gambling is unlawful if an operator does not hold the required licence from the Gambling Commission for the gambling to take place as advertised. In the case of remote gambling, the offence of advertising unlawful gambling only applies if at least one piece of remote gambling equipment to be used in providing facilities for the advertised gambling is situated in Great Britain (see section 333 (territorial application: remote advertising)).
12. Section 331 makes it an offence to advertise foreign gambling, whether by remote or non-remote communication. ‘Foreign gambling’ means gambling which either takes place in a non-EEA state (e.g. a casino in Australia), or gambling by remote means which is not regulated by the gambling law of any EEA state. For the purposes of section 331, Gibraltar is treated as if it is an EEA state. The Secretary of State may also make regulations specifying places which are to be treated as though they were EEA states for the purposes of section 331, known as the “White List”. There are currently four places on the White List: the Isle of Man and Tasmania, the States of Alderney, and Antigua and Barbuda. Gambling operators based in Gibraltar and White List places are able to advertise their remote gambling services in the United Kingdom without a remote operating licence from the Gambling Commission.
13. The Act engages the Technical Standards and Regulations Directive 98/34/EC (as amended by Directive 98/48/EC) and as such was required to be notified in draft to the European Commission. This has been done.

TERRITORIAL EXTENT AND APPLICATION

14. Sections 6(1) to (3) provide for the territorial extent of the Act. Sections 1 to 3 and 5 apply to England and Wales and Scotland. Section 3(1) also extends to Northern Ireland, and section 5 only extends there.

Territorial application: Scotland

15. Betting, gaming and lotteries are reserved matters for the purposes of the Scotland Act 1998. The Act does not contain any provisions that fall within the legislative competence of the Scottish Parliament. It does not affect the functions of the Scottish Ministers and does not make different provision in relation to Scotland.

Territorial application: Wales

16. The Act does not contain any provisions that fall within the legislative competence of the National Assembly for Wales. It does not affect the functions of Welsh Ministers and does not make different provision in relation to Wales.

Territorial application: Northern Ireland

17. Gambling is a transferred matter for the purposes of the Northern Ireland Act 1998. Westminster will not normally legislate with regard to a transferred matter in Northern Ireland without consent of the Northern Ireland Assembly. Sections 3(1), 5 and 6 extend to Northern Ireland. The Northern Ireland Assembly passed a Legislative Consent Motion consenting to these provisions on 17 June 2013.

COMMENTARY ON SECTIONS

Section 1: Licensing of remote gambling

18. Section 1(2) extends the category of remote gambling operators who will need a licence from the Gambling Commission. An operator will need a licence from the Gambling Commission if their gambling facilities are used in Great Britain (even if no equipment is located here) and the operator knows, or should know, that the facilities are being used or are likely to be used in Great Britain. If the operator does not obtain a remote gambling licence, they will be committing an offence under section 33 of the 2005 Act.
19. For example, an overseas-based operator who makes remote gambling facilities available on the internet will need to obtain an operating licence from the Commission if their website is used in Great Britain and the operator knows, or should know, that the facilities are being used or are likely to be used in Great Britain. If the overseas operator wants to avoid having to obtain a licence, they will need to take action to prevent consumers using their website here.
20. Section 1(3) repeals paragraph (a) of section 26B of the Betting and Gaming Duties Act 1981. Section 26B makes provision for remote gambling duty. Under that section, duty is charged on the provision of facilities for remote gambling in two cases. The first case is where the facilities are provided in reliance on a remote operating licence (section 26B(a)). The second case is where at least one piece of remote gambling equipment used in the provision of the facilities is situated in the United Kingdom (section 26B(b)). At present, under the 2005 Act, an operator is

only required to hold a remote operating licence if they have at least one piece of remote gambling equipment in Great Britain. Therefore a remote gambling operator who needs a licence will always also fall within section 26B(b) of the 1981 Act. As above, section 1(2) of the Act extends the category of operators who will have to hold a remote gaming licence. The government do not intend to use this Act to extend the remote gambling duty to this new category of operators. The repeal of section 26B(a) ensures that they will not be liable for remote gambling duty, whilst not affecting the liability of those who are currently required to hold a remote operating licence.

Section 2: Payment of Horserace Betting Levy by holders of remote operating licences

21. Section 2 gives power to the Secretary of State to make regulations to secure that the liability for payment of the horserace betting levy under section 27 of the Betting, Gaming and Lotteries Act 1963 includes all bookmakers who are required to hold a remote operating licence under the Gambling Act 2005.
22. The horserace betting levy was established by the Betting Levy Act 1961. The levy was subsequently consolidated into the Betting, Gaming and Lotteries Act 1963. The current horserace betting levy is assessed and collected by the Horserace Betting Levy Board in accordance with the 1963 Act.
23. Liability to pay the levy is imposed on bookmakers under section 27 of the 1963 Act. Currently, liability to pay the levy under section 27 does not extend to bookmakers who are based outside of Great Britain. It applies only to those who are based within Great Britain. Section 2(1) gives power to the Secretary of State to make regulations to extend the category of bookmakers liable to pay the levy to include all bookmakers required to obtain a remote operating licence from the Gambling Commission. This will include bookmakers based overseas who will be required to obtain a remote operating licence from the Gambling Commission as a result of this Act.
24. Section 2(2) sets out a non-exhaustive list of the types of provision that could be included in any regulations made under subsection (1). It makes it clear that the power in subsection (1) is a broad power, including power to make changes to the existing levy system to secure its extension to all bookmakers required to obtain a remote operating licence.
25. Any regulations made under subsection (1) would have to be approved by a resolution of each House of Parliament before they could be brought into force (section 2(3)).
26. Section 2(4) clarifies that nothing in section 2 is to be read as preventing the Secretary of State bringing Part 2 of the Horserace Betting and Olympic Lottery Act 2004 into force, or exercising any power under that Part. Part 2 of the 2004 Act enables the Secretary of State by order made by statutory instrument to make provision for the abolition of the Horserace Betting Levy Board and the levy system, and make transfer schemes to transfer any property, rights and liabilities of the Levy Board to specified persons at specified times.

Section 3: Advertising of foreign gambling

27. Section 3(1) repeals the offence of advertising foreign gambling in section 331 of the 2005 Act. The effect of this amendment is to abolish the White List (for further discussion about the White List see paragraph 12, above).
28. Section 3(2) makes minor consequential amendments to sections 332, 333 and 361 of the 2005 Act.

Section 4: Advertising of gambling by way of remote communication

29. Section 4 amends section 333 of the 2005 Act. Section 333 sets out the territorial application of the advertising provisions in the case of advertising which is done by remote communication (called 'remote advertising' in the 2005 Act).
30. Section 3(2) repeals section 333(2)(b) which relates to advertising broadcast by television. Currently television broadcasters established in another EEA state can advertise gambling in the United Kingdom that they would otherwise be prohibited from doing by section 330 of the 2005 Act. The amendment changes this, and ensures that television advertising is subject to the same rules regardless of where the broadcaster is based.
31. Section 3(3) amends section 333(9)(b). Section 333(9)(b) limits the extent of the offence of advertising unlawful gambling, in the case of remote gambling, to operators who have at least one piece of equipment in Great Britain, i.e. those operators who currently require a remote operating licence from the Gambling Commission. Section 3(3) extends the offence to operators whose remote gambling facilities are capable of being used in Great Britain, to bring it in line with the point of consumption licensing requirement being enacted by this Act. The effect is that a remote gambling operator will commit an offence under section 330 if their remote gambling facilities are capable of being used in Great Britain **and** a remote operating licence is required for the gambling to taken place as advertised, but the operator does not have a licence.
32. The amendment of section 333(9)(b) will also extend to any regulations made under section 328 in relation to remote advertising.

Section 5: Offence of advertising unlicensed remote gambling: Northern Ireland

33. Section 5 creates an offence of advertising unlicensed remote gambling which will only apply in Northern Ireland. The effect of this amendment is that a remote gambling operator who does not hold the required Gambling Commission licence will not be able to advertise remote gambling in Northern Ireland.
34. Section 331 of the 2005 Act also applies in Northern Ireland. The repeal of section 331 in Northern Ireland would therefore mean that remote gambling operators could advertise remote gambling in Northern Ireland, regardless of whether they were regulated in Great Britain (or in any country). The new offence will ensure that remote gambling operators will not be able to advertise remote gambling in Northern Ireland unless they hold a remote operating licence from the Gambling Commission.

35. Section 5(3) replicates the same protections that currently apply in relation to remote advertising in the 2005 Act (see section 333(4)). A person guilty of an offence of advertising unlicensed remote gambling is liable on summary conviction to imprisonment for a term not exceeding 6 months, a fine not exceeding level 5 on the standard scale, or both.

COMMENCEMENT

36. Section 6 and sections 1(4) to (7) will come into force on the day on which the Act is given Royal Assent. The remaining provisions of the Act will come into force on such day as the Secretary of State may by order made by statutory instrument appoint (different days may be appointed for different purposes).

HANSARD REFERENCES

37. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament

Stage	Date	Hansard Reference
House of Commons		
Introduction	9 May 2013	Vol. 563 (No.2) Col. 165
Second Reading	5 November 2013	Vol. 570 Cols. 125-177
Committee	12 and 19 November 2013	Hansard Public Bill Committee
Report and Third Reading	26 November 2013	Vol. 571 Cols.164-209
House of Lords		
Introduction	27 November 2013	Vol. 749 Col. 1416
Second Reading	17 December 2013	Vol. 750 Cols. 1217-1228
Grand Committee	14 January 2014	Vol. 751 Cols. GC53-GC102
Report	4 March 2014	Vol. 752 Cols. 1276-1306
Third Reading	18 March 2014	Vol. 753 Cols. 83-99

*These notes refer to the Gambling (Licensing and Advertising) Act 2014 (c.17)
which received Royal Assent on 14 May 2014*

Stage	Date	Hansard Reference
House of Commons		
Consideration of Amendments	26 March 2014	Vol. 578 Cols. 406-415
Royal Assent	14 May 2014	Lords: Vol. 753 Col. 1920 Commons: Vol. 580 Col. 859

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