



# Gambling Act 2005

## 2005 CHAPTER 19

### PART 18

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### **339 Prize competitions**

Participating in a competition or other arrangement under which a person may win a prize is not gambling for the purposes of this Act unless it is—

- (a) gaming within the meaning of section 6,
- (b) participating in a lottery within the meaning of section 14, or
- (c) betting within the meaning of sections 9 to 11.

#### **340 Foreign betting**

Sections 9 to 9B of the Betting and Gaming Duties Act 1981 (c. 63) (prohibitions, for protection of the revenue, in relation to foreign betting) shall cease to have effect.

#### **341 Offence committed by body**

- (1) Subsection (2) applies where an offence under this Act is committed by a body of persons corporate or unincorporate (other than a partnership) and it is proved that the offence was committed—
  - (a) with the consent or connivance of an officer of the body, or
  - (b) as a result of the negligence of an officer of the body.
- (2) The officer, as well as the body, shall be guilty of the offence.
- (3) In subsection (1) a reference to an officer of a body includes a reference to—
  - (a) a director, manager or secretary,
  - (b) a person purporting to act as a director, manager or secretary, and

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- (c) if the affairs of the body are arranged by its members, a member.
- (4) Where an offence under this Act is committed by a partnership (other than a limited partnership) each partner shall be guilty of the offence.
- (5) Where an offence under this Act is committed by a limited partnership, subsections (1) and (2) shall have effect, but as if a reference to an officer of the body were a reference to a partner.
- (6) In relation to the prosecution of a body of persons unincorporate for an offence under this Act, the body shall be treated for all procedural purposes as if it were a body corporate.
- (7) The Secretary of State may by regulations make provision for the modification of a provision of this section in its application to a body of persons formed under, or in so far as the body is recognised by, law having effect outside the United Kingdom.

### **342 False information**

- (1) A person commits an offence if without reasonable excuse he gives to the Commission or a licensing authority for a purpose connected with a provision of this Act (whether or not in relation to an application under this Act) information which is—
  - (a) false, or
  - (b) misleading.
- (2) A person guilty of an offence under this section shall be liable on summary conviction to—
  - (a) imprisonment for a term not exceeding 51 weeks,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.
- (3) In the application of subsection (2) to Scotland the reference to 51 weeks shall have effect as a reference to six months.
- (4) Where it appears to the Commission or a licensing authority that a decision under this Act was taken by them in reliance upon false or misleading information, they may do anything that they think expedient for the purpose of cancelling, terminating or varying an effect of the decision (but action under this subsection shall not make unlawful anything done before the action is taken).

### **343 Value of prize**

- (1) Regulations prescribing a maximum value of prizes for a purpose of this Act may include provision for determining the value of a prize.
- (2) Regulations by virtue of subsection (1) may, in particular—
  - (a) apply (with or without modification) or make provision similar to a provision of section 20 of the Betting and Gaming Duties Act 1981 (c. 63) (expenditure on bingo winnings);
  - (b) confer a discretion on the Secretary of State, on the Gambling Commission or on another person;
  - (c) provide for an appeal;
  - (d) confer jurisdiction on a court or tribunal.

- (3) The imposition by or by virtue of this Act of a maximum on the value of a prize does not prevent an arrangement between a person who has won one or more prizes and a person who provides facilities for gambling whereby the prize or prizes are exchanged (whether for money or for one or more articles); provided that—
- (a) the amount of money or the value of the articles for which the prize or prizes are exchanged does not exceed the maximum amount or value of the prize, or the aggregate maximum amount or value of the prizes, that the person could lawfully have won, and
  - (b) the nature of the substituted prize or prizes complies with any requirements of or by virtue of this Act as to the nature of the prize or prizes that the person could lawfully have won.

### **344 Participation fees**

- (1) In this Act “participation fee” means an amount paid in respect of entitlement to participate in gambling; and for that purpose—
- (a) it is immaterial—
    - (i) how a fee is described,
    - (ii) whether a fee is payable in money or in money’s worth,
    - (iii) when and how a fee is payable,
    - (iv) to whom a fee is payable,
  - (b) a charge for admission to premises where gambling takes place shall be treated as a participation fee,
  - (c) a membership subscription is not a participation fee (subject to subsections (2) and (3)), and
  - (d) a stake is not a participation fee.
- (2) The Secretary of State may by regulations provide for a membership subscription to be treated as a participation fee in specified circumstances.
- (3) For the purposes of section 279, a membership subscription is a participation fee.
- (4) The Secretary of State may make regulations providing, in connection with the operation of a provision made by or by virtue of this Act in relation to a participation fee, for the apportionment of an amount which is payable partly in respect of entitlement to participate in gambling and partly in respect of another matter; and that provision may, in particular—
- (a) provide for apportionment by a specified person;
  - (b) provide for apportionment in accordance with a specified formula or principle;
  - (c) refer to the concept of reasonableness.

### **345 Forfeiture**

- (1) A court by or before which a person is convicted of an offence under this Act may make an order for the forfeiture of an article that appears to the court to relate to the offence.
- (2) A forfeiture order—
- (a) may include such provision about the treatment of the article forfeited as the court thinks appropriate, and

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- (b) subject to any provision made under paragraph (a), shall be treated as requiring any person in possession of the article to surrender it to a constable as soon as is reasonably practicable.
- (3) Where—
  - (a) a court proposes to make a forfeiture order in respect of an article, and
  - (b) a person notifies the court that he has an interest in the article,the court may not make the order without first giving the person an opportunity to make representations.
- (4) The court which made a forfeiture order may order that the forfeited article be given up to a person who claims to have an interest in it.
- (5) A person commits an offence if he fails to—
  - (a) comply with a forfeiture order, or
  - (b) co-operate with a step taken for the purpose of giving effect to a forfeiture order.
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to—
  - (a) imprisonment for a term not exceeding 51 weeks,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.
- (7) In the application of subsection (6) to Scotland the reference to 51 weeks shall have effect as a reference to six months.

### **346 Prosecution by licensing authority**

- (1) A licensing authority may institute criminal proceedings in respect of an offence under any of the following provisions of this Act—
  - (a) section 37,
  - (b) section 185,
  - (c) section 186,
  - (d) section 229,
  - (e) section 242,
  - (f) section 258,
  - (g) section 259,
  - (h) section 260,
  - (i) section 261,
  - (j) section 262,
  - (k) section 326,
  - (l) section 342,
  - (m) paragraph 20 of Schedule 10,
  - (n) paragraph 10 of Schedule 13, and
  - (o) paragraph 20 of Schedule 14.
- (2) This section is without prejudice to section 222 of the Local Government Act 1972 (c. 70) (power of local authorities to prosecute or defend legal proceedings).
- (3) This section shall not apply to an authority in Scotland.

### **347 Prosecution: time limit**

- (1) A magistrates' court may try an information for an offence under this Act provided that the information was laid within the period of twelve months beginning with the date (or last date) on which the offence is alleged to have been committed.
- (2) Section 127(1) of the Magistrates' Courts Act 1980 (c. 43) shall not apply to an offence under this Act.

### **348 Excluded premises**

- (1) This Act shall have no effect in relation to anything done on, or in relation to any use of, premises of a kind specified for the purposes of this subsection by order of the Secretary of State.
- (2) This Act shall have no effect in relation to anything done on, or in relation to any use of, premises certified for the purposes of this subsection, on grounds relating to national security, by the Secretary of State or the Attorney General.

### **349 Three-year licensing policy**

- (1) A licensing authority shall before each successive period of three years—
  - (a) prepare a statement of the principles that they propose to apply in exercising their functions under this Act during that period, and
  - (b) publish the statement.
- (2) A licensing authority shall—
  - (a) review their statement under this section from time to time,
  - (b) if they think it necessary in the light of a review, revise the statement, and
  - (c) publish any revision before giving it effect.
- (3) In preparing a statement or revision under this section a licensing authority shall consult—
  - (a) either—
    - (i) in England and Wales, the chief officer of police for the authority's area, or
    - (ii) in Scotland, the chief constable of the police force maintained for the police area comprising that area,
  - (b) one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area, and
  - (c) one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under this Act.
- (4) The Secretary of State may make regulations about—
  - (a) the form of statements under this section;
  - (b) the procedure to be followed in relation to the preparation, review or revision of statements under this section;
  - (c) the publication of statements under this section.
- (5) In relation to statements prepared under this section by licensing authorities in Scotland, subsection (4) shall have effect as if the reference to the Secretary of State were a reference to the Scottish Ministers.

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- (6) The Secretary of State shall by order appoint a day as the first day of the first period of three years for the purpose of this section.
- (7) Where a licensing authority is specified in an order under section 175 they shall ensure that their statement under this section includes the principles that they propose to apply in making determinations under paragraph 5 of Schedule 9.

### **350 Exchange of information**

- (1) A person or body listed in Part 1 of Schedule 6 may provide information to any other person or body so listed for use in the exercise of a function under this Act.
- (2) A person or body listed in Part 1 of Schedule 6 may provide information obtained in the course of the exercise of a function under this Act to Her Majesty's Commissioners of Customs and Excise for use in the exercise of any function.
- (3) Provision of information in reliance on this section may be subject to conditions (whether as to use, storage, disposal or otherwise).

### **351 Power to amend Schedule 6**

- (1) The Secretary of State may by order amend Schedule 6 so as to—
  - (a) add an entry to a list (in Part 1, 2 or 3);
  - (b) remove an entry from a list (in Part 1, 2 or 3);
  - (c) move an entry from one list to another;
  - (d) add, remove or vary a Note.
- (2) In particular, a Note relating to an entry for a person or body situated outside the United Kingdom may provide that the entry has effect only in relation to the law of a Part of the United Kingdom.
- (3) An entry added to a list in Schedule 6 may specify a person or body or a class or description of persons or bodies.
- (4) The power to add, remove or vary a Note may be exercised generally or in relation to a specified person or body or class or description of persons or bodies.

### **352 Data protection**

Nothing in this Act authorises a disclosure which contravenes the Data Protection Act 1998 (c. 29).