

BRIEF SUMMARY OF THE GAMBLING ACT 2005

Introduction

On 7 April 2005, the Gambling Act 2005 (the “Act”) received Royal Assent, establishing a new framework for the provision of gambling services within the UK. However the Act is not yet in force and it is anticipated that it will be brought into effect in stages during 2005 and 2006. It anticipates applications by both individuals and companies so in it, and in this Summary, a reference to a “person” includes a company.

Please note that in this Summary we use the term United Kingdom or UK for ease of reference, but the Act does not in fact extend to Northern Ireland, which has its own laws on gambling.

At the Act’s core are the licensing objectives of:

- a. preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
- b. ensuring that gambling is conducted in a fair and open way, and
- c. protecting children and other vulnerable people from being harmed or exploited by gambling.¹

Other key concepts include “gambling” being defined to mean gaming, betting and participating in a lottery (each of which is further defined).² “Remote gambling” means gambling in which people participate by the use of remote communication, which in turn means communication using the Internet, telephone, TV, radio or “any other kind of electronic or other technology for facilitating communication”.³ The UK Government has reserve power to specify any system or method of communication to be treated as remote communication for these purposes.

Providing “facilities for gambling” is a key concept for licensing purposes, and a person provides facilities for gambling if he:

- a. invites others to gamble in accordance with arrangements made by him,
- b. provides, operates or administers arrangements for gambling by others, or
- c. participates in the operation or administration of gambling by others.⁴

¹ Section 1 Gambling Act 2005

² Section 3

³ Section 4

⁴ Section 5

The Act provides exemptions for those providing ancillary facilities, such as communication networks, internet service providers, etc.

“Gaming” means playing a game of chance for a prize and a “game of chance” includes a game involving both chance and skill, a game that involves an element of chance that can be eliminated by superlative skill and a game that is presented as involving an element of chance.⁵ Poker will therefore continue to constitute gaming under UK law.

A “casino” is defined, not as any kind of building, but as an arrangement whereby people are given an opportunity to participate in one or more casino games. “Casino game” means a game of chance which is not equal chance gaming⁶ and “equal chance gaming” for purposes of the Act is gaming which does not involve playing or staking against a bank and where the chances are equally favourable to all participants.⁷ Thus, by way of example, roulette is a casino game but poker is not, being merely within the definition of a game of chance.

“Betting” means the making or accepting of a bet on the outcome of a race, competition or other event or process, the likelihood of anything occurring or not occurring, or whether anything is or is not true.⁸ However, the word “bet” is not defined and the courts will therefore continue to rely upon the existing judicial definitions which have been built up over the centuries.

There are further definitions covering “prize competitions”, which now fall within the definition of betting, “pool betting” and a new concept of “betting intermediary” which means a person who provides a service designed to facilitate the making or acceptance of bets between others.⁹ Betting exchange operators or bet brokers therefore will be regulated as betting intermediaries under the Act.

The new definition of a “lottery” involves classification of lotteries as “simple” or “complex”, where a simple lottery involves people paying to participate in an arrangement in the course of which one or more prizes are allocated according to chance, whereas a “complex” lottery involves the allocation of prizes by a series of processes, the first of which relies wholly on chance.¹⁰

Commercial lotteries will continue to be prohibited under the Act, with lottery operating licences being only available to non-commercial societies, local authorities (municipalities) or external lottery managers acting on behalf of the same.¹¹

The Gambling Commission

The Act establishes a new industry-wide regulator to be known as the Gambling Commission (the “Commission”), which will assume not only the duties of the Gaming Board for Great Britain (the current regulator of casinos and lotteries) but an extended regulatory remit to include all gambling in the UK.

⁵ Section 6

⁶ Section 7

⁷ Section 8

⁸ Section 9

⁹ Section 13

¹⁰ Section 14

¹¹ Section 98

The Commission will be responsible for the promotion of the licensing objectives and for the production of a statement of principles for licensing and regulation of gambling activities in

the UK, together with various codes of practice and guidance to local authorities (who will be responsible for premises licensing).¹² It is directed to aim to permit gambling so far as reasonably consistent with the licensing objectives. Thus the restrictive rules in the UK's old law are reversed.

The Commission's responsibilities will extend to advising the UK Government regarding the incidence, manner, effect and regulation of gambling¹³ and the assessment of compliance and (for the first time) investigation and prosecution of offences under the Act. The Commission will consult with the National Lottery Commission, who will continue to regulate the National Lottery, and the Commissioners of Customs and Excise, who are responsible for the collection of gambling taxes.

Operating Licences

In order to provide facilities for gambling (except in certain limited exempt circumstances, such as domestic occasions), it will be necessary to obtain the relevant operating licence from the Commission. The Act contemplates various operating licences allowing the provision of specified facilities, including:

- (a) casino operating licence,
- (b) bingo operating licence,
- (c) general betting operating licence (replacing the bookmaker's permit),
- (d) pool betting operating licence,
- (e) betting intermediary operating licence (for betting exchanges/brokers),
- (f) gaming machine general operating licence (which may specify the operation of an adult gaming centre or a family entertainment centre, the latter having machines of lower stakes and prizes than the former),
- (g) gaming machine technical operating licence (for the manufacture, supply, installation, etc. of machines),
- (h) gambling software operating licence (for the manufacture, supply, installation, etc of gambling software), and
- (i) lottery operating licence.

The Act provides reserve power for the UK Government to add or remove and vary operating licences.¹⁴

A single operating licence may authorise various of the activities set out above (for example, authorising a bingo operator also to provide pool betting), but an operating licence may

¹² Sections 20 through 25

¹³ Section 26

¹⁴ Section 65

permit only terrestrial facilities or those offered by means of remote communication (a “remote operating licence”) and not both.¹⁵ Accordingly, a terrestrial operator who also wishes to provide remote facilities will need at least two licences.

In considering applications for operating licences, the Commission will have regard to the licensing objectives, the applicant’s suitability and the suitability of any gaming machines and other equipment to be used in connection with the licensed activities. However, the detailed application procedure and statements of principles to be applied in consideration of licensing applications are not yet available and are to be prepared by the Commission when it is fully established.

The Commission’s statement of principles to be applied in considering applications must, in particular, specify the kind of evidence to which the Commission will have regard when assessing integrity, competence and financial and other circumstances. A criminal record may be taken into account by the Commission in assessing an application for an operating licence,¹⁶ but the Commission is not allowed to have regard to the anticipated demand for the proposed facilities in the relevant area.¹⁷

Certain conditions to be stated by the Government will be attached to all licences (mandatory conditions), as will others unless they are waived by the Commission (default conditions), but the Commission may also attach further conditions either to individual licences or to all in a specified class as it sees fit. Mandatory conditions will include, by way of example, the obligation to comply with relevant codes of practice and to return stakes to children or young persons who have used facilities for gambling (see below).

An operating licence must not contain a condition determining where the licensed activities may or may not take place (although for any terrestrial facility, a premises licence will also be required), but it may include a condition limiting the number of premises on which a licensee may operate or the number of people for whom his facilities may be provided.¹⁸ In addition, an operating licence must not be subject to a membership condition.¹⁹

Operating licences will run indefinitely (unless their duration is limited by the Government) but will be subject to variation, suspension, revocation, etc and a new and wide-ranging power of review in the hands of the Commission.

Rules for particular kinds of Operating Licence

The Act includes certain rules for some of the operating licences. In particular remote operating licences will be subject to the condition that “remote gambling equipment” used by the licensee in connection with the licensed activities must be situated in the UK.²⁰ Remote gambling equipment for these purposes means equipment: -

¹⁵ Section 67

¹⁶ Section 71

¹⁷ Section 72

¹⁸ Section 84

¹⁹ Section 87

²⁰ Section 89

- used to store information relating to customers' participation in the gambling;
- used to present a virtual game, race or event or process by reference to which the gambling is conducted;
- used to determine all or part of a result or the effect of a result; or
- used to store information relating to a result.

Accordingly, equipment used to store registration and transactional information, random number generators and equipment/servers hosting the gaming and betting software must all be located in the UK.²¹ However, the Commission has a residual discretion to allow certain remote gambling equipment to be located outside the UK if it is satisfied that it is reasonably consistent with the pursuit of the licensing objectives to do so.²² At present it is not clear how the Commission will exercise this discretion but it is anticipated that it will be used to facilitate UK licensing of certain parts of larger P2P networks, such as poker networks.

Personal Licences

At least one personal licence must be held for every operating licence before it can be implemented. Personal licences will be granted by the Commission to authorise individuals to perform certain specified management and operational functions in connection with the provision of facilities for gambling, so the Commission will use its powers to attach conditions to operating licences to ensure that at least one person occupying a specified management office holds a personal licence and that others in key operational positions (generally where their functions allow them to influence the outcome of the gambling) also have personal licences.²³ There is an exemption for small-scale operators, a term which is to be defined by the UK Government.²⁴

Personal licences will also run indefinitely but will also be subject to lapse, forfeiture, revocation, review etc in the same way as operating licences. Personal licences will be portable between gambling facilities, so long as the personal licence authorises the licensee to fulfil the management or operational function in question.

Licensing Appeals

Appeals from decisions made by the Commission regarding operating and personal licences will be heard by a new Gambling Appeal Tribunal.²⁵ A party to proceedings before the Tribunal may further appeal (on a point of law only) to the High Court.²⁶

²¹ Section 36(4)

²² Section 89(3)

²³ Section 80 and Part 6

²⁴ Section 129

²⁵ Section 141

²⁶ Section 143

Premises Licences

A premises licence will be necessary to use premises for the provision of gambling facilities. As with operating licences, premises licences will specify the type of gambling facilities to be offered, including:-

- a casino premises licence;
- b bingo premises licence;
- c adult gaming centre premises licence;
- d family entertainment centre premises licence; and
- e betting premises licence.

Casino premises licences will specify whether they relate to a regional casino, large casino or small casino, those categories to be defined by the minimum gaming and non-gaming areas permitted by the Government, and entitling the operator to provide different ranges of facilities, including numbers and categories of gaming machines.²⁷ A summary of the expected casino and gaming machine categories is attached.

Premises licences must not authorise the use of premises for more than one of the kinds of activity specified in the list above (apart from in the case of a track, to which special rules apply), but certain premises licences will automatically allow the provision of multiple facilities. For example, large and regional casino licences will allow the provision of bingo and betting on the premises, a small casino licence will allow the provision of betting but not bingo, and bingo licences will allow the provision of betting.

Premises licences will be awarded by the local authority (municipality) for the relevant area. Applications for premises licences may only be made by an applicant who has a right to occupy the premises and, therefore, some uncertainty exists in relation to those benefiting from, say, an option to purchase or a conditional agreement.²⁸ Further, an application may only be made by a person who either holds an operating licence or who has applied for one.²⁹

“Responsible authorities”, which include the local authority (municipality) itself, the Police and Fire Authorities, Customs & Excise, etc,³⁰ and “interested parties”, who include those living sufficiently close to the premises to be likely to be affected, and those whose business interests are likely to be affected (and could therefore include corporations) are required to be made aware of the application and will have the right to make representation in writing and appear at any hearing.³¹

²⁷ Section 150

²⁸ Section 159

²⁹ Section 159

³⁰ Section 157

³¹ Section 158

A local authority may resolve not to issue casino premises licences within its area.³² Such a “blanket ban” may only apply to casino premises licences in general, and not specifically to any particular category of casino premises, and cannot be retrospective. There is no similar right to resolve not to issue premises licences for other gambling.

In exercising their licensing functions under the Act, local authorities must promote the licensing objectives and must have regard to the guidance of the Commission, but they must not have regard to the expected demand for the facilities proposed.³³ Notably, local authorities are directed to aim to permit the use of premises for gambling to the extent that they think it in accordance with the relevant codes of practice and their own local licensing policy (which each must issue on a triennial basis).

Mandatory, default and other conditions must or may be imposed on (or excluded from) premises licences (as appropriate), but no premises licence can be subject to a membership condition.³⁴ Also, premises licences must not be subject to a condition imposing limits on stakes, fees, winnings or prizes, since these are matters for the Commission and not for the local authority.³⁵

Appeals from decisions by the local authority in relation to premises licensing are heard by the local magistrates court and further appeals (on a point of law only) can be made to the High Court.

The duration of premises licences (or classes of premises licences) can be fixed by the Government. The local authority may subject a premises licence to a review on the application of a responsible authority or an interested party or simply by itself.³⁶

Temporary Use of Premises

The holder of an operating licence may use premises for gambling activities authorised by his operating licence for up to 21 days in any twelve month period if he provides a valid temporary use notice to the relevant licensing authority. A temporary use notice must be given at least three months in advance of the start of the period during which it is sought to be relied upon and the notice must be copied to the Gambling Commission, the Police and Customs & Excise authorities. The licensing authority (and other persons) may object to the use of a temporary use notice and the procedure will be put in place for the hearing for such objections.

General Offences

It is an offence to provide facilities for gambling without the requisite licences (or the benefit of an exemption).^{37 & 38}

³² Section 166

³³ Section 153

³⁴ Section 170

³⁵ Section 171

³⁶ Section 197 and 200

³⁷ Section 33

³⁸ Section 37

The Act establishes a new offence of “cheating” where someone cheats at gambling or does anything for the purpose of enabling or assisting another person to cheat at gambling.³⁹ It is immaterial whether that person improves his chances of winning anything, or actually wins anything. Cheating may (but need not) involve interference with the process by which the gambling is conducted. The offence can be committed by either the operator of the gambling or by a player/participant or by someone associated with or assisting either.

A new offence of “providing unlawful facilities abroad” is established, where a person commits an offence if he does anything in the UK, or uses remote gambling equipment situated in the UK, to invite or enable someone in a prohibited territory to participate in remote gambling. A prohibited territory is a country or place to be designated as such by the Government.⁴⁰

There are a number of specific offences aimed at protecting children (those less than 16 years old) and young persons (those less than 18 years old). These include inviting or causing or permitting a child or young person to participate in gambling activities in which it is illegal for them to participate.⁴¹ There are certain gambling activities in which young persons (i.e. those over 16 but under 18) can participate, including football pools, lotteries and the use of Category D gaming machines. An offence would also be committed where a person intentionally sends to a child or a young person a document advertising gambling or brings such a document to the attention of the child or young person with a view to encouraging them to gamble.

Similarly, a person commits an offence if he invites or permits a child or young person to enter gambling premises which that child or young person is not entitled to enter. Again, young people (and, in some cases, children) are entitled to enter certain gambling premises, including family entertainment centres and the non-gaming areas of regional casinos.⁴²

A young person commits an offence if he participates in commercial gambling or enters premises which he is not entitled to enter or provides facilities for gambling.⁴³ There are further offences relating to the employment of children and young people in gambling enterprises and provisions requiring a gambling operator to return the stakes paid in respect of gambling facilities used by a child or young person.⁴⁴ But if the child/young person has won; he is not required to return his winnings. There can therefore be potential for troublesome collusion between adults and children/young people which an operator, especially of remote gambling, will need to monitor carefully.

A defence of reasonable belief as to age will be available to an individual who is charged with an offence relating to a child or a young person.⁴⁵

³⁹ Section 42

⁴⁰ Section 44

⁴¹ Section 46

⁴² Section 47

⁴³ Sections 48, 49 and 50

⁴⁴ Section 58

⁴⁵ Section 63

Advertising

Advertising is defined as doing anything to encourage people to use gambling facilities or bringing information regarding such facilities to the attention of people or being involved in an activity knowing or believing it is designed to encourage participation in gambling or increase the use of facilities by participants. The Government will make regulations controlling the advertising of gambling and must, in particular, have regard for the need to protect children, young people and vulnerable persons. Broadcast advertising will be regulated by Ofcom (the existing regulator of UK broadcasting), although investigation of complaints will continue to be handled by the Advertising Standards Authority.

A person will commit an offence if he advertises unlawful gambling.⁴⁶ Likewise, it will be an offence to advertise foreign gambling.⁴⁷ However, “foreign gambling” means either non-remote gambling which takes place other than in an EEA State or remote gambling, none of the arrangements for which are subject to a law concerning gambling at any EEA State. For these purposes, Gibraltar is to be treated as an EEA State and the UK Government is to produce a “white list” of countries that will be treated as if they were an EEA State for these purposes. Therefore, operators duly licensed within an EEA State or white list place will be able to advertise as if they were licensed in the UK.

The Government’s regulations regarding gambling advertising will apply to remote advertising (including Internet advertising) to the extent it provides information intended to come to the attention of British residents or involves a communication intended to do the same, or makes data available to British residents or makes data available in circumstances where it is likely to be accessed by British residents.⁴⁸

Enforceability of Gambling Contracts and Void Gambling

The Act repeals the various old provisions of UK law which have previously rendered gambling contracts unenforceable. Therefore, gambling contracts will be enforceable. The Commission can make an order voiding a bet and requiring repayment of any monies paid in relation to it, where the Commission takes the view that the bet was substantially unfair, on the grounds that the information supplied was insufficient, false or misleading or the underlying race or event was conducted in breach of industry rules or because cheating was involved.⁴⁹

Gaming Machines

Under the Act, a gaming machine means a machine designed or adapted for use by individuals to gamble whether or not it can also be used for other purposes. Exceptions include domestic or dual-use PCs and lottery ticket machines provided the machine itself does not determine the result or announce the result without an interval to be prescribed.⁵⁰

⁴⁶ Section 330

⁴⁷ Section 331

⁴⁸ Section 333

⁴⁹ Section 336

⁵⁰ Section 235

The UK Government will make regulations defining four classes of gaming machines for the purposes of the Act, to be known as Categories A, B, C and D. The regulations will further sub-divide Category B (initially expected to be four sub-categories). The regulations are expected to categorise the machines based on stakes, prizes, the nature of the machine and the premises on which they will be used. Please see the attached table setting out the expected categorisations.

Miscellaneous

There are specific provisions dealing with lotteries, prize gaming, private and non-commercial gaming.

Taxation

Despite the passing of the 2005 Act, the UK Government has yet to announce its decision on the taxation of on-line gambling. In its paper “The Modernising of Gambling Taxes” (issued in November 2002) it stated that “...the Government is...committed to delivering a business environment which enables the gambling industry to compete and grow [and] it therefore wants [UK] gambling taxes to operate in a way which is fair, simple and efficient, and which keeps pace with the technological, competitive and regulatory environment in which the industry operates”.

With the 2005 Act now in place, the extent to which the Government’s stated objective will be achieved will depend on its decisions on tax. There is now no uncertainty about the future regulatory regime, so (at the time of writing), the decisions on tax are eagerly awaited.

Conclusion

For an interim period, until the new gambling regulation provided for the 2005 Act is in force, the old laws continue in force. Indeed, until all the rules, regulations, codes of practice etc are issued by the UK Government and the Gambling Commission, the uncertainties of the old laws continue and a very careful consideration of what is involved is required.

Disclaimer

This “Brief Summary of the Gambling Act 2005” is prepared by Jeffrey Green Russell but it is not intended to be comprehensive, nor is intended to be a substitute for legal advice. Professional advice should be sought before applying the information to particular situations.

While all care has been taken in the preparation of this Guide, no liability is accepted by Jeffrey Green Russell for its contents.

Jeffrey Green Russell

May 2005

**56 New Bond Street
London W1S 1RG**

**Tony Coles: arc@jgrrlaw.co.uk
Nick Nocton: njn@jgrrlaw.co.uk**

+44 (0) 207 339 7000

Gambling Act 2005: Summary of Casino and Gaming Machine Categories

Category	Min table gaming area	Min additional gambling area	Min non gambling area	Min total customer area	Min no of gaming tables	Category of machines permitted	Machine: table ratio
Existing	n/a	n/a	n/a	n/a	n/a	B,C,D	n/a (max 20)
Small	500m ²	0	250m ²	750m ²	1	B,C,D	2:1 (max 80)
Large	1000m ²	0	500m ²	1500m ²	1	B,C,D	5:1 (max 150)
Regional	1000m ²	2500m ²	1500m ²	5000m ²	40	A,B,C,D	25:1 (max 1,250)

Category	Maximum stake	Maximum prize	Location(s)	Maximum number per premises
A	Unlimited	Unlimited	Regional casinos	1250
B1	£2	£4,000	All casinos	150 in large casinos 80 in small 20 in existing
B2	£100/game; £15/chip	£500	As above plus premises licensed for betting	4
B3	£1	£500	As above plus Bingo clubs and adult gaming centres	4
B4	£1	£250	As above plus Registered clubs and miners' welfare institutes	3
C	50p	£25	As above plus premises licensed for alcohol	2 (may apply for more)
			Bingo clubs, adult gaming and family entertainment centres	Any number
D	10p (when cash or exchangeable prizes)	£5	Bingo clubs, adult gaming and family entertainment centres and travelling fairs	Any number
	30p (non-cash and non-exchangeable prizes)	£8		

