

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 9: Applications for casino premises licences

Part 10: Gaming Machines

Section 235: Gaming machine

577. This section provides a definition of a gaming machine for the Act. It is significantly broader than the definition of gaming machine in section 26 of the Gaming Act 1968, which the Act repeals. The new definition accommodates developments in technology which have taken place since the 1968 Act. It also covers a wide range of gambling activities which can take place on a machine, and includes betting on virtual events.
578. *Subsection (1)* defines a gaming machine as a machine that is designed or adapted for use by people to gamble (whether or not it can be used for other purposes). This is a wide definition. *Subsection (3)(b)* contains further detail about how the words “designed or adapted” are to be interpreted, particularly in relation to a computer.
579. *Subsection (2)* then sets out a number of exceptions to subsection (1) which ensure that the gaming machine definition does not capture certain specified types of machine.
580. The definition at subsection (1) does not depend on any concept of players depositing payments into the machine, or on the gambling activity being generated from within the machine itself (as opposed to being transmitted to the machine from other equipment). Nor is it restricted solely to gaming. To the extent that these were requirements under the 1968 Act, they are no longer part of the new definition.
581. The exclusions at subsection (2) provide that the following are not gaming machines:
- A **domestic or dual-use computer** which can be used for participating in remote gambling. The Secretary of State will prescribe the meaning of “domestic computer” and “dual-use computer” in regulations. The purpose of this exception is to exempt internet terminals and home computer equipment, which are not dedicated or specifically configured for gambling activities, from the definition of gaming machine. The mere fact that a home computer can be used to access gambling facilities should not render the computer a gaming machine. However, someone offering the public access to the internet, via terminals, and configuring them to encourage gambling, is making a gaming machine available for use (unless any other exception applies, such as betting on real events). The regulations to be made under this power will set out the relevant criteria for determining whether equipment is a domestic or dual use computer, and can refer to matters such as the location of the computer, the software installed on the computer, and the circumstances in which the computer is used (*subsections (2)(a), (3)(f) and (4)*);

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- A **telephone or other communications device** that can be used for remote gambling (other than a computer). The fact that, with modern technology, a telephone or interactive television can be used to participate in gambling will not render the equipment a gaming machine (*subsection (2)(b)*). This exception does not apply to computers;
- A **machine which is designed or adapted for betting only on future real events**. This exemption is designed to prevent equipment, such as automated betting terminals, through which people place bets on real, not virtual, events, from being counted as gaming machines. The event must be a future event at the time the machine is used, meaning that betting on pre-recorded activities, where the result is already known, is not exempt. The exempt equipment is not unregulated. Making it available as part of a business will be providing facilities for betting, and will require the relevant operating licences under the Act. However, in regulatory terms, these machines are not to be treated as gaming machines (*subsection (2)(c)*).
- A **machine upon which someone enters a lottery**. Provided that the machine does not determine the result of the lottery, or announces it only after a specified period, then such a machine is not a gaming machine. This means that if a machine only dispenses lottery tickets (for a draw that takes place completely independent of the machine), or vends lottery paper scratchcards, then the machine is outside the definition of a gaming machine. If the machine announces the results of the lottery, as well as selling tickets to it, then the machine will not be a gaming machine provided a prescribed interval has elapsed between the sale of the ticket and the announcement of the result. The Secretary of State will determine the duration of the period by order. In no circumstances can the machine determine the result of the lottery (*subsection (2)(d)*).
- A **machine for playing bingo** which is used by the holder of a bingo operating licence, in accordance with conditions attached by the Commission. This is designed to exempt what is known as “mechanised cash bingo equipment which is used for playing real bingo games, but whose degree of computerisation or mechanisation means that it would otherwise be caught by the definition of gaming machine. The need for it to comply with Commission conditions ensures that the exemption is construed narrowly and not extended to any machine on which a virtual bingo game could be played (*subsection (2)(e)*);
- A **machine for playing bingo prize gaming** which is used by the holder of a gaming machine general operating licence (for an adult gaming centre or a family entertainment centre), in accordance with conditions attached to those licences by the Commission. This is designed to exempt equipment used for playing real prize bingo, in accordance with the terms of Part 13 of the Act. The need for it to comply with Commission conditions ensures that the exemption is construed narrowly and not extended to any machine on which a virtual bingo game could be played (*subsection (2)(f)*);
- A **machine for playing bingo prize gaming** which is used by an unlicensed family entertainment centre or pursuant to a prize gaming permit, in accordance with any Commission code of practice. This exemption is similar to that at subsection (2) (g), but applies to different types of operator who have prize gaming rights under Part 13 (*subsection (2)(g)*);
- A **machine which is used for playing manual games of chance**. This is a machine which:
 - is controlled or operated by someone employed to do so (e.g. a croupier spinning a roulette wheel); or

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- is used in connection with a real game of chance which is controlled or operated by an individual (e.g. a computer terminal for staking on the outcome of a roulette wheel that is spun by a croupier) (*subsection (2)(h)*).

In both these instances the equipment could be construed as a gaming machine under the broad definition, but the fact that it is operated as part of a real game of chance means that it is not to be regulated under the gaming machine provisions. Such equipment and activities will be regulated under other parts of the Act.

- **A machine which is used for playing automated games of chance in a casino.** This is equipment used for playing a real game of chance, pursuant to a casino operating licence, but which has no human involvement from the organisers of the casino game, and which is not linked to a game which does have such human involvement. For example, apparatus such as a roulette wheel which is completely mechanised, and works without the need for any croupier to rotate the wheel, spin the ball or accept stakes. This equipment is not a gaming machine provided it is used in accordance with Commission licence conditions. Section 174(6) contains further provisions in relation to this equipment in casinos.

582. These various exemptions prevent the broad definition of gaming machine from capturing equipment unintentionally. The definition in subsection (1) is intended to cover a gaming machine that is used for taking part in virtual gaming, virtual betting or a virtual lottery (where the draw is part of the activity determined by the machine).
583. *Subsection (3)* provides clarification about the characteristics of a gaming machine. Reference to part of a gaming machine includes computer software to be used in a gaming machine, but does not include a component of a gaming machine which does not influence the outcome of the gambling (*subsection (3)(c)*). This means that where a gaming machine technical operating licence is required for the manufacture, installation etc. of gaming machines, computer software intended for use in the machine is included within the licensing requirement. However, the plywood from which the machine is constructed is not. References to installing part of a gaming machine include installing computer software (*subsection (3)(d)*). This is required because machines can be configured or changed by the downloading of gambling software, without any need to physically interfere with the machine.
584. *Subsection (5)* allows the Secretary of State to make regulations concerning the subdivision of apparatus into individual gaming machines. It is no longer the case that a gaming machine will take the form of a stand-alone machine in the form of a traditional “fruit-machine”. A single computer can be linked to a number of player positions and offer each player the experience of playing a gaming machine, although the apparatus forms one large whole. To tackle the possibility of evasion of the Act’s regulation for gaming machines, this power allows rules to be made for calculating when a single piece of apparatus counts as more than one machine, and, in particular, can focus on the number of player positions available. These regulations will supplement other parts of the Act, where numerical limits are placed on the entitlements to make gaming machines available for use.