

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

# GAMBLING ACT 2005

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT

#### *Territorial limits – vessels and aircraft*

#### *Schedule 13: Licensed premises gaming machine permits*

712. This Schedule makes further provision with respect to licensed premises gaming machine permits. This Schedule does not have effect in relation to Scotland. Section 285 enables Scottish Ministers to make provision by regulations in respect of licensed premises gaming machine permits which is to have effect in place of that in Schedule 13.
713. *Paragraphs 1 to 6* set out the process for making applications for such a permit. By virtue of paragraph 5, a licensing authority may not attach conditions to a permit. Under paragraph 6, a licensing authority may not refuse an application or grant a permit for a different category or a smaller number of gaming machines unless they have notified the applicant and given him the opportunity to make representations.
714. There is no limit on the duration of a permit. *Paragraph 12* provides for it to continue unless and until it ceases to have effect under a provision of the Schedule.
715. *Paragraph 16* enables the licensing authority to cancel or vary the permit. The authority may only take such action in the circumstances specified in sub-paragraph (1), namely if-
- it would not be reasonably consistent with pursuit of the licensing objectives for the permit to continue to have effect;
  - gaming has taken place on the premises in breach of the permit or a condition of the permit;
  - the premises are mainly used for making gaming machines available; or
  - an offence under the Act has been committed on the premises.
716. The licensing authority is required, before cancelling or varying a permit, to give the permit holder at least 21 days' notice and to consider any representations made by the permit holder. The authority is required to hold a hearing if the permit holder requests one.
717. *Paragraphs 19 and 20* make provision for transfer of permits. *Paragraph 21* sets out rights of appeal.
718. *Paragraph 22* requires the licensing authority to maintain a register of permits. The Secretary of State may make regulations about how the licensing authority record and use this information.

### **Section 284: Removal of exemption**

719. This section enables the licensing authority to make an order in respect of specific premises, removing the right to provide exempt gaming at those premises under section 279 or the right to make up to 2 gaming machines available for use in accordance with section 282.
720. The licensing authority may only make an order under this section if-
- it would not be reasonably consistent with pursuit of the licensing objectives for the exemption or entitlement conferred by the relevant section to continue to have effect;
  - gaming has taken place on the premises in reliance on the exemption or entitlement conferred by the relevant section, but in breach of a condition of that section. An example of such a breach would be where gaming machines were made available in breach of a relevant code of practice issued by the Gambling Commission;
  - the premises are mainly used for gaming; or
  - an offence under the Act has been committed on the premises.
721. Before making an order under this section, the licensing authority must give 21 days' notice to the holder of the alcohol licence, allow representations to be made, and hold a hearing if the licensee requests one. The licensee also has a right to appeal to a magistrates' court (or sheriff's court in Scotland) against any decision of the licensing authority under this section.

### **Section 285: Permits for clubs, pubs etc.: special provision for Scotland**

722. This section enables Scottish Ministers, with the consent of the Secretary of State, to make provision by regulations in respect of club gaming and machine permits in place of that in Schedule 12, and in respect of licensed premises gaming machine permits in place of that in Schedule 13.

### **Sections 286 & 287: Travelling fairs**

723. These sections:
- define a "travelling fair" for the purposes of the Act, and
  - grant travelling fairs the right to provide unlimited numbers of Category D gaming machines, provided any facilities for gambling offered at the fair are no more than an ancillary amusement.
724. Fairs are also entitled to offer equal chance prize gaming, under Part 13 of the Act. This means that any prize gaming and any gaming machines made available must not be the principal activities at the fair. Instead, in order to offer these limited gambling facilities, the fair must be composed mainly of non-gambling amusements and activities.

### **Part 13: Prize Gaming**

725. **Part 13** contains authorisations for prize gaming. This is a type of gaming where the organiser puts up the prizes in advance, as distinct from gaming where the stakes of the participants make up the winnings. Prize gaming is intended to permit low level gaming, for small participation fees, and modest prizes. Bingo played at seaside amusement arcades is a typical venue for such gaming.
726. The definition of "gaming" in Part 1 covers any sort of gaming for prizes or winnings. Therefore, a provision in the Act which authorises gaming generally, also authorises prize gaming. For example, a bingo operating licence authorises the playing of games

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of bingo for prizes or winnings. However, in this Part the permissions relate exclusively to prize gaming.

727. The premises which can receive authorisations under this Part are: adult gaming centres, licensed or unlicensed family entertainment centres, and travelling fairs. There is also a permit for authorising other premises to provide prize gaming, under Schedule 14, and particular allowances for bingo operators.
728. This Part is derived from provisions in section 16 (provisions of amusements with prizes at certain commercial entertainments) of the Lotteries and Amusements Act 1976 (which is repealed by this Act) and section 21 (special provisions as to gaming for prizes) of the Gaming Act 1968 (which is repealed by this Act). This Part does not replicate every aspect of those sections. In particular, lotteries may not be promoted under this Part.
729. Where machines are used for playing prize games, these may or may not count as gaming machines. This will depend on whether the machine complies with the exemptions in section 235(2)(e), (f) or (g). If it does, it will not be subject to the Part 10 gaming machine regime, but will be subject to regulation by this Part, together with relevant licence conditions and codes of practice. If it does not, it will be a gaming machine, and that regime will apply.

***Section 288: Meaning of “prize gaming”***

730. To be prize gaming, the prize for which the gaming is played must comply with the following requirements:
- the nature or size of the prize must not be determined by reference to the number of people playing the game; and
  - the nature or size of the prize must not be determined by reference to the amount paid for or raised by the gaming.
731. This gaming is therefore different to gaming where the stakes paid by the players are used to calculate the winnings available. The effect of the definition is that in prize gaming the prizes available will be determined by the operator of the gaming before play commences, and the payments he receives from the players will not be put directly to any prize on offer. This does not stop operators from estimating what money will be raised from gaming, or predicting the numbers who will take part. Its purpose is to stop the actual amounts raised in a particular game being used to determine the prize in that particular game. Prize gaming can cover both money and non-money prizes.
732. **Section 288** does not prevent prizes being won in a way that depends on the progress or outcome of the game. This means that if different prizes can be claimed dependent on how quickly a win takes place (for example, calling “house” in a game of bingo within a certain number of calls), this is permitted.

***Section 289: Prize gaming permits and Schedule 14***

733. One way of authorising prize gaming is to obtain a prize gaming permit from a licensing authority. This section and Schedule 14 make provision for the grant and maintenance of prize gaming permits. Anyone who occupies, or proposes to occupy, premises may apply for a permit, but a permit is not available in respect of premises which are subject to a premises licence under Part 8, or a club gaming permit under Part 12. This is because those licences and permits already give such premises the relevant rights to offer prize gaming, where appropriate. A permit cannot be granted for a vessel or a vehicle.
734. The reference to “occupy” in this context means a legal right to be in occupation of the premises. This can either be by having a freehold or leasehold interest in the property, or holding it on a tenancy agreement. A person who is seeking a prize gaming permit must have a right to occupy the premises where the prize gaming takes place. For example,

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if “A” has a prize gaming permit and owns the freehold of the premises where the prize gaming is taking place, and leases the property to “B”, then (subject to the terms of the lease), A will no longer have the right to be in occupation of the premises. On this basis, the permit shall lapse in accordance with *paragraph 14* of Schedule 14. If “B” wishes to offer prize gaming at the premises then he will need to make an application for a new permit under paragraph 3. In these circumstances, “B’s” permit will not take effect until the lease has formally been executed in his favour (see paragraph 14(2)).

735. By virtue of the provisions of Part 4 of the Act, children and young people may only participate in equal chance prize gaming, and not any other form of prize gaming made available pursuant to a permit. There are a number of conditions applicable to prize gaming permits, which are common to all prize gaming authorised by this Part, contained in section 293.
736. *Schedule 14* covers the process and procedure of the grant and maintenance of a prize gaming permit. The requirements are similar, but not identical, to those applicable to family entertainment centre gaming machine permits under Part 10 of and Schedule 12 to the Act. The licensing authority must maintain a register of prize gaming permits.
737. Under *paragraph 8* of *Schedule 14* a licensing authority can prepare a statement of principles which they propose to use for determining applications for permits, and, in particular, the suitability of an applicant. In exercising their functions in relation to prize gaming permits, a licensing authority may have regard to the licensing objectives set out in Part 1 of the Act, but must have regard to any relevant guidance issued by the Commission (paragraph 8(3)). Subject to this, an authority has discretion whether to grant or refuse a permit. *Paragraph 10* requires the authority to consult the police prior to issuing a permit.
738. Under *paragraphs 13 to 17*, a permit will expire after ten years (when it can be renewed) unless it lapses (in which case certain transitional provisions are made), is surrendered or is forfeited under the provisions of these paragraphs. Renewal applications are considered on the same grounds as an original application (this is different to the renewal of a family entertainment centre gaming machine permit under *Schedule 12*, where the grounds for refusing renewal are more narrowly defined). Forfeiture can be ordered by any court sentencing a permit holder for a relevant offence, as defined in section 126.
739. *Paragraph 22* provides a full appeals procedure for anyone wishing to appeal against the decisions of a licensing authority under this Schedule.

***Sections 290 & 292: Prize gaming in gaming and entertainment centres and fairs***

740. As a separate authorisation to the prize gaming permit, these sections grant rights to conduct prize gaming to licensed adult gaming centres (AGCs), licensed and unlicensed family entertainment premises (FECs), and to travelling fairs. Licensed AGCs and FECs may offer any type of prize gaming, but an unlicensed FEC (i.e. one with a permit under Schedule 10 to the Act), and a travelling fair, may only offer equal chance prize gaming.
741. The prize gaming which can be offered under these sections is subject to conditions under section 293. In addition, under Part 4 of the Act, children and young people can only participate in equal chance gaming at a licensed or unlicensed FEC or travelling fair. Therefore, if a licensed FEC chooses to offer unequal chance prize gaming, children and young people may not participate in it (people under 18 are not allowed into AGCs at all).
742. In addition, for prize gaming to be offered lawfully at a fair, the prize gaming, together with any other facilities for gambling offered (e.g. gaming machines), must be ancillary to the other amusements and activities offered at the fair.

### ***Section 291: Bingo halls***

743. Under a bingo operating licence, any form of bingo may be offered. This means prize bingo and cash bingo, as developed under the Gaming Act 1968, are both permitted by the bingo operating licence. However, section 21 of the 1968 Act conferred certain entitlements to offer gaming for prizes upon premises licensed under Part II of that Act, which are not covered entirely by the terms of the bingo operating licence.
744. **Section 291** permits holders of a bingo premises licence (and necessarily a bingo operating licence) to offer prize gaming, provided the gaming complies with any conditions attached to the relevant bingo operating licence. Such conditions may be added as general conditions by the Commission or imposed by the Secretary of State (see the notes on Part 5 for an explanation of these). In particular, the conditions may restrict the types of games offered under this authorisation. Conditions imposed by the Secretary of State may also relate to any of the matters set out in section 91(1) e.g. impose limits on the size of payments made by players to participate in the gaming, or on the size of prizes.
745. Under the terms of Part 1 and Part 5 of the Act, casinos are granted permission to offer any form of gaming (subject to conditions which may be imposed on a casino operating licence), and no longer need any express permission similar to that offered by section 21 of the 1968 Act. Therefore, Part 13 does not cover casinos.

### ***Section 293: Conditions for prize gaming***

746. There are four conditions that prize gaming permit holders, licensed AGCs, licensed FECs, FECs with permits and fairs must comply with in order for them to offer prize gaming lawfully under this Part:
- The amounts charged to players to take part in the prize gaming must not exceed any amounts prescribed by the Secretary of State, and these may differ according to different matters (and see section 344 for the definition of participation fee);
  - The prizes offered in the prize gaming must not exceed any value set by the Secretary of State (and this may cover money and/or non-money prizes). The limits may be set by reference to each prize that is offered in a game or all the prizes that are offered in a game;
  - The prize gaming must take place on the relevant premises, in the course of one day only, and the results must be announced on the premises, and as soon as possible after the game ends; and
  - Participation in a game must not entitle the player to participate in any other gambling. In other words, the prize gaming must be free-standing and self-contained, and not linked with other gambling.

### ***Section 294: Power to restrict exemptions***

747. This section gives the Secretary of State the power to remove some, or all, of the prize gaming entitlements conferred in this Part. The purpose of this section is to provide flexibility in the event that, for example, an additional class of operating licence is added to Part 5 of the Act which covers matters dealt with under the prize gaming sections. If this were to happen, it would be necessary to remove the entitlements from Part 13, in order for new operating licence requirements to apply. This power is included to deal with such future contingencies.

## **Part 14: Private and Non-Commercial Gaming and Betting**

748. This Part provides authorisations for gambling to take place in private, or on non-commercial terms. In particular, it permits various forms of domestic gambling, and also provides authorisations for gaming to take place at non-commercial events.

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749. These sections replace various provisions of the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968, and the Lotteries and Amusements Act 1976. In particular, this Part replaces section 41 (gaming at entertainments not held for private gain) of the 1968 Act and section 15 (provision of amusements with prizes at exempt entertainments) of the 1976 Act. This Part does not provide any authority for the promotion of lotteries. Those elements of the 1976 Act which dealt with lotteries at exempt entertainments (specifically sections 3 and 15) are now dealt with under Part 11 and Schedule 11. The “incidental non-commercial lottery” is the new type of exempt lottery, for what were lotteries at exempt entertainments.

***Sections 295 & 296: Private betting and gaming***

750. These sections enable people to participate in and offer facilities for betting and gaming, including on premises, without committing any offence under the Act, provided their activity meets the various conditions for private gaming and betting. Schedule 15 sets out the various conditions.
751. In addition, these sections contain protection for people who bet, but who are not doing so in the course of a business. The definitions set out in Part 1 of the Act mean that both parties to a bet (sometimes known as the “backer” and the “layer”) are capable of providing facilities for betting. This means that, ordinarily, anyone who offers a bet, or accepts a bet will be committing an offence under Part 3, unless he has authorisation under the Act.
752. Where a person is offering or negotiating bets in the course of a business, (commonly known as “bookmaking”), he will require a betting operating licence under Part 5. Similarly, if someone is using betting as a way of earning a living, so that it renders it a business activity, that too may require a licence. However, there is no regulatory requirement for people who use the services of a betting operator on a non-commercial basis to obtain a licence. Nor should private bets, i.e. between friends, require any form of express authorisation. These sections make it clear that a person does not commit any offence under the Act if he makes or accepts a bet, or offers to do so, provided he is acting in a personal capacity, and not in the course of business.
753. These provisions apply equally to those using the services of a betting intermediary i.e. an internet betting exchange. The intermediary will require an operating licence under Part 5, but the users of the exchange will benefit from the exemption in these sections, provided their use is in a non-business capacity.