

Gambling Act 2005 FAQs for Members in English and Welsh local authorities (updated November 2009)

All statutory references are to the Gambling Act 2005 unless stated otherwise. Comments on this document can be made by e-mail to: emily.scantlebury@lacors.gov.uk. A more detailed FAQ document covering the different licences and permits is available via LACORS website at: <http://www.lacors.gov.uk/lacors/ViewDocument.aspx?docID=18796&docType=C>

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In offering this advice LACORS wishes to make it clear that:

- *Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.*
- *Only the courts can interpret statutory legislation with any authority.*
- *This advice is not intended to be a definitive guide to, nor substitute for, the relevant law. Independent legal advice should be sought where appropriate.*

1. What is the legislative background to the Act?

Reform of gambling law began with a policy review by the Independent Gambling Review Body. This was first published in 2001 (The Budd Report):

http://www.culture.gov.uk/Reference_library/Publications/archive_2001/gamb_rev_report.htm.

The Government responded to this report in March 2002 with a White Paper "A Safe Bet for Success":

http://www.culture.gov.uk/Reference_library/Publications/archive_2002/safe_bet_for_success.htm

In November 2003 the Government published the first clauses of a draft Gambling Bill. This and subsequent draft sections of the Bill were considered by a Joint Scrutiny Committee of both Houses of Parliament. The reports of the Committee and Government responses are available via:

http://www.parliament.uk/parliamentary_committees/jcdgb.cfm

Much debate surrounding the Bill focused upon the provisions for regional, large and small casinos, as well as the permissions for the existing casinos and amusements sectors.

The Gambling Act received Royal Assent on 7th April 2005 and is available via:

<http://www.opsi.gov.uk/acts/acts2005/20050019.htm>

The reform affected England, Wales and Scotland.

2. What are the main changes?

The Act replaced three previous Acts relating to gambling: the Betting, Gaming and Lotteries Act 1963; the Gaming Act 1968; and the Lotteries and Amusements Act 1976.

The Gambling Commission was formed from the previous Gaming Board for Great Britain and is responsible for licensing gambling operators and those working in the gambling industry. The Gambling Commission has new responsibilities relating to betting (it is first time that betting has been subject to a national regulator), remote gambling (UK based), illegal gambling and the protection of children and the vulnerable. It also now has statutory powers of entry, search and seizure. The Government has also given responsibility to the Gambling Commission to monitor the social impact of gambling reform and the Secretary of State has a reserve power to levy monies from industry to fund projects relating to gambling addiction or other harms/exploitation associated with gambling or any of the licensing objectives.

The Act enables wider geographical spread of casinos and increased gambling provision.

Regarding casinos, the Gambling Act allows for three new types of casinos to operate in Britain, namely one "regional casino" along with eight large and eight small casinos. The Government appointed an Independent Casino Advisory Panel (CAP) to shortlist proposals for where these new casinos might be located, and a final list for the 17 casinos was announced in January 2007. The Government's Order for these locations was defeated in March 2007 largely due to the controversy over the Panel's recommended location for the regional casino. In February 2008, Government announced it had decided not to go ahead with a regional casino at this stage but was successful in May 2008 in laying the geographical Order for the other 16 locations:

Large casino: Great Yarmouth, Kingston-upon-Hull, Leeds, Middlesbrough, Milton Keynes, Newham, Solihull and Southampton.

Small casino: Bath and North East Somerset, Wigtown licensing area in Dumfries and Galloway, East Lindsey, Luton, Scarborough, Swansea, Torbay and Wolverhampton

LACORS remains in contact with DCMS and GC officials along with the Casino Officers Network – a self formed group of officers from those authorities chosen by the CAP - who are preparing for the casino competitions that will determine which operator is successfully awarded the casino licence.

3. How was the Act implemented?

Local authorities as *licensing authorities* (see Gambling Act 2005 Section 2 for the definition of 'licensing authority') were firstly required to publish, on or by 3rd January 2007, 'Statements of Policy' setting out their policies as regards their functions under the Act. The Statements must be reviewed from 'time to time' as well as every 3 years (Section 349). A period of transition to the new Act took place between January – September 2007 with licensing authorities processing conversion applications from May and the Gambling Commission doing so from January 2007. The Act came into force on 1st September 2007 (with the exception of Temporary Use Notice arrangements which came into force in December 2007).

4. What role do local authorities have?

Local authorities have a significant role under the Act, as 'licensing authorities' which are defined in Section 2. Generally, in England this includes District Councils in two tier authorities or the Metropolitan / Borough Council in single tier. This definition is the same as for the Licensing Act 2003.

Licensing authorities are therefore responsible for the following licences and permissions:

- Adult Gaming Centre premises licences
- Family Entertainment Centre premises licences
- 'Unlicensed' Family Entertainment Centre gaming machine permits
- Betting Premises Licences
- Betting Tracks Premises Licences
- Bingo Premises Licences
- Casinos Premises Licences
- Alcohol licensed premises gaming machines permits (and notifications of 2 or less gaming machines)
- Clubs Gaming and Gaming Machine permits
- Temporary Use Notices
- Occasional Use Notices
- Note. the local authority registers small society lotteries (as a 'local' authority' rather than as a 'licensing authority')

Licensing authorities also need to provide the Gambling Commission with information quarterly, as well as maintain public registers of licences / permissions. The information requirements are set-out in the Commission's guidance available via this link:

http://www.gamblingcommission.gov.uk/licensing_authorities/information_for_licensing_auth/quarterly_returns.aspx

5. What powers do local authorities have under the Act?

Local authorities, as licensing authorities, have a number of powers under the Act including:

- Granting or refusing premises licence and permit applications
- Granting premises licence applications but removing or adding conditions
- Reviewing premises licences leading to revocation or removal / addition of licence conditions
- Prosecuting licence holders for certain offences (see Section 346) under the Act or breaches of licence conditions
- Prosecuting non licence holders for offences under the Act e.g. illegal gambling

The licensing authority does not need to await to receive representations or objections from other persons in order to hold a hearing to consider an application, remove or add conditions, or commence a review (this is different from the Licensing Act 2003), however, there do appear to be fairly limited grounds upon which the licensing authority can refuse, revoke or remove / add conditions.

Section 153 requires that the licensing authority shall aim to permit gambling in so far as the authority think it is in accordance with Gambling Commission Codes of Practice and guidance, reasonably consistent with the licensing objectives, and in accordance with the licensing authority's own Statement of Principles.

It should be noted that the licensing objectives do not for example include public nuisance or public safety matters. It is also not clear whether the Statement of Principles can address matters outside the licensing objectives although it is clear that it ought not address issues of demand as these cannot be considered as part of the licensing process (Section 153) nor whether the application is likely to obtain planning permission (Section 210).

There may be wider grounds upon which a licensing authority can decide an outcome of a review as in addition to the matters in Section 153 it can consider representations made (Section 201).

6. What is the Gambling Commission's role?

Whilst licensing authorities are responsible for Premises Licences, the Gambling Commission is responsible for Operating Licences and Personal Licences. The Commission is also under a duty to provide guidance to local authorities on their functions; the current guidance is available via this link:- http://www.gamblingcommission.gov.uk/licensing_authorities/information_for_licensing_auth/guidance_to_las.aspx

The Commission also has a responsibility to monitor the social impact of gambling reform. Its first Prevalence Survey is available via this link: http://www.gamblingcommission.gov.uk/research_consultations/research/bgps.aspx

The Commission must carry out its functions, where appropriate, with regard to the Licensing Objectives contained within the Gambling Act 2005 (See Section 22).

The Gambling Commission is also defined as a 'responsible authority' and will receive notifications of premises licence applications made, revoked etc. The Commission is able to make representations regarding the applications to the licensing authority. It is apparent so far however that the Commission has been unlikely to make representations apart from on fairly minimal grounds such as the applicant

not being an operating licence holder, rather than on the substance of the actual application.

7. What is LACORS' role?

LACORS has been part of a number of government working groups on the Bill / Act including the premises licence working group, industry liaison group and the project implementation board. These groups have considered matters such as the regulations, fees, local authority training, transition and joint working. LACORS also continues to attend Gambling Commission meetings and communicates with the Commission on matters of local government concern.

At the Bill stage, LACORS worked with the LGA to provide feedback to DCMS, and supported the LGA's Evidence to the Joint Scrutiny Committee. Documentation regarding these can be found on the LACORS' website (<http://www.lacors.gov.uk/>) under the Reference Section / Licensing / Gambling.

Implementation of the Act involved numerous consultations on Government regulations and Gambling Commission guidance. LACORS collated local government views and provided comprehensive responses to the Government and the Commission on all consultations involving local government interest.

LACORS Gambling Reform Policy Forum was established in April 2005 to consider local government issues under the Act and involved representatives from local authority licensing teams. The policy forum has now become part of our Licensing Policy Forum which looks at matters relating to the Gambling Act as well as the Licensing Act 2003. Agenda, minutes and presentations are available from LACORS website.

LACORS also encourages local authorities to work together in regional licensing officer groups and we provide secretariat for bi-annual meetings for the chairs of these groups to discuss and disseminate information regarding the Licensing and Gambling Acts.

8. What is gambling?

Gambling is defined in Part 1 of the Act, Principle Concepts, Section 3. The definition states that gambling is gaming; betting or participating in a lottery. In turn, each of these is defined within the Act.

- **Gaming** is defined at Section 6 as meaning playing a game of chance for a prize. *Game of chance* includes a game which includes both an element of chance and an element of skill; or a game where an element of chance can be eliminated by superlative skill; or a game that is presented as involving an element of chance. The game cannot however include a sport. A person *plays* a game of chance if s/he participates in the game; it is irrelevant whether or not there are other participants or whether there are computer generated images of other participants. *Playing for a prize* means the participant acquires a chance of winning a prize by playing the game, even if s/he does not risk losing anything. *Prize* means money or money's worth, and includes both prizes provided by an organiser and winnings of money staked.
- **Betting** is defined at Section 9 as meaning making or accepting a bet on the outcome of a race, competition or other event or process; on the outcome of anything occurring or not occurring; or on whether anything is or is not true. It is irrelevant whether that event has already taken place (or has failed to take place), or where one party knows the outcome. It should be noted that spread betting

is regulated by the Financial Services Authority and does not come within this definition of betting. There are specific provisions to deal with prize competitions that amount to betting (such as fantasy football), and pool betting.

- A **lottery** is defined at Section 14 and is either a simple lottery or a complex lottery. A *simple lottery* is one where persons are required to pay to participate and one or more prizes are allocated to one or more members of a class, and the prizes are allocated by a process which relies wholly on chance. A *complex lottery* is where persons are required to pay to participate and one or more prizes are allocated to one or more members of a class, and the prizes are allocated by a series of processes where the first of those processes relies wholly on chance. *Prize* means money, articles or services provided by the members of the class among whom the prize is allocated. It should be noted that the National Lottery is not included in this definition of lottery and is regulated by the National Lottery Commission.
- A definition of **remote gambling** is also provided, at Section 4 of the Act.

9. What is 'private' or 'non-commercial' gaming?

Schedule 15 defines private gaming and betting and Part 14, Section 297 defines non-commercial gaming or betting. Parts 3 and 4 provide exceptions to various offences where the gaming or betting being provided is private or non-commercial.

- *Gaming is private* if: no charge is made for participation (including an admission charge); it does not occur in a place to which the public have access; and (unless it is domestic or residential gaming) the gaming is equal chance gaming. *Domestic gaming* is gaming that takes place on a private dwelling and on a domestic occasion; *residential gaming* is gaming that takes place in a hostel, hall of residence or similar establishment (not conducted in the course of a business), and more than half of the participants are residents of the establishment.
- *Betting is private* where it is domestic betting or workers' betting. *Domestic betting* is that where the betting is made on premises in which every party lives. *Workers' betting* is betting made between persons who have a contract of employment with the same employer.
- *Gaming is non-commercial* where it takes place at a non-commercial event. Such an event is where no part of the proceeds is used for private gain. A person does not commit the offences of providing facilities for gambling (section 33) or using premises for gambling (section 37) if s/he offers non-commercial prize gaming or non-commercial equal chance gaming in accordance with the various conditions set out in sections 299 and 300.
- *Betting is non-commercial* where no party enters into the betting in the course of a business or holds himself out as being in business in relation to the acceptance of the bets.