

These notes refer to the Betting, Gaming, Lotteries and Amusements (Amendment) Act (Northern Ireland) 2022 (c.14) which received Royal Assent on 26 April 2022

Betting, Gaming, Lotteries and Amusements (Amendment) Act (Northern Ireland) 2022

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1

Section 1: Interpretation

Section 1 confirms that all references to “the 1985 Order” within the Act mean the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985.

Section 2: Opening of licensed offices on Sunday and Good Friday

Section 2 amends Article 31(1) of the 1985 Order by removing all reference to Sunday (with the exception of Christmas Day) and Good Friday as days when licensed offices may not be open.

The above Article relates to the closing of licensed offices on certain days during which an office shall not be opened or kept open for the transaction of business at any time or at such other times, if any, as may be prescribed by regulations. The amendment allows licensed offices to be opened for the transaction of business on Sundays and Good Fridays, but not on Christmas Day including Christmas Days which fall on a Sunday.

Section 3: Sunday working in a licensed office

Section 3(1) and (2) amend the definition of betting work in Schedule 8A of the 1985 Order (rights of betting workers as regards Sunday working) to include work in a licensed office. The Schedule is construed as at one with the Employment Rights (Northern Ireland) Order 1996 which consolidates employment rights laws in a range of areas including Sunday working.

Section 3(3) therefore substitutes the definition of “commencement date” in paragraph 1(4) of Schedule 8A so as to include betting work under the meaning of Section 3(2).

Section 3(4) amends paragraph 8(4) of Schedule 8A to also include “betting work” as work at a licensed office on a Sunday which is open for business.

Section 3(5) inserts an additional provision into Article 53B of the 1985 Order (Sunday observance) which states that the Sunday Observance Act (Ireland) 1695 does not apply to any person who has effected a betting transaction on a non-sporting event at either a track or a licensed office which is open on a Sunday.

The rights of individuals employed in a licensed bookmakers' office now mirror those of individuals who work at a track for a bookmaker with respect to Sunday working.

Section 4: Pool betting

Section 4 introduces new paragraphs (3A) and (3B) of Article 44 of the 1985 Order (Restriction of pool betting) which restricts any person, other than a registered pool promoter, from carrying on any pool betting business except at a licensed track and except by means of a totalisator operated in accordance with Article 45.

New paragraph (3A) exempts licensed offices from the restriction that prevents any person, other than a registered pool promoter, from carrying on any pool betting business other than at a licensed track and except by means of a totalisator operated in accordance with Article 45.

New paragraph (3B) stipulates the conditions under which the restriction is dis-applied to a licensed bookmaker. These are namely that: - persons placing bets at licensed offices are allowed to do so on the same terms and conditions as if they were placed by means of a totalisator at the licensed track; and the bookmaker displays a notice at the premises which contains information as to the name of the track concerned and information corresponding to that required to be posted under Schedule 8 (Totalisators on Licensed Tracks) of the 1985 Order.

Section 5: Persons who may participate in bingo at a bingo club

Section 5 amends Article 75 of the 1985 Order by repealing specified parts of paragraphs (3)(a) and (3)(b) and the whole of paragraph (4), all of which limit the eligibility of persons who may participate or take part in bingo at a bingo club premises.

As a result of these amendments only bona fide members of a bingo club or a guest of a bona fide member are allowed to participate or take part in bingo at a bingo club premises. Members

and bona fide guests of members may also take part in bingo at the premises irrespective of any time elapsing since application for club membership was made. The exemption to restrictions on participation that applies to employees of the club, including cleaners under paragraph (4)(b) is further removed.

Section 6: Days when bingo and use of gaming machines permitted on bingo club premises

Article 76 of the 1985 Order (Conditions applying to bingo) sets conditions applying to bingo taking place on bingo club premises. Article 108 (Use of gaming machines on other premises) sets conditions on the use of gaming machines on premises other than registered clubs.

Section 6 of the Act allows bingo to take place and gaming machines to be made available on bingo club premises on Sundays and Good Fridays, but not on Christmas Day including Christmas Days which fall on a Sunday.

Section 6(1) thus removes the prohibition contained within Article 76(7) of the 1985 Order on any bingo taking place on bingo club premises on any Sunday (with the exception of Christmas Day) and Good Friday.

Section 6(2) likewise removes the prohibition contained within Article 108(3) of the 1985 Order on any gaming machine being made available for gaming on any bingo club premises on any Sunday (with the exception of Christmas Day) and Good Friday.

Section 7: Offence of inviting, etc. person under 18 to play gaming machine

Section 7 inserts a new entry into the 1985 Order to create a new offence in relation to the playing of gaming machines by persons under the age of 18.

Paragraph (1) of Article 124A creates a new offence of inviting, causing or permitting a person under 18 to play anything other than a lower limit gaming machine.

Paragraph (2) of Article 124A makes it a defence for a person charged with an offence under paragraph (1) to prove that there was good reason to believe that the person under 18 had attained that age.

Paragraph (3) provides a definition for a “lower limit gaming machine” as meaning a machine installed on premises for which an amusement permit is in force and where the prize limits comply with those limits established under Article 108(7) of the 1985 Order (Use of gaming machines on other premises).

Section 7(2) of the Act inserts a new entry into Schedule 18 of the 1985 Order (Table of offences with mode of prosecution and punishments) setting the mode of prosecution for an offence committed under Article 124A as summary and the punishment as Level 5 or imprisonment for 6 months or both.²

Section 8: Gaming machines: charges and prize limits

Section 8 of the Act amends Article 108 of the 1985 Order by substituting paragraphs 108(6)(b) and 108(8) with new provisions. These new provisions set out the maximum charges for playing a game once by means of a gaming machine and the maximum money prize amounts a player shall receive from playing a game by means of a gaming machine on bingo club premises, licensed

premises, a licensed office or premises in respect of which an amusement permit is in force. The policy intention behind Section 8 is to permit the Department, in accordance with Article 108(16), to substitute different maximum charge and maximum prize amounts for different premises specified in Article 108.

New Article 108(8) will now cover premises previously covered by Articles 108(7A) and (8A) which in consequence are repealed.

This Section makes other amendments to Article 108 and removes the previous paragraphs 7A and 8A of Article 108 and to Articles 111 and 115 consequential on the restructuring of Article 108.

Section 9: Arrangements not requiring persons to pay to participate

Section 9(1) renumbers Article 131 of the 1985 Order (illegality of lotteries) as Article 131(1) and introduces a new paragraph (2) to that Article specifying that a prize competition arrangement is not a lottery unless persons are required to pay to participate.

Section 9(2) adds a new Schedule 15A (Lotteries and Competitions: Requirements to Pay in Order to Participate) to the 1985 Order setting out what does and does not constitute a requirement to pay to participate in order to be deemed a lottery.

Section 9 thereby removes free to enter prize competition arrangements from the definition of a lottery by reference to new Schedule 15A. New Schedule 15A sets out both the meaning of payment to enter under the 1985 Order as well as the forms of payment or expenses arrangements that are not included in Article 131.

Section 10: Rules for societies' lotteries

Section 10(a) amends Article 137 of the 1985 Order (Rules for societies' lotteries) by increasing the maximum ticket price limit set out in paragraph (5) of the Article from £1 to £100 for society lotteries.

Section 10(b) alters the limit set under paragraph (14) of Article 137 on the amount which may be appropriated for the expenses of a society lottery to 20% of the whole proceeds whilst Section 9(c) repeals paragraph (15) which specified the previously applicable amounts.

Section 11: Qualifications by age, residence or corporate status for licences, certificates and permits

Section 11(1) reduces the lower age limit for grant of a bookmaker's licence, bingo club licence, a gaming machine certificate and permit and a lottery certificate specified under Articles 7(5)(a), 61(5)(a), 84(4)(a), 141(4)(a) respectively of the 1985 Order from 21 to 18 years of age.

Section 11(2) removes the residency restrictions for grant of a bookmaker's licence, bingo club licence, a gaming machine certificate and permit and a lottery certificate specified under Articles 7(5)(b), 7(5)(c) and 7(7), 61(5)(b) and 61(5)

(c), 84(4)(b) and 84(4)(c), 141(4)(b) and 141(4)(c) respectively of the 1985 Order.

Section 11(3) repeals Articles 7(5)(5)(d) and 7(6), 61(5)(d) and 61(6), 84(4)(d) and 84(5) and Article 141(4)(d) and 141(5) of the 1985 Order to allow certain corporate bodies to hold a bookmaker's licence, bingo club licence, a gaming machine certificate and permit and a lottery certificate.

Section 11(4) amends 109(2) of the 1985 Order to allow a body corporate to be granted an amusement permit.

Section 11(5) similarly amends Article 155(2) of the Order to allow a body corporate to be granted a pleasure permit.

Section 12: Prize competitions not requiring persons to pay to participate

Section 12 amends Article 168 of the 1985 Order which prohibits the conduct of certain prize competitions.

Section 12(2) and (3) introduce a new paragraph (2A) to Article 168 which specifies that a prize competition arrangement is not prohibited by Article 168 unless persons are required to pay to participate in the arrangement and refers to new Schedule 15A (Lotteries and Competitions: Requirements to Pay in Order to Participate) of the 1985 Order, introduced under Section 8, as setting out what does and does not constitute a requirement to pay to participate in such an arrangement.

New Schedule 15A sets out both the meaning of payment to enter under the 1985 Order as well as the forms of payment or expenses to participate (enter) in prize competitions that are not included in Article 168.

Section 13: Cheating

Section 13 replaces the existing offence in Article 169 of the 1985 Order (Cheating) with a new Article 169.

Section 13 introduces paragraphs (1)(a) and (b) to new Article 169 which respectively make it an offence for any person to either cheat at gambling or do anything to enable or assist another person to cheat at gambling.

Section 13 also introduces paragraphs (2) (a) and (b) to new Article 169 to make it an offence for person to cheat under paragraph (1) irrespective of whether that person improves his chances of winning anything or wins anything.

Section 13 introduces paragraphs (3)(a) and (b) to new Article 169 which state that cheating at gambling may, in particular, consist of actual or attempted deception or interference with the process of gambling or any game, sport, pastime, etc. to which gambling relates.

Section 13 further introduces a paragraph (4) to Article 169 clarifying what is meant by "gambling" for the purposes of this Section.

Section 14: Enforceability of gambling contracts

Section 14(1)(a) repeals Article 170 of the 1985 Order (Gaming and wagering contracts void) and Section 14(1)(b) repeals Article 171 (Securities in connection with gaming or wagering deemed given for an illegal consideration).

Section 14(2) and (3) provide for contracts relating to gambling to be legally enforced without prejudice to any law which prohibits the enforcement of contracts on unlawfulness grounds.

Section 14(4) clarifies that the repeal of Articles 170 and 171 under Section 14(1) does not allow for the enforcement of contractual rights arising from agreements made before Section 14 comes into operation.

Section 14(5) clarifies what is meant by “gambling” for the purposes of this Section.

Section 15: Industry Levy

Section 15(1) inserts a new Article 172A (Industry levy) after Article 172 of the 1985 Order.

Article 172A(1) and (2) allow the Department to make regulations with regard to the payment of a levy to the Department by every person who intends to apply for the grant or renewal of a bookmakers’ licence, bookmaking office licence, bingo club licence, gaming machine certificate or permit and an amusement permit.

New Article 172A(2) further allows the Department to make regulations with regard to the payment of a levy by every person who intends to have the provisional grant of a bookmaking office licence, bingo club licence or amusement permit declared final.

New Article 172A(3) requires that any regulations made for the payment of a levy make provision for the amount of the levy and its general administration. Article 172A (3) also allows any regulations made to: - make provision for determining the amount of the levy according to a specified formula or other means; require the Department to issue a receipt in relation to levy payments; enable repayment of levies to those whose applications are refused; and modify the Order as necessary or expedient to give full effect to the levy.

New Articles 172A(4) and (5) specify that the proceeds of a levy are to be expended on projects related to gambling addiction or other associated forms of harm and exploitation, which includes treatment, education and research. Financial assistance may be provided by grants, loans or any other form of financial assistance. Before any such financial assistance can be paid, the Department must seek the consent of the Department of Finance to the expenditure.

New Article 172A(6) requires that, before making regulations in relation to the levy, the Department must consult such organisations as appear to it to represent

the interests of those who have suffered from, or been affected by, addiction to gambling, or other forms of harm or exploitation associated with gambling, or have knowledge or experience of the issues relating to such addiction, harm or exploitation and the gambling industry in Northern Ireland.

New Article 172A(7) clarifies what is meant by “gambling” for the purposes of this Article.

Section 15(2) of the Act introduces a new paragraph (3A) to Article 186 of the 1985 Order (Orders and regulations) which requires that regulations made under new Article 172A of the Order be laid before and approved by resolution of the Northern Ireland Assembly.

Section 16: Code of Practice

Section 16(1) inserts a new Article 180A (Code of practice) after Article 180 of the 1985 Order (Provision for inspection and rights of entry).

New Article 180A(1) requires the Department to issue one or more codes of practice about the manner in which facilities for gambling are provided.

New Article 180A(2) requires that the code in particular describe the arrangements that should be made to meet an expected duty of care to those using gambling facilities to include, but not be limited to, protecting persons under the age of 18 years and other vulnerable persons from gambling harm or exploitation and making assistance available to those who are or may be affected by gambling related problems.

New Articles 180A(3) and (4) respectively allow the Department to include provisions within the code in respect of how gambling facilities are advertised or described and to revise or revoke a code.

New Articles 180A(5) and (6) respectively require that a code and any revision must state when it comes into force and that the Department must publish a code and revision in a manner which it thinks is likely to bring it to the attention of those whose activities it concerns.

New Article 180A(7) allows the Department, in issuing a code, to make different provision for different cases or circumstances (whether or not by way of separate codes of practice).

New Articles 180A(8) and (9) respectively make clear that failure to comply with a provision of the code does not of itself make a person liable to criminal or civil proceedings but that a code:- is admissible in evidence in both criminal and civil proceedings; must be taken into account by a court or tribunal in any case in which it appears to them to be relevant; and must be taken into account by the Department, court or district council in the exercise of a function under the 1985 Order.

New Article 180A(10) requires that, before issuing or revising a code, the Department must consult with: organisations and persons that appear to it

to represent the gambling industry in Northern Ireland; persons who have knowledge about social problems relating to gambling; persons representing district councils; the Chief Constable; and, in such a manner as the Department thinks appropriate, members of the public.

New Article 180A(10) also requires the Department to consult persons who appear to have a relevant responsibility for regulating the advertising industry in cases where any provision of a code relates to advertising as set out in Article 180A(3).

New Article 180A(11) specifies that serious, significant, continuing or multiple breaches of a code will be a ground to revoke or cancel a licence, registration or permit under Articles 27, 42, 92, 103 or 121 of the 1985 Order.

New Article 180A(12) clarifies the meaning of gambling for the purposes of this Section.

Section 16(2) amends various provisions of the 1985 Order which relate to grounds for applying for the revocation of licences, certificates or registration. It provides that serious, repeated or continuous failure to comply with a code of practice in force under Article 180A are grounds for application for the revocation of bookmaker's licences, bookmaking office licences, track betting licences, bingo club licences, gaming machine certificates, lottery certificates and cancellation of club registration under Articles 27(1), 28(1), 42(1), 72(1), 92(1), 103(1) and 149(1).

Schedules to the Act **Schedule 15A**

Lotteries and Competitions: Requirements to Pay in Order to Participate

Schedule 15A makes provision about the circumstances in which a prize competition arrangement is to be or not to be treated as requiring persons to pay in order to participate for the purposes of new Articles 131(2) and 168(2A).

Schedule 15A specifies that references to paying in order to participate in new Articles 131(2) and 168(2A) exclude "normal rate" expenses of sending a letter by ordinary post, making a telephone call or using any other method of communication to participate in the arrangement (such as a text). The normal purchase costs of paying for goods (e.g. newspaper, chocolate bar, equipment, property etc.) or services (e.g. hospitality or financial services such as having a specific type of bank or building society account etc.) are also excluded from the meaning of payment under new Articles 131(2) and 168(2A).

Under Schedule 15A an arrangement is also not included within the meaning of payment to participate in new Articles 131(2) and 168(2A) provided the person who is eligible to participate through normal purchase rates or through sending communications at normal expenses rates is given a choice of free entry into the competition.

Under Schedule 15A paying for goods or services at a price rate which either reflects the opportunity to participate in an arrangement (i.e. an inflated price) or exceeds the “normal rate” of expenses of sending a letter by ordinary post (e.g. a requirement to send by recorded delivery), making a telephone call or using any other method of communication constitute paying to participate (to enter) and are thereby an illegal lottery or unlawful prize competition under new Articles 131(2) and 168(2A) respectively. The same principle applies to any arrangement which requires a person to pay in order to discover whether a prize has been won or to take possession of a prize which has or may have been allocated. It is also immaterial, under new Schedule 15A, whether a person knows when making a payment that the person thereby participates in the arrangement.

Paragraph 9 of Schedule 15A gives the Department to power to make regulations that may provide that an activity of a specified kind or performed in specified circumstances is to be or not to be treated for the purposes of new Articles 131(2) and 168(2A) as paying to participate in the arrangement.