
STATUTORY INSTRUMENTS

2007 No. 2169 (C. 81)

BETTING, GAMING AND LOTTERIES

The Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) (Amendment) (No. 2) Order 2007

<i>Made</i>	- - - -	<i>24th July 2007</i>
<i>Laid before Parliament</i>		<i>25th July 2007</i>
<i>Coming into force</i>	- -	<i>16th August 2007</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 355(1) and 358(1), (2) and (4) of, and paragraphs 2 and 4 to 11 of Schedule 18 to, the Gambling Act 2005(1).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) (Amendment) (No. 2) Order 2007 and shall come into force on 16th August 2007.

(2) In this Order “the Principal Commencement Order” means the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006(2).

Amendment of article 1 of the Principal Commencement Order

2. Article 1(2) of the Principal Commencement Order is amended by—

(a) inserting the following definition after the definition of “the 1976 Act”—

““the 2004 Act” means the Horserace Betting and Olympic Lottery Act 2004(3)

(b) deleting “and” where it appears immediately after the definition of “non-conversion application for a casino premises licence”;

(c) inserting “; and” immediately after the definition of “point to point certificate”; and

(d) inserting the following definition after the definition of “point to point certificate”—

(1) 2005 c. 19.

(2) S.I. 2006/3272, amended by S.I. 2006/3361, 2007/1157 and 2007/1527.

(3) 2004 c.25.

““the successor company” means the company which is nominated for the purposes of section 2 of the 2004 Act by the Secretary of State in accordance with subsection (2)(a) of that section”.

Amendment of article 2 of the Principal Commencement Order

3. Article 2 of the Principal Commencement Order is amended by substituting for paragraph (4)

—
“(4) Save as provided by articles 3 to 5, the 2005 Act apart from the provisions listed in column 1 of Schedule 3B shall come into force on 1st September 2007.

(5) Where a particular purpose is specified in column 2 of Schedule 3B in relation to any provision listed in that Schedule, the reference to that provision in paragraph (4) is only to that provision for the purpose so specified. ”.

Amendment of article 3 of the Principal Commencement Order

4.—(1) Article 3 of the Principal Commencement Order is amended as follows.

(2) In paragraph (2) for “sections 12, 14, 15 and 24 to 31” substitute “section 31”.

Amendment of the Principal Commencement Order: provisions relating to the successor company established under Part 1 of Horserace Betting and Olympic Lottery Act 2004

5. The Principal Commencement Order is amended by inserting the following articles after article 6—

“Modification of Part 1 of the Horserace Betting and Olympic Lottery Act 2004

7.—(1) Section 8 of the 2004 Act (exclusive licence for the right to carry on horse-race pool betting) shall have effect subject to the following modifications.

(2) A term or condition of the exclusive licence under that section shall be of no effect to the extent that it is inconsistent with a term or condition of an operating licence issued to the successor company.

(3) A term or condition of an authorisation given to a person under subsection (5)(a) of that section shall be of no effect to the extent that it is inconsistent with a term or condition of any authorisation given by the successor company to that person under section 94 of the 2005 Act.

(4) Subsection (7)(b) of that section shall have effect as if it also provided for the Secretary of State to have power to direct the Gambling Commission to make an order revoking the exclusive licence under that section if any operating licence issued to the successor company ceases to have effect.

Modification of the Gambling Act 2005 to reflect provisions of Part 1 of the Horserace Betting and Olympic Lottery Act 2004

8.—(1) In respect of any time when the exclusive licence issued to the successor company under section 8 of the 2004 Act has effect—

(a) section 33 of the 2005 Act (which makes it an offence to provide facilities for gambling without the appropriate authorisation under that Act) shall have effect subject to the modification in paragraph (2); and

(b) Part 8 of the 2005 Act shall have effect subject to the modification in paragraph (3).

(2) A person who acts in contravention of section 8(5)(b) of the 2004 Act shall be treated as having committed an offence under section 33 of the 2005 Act irrespective of whether or not he would otherwise have committed the offence.

(3) A premises licence issued under that Part shall not authorise the use of premises for doing anything prohibited by section 8(5)(b) of the 2004 Act.

(4) Part 5 of the 2005 Act (which makes provision with respect to operating licences under that Act) shall have effect in relation to the successor company subject to the modifications in the following provisions of this paragraph.

(5) If the Gambling Commission issues the exclusive licence to the successor company under section 8 of the 2004 Act, the Commission must (if it has not already done so) issue a remote and a non-remote pool betting operating licence to the successor company which will have the effect of authorising the activities which the exclusive licence grants the successor company the right to perform.

(6) An operating licence issued in accordance with paragraph (5) must provide for section 94 of the 2005 Act to apply to the licence.

(7) Paragraph (5) applies whether or not the successor company is applying under section 69 of the 2005 Act for a remote or a non-remote pool betting operating licence when the exclusive licence is issued.

(8) If the successor company holds a remote or a non-remote operating licence when the exclusive licence is issued, the Gambling Commission must (if necessary) vary the licence so that it will—

- (a) have the effect of authorising the activities referred to in paragraph (5), and
- (b) provide for section 94 of the 2005 Act to apply to the licence.

(9) Subsection (6) of section 104 of the 2005 Act applies to the variation of the operating licence under paragraph (8) as it applies to the variation of an operating licence on an application being made under that section.”.

Amendment of the Principal Commencement Order to insert new Schedule

6. The Principal Commencement Order is amended by inserting after Schedule 3A the Schedule 3B set out in the Schedule to this Order.

Amendment of Part 2 of Schedule 4 to the Principal Commencement Order

7.—(1) Paragraph 7 of Schedule 4 to the Principal Commencement Order (which restricts the circumstances in which an application for a certificate of approval under section 19 of the Gaming Act 1968 may be granted) is amended as follows.

(2) After paragraph (1) insert—

“(1A) Paragraph (1) does not apply where—

- (a) the application is made by a person who, when the application is made, holds a certificate under section 19 of the 1968 Act (“the existing certificate”);
- (b) the effect of the certificate being applied for (“the new certificate”) would be to authorise the performance of functions to which section 19(1) of the 1968 Act applies; and
- (c) the new certificate would apply to different premises from those to which the existing certificate applies.”.

(3) The amendment made by this article shall not affect the validity of any decision taken by the Gambling Commission on an application for a certificate under section 19 of the Gaming Act

1968 to which the amendment applies, where the decision was taken before the date on which this Order comes into force.

Amendment of Part 3 of Schedule 4 to the Principal Commencement Order

8.—(1) Paragraph 17 of Schedule 4 to the Principal Commencement Order (which provides for the continuation of certificates and permits granted under section 27 of the Gaming Act 1968) is amended as follows.

(2) In paragraph 17(6), for paragraph (a) substitute—

- “(a) any conditions in relation to gaming machine technical operating licences—
- (i) for the time being specified by the Gambling Commission under section 75 of the 2005 Act, or
 - (ii) for the time being specified by the Secretary of State in regulations under section 78 of that Act,

and which apply to the activities authorised by the certificate;

(aa) the condition specified in section 82(1) of the 2005 Act; and”.

Amendment of Part 4 of Schedule 4 to the Principal Commencement Order

9.—(1) Part 4 of Schedule 4 to the Principal Commencement Order (which makes provision about licences etc. issued under the Gambling Act 2005 before 1st September 2007) is amended as follows.

(2) In paragraphs 37(2) and 38(2), in each case after “2007” insert “and which take effect on the date of issue”.

Amendment of Part 6 of Schedule 4 to the Principal Commencement Order

10.—(1) Paragraph 45 of Schedule 4 to the Principal Commencement Order (continuation of certificates under section 19 of the Gaming Act 1968) is amended as follows.

(2) In paragraph (4), for “sub-paragraphs (5) and (6)” substitute “sub-paragraphs (5) to (6C)”.

(3) In sub-paragraph (6)(b) for “granted”, in both places where it occurs, substitute “made”.

(4) After sub-paragraph (6) insert—

“(6A) Sub-paragraph (6B) applies to any section 19 certificate (“the existing certificate”) where—

- (a) the holder of the certificate is applying for a new certificate under section 19 of the 1968 Act (“the new certificate”), and
- (b) immediately before 1st September 2007 that application has not been determined or withdrawn.

(6B) In sub-paragraph (6A), the reference to an application for a new section 19 certificate is to an application for a certificate under section 19 of the 1968 Act—

- (a) whose effect would be to authorise the performance of functions to which subsection (1) of that section applies, and
- (b) which would apply to different premises from those to which the existing certificate applies.

(6C) The existing certificate is to have effect on and after 1st September 2007 as if it authorised the holder to perform functions in or in relation to the premises to which the new certificate would apply (as well as in or in relation to the premises specified in the existing certificate).

(6D) If the application for a personal licence referred to in sub-paragraph (5) or the application for a certificate under section 19 of the 1968 Act referred to in sub-paragraph (6A) is rejected, sub-paragraph (6) or (as the case may be) sub-paragraph (6C) shall cease to have effect in relation to the section 19 certificate.”.

(5) In sub-paragraph (8)—

(a) at the end of paragraph (a) leave out “and”; and

(b) after paragraph (a) insert—

“(aa) the conditions specified in sections 82(1) and 83(1) of the 2005 Act; and”.

Amendment of Part 7 of Schedule 4 to the Principal Commencement Order

11.—(1) Part 7 of Schedule 4 to the Principal Commencement Order (transitional provisions relating to the conversion of licences etc. issued under enactments to be repealed into premises licences under the Gambling Act 2005) is amended as follows.

(2) In paragraph 54—

(a) in sub-paragraph (4), after “Subject to” insert “sub-paragraph (5A) and”;

(b) after sub-paragraph (5), insert—

“(5A) Where—

(a) a person making a conversion application does not hold a relevant operating licence on the date on which he makes the application, and

(b) that person’s application for a relevant operating licence is rejected before the conversion application is granted,

the licensing authority must reject the conversion application; and if the licensing authority grant the conversion application, any premises licence issued on such an application shall be of no effect.”; and

(c) after sub-paragraph (8) insert—

“(9) In this paragraph “relevant operating licence” in relation to a conversion application means an operating licence (other than an interim operating licence) which authorises the person making the application to carry on the activity in respect of which the premises licence is sought.”.

(3) In paragraph 55(4) for “28th July” substitute “31st July”.

(4) The amendment made by paragraph (3) does not apply to any request made under paragraph 55(2) or (3) of Schedule 4 to the Principal Commencement Order which is made before the date on which this Order comes into force.

(5) In paragraph 62(8), in paragraph (b) for the words from “in a case to which paragraph 60(2)(b)(ii) applies” to the end of that paragraph substitute “in a case to which sub-paragraph (5A) of paragraph 54 applies, until the date on which the application for the relevant operating licence referred to in that sub-paragraph is rejected”.

24th July 2007

Gerry Sutcliffe
Parliamentary Under Secretary of State
Department for Culture, Media and Sport

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SCHEDULE

Article 6

New Schedule 3B to the Principal Commencement Order

“SCHEDULE 3B

Article 2(4) and (5)

Provisions excluded from coming into force on 1st September 2007

<i>Column 1</i>	<i>Column 2</i>
Section 7(5) to (7)	
Section 89(2) and (3)	
Sections 159 to 165	For the purposes of enabling a non-conversion application for a casino premises licence to be made, considered and determined; and for the purposes of enabling a regional, large or small casino premises licence to be issued on such an application.
Section 175	
Section 204	For the purposes of enabling applications for a provisional statement with respect to a casino to be made, considered and determined; and for the purposes of enabling such statements to be issued.
Sections 214 to 234	
Section 245	
Schedule 9	
Paragraph 17 of Schedule 16”	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 (S.I. 2006/3272) (“the Principal Commencement Order”).

Article 2 inserts a definition of the expression “the 2004 Act” which is defined to mean the Horserace Betting and Olympic Lottery Act 2004. It also inserts a definition of “the successor company” which is defined to mean the company nominated for the purposes of section 2 of the Horserace Betting and Olympic Lottery Act 2004 by the Secretary of State in accordance with subsection (2) (a) of that section. Both definitions are required for the purposes of articles 7 and 8 of the Principal Commencement Order which are inserted by article 5 of this Order.

Article 3 substitutes new provisions for article 2(4) of the Principal Commencement Order. Article 2 of the Principal Commencement Order provides for the commencement of provisions of the Gambling Act 2005 (“the 2005 Act”). Paragraph (4) of that article provides for the 2005 Act generally to come into force (save as provided by article 3 to 5 of that Order) for all remaining purposes on 1 September 2007. Three provisions are specified in paragraph (4) as not coming into force on 1 September 2007. These are sections 89(2) and (3), section 245 and paragraph 17 of Schedule 16. Article 2 of this Order, together with article 6 and the Schedule to the Order, have the effect of adding to the provisions which are excluded from coming into force on 1st September 2007. The relevant provisions are:

- sections 7(5) to (7),
- sections 159 to 165, in so far as they relate to the new categories of casino established by the 2005 Act,
- section 175 and Schedule 9,
- section 204, in so far as it relates to the new categories of casino established by the 2005 Act, and
- sections 214 to 234.

The provisions specified in the first four items of the list all relate to the new categories of casino established by the 2005 Act. Sections 214 to 234 make provision for the giving of temporary use notices under the 2005 Act.

Article 4 amends article 3 of the Principal Commencement Order which provides for the Betting, Gaming and Lotteries Act 1963 (“the 1963 Act”) to continue to have effect for certain limited purposes on and after 1st September 2007, despite that Act’s repeal by the 2005 Act. Article 3(2) of the Principal Commencement Order provides for specified sections of the 1963 Act relating to the Horserace Totalisator Board and the Horserace Betting Levy to continue in force on and after 1st September 2007. Article 3 of this Order amends article 3(2) to remove the references to sections 12, 14, 15 and 24 to 30 of the 1963 Act. This is consequential on provisions to be made by the Gambling Act 2005 (Horserace Totalisator Board) Order 2007 and the Gambling Act 2005 (Horserace Betting Levy) Order 2007. The effect of those statutory instruments will be, amongst other things, to save the relevant sections of the 1963 Act with modifications.

Article 5 inserts two new provisions, articles 7 and 8, into the Principal Commencement Order:

- Article 7 provides for section 8 of the Horserace Betting and Olympic Lottery Act 2004 (“2004 Act”) to have effect subject to the modifications specified in that article. Section 8 provides for the issuing of a licence to the successor company established under that Act conferring on

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that company exclusive rights with respect to pool betting on horse racing. The modifications make provision about the relationship between the exclusive licence and any operating licence issued to the successor company. They also confer power on the Secretary of State to direct the Gambling Commission to revoke the exclusive licence where the successor company's operating licence ceases to have effect.

- Article 8 of the Principal Commencement Order modifies various provisions of the 2005 Act:
 - Paragraphs (1)(a) and (2) modify section 33 (which makes it an offence to provide facilities for gambling without the appropriate authorisation under the 2005 Act) so that a person who acts in contravention of section 8(5)(b) of the 2004 Act commits an offence under section 33 irrespective of whether or not he would otherwise have done so. This reflects section 9(5) of the 2004 Act which makes similar provision in relation to the 1963 Act which is repealed by the 2005 Act.
 - Paragraphs (1)(b) and (3) modify Part 8 of the 2005 Act to provide that premises licences issued under that Part do not authorise premises to be used for doing anything prohibited by section 8(5)(b) of the 2004 Act. This reflects section 9(3)(b) which makes similar provision in relation to betting office licences issued under the 1963 Act.
 - Paragraphs (4) to (9) modify Part 5 of the 2005 Act (which relates to operating licences under that Act) in so far as that Part applies to the successor company established under Part 1 of the 2004 Act. The relevant provisions require the Gambling Commission, if it issues the exclusive licence to the successor company under section 8 of the 2004 Act, to issue the successor company with both a remote and non-remote pool betting operating licence which authorises the activities which the exclusive licence grants the successor company the right to perform. Any such operating licence must provide for section 94 of the 2005 Act to apply to it. Where the successor company already holds an operating licence when the existing licence is issued, the Gambling Commission must, if necessary, vary that licence so that it authorises the activities which the exclusive licence grants the successor company the right to perform and it provides for section 94 of the 2005 Act to apply to it.

Article 7 amends paragraph 7 of Schedule 4 to the Principal Commencement Order which makes provision about the issuing of certificates under section 19 of the Gaming Act 1968 ("section 19 certificate"). Section 19 prohibits persons from carrying out specified functions in or in relation to casinos or bingo halls without the appropriate section 19 certificate. Paragraph 7 of Schedule 4 prevents an application for a section 19 certificate from being granted where the application is made on or after 1st June 2007. Article 7 of this Order amends paragraph 7 to disapply this prohibition where the application for the section 19 certificate is made by a person who already holds such a certificate, and the new certificate would authorise the performance of functions to which section 19(1) of the Gaming Act 1968 ("the 1968 Act") applies, and would apply to different premises from those to which the existing certificate applies.

The amendment made by article 10 is linked to that made by article 7. Article 10 amends paragraph 45 of Schedule 4 to the Principal Commencement Order which makes provision for section 19 certificates to continue in force on and after 1st September 2007. Article 10 amends paragraph 45 to extend the scope of a section 19 certificate where the holder is applying for a new certificate which would authorise the performance of functions to which section 19(1) applies, and which would apply to different premises from those to which the existing certificate applies. Further amendments are made by article 10 to paragraph 45 which include minor corrections to sub-paragraph (6)(b).

Article 8 amends paragraph 17 of Schedule 4 to the Principal Commencement Order which makes provision for certificates and permits under section 27 of the 1968 Act to continue in force on and after 1st September 2007. Section 27 makes it unlawful to sell, supply or maintain machines to which Part 3 of the 1968 Act applies without a certificate or permit under that section. By virtue of paragraph 17 of Schedule 4 to the Principal Commencement Order, a certificate under section 27,

which has effect on and after 1st September 2007, does so subject to any relevant operating licence conditions as defined in paragraph 17(6). Article 8 of this Order amends paragraph 17(6) to extend the definition of relevant operating licence conditions to that it includes:

- any conditions for the time being imposed on gaming machine technical operating licences by regulations made by the Secretary of State under section 78 of the 2005 Act; and
- the condition specified in section 82(1) of the 2005 Act (which relates to compliance with relevant social responsibility codes).

Article 9 amends paragraphs 37(2) and 38(2) of Schedule 4 to the Principal Commencement Order. Paragraphs 37 and 38 are concerned respectively with club gaming and machine permits and licensed premises gaming machine permits. They make provision, amongst other things, as to the period within which the first annual fee is to be paid in the case of a permit which is issued before 1st September 2007. In each case, the relevant provision requires the fee to be paid within the “relevant period” after 1st September 2007. “Relevant period” is defined to mean a period equal in length to the period prescribed, as the case may be, for the purposes of paragraph 14(1)(a) of Schedule 12 or paragraph 9(1)(a) of Schedule 13, as that provision has effect in relation to permits issued on or after 1st September 2007. Article 9 amends this definition so that the reference to permits issued on or after 1st September 2007 refers instead to permits which are both issued on or after 1st September 2007 and which have effect on the date of issue. This amendment reflects the fact that the relevant regulations made under paragraph 14(1)(a) of Schedule 12 and paragraph 9(1)(a) of Schedule 13 provide for different periods in those cases where the licence has effect on issue and those where it has effect on a date after issue.

Article 11 amends provisions of Part 7 of Schedule 4 to the Principal Commencement Order which makes transitional provision relating to the conversion of licences etc. issued under enactments to be repealed by the 2005 Act into premises licences under that Act. Paragraph (2) of article 11 amends paragraph 54 of Schedule 4 to the Principal Commencement Order. Paragraph 54(4) requires the licensing authority to which a conversion application is made to grant the application. Article 11 inserts a new sub-paragraph (5A) which disapplies this requirement in a case where the person applying for the premises licence is also applying for a relevant operating licence and the application for a relevant operating licence is rejected. The amendment made by paragraph (5) of article 11 to paragraph 62(8) is linked to the amendment to paragraph 54. Paragraph 62 of Schedule 4 to the Principal Commencement Order provides for a licence or other permission under the 1963 or 1968 Act held by a person making a conversion application to continue to have effect on and after 1 September 2007 where the conversion application has not been determined by that date. The amendment made by paragraph (5) of article 11 ensures that such a licence or permit ceases to have effect where the application for a relevant operating licence made by the person holding that permission is rejected. The words omitted from paragraph 62(8) have been rendered redundant by an amendment made to the Principal Commencement Order by the Gambling Act 2005 (Commencement and Transitional Provisions) (Amendment) Order 2007 ([S.I. 2007/1157](#)).

Paragraph (3) of article 11 amends paragraph 55(4) of the Principal Commencement Order to correct a reference to a date. The date is intended to be the same as that referred to in paragraph 62(1)(a), namely 31st July 2007. Paragraph (4) of article 11 makes transitional provision in connection with the amendment made by paragraph (3).