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STATUTORY INSTRUMENTS

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**2007 No. 2169**

**The Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) (Amendment) (No. 2) Order 2007**

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) (Amendment) (No. 2) Order 2007 and shall come into force on 16th August 2007.

(2) In this Order “the Principal Commencement Order” means the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006(1).

**Amendment of article 1 of the Principal Commencement Order**

2. Article 1(2) of the Principal Commencement Order is amended by—

(a) inserting the following definition after the definition of “the 1976 Act”—

““the 2004 Act” means the Horserace Betting and Olympic Lottery Act 2004(2)

(b) deleting “and” where it appears immediately after the definition of “non-conversion application for a casino premises licence”;

(c) inserting “; and” immediately after the definition of “point to point certificate”; and

(d) inserting the following definition after the definition of “point to point certificate”—

““the successor company” means the company which is nominated for the purposes of section 2 of the 2004 Act by the Secretary of State in accordance with subsection (2)(a) of that section”.

**Amendment of article 2 of the Principal Commencement Order**

3. Article 2 of the Principal Commencement Order is amended by substituting for paragraph (4)

—  
“(4) Save as provided by articles 3 to 5, the 2005 Act apart from the provisions listed in column 1 of Schedule 3B shall come into force on 1st September 2007.

(5) Where a particular purpose is specified in column 2 of Schedule 3B in relation to any provision listed in that Schedule, the reference to that provision in paragraph (4) is only to that provision for the purpose so specified.”.

**Amendment of article 3 of the Principal Commencement Order**

4.—(1) Article 3 of the Principal Commencement Order is amended as follows.

(2) In paragraph (2) for “sections 12, 14, 15 and 24 to 31” substitute “section 31”.

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(1) S.I. 2006/3272, amended by S.I. 2006/3361, 2007/1157 and 2007/1527.

(2) 2004 c.25.

**Amendment of the Principal Commencement Order: provisions relating to the successor company established under Part 1 of Horserace Betting and Olympic Lottery Act 2004**

5. The Principal Commencement Order is amended by inserting the following articles after article 6—

**“Modification of Part 1 of the Horserace Betting and Olympic Lottery Act 2004**

7.—(1) Section 8 of the 2004 Act (exclusive licence for the right to carry on horse-race pool betting) shall have effect subject to the following modifications.

(2) A term or condition of the exclusive licence under that section shall be of no effect to the extent that it is inconsistent with a term or condition of an operating licence issued to the successor company.

(3) A term or condition of an authorisation given to a person under subsection (5)(a) of that section shall be of no effect to the extent that it is inconsistent with a term or condition of any authorisation given by the successor company to that person under section 94 of the 2005 Act.

(4) Subsection (7)(b) of that section shall have effect as if it also provided for the Secretary of State to have power to direct the Gambling Commission to make an order revoking the exclusive licence under that section if any operating licence issued to the successor company ceases to have effect.

**Modification of the Gambling Act 2005 to reflect provisions of Part 1 of the Horserace Betting and Olympic Lottery Act 2004**

8.—(1) In respect of any time when the exclusive licence issued to the successor company under section 8 of the 2004 Act has effect—

(a) section 33 of the 2005 Act (which makes it an offence to provide facilities for gambling without the appropriate authorisation under that Act) shall have effect subject to the modification in paragraph (2); and

(b) Part 8 of the 2005 Act shall have effect subject to the modification in paragraph (3).

(2) A person who acts in contravention of section 8(5)(b) of the 2004 Act shall be treated as having committed an offence under section 33 of the 2005 Act irrespective of whether or not he would otherwise have committed the offence.

(3) A premises licence issued under that Part shall not authorise the use of premises for doing anything prohibited by section 8(5)(b) of the 2004 Act.

(4) Part 5 of the 2005 Act (which makes provision with respect to operating licences under that Act) shall have effect in relation to the successor company subject to the modifications in the following provisions of this paragraph.

(5) If the Gambling Commission issues the exclusive licence to the successor company under section 8 of the 2004 Act, the Commission must (if it has not already done so) issue a remote and a non-remote pool betting operating licence to the successor company which will have the effect of authorising the activities which the exclusive licence grants the successor company the right to perform.

(6) An operating licence issued in accordance with paragraph (5) must provide for section 94 of the 2005 Act to apply to the licence.

(7) Paragraph (5) applies whether or not the successor company is applying under section 69 of the 2005 Act for a remote or a non-remote pool betting operating licence when the exclusive licence is issued.

(8) If the successor company holds a remote or a non-remote operating licence when the exclusive licence is issued, the Gambling Commission must (if necessary) vary the licence so that it will—

- (a) have the effect of authorising the activities referred to in paragraph (5), and
- (b) provide for section 94 of the 2005 Act to apply to the licence.

(9) Subsection (6) of section 104 of the 2005 Act applies to the variation of the operating licence under paragraph (8) as it applies to the variation of an operating licence on an application being made under that section.”.

#### **Amendment of the Principal Commencement Order to insert new Schedule**

6. The Principal Commencement Order is amended by inserting after Schedule 3A the Schedule 3B set out in the Schedule to this Order.

#### **Amendment of Part 2 of Schedule 4 to the Principal Commencement Order**

7.—(1) Paragraph 7 of Schedule 4 to the Principal Commencement Order (which restricts the circumstances in which an application for a certificate of approval under section 19 of the Gaming Act 1968 may be granted) is amended as follows.

(2) After paragraph (1) insert—

“(1A) Paragraph (1) does not apply where—

- (a) the application is made by a person who, when the application is made, holds a certificate under section 19 of the 1968 Act (“the existing certificate”);
- (b) the effect of the certificate being applied for (“the new certificate”) would be to authorise the performance of functions to which section 19(1) of the 1968 Act applies; and
- (c) the new certificate would apply to different premises from those to which the existing certificate applies.”.

(3) The amendment made by this article shall not affect the validity of any decision taken by the Gambling Commission on an application for a certificate under section 19 of the Gaming Act 1968 to which the amendment applies, where the decision was taken before the date on which this Order comes into force.

#### **Amendment of Part 3 of Schedule 4 to the Principal Commencement Order**

8.—(1) Paragraph 17 of Schedule 4 to the Principal Commencement Order (which provides for the continuation of certificates and permits granted under section 27 of the Gaming Act 1968) is amended as follows.

(2) In paragraph 17(6), for paragraph (a) substitute—

- “(a) any conditions in relation to gaming machine technical operating licences—
  - (i) for the time being specified by the Gambling Commission under section 75 of the 2005 Act, or
  - (ii) for the time being specified by the Secretary of State in regulations under section 78 of that Act,and which apply to the activities authorised by the certificate;
- (aa) the condition specified in section 82(1) of the 2005 Act; and”.

#### **Amendment of Part 4 of Schedule 4 to the Principal Commencement Order**

**9.**—(1) Part 4 of Schedule 4 to the Principal Commencement Order (which makes provision about licences etc. issued under the Gambling Act 2005 before 1st September 2007) is amended as follows.

(2) In paragraphs 37(2) and 38(2), in each case after “2007” insert “and which take effect on the date of issue”.

#### **Amendment of Part 6 of Schedule 4 to the Principal Commencement Order**

**10.**—(1) Paragraph 45 of Schedule 4 to the Principal Commencement Order (continuation of certificates under section 19 of the Gaming Act 1968) is amended as follows.

(2) In paragraph (4), for “sub-paragraphs (5) and (6)” substitute “sub-paragraphs (5) to (6C)”.

(3) In sub-paragraph (6)(b) for “granted”, in both places where it occurs, substitute “made”.

(4) After sub-paragraph (6) insert—

“(6A) Sub-paragraph (6B) applies to any section 19 certificate (“the existing certificate”) where—

- (a) the holder of the certificate is applying for a new certificate under section 19 of the 1968 Act (“the new certificate”), and
- (b) immediately before 1st September 2007 that application has not been determined or withdrawn.

(6B) In sub-paragraph (6A), the reference to an application for a new section 19 certificate is to an application for a certificate under section 19 of the 1968 Act—

- (a) whose effect would be to authorise the performance of functions to which subsection (1) of that section applies, and
- (b) which would apply to different premises from those to which the existing certificate applies.

(6C) The existing certificate is to have effect on and after 1st September 2007 as if it authorised the holder to perform functions in or in relation to the premises to which the new certificate would apply (as well as in or in relation to the premises specified in the existing certificate).

(6D) If the application for a personal licence referred to in sub-paragraph (5) or the application for a certificate under section 19 of the 1968 Act referred to in sub-paragraph (6A) is rejected, sub-paragraph (6) or (as the case may be) sub-paragraph (6C) shall cease to have effect in relation to the section 19 certificate.”.

(5) In sub-paragraph (8)—

- (a) at the end of paragraph (a) leave out “and”; and
- (b) after paragraph (a) insert—

“(aa) the conditions specified in sections 82(1) and 83(1) of the 2005 Act; and”.

#### **Amendment of Part 7 of Schedule 4 to the Principal Commencement Order**

**11.**—(1) Part 7 of Schedule 4 to the Principal Commencement Order (transitional provisions relating to the conversion of licences etc. issued under enactments to be repealed into premises licences under the Gambling Act 2005) is amended as follows.

(2) In paragraph 54—

- (a) in sub-paragraph (4), after “Subject to” insert “sub-paragraph (5A) and”;

(b) after sub-paragraph (5), insert—

“(5A) Where—

- (a) a person making a conversion application does not hold a relevant operating licence on the date on which he makes the application, and
- (b) that person’s application for a relevant operating licence is rejected before the conversion application is granted,

the licensing authority must reject the conversion application; and if the licensing authority grant the conversion application, any premises licence issued on such an application shall be of no effect.”; and

(c) after sub-paragraph (8) insert—

“(9) In this paragraph “relevant operating licence” in relation to a conversion application means an operating licence (other than an interim operating licence) which authorises the person making the application to carry on the activity in respect of which the premises licence is sought.”.

(3) In paragraph 55(4) for “28th July” substitute “31st July”.

(4) The amendment made by paragraph (3) does not apply to any request made under paragraph 55(2) or (3) of Schedule 4 to the Principal Commencement Order which is made before the date on which this Order comes into force.

(5) In paragraph 62(8), in paragraph (b) for the words from “in a case to which paragraph 60(2)(b)(ii) applies” to the end of that paragraph substitute “in a case to which sub-paragraph (5A) of paragraph 54 applies, until the date on which the application for the relevant operating licence referred to in that sub-paragraph is rejected”.

24th July 2007

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