

Gambling Act 2005

The objectives of the Gambling Commission and Licensing Authorities are defined as:

- Preventing gambling from being a source of crime or disorder, being associated with crime and disorder, or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable people from being harmed or exploited by gambling.

R (on the application of TC projects Ltd) v Newcastle Licensing Justices [2008] EWCA 428. The claimant in that case applied for a casino licence and was refused on the basis that there was no unmet demand for casinos in the area, and the claimant had not shown that there were other material considerations which should lead to the grant of the licence. The previous decision (in this area) in *Oasis Casino Ltd v Blackpool Licensing Justices* 17 December 2004, (unreported) stated that if no unmet demand was proved, there was a “residual discretion” to grant the application. The Claimant argued that Oasis was wrong in that it approached the case backwards. The claimant submitted that the justices have discretion to refuse, not discretion to grant.

The court held that the absence of unmet demand is a reason in itself for exercising its discretion to refuse a licence. Sched 2 para 18 of the Gaming Act 1968 is clear that the absence of unmet demand is a “ground for refusal”.

GAMBLING ACT 2005

What is The Gambling Act about?

It’s a huge act that governs all aspects of running a gambling business in the UK, from the minimum age of customers to the types of advertising, and from what constitutes cheating to the use of gaming machines. There are around 70 separate offences!



The Gambling Commission

The Gambling Act 2005 established the Gambling Commission. It assumed its full powers in 2007, taking responsibility for regulating arcades, betting, bingo, casinos, slot machines and lotteries (including the National Lottery from 1st October 2013). It has no power over spread betting, which is regulated by the Financial Conduct Authority.

All remote gambling, including betting online, by telephone and other communication devices based on the territory of Great Britain is also overseen by the Commission.

They issue licenses to gambling operators, can levy fines and revoke licenses, and investigate and prosecute illegal gambling. It also advises national and local government on gambling-related issues.

The Commission can take regulatory action against licensees who breach the rules in some way. Those actions can range from issuing a warning to imposing a fine on those who violate licence conditions. The Commission also has the ability to revoke licences.

The Commission works with other UK organisations and the police in cases where suspicious betting or gambling activities are detected.

Operators who have had a regulatory sanction imposed on them are listed on the website of the Gambling Commission.

On the 1st November 2014, the *Gambling (Licensing and Advertising) Act 2014* came into force. This amended portions of the Gambling Act 2005.

Previously, remote operators required a licence only if they had at least one piece of remote gambling equipment located in Great Britain. Remote gambling operators who located all of their equipment offshore therefore did not need a licence and were not subject to regulatory supervision by the Gambling Commission.

Following the commencement of this act, gambling in the UK is regulated at the point of consumption rather than supply. This means that remote gambling operators now require a licence if their gambling facilities are used in Britain, even if no equipment is located here.

In addition, only licensed operators may advertise their services to British consumers. The advertisement of gambling is unlawful if an operator does not hold the required licence for the gambling to take place as advertised.



A remote gambling operator commits an offence if their remote gambling facilities are capable of being used in Great Britain and a remote operating licence is required for the gambling to take place as advertised, but the operator does not have the requisite licence.

One of the principle changes for remote gambling operators is that from 1 December 2014 (Finance Act 2014, they will also be liable to pay remote gaming duty of 15% on their profits generated from UK customers, no matter where in the world the operator is situated. This is a major change in the way the gambling industry is regulated, as previously around only 15% of remote gambling operators had a UKGC licence.

Gibraltar Betting & Gaming Association Ltd and the Secretary of State for Culture, Media & Sport and others [2014] EWHC 3236 (Admin).

The Gibraltar Betting and Gaming Association (GBGA), claimed the new regime was 'unlawful because it is an illegitimate, disproportionate and discriminatory interference with the right to free movement of services guaranteed by Article 56 TFEU (Treaty on the Functioning of the European Union).' In addition, the GBGA claimed that the new regime would actually undermine consumer protection and create perverse incentives which would encourage the uptake of unlicensed gambling.

However, Justice Nicholas Green disagreed, rejecting the claim and concluding that the GBGA had not established that the new regime was unlawful under EU or domestic law, and it served a series of legitimate objectives. He stated that remote gambling services are highly profitable for those that provide the service, but the financial benefit to the provider can be at the expense of the social welfare of the consumer and can bring about a high consequential social and economic clean-up cost for the State. He considered that if the Government could not lawfully move to a point of consumption regime, the prospect of any form of regulation of remote e-commerce becomes increasingly difficult.

Mr Justice Charles considered that a number of issues were unclear as a matter of EU law, and therefore that a reference to the Court of Justice of the European Union was necessary. The consequential Order is yet to be determined.

Licensing Authorities

The Gambling Act 2005 designates certain classes of local authorities in England and Wales (and licensing boards in Scotland) as licensing authorities.



Licensing authorities have a number of important regulatory functions in relation to licensing premises for gambling including:

- issuing premises licences
- regulating gaming and gaming machines in clubs, and on alcohol licensed premises
- granting permits to family entertainment centres for the use of certain lower stake gaming machines
- granting permits for prize gaming
- registering small society lotteries
- horse and dog tracks.
- inspection and enforcement of licences, permits and permissions

GAMBLING ACT 2005 - OFFENCES

The Gambling Act 2005 is a vast act, containing a regulatory system with which to govern the provision of all gambling in the UK. It has created over 70 offences and it would be virtually impossible to summarise. These templates therefore cover the two comprehensive offences which were created by the Act – namely that of providing facilities for gambling or using premises for gambling. There are a raft of other offences, concerned with such subjects as allowing young people to gamble, cheating, offences relating to Gaming Machines, advertising, lotteries etc.

It is possible for a company or person seeking to appeal a decision made by a licensing authority to seek judicial review of that decision.

Be aware that you are considered to be providing facilities for gambling if:

1. You invite other people to gamble in accordance with arrangements made by you, or;
2. You provide, operate or administer arrangements for gambling by others, or;
3. You participate in the operation or administration of gambling for others.

Section 33: Provision of Facilities for gambling without an operating licence

A person commits an offence if he provides facilities for gambling unless he holds an operating licence or is in business with someone who does. There are certain statutory exceptions.



Exceptions to Section 33:

1. The provision of facilities for a lottery;
2. The making of a gaming machine available for use;
3. Clubs and miners welfare institutes;
4. Premises with an alcohol licence;
5. Prize gaming;
6. Private gaming and betting;
7. Non-commercial gaming

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 (6 months in Scotland)
- b) A fine, or
- c) Both

It is worth noting that an offence can be committed under Section 33 by way of remote communication. Remote communication means by way of the internet, telephone or radio, or other methods of indirect, electronic communication. The remote communication can be wholly or partly. However, for an offence to be committed, at least one piece of the remote gambling equipment used in the provision of the facilities, must be situated in Great Britain, or, if no such equipment is situated in GB but the facilities are used there, and the person providing the facilities knows or should know that the facilities are being used, or are likely to be used in Great Britain. It does not matter whether or not the facilities provided are for use wholly or partly in Great Britain.

It is irrelevant whether the facilities provided are situated inside Great Britain, outside Great Britain or partially inside or outside.

Section 37: Use of facilities for gambling without an operating licence

A person commits an offence if he uses premises, or causes or permits premises to be used, to—

- a) Operate a casino,
- b) Provide facilities for the playing of bingo,
- c) Make a gaming machine available for use,
- d) Provide other facilities for gaming, or



- e) Provide facilities for betting (whether by making or accepting bets, by acting as a betting intermediary or by providing other facilities for the making or accepting of bets).

There are certain statutory exceptions:

Exceptions to Section 37:

1. Occasional use notices with regard to a racing track;
2. Football pools;
3. Temporary use notices;
4. Gaming machines;
5. Clubs and miners' welfare institutes;
6. Premises with alcohol licences;
7. Travelling fairs;
8. Prize gaming;
9. Private gaming and betting;
10. Non-commercial gaming

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 (6 months in Scotland),
- b) A fine, or
- c) Both.

Penalties for offences under either Section 33 or 37:

A maximum prison sentence of 51 weeks, or fine, or both. For offences committed before 12th March 2015 any fine may not exceed level 5 on the standard scale (currently £5000.00), for offences after that date, the maximum level of fine is unlimited.

The offences are triable in the Magistrates Court only, and are therefore summary offences.

GAMBLING ACT 2005 – POWERS OF THE REGULATORS

The Gambling Commission

The Gambling Commission was set up under the Gambling Act 2005 to regulate gambling in Great Britain in partnership with the licensing



authorities. On the 1st October 2013 the Gambling Commission and the National Lottery Commission merged to create the UKGC (United Kingdom Gambling Commission) (Public Bodies Act 2011, given effect by the Public Bodies (Merger of the Gambling Commission and the National Lottery Commission) Order 2013.) They permit gambling and ensure that crime is kept out of gambling, that gambling is fair and open and that children and the vulnerable are protected. They take enforcement action where necessary and combat illegal gambling activities and corruption in sports and other betting.

They work closely with the Police and HMRC.

What regulatory powers does the Gambling Commission have?

The Gambling Commission has a range of powers which we may exercise following a review including:

- Issuing a warning to a licence holder
- Attaching an additional condition to a licence
- Removing or amending a condition to a licence
- Suspending a licence at the outset, or following a review
- Revoking a licence
- Imposing a financial penalty following breach of a licence condition.

What the Gambling Commission does not do

- Assist individuals in resolving consumer complaints about gambling transactions.
- Give specific legal advice
- Regulate all gambling websites accessible to the public
- Regulate spread betting (this is done by the FSA).

GAMBLING ACT 2005 – CASE STUDIES - OF INTEREST

R (on the application of Betting Shop Services Ltd) v. Southend on Sea Borough Council [2008] EWHC 105 Admin

This case is concerned with the application of a licence for premises to be used for the purpose of gambling. It is a judicial review case which was brought by Betting Shop Services Ltd against Southend-on-Sea Borough Council. The facts are that Betting Shop applied to Southend Council for a



premises licence to use their premises for gambling. Southend Council is a licensing authority; as provided for by s.159 of the Gambling Act 2005, which states at (1)(a) An application must be made to a licensing authority in whose area the premises are wholly or partially situated.

Betting Shop already held an operating licence and had a right to occupy the premises to which the application related. Guidance issued by the Gambling Commission stipulates that 'a licence to use premises for gambling should only be issued in relation to premises that are ready to be used for gambling', although it does also state that 'a provisional statement' can be applied for should the premises in question not be complete or need alteration. A provisional statement obviously does not provide the security that a full premises licence does, and although Betting Shop held a provisional statement already for the premises in question they wished to obtain a premises licence as well.

The Council refused to consider the application of Betting Shop on the basis that the guidance issued by the Gambling Commission did not allow them to do so. Betting Shop had applied for judicial review in an attempt to get the matter remitted to the Council for a determination of its application for a Premises Licence. The court found for Betting Shop because it found that the Council had an obligation to consider the application of the Betting Shop, on the basis that under the legislation, Betting Shop had fulfilled the criteria necessary for permission to be granted to make a premises application. The Council was therefore obliged to consider the application, although of course it was still for the Council ultimately to decide whether or not to grant the application.

R (Alistair Lockwood Thompson) v Oxford City Council 2013 EWHC 1819 (Admin)

In this case a decision by Oxford City Council's licensing sub-committee to refuse an application for a renewal of a sexual entertainment licence was challenged in the High Court. The premises in question was granted a SEV licence in 2011 by the Council but a year later the Council refused to renew the same licence in the same location. Amongst other things Mr Gouriet QC, acting for the claimant, submitted that his client "was understandably bemused and at a loss to understand why his application for an SEV licence in relation to Oxpens Road was granted in 2011 but not renewed in 2012."

On this point, Mr Justice Haddon-Cave confirmed that, with reference to renewal applications, local authorities *are entitled to take "a fresh look" at the matter and accordingly, it is open to a local authority to refuse to*



renew a licence even where no change in the character of the relevant locality or in the use to which any premises in the locality are put. [para. 57]

The claimant also argued that the Council had taken into account irrelevant matters by taking into account the future character of the area as opposed to the current at the time the application was made. In rejecting this argument, Mr Justice Haddon-Cave stated "...licensing decision-makers are entitled to take into account both the present and future "character" of an area. There is no reason to limit the reference to "character" in paragraph 12(3)(d) only to the present character of the area. Indeed, it would make no sense to do so in the context of prospective licenses which were to be granted for 12 months in the future. Prospective licenses required a prospective view. The fact that an area is developing and in a continued state of change is a relevant consideration to why renewal might be inappropriate." [para 68]

Although this case is not specifically related to a licence issued under the Gambling Act, it is likely that it would be equally applicable in this area.

**For further information please contact Abigail's clerks
on 0161 214 1500 or email
clerk@stjohnsbuildings.co.uk**