

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

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 3: Amendment of the National Lottery etc. Act 1993 (c.39)

Part 2: the Gambling Commission

91. The Act creates a new, unified regulator for betting, gaming and lotteries in Great Britain called the Gambling Commission (“the Commission”).

Section 20: Establishment of the Commission

92. This section establishes the Commission, which will be the central regulatory body for gambling in Great Britain. Schedule 4, explained below, sets out the constitution of the Commission and its proceedings, the appointment of Commissioners and staff, as well as its financial and reporting arrangements.

Section 21: Gaming Board: transfer to Commission

93. The Commission will take over from the Gaming Board of Great Britain, which was established under the Gaming Act 1968 and currently regulates gaming and certain types of lotteries. When commenced, this section, and Schedule 5, will transfer the Gaming Board’s functions, rights and liabilities (including property) to the Commission. This section also provides for the chairman and members of the Gaming Board in post immediately before the establishment of the Commission to become chairman and commissioners in the new organisation.

Section 22: Duty to promote the licensing objectives

94. In carrying out its functions under the Act, the Commission must aim to pursue, and, wherever appropriate, have regard to the licensing objectives (as defined in section 1) and must aim to permit gambling in so far as it thinks such permission is reasonably consistent with pursuit of those objectives. Therefore, in carrying out its licensing functions under Parts 5 and 6 of the Act, or in issuing guidance and codes of practice or advising the Secretary of State in accordance with Part 2, the Commission will have regard to the licensing objectives.

Section 23: Policy for licensing and regulation

95. Once established, the Commission will be responsible for licensing gambling operators and personnel working in the gambling industry under the provisions of Part 5 (operating licences) and Part 6 (personal licences) of the Act. This will be the primary licensing activity of the Commission, although the Act also provides it with other regulatory and advisory functions concerned with the proper conduct and control of gambling in Great Britain. The Commission will have investigation, enforcement and prosecution powers.

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96. This section requires the Commission to prepare, publish, and keep under review, a statement that sets out the principles which will govern the exercise of its functions, and, in particular, explain how such principles will assist the Commission in its pursuit of the licensing objectives. This statement will underpin the work of the Commission.
97. Examples of specific matters for inclusion in the statement are: the principles, practice and procedure which the Commission will apply in considering applications for operating and personal licences under Parts 5 and 6.
98. Before issuing or revising a statement, *subsection (5)* provides that the Commission must consult the following:
- The Secretary of State;
 - Representatives of local authorities (including, in Scotland, licensing boards);
 - Representatives of Chief Constables of police forces;
 - Representatives of gambling businesses;
 - Commissioners of Customs and Excise;
 - People with knowledge of social problems that may be associated with gambling; and
 - The public, to such and extent, and in such a way as it thinks appropriate.
99. The statement and any revisions to the statement must be published.

Section 24: Codes of practice

100. This section requires the Commission, as part of its regulatory functions, to publish codes of practice about the manner in which facilities for gambling are provided. These may be directed at the holders of operating or personal licences, or any other person involved in providing facilities for gambling. In particular, the Commission is required to publish a social responsibility code, which should describe the arrangements which a person providing facilities for gambling is to make for:
- ensuring that gambling is conducted in a fair and open way,
 - protecting children and other vulnerable persons from harm or exploitation, and
 - making help available to those who are, or may be, affected by problems related to gambling.
101. The Commission is required to publish its codes of practice, and all revisions, in a way that will ensure that those to whom they are addressed are made aware of them. A code, and any revision thereto, must state clearly when it is to come into effect. The Commission has the ability to revoke codes at any time.
102. Under Part 5, an operating licence is subject to the condition that the licensee complies with any relevant provision of a social responsibility code. Furthermore, it is open to the Commission to attach general or individual conditions to a licence requiring compliance with a provision of any other code (as further provided under Part 5). The same applies in relation to the Secretary of State's power to attach conditions to an operating licence.
103. A failure to comply with a code will not, of itself, render a person liable to prosecution or civil action. However, the codes can be used as evidence for criminal or civil proceedings; are to be taken into account by a court or tribunal in any case where it appears relevant; and are to be taken into account by the Commission in exercising any of its functions. For example, where a licence holder has his operating licence reviewed by the Commission for potential breach of a licence condition, under the

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powers provided in Part 5, the Commission will refer to a code of practice, where it is relevant.

104. Before issuing a code of practice, *subsection (10)* requires the Commission to consult:
- The Secretary of State;
 - People with knowledge of social problems that may be associated with gambling;
 - Commissioners of Customs and Excise;
 - People who appear to the Commission to represent gambling businesses, which are likely to be affected by the code or revision; and
 - Where a provision in a code is about the advertising of facilities for gambling, people who appear to the Commission to have a relevant responsibility for regulating the advertising industry.
105. *Subsection (11)* requires the Commission to consult the following people as well, but only to the extent that it thinks it appropriate depending on the context and subject matter of the code:
- Representatives of local authorities (including, in Scotland, licensing boards);
 - Representatives of Chief Constables of police forces;
 - Representatives of gambling businesses other than mandatory consultees under subsection (10) (such as, those persons who are unlikely to be directly affected by the code); and
 - The public (in such a manner as the Commission thinks fit).
106. The references to consultation of local authorities in sections 23 and 24 are to be read in the wider context, and includes parts of a local authority other than that responsible for licensing matters. This is to ensure that relevant parts of local government (in England, Scotland, and Wales) are consulted, where appropriate, in respect of the Commission's policy statement and codes of practice.

Section 25: Guidance to local authorities

107. Under the Act, licensing authorities (local authorities in England and Wales, licensing boards in Scotland, and, where applicable, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple) are required to undertake various regulatory functions in relation to a number of gambling activities. They are responsible for:
- licensing of premises for gambling activities (Parts 8 and 9);
 - regulating members' clubs and miners' welfare institutes which wish to undertake certain gaming activities (Part 12 and Schedule 12);
 - regulating gaming and gaming machines in premises licensed to supply alcohol under the Licensing Act 2003. This includes granting licensed premises gaming machine permits (Part 12 and Schedule 13);
 - granting permits to family entertainment centres for the use of certain lower stake gaming machines (Part 10 and Schedule 10);
 - granting permits for prize gaming (Part 13 and Schedule 14); and
 - registering societies' lotteries which fall below certain prescribed thresholds (Schedule 11, Part 5).
108. In order to assist licensing authorities to perform these various licensing and regulatory functions, this section requires the Commission to issue and publish guidance about

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how licensing authorities are to exercise their functions under the Act, including the principles to be applied in exercising those functions.

109. Licensing authorities are under a duty to have regard to such guidance.
110. Before issuing guidance to licensing authorities, *subsection (4)* requires the Commission to consult:
- The Secretary of State,
 - The Scottish Ministers,
 - Commissioners of Customs and Excise,
 - Representatives of local authorities (as defined by this section),
 - Representatives of gambling businesses, and
 - People with knowledge of social problems that may be associated with gambling.
111. Depending on the nature of the code, or any revision, *subsection (5)* also requires the Commission to consult if, and to the extent it thinks it appropriate to do so:
- Representatives of Chief Constables of police forces; and
 - Members of the public (in such a manner as the Commission thinks fit).

Section 26: Duty to advise the Secretary of State

112. One of the functions of the Commission is to provide advice to the Secretary of State on matters relating to gambling as described in this section. This section permits the Commission to give advice about gambling to the Secretary of State either in response to a request or on its own initiative. Copies of any such advice will be sent to the Scottish Ministers also.

Section 27: Compliance

113. This section gives the Commission power to undertake activities for the purpose of assessing compliance with the provisions of the Act, or whether an offence has been committed under the Act. In particular, the Commission will be able to use children and young persons in test purchasing activities to assess whether the provisions for prevention of under-age gambling in Part 4 of the Act are being complied with. Section 64 exempts children, and people acting in the course of their duty, from committing an offence in these circumstances.

Section 28: Investigation and prosecution of offences

114. The Commission has the power to investigate whether an offence has been committed under the Act, and to pursue criminal proceedings if this is the case. The Commission can do this on its own initiative or acting on other information. The power for the Commission itself to bring criminal proceedings does not apply in Scotland, due to the particular requirements of the criminal justice system in that jurisdiction.

Section 29: Licensing authority information

115. Under the Act, Commission and licensing authorities must maintain registers containing appropriate details of licences that they have each issued. These registers will be open to the public. There will be circumstances where the Commission will need to obtain information directly from licensing authorities. For example, such information may be needed by the Commission to fulfil its duty under this Part to advise the Secretary of State. This section places an obligation on licensing authorities to comply with requests from the Commission for information contained in a register maintained by

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the authority, or for information in the authority's possession in consequence of their licensing and regulatory functions.

Section 30: Other exchange of information

116. This section permits the Commission to pass on information received in the course of its functions to those people or organisations listed in Parts 1 and 2 of Schedule 6, for use in the course of their, or the Commission's, business. This section also provides a reciprocal power for the bodies listed in the Schedule to provide information to the Commission. Conditions may be imposed where information is provided under this section. The Commission may also provide information to the Comptroller and Auditor General for use in the exercise of his functions or to a person for use in a criminal investigation or criminal proceedings.

Section 31: Consultation with the National Lottery Commission

117. The National Lottery will continue to be regulated by the National Lottery Commission (NLC). This section requires the Commission to consult the NLC about matters in which the NLC is likely to have an interest or where the Secretary of State directs them to do so.
118. The sorts of issues which are likely to be of common concern between the NLC and the Commission are the way in which lotteries are conducted, and in particular those matters with respect to the conduct of lotteries that are liable to present risks to those taking part. There may be also a mutual interest in whether a particular activity is properly to be described as a lottery or a form of betting.

Section 32: Consultation with Commissioners of Customs and Excise

119. This section requires the Gambling Commission to consult HM Commissioners of Customs and Excise on matters upon which HMCE are likely to have an opinion, or where it is directed to do so by the Secretary of State. This is in addition to the specific requirements for the Commission to consult HMCE concerning its policy statement, codes of practice, and guidance for local authorities.