

DRAFT GAMBLING BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes accompany further clauses of the draft Gambling Bill published in February 2004. They are supplemental to the explanatory notes published in November 2003, and provide explanation of the new material in the draft Bill. They have been prepared by the Department for Culture, Media and Sport in order to help the reader of these clauses and to assist scrutiny of them. These notes do not form part of the draft Bill and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the published clauses. They are not, and are not meant to be, a comprehensive description of the clauses. Therefore, where a clause or a part of a clause does not seem to require any explanation or comment, none is given. The clause numbering of the draft Bill has been amended and the notes published here refer to the numbering of the February 2004 draft of the Bill.

PART 3: OFFENCES

Clause 21: Provision of facilities for gambling

3. Parts 12 and 13 of the draft Bill contain new clauses on gambling in clubs and miners' welfare institutes, and premises with alcohol licences. As a result additions have been made to clause 21, at subsection (1) (b) (ii) and (iii), to create the necessary exceptions from this offence for gambling authorised in these sectors.

Clause 26: Use of Premises

4. Parts 12 and 13 of the draft Bill contain new clauses on gambling in clubs and miners' welfare institutes and premises with alcohol licences. As a result additions have been made to clause 26, at subsection (7) (d) and (e), to create the necessary exceptions from this offence for gambling authorised on premises in these sectors.

Clause 30: Cheating

5. Clause 30 provides for a criminal offence of cheating at gambling, and repeals the old offence of cheating at section 17 of the Gaming Act 1845. The word "cheating" is not defined but has its normal, everyday meaning. The offence is committed by both cheating directly, or by doing something for the purpose of assisting or enabling another person to cheat. A person who does something inadvertently which enables another person to cheat, will not, therefore, commit an

offence.

6. Subsection (2) provides that a person will commit the offence irrespective of whether he actually wins anything as a result of the cheating, or whether the cheating has the effect of improving the cheat's chances of winning. This means that an inept cheat, or one who cheats for another person's benefit, will still commit an offence. Subsection (3) provides that, in particular, cheating may include actions that involve actual or attempted deception or interference with the processes involved in the conduct of gambling, or with any other game, race or other event or process to which gambling relates. Games can be either real or virtual.

7. Subsection (4) provides that the offence of cheating can be committed in relation to spread betting and entries to the National Lottery. Spread betting and the National Lottery are, for the most part otherwise excluded from the system of regulation provided for in the draft Bill, although it should be noted that additional discrete provisions relating to the National Lottery are intended to be included in the final version of the Bill.

8. Subsection (5) provides for penalties that may be imposed upon conviction of the offence. It should be noted that unlike other offences created under the draft Bill, this offence is capable of being tried either summarily or on indictment.

Clause 34: Supply of alcohol, &c.

9. This clause makes it an offence for certain types of gambling premises to sell alcohol on the premises, or, if it is a club, to supply it. A person will commit an offence if he sells alcohol (by retail) in an adult gaming centre, family entertainment centre or premises subject to a betting premises licence (other than a track). Where an adult gaming centre, family entertainment centre or licensed betting premises is a club, the offence will also be committed where a person supplies alcohol by or on behalf of the club or to the order of a member of the club (supply being distinct from sale by retail in these circumstances).

10. The penalty upon conviction for this summary offence is imprisonment for a period not exceeding six months or a fine up to level 5, or both.

11. The clause operates by reference to the definition of "licensable activity" in section 1 of the Licensing Act 2003, but it is immaterial for the purposes of the offence whether the supply or sale of alcohol is licensed or permitted under that Act (subsection (2)).

PART 5: OPERATING LICENCES

Clause 67: Requirement for personal licence

12. Clubs and miners' welfare institutes which play bingo will be required to obtain a bingo operating licence from the Gambling Commission if they play bingo

which is high-turnover bingo. Clause 233 defines high-turnover bingo and explains that where this takes place the bingo is not covered by clause 227 (the exemption) or clause 229 (club gaming permit) and so is not exempt from clause 21 (provision of facilities for gambling). In order to be lawful under the Bill, high-turnover bingo will need to be covered by a bingo operating licence.

13. Clause 67(9) exempts members' and commercial clubs and miners' welfare institutes from the personal licensing requirements set out in clause 67 where they hold a bingo operating licence. Thus, the Commission will not be required to ensure that at least one person in the club or institute in a management office holds a personal licence, and neither the Commission nor the Secretary of State may attach any condition to such a bingo operating licence prescribing that personal licences must be held. This exemption reflects the particular management and operational structures of clubs and institutes where it would be inappropriate to require additional personal licensing i.e. where officers are frequently ex officio and committees change on a regular basis.

PART 10: GAMING MACHINES

Clause 201: Making machine available for use

14. Parts 12 and 13 of the draft Bill contain new clauses on gambling in clubs and miners' welfare institutes and premises with alcohol licences. These include measures which authorise making gaming machines available for use. As a result additions have been made to clause 201, at subsection (1) (b), to create the necessary exceptions from this offence for the use of machines on premises in these sectors.

PART 12: CLUBS

15. Part 12 is an entire new Part to the draft Bill, published in February 2004.

16. In existing gambling legislation defined categories of clubs and miners' welfare institutes are afforded special treatment so far as gaming activities are concerned. Special registration processes are available to allow clubs to provide certain types of gaming and / or gaming machines. This registration process is separate from the general licensing system offered by the Gaming Act 1968 ("the 1968 Act") because that process is designed for clubs whose purpose is the provision of commercial gaming.

17. The draft Bill seeks to continue the special position for clubs and institutes in relation to the provision of gaming and gaming machines. They are to be permitted to provide some types of gaming without authorisation, and to be eligible to apply for additional permits that authorise further provision. Clubs and institutes are not placed in any special position in relation to betting or lotteries.

Definitions

Clauses 224-226: Definitions of eligible clubs

18. There are to be three categories of eligible club: members' clubs, commercial clubs and miners' welfare institutes. To take advantage of the various gaming rights in Part 12 a club has to bring itself within one of these categories (although not all gaming rights are equally available to all three categories of club).

19. Clause 224 defines members' clubs. Such clubs must have at least 25 members and be established and conducted wholly or mainly for purposes other than gaming (unless the gaming is of a prescribed kind). They are to be established and conducted for the benefit of their members and not as a commercial enterprise. They are also to be established with the intention of operating on an ongoing basis, and not temporarily. Examples of such clubs would include political clubs or branches of the Royal British Legion. By virtue of the provisions set out at subsection (2) bridge and whist clubs will also be permitted to be members' clubs.

20. Clause 225 defines commercial clubs. Commercial clubs are subject to the same conditions as members' clubs, except that members' clubs must not operate as a commercial enterprise. Commercial clubs can also be known as proprietary clubs. An example of a commercial club would be a snooker club.

21. Clause 226 defines miners' welfare institutes. Such institutes are associations established for social or recreational purposes, and specifically (either wholly or mainly) for the benefit of persons employed in connection with coalmines.

22. There is a requirement that the affairs of the association must be managed by a group of whom at least two thirds are miners' representatives. Miners' representatives are:

- a) people nominated by a licensed coal operator or by the Coal Industry Social Welfare Organisation; and
- b) persons nominated by an organisation representing employed persons or present or former employees in connection with a coal mine.

The management group must contain people from both (a) and (b) above. Discussions are taking place with the Department of Trade and Industry about the status of the Coal Industry Social Welfare Organisation.

23. Alternatively, an association will be an institute if it operates on premises that are operated wholly or mainly for the purposes of the association and is a miners' welfare trust under section 2 of the Recreational Charities Act 1958.

Exempt gaming

Clauses 227-228: The exemption

24. Clause 227 exempts members' clubs, commercial clubs and miners' welfare institutes from the core offences of the draft Bill (provision of facilities for gambling and the use of premises at clauses 21 and 26 respectively) with respect to some limited forms of gaming. Accordingly, clubs may provide such gaming without any further authorisation.

25. The exemption applies to commercial and members' clubs even if they are established and conducted wholly or mainly for gaming.

26. In order to qualify for the exemption the gaming must meet a number of conditions:

- a) There must be no "bank" involved, that is to say the gaming must take place between a number of equal participants who contribute all of the stakes;
- b) Each of the participants must have an equal chance of winning (leaving aside any skill required to play the game);
- c) Maximum stakes and / or winnings must not exceed any limits prescribed in regulations;
- d) The club must not deduct any amounts from stakes or winnings in the gaming, unless permitted by regulations;
- e) Any fee for participation must not exceed amounts prescribed in regulations;
- f) The games played may only take place on one set of premises as there may not be any linking of games between premises; and
- g) People may only participate in the gaming if they have been members of the club (or applied or were nominated for membership) at least 48 hours before playing, or are the guests of such a person.

27. With the exception of the restriction on linking games and the addition of a power to prescribe maximum stakes and winnings, these conditions are similar to those set out in section 40 of the 1968 Act.

28. Clause 228 supplements clause 227 by providing additional explanation of the provisions of that clause and by specifying what may be contained in regulations to be made by the Secretary of State. In particular, subsection (6) defines in greater detail what constitutes linked games and subsection (7) provides for circumstances when someone is not to be treated as a guest of a member.

Permits

Clauses 229-230: Club gaming permit

29. Members' clubs (but not commercial clubs) and miners' welfare institutes may apply for a club gaming permit from a licensing authority to authorise the provision of games of chance and gaming machines. This permit allows clubs and institutes to

offer gaming facilities over and above those available by virtue of clause 227 (the exemption). Schedule 9 sets out the procedure and rules for this permit.

30. Under clause 229 (3) the club gaming permit will authorise the provision of up to 3 gaming machines in categories B, C or D (but no more than 3 machines in total). The permit is subject to the condition that no person under 18 shall use a category B or C machine, and the holder of the permit must comply with any relevant Gambling Commission code of practice (issued under clause 16) about the location and operation of gaming machines.

31. The club gaming permit will also allow gaming to be offered. This gaming falls into two types:

- gaming which is equivalent to the gaming under clause 227 (i.e. equal chance, non-banker's games), but without any prescribed maximum value of stakes or prizes (subsection (3)(b)); or
- such games of chance as are prescribed in regulations (subsection (3)(c)). This provision allows the Secretary of State to authorise particular games involving a bank or unequal chance games to be played under the permit. Under the 1968 Act pontoon and chemin de fer are permitted.

32. Any gaming offered pursuant to subsection (3)(b) (the first bullet point above) must comply with all of the conditions set out in clause 227 (other than the third condition relating to maximum value of stakes or prizes), as amplified by clause 228. However, by virtue of clause 228(5) the Secretary of State may make regulations which set different maximum participation fees for this type of gaming depending on whether the club or institute at which the gaming takes place holds a club gaming permit. By this means a club which holds a club gaming permit can be permitted to make different charges for this gaming to a club which relies solely on the exemption at clause 227.

33. Any gaming offered pursuant to subsection (3)(c) (the second bullet point above) must comply with a number of conditions. These are:

- a) Any fee for participation must not exceed amounts prescribed in regulations;
- b) The club must not deduct any amounts from stakes or winnings in the gaming, unless permitted by regulations;
- c) The games played may only take place on one set of premises as there may not be any linking of games between premises; and
- d) The public and people under 18 must be excluded from areas where the gaming is taking place.

34. Clause 230 provides further detail about the operation of these conditions. In particular, "the public" in item (d) above means anyone who is not a member, guest or

staff of the club or institute, or who is not providing services to or for the club or institute.

35. A club gaming permit is subject to the condition that people may only participate in the gaming or use gaming machines if they have been members of the club (or applied or were nominated for membership) at least 48 hours before playing, or are the guests of such a person. Clause 230(5) expands upon the meaning of “guest”.

Clause 231: Club machine permit

36. Under clause 231 a club machine permit is available to a members' club, miners' welfare institute or commercial club. This type of permit authorises the holder to provide up to 3 gaming machines in category B, C or D (but no more than 3 machines in total). It does not authorise the provision of any other type of facilities for gaming. Where a club or institute makes a gaming machine available for use pursuant to a club gaming permit no offence is committed under clauses 26 (use of premises) or 201 (making a machine available for use).

37. Three conditions are automatically attached to a club gaming permit under clause 231. First, people may only use gaming machines if they have been members of the club (or applied or were nominated for membership) at least 48 hours before playing, or are the guests of such a person (and subsection (5) expands upon the meaning of “guest”). Secondly, no person under 18 shall use a category B or C machine. Thirdly, the holder of the permit must comply with any relevant Gambling Commission code of practice (issued under clause 16) about the location and operation of gaming machines.

Clause 232: Procedure, &c.

38. Schedule 9 sets out the detailed procedure for application for a club gaming permit or club machine permit, and the rules which apply to its maintenance and validity.

SCHEDULE 9: CLUB GAMING PERMITS AND CLUB MACHINE PERMITS

39. Schedule 9 describes the procedures for obtaining club gaming and club machine permits, and the rules on their duration, maintenance, renewal and cancellation. Licensing authorities, defined in clause 9, will issue both types of permit (and see paragraph 27 of Schedule 9 for the application of clause 128 (delegation to licensing committee) in relation to these permits). The Schedule provides for appeals from the decisions of licensing authorities in relation to permits.

Paragraphs 1-3: Application

40. Paragraph 1 provides that members' clubs and miners' welfare institutes may apply for a **club gaming permit**. Members' clubs, miners' welfare institutes and commercial clubs may apply for a **club machine permit**. Paragraphs 2 and 3 describe

how applications must be made, including requirements to copy applications to the Gambling Commission and the police. A failure to copy the application as required means the application is invalid.

Paragraphs 4-9: Consideration of application

41. The Commission and the police may object to the grant of the application, provided they do so within the period prescribed by the Secretary of State (and in the manner prescribed) (paragraph 4).

42. The licensing authority will consider the application and may grant or refuse it. Refusal may only be made on certain, limited, grounds. These grounds are that:

- a) The applicant does not fulfil the requirements (in clauses 224, 225 or 226) for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- b) The applicant's premises are used wholly or mainly by children or young people;
- c) An offence under the Bill or a breach of a permit has been committed by the applicant while providing gaming facilities;
- d) A permit held by the applicant has been cancelled in the previous 10 years; or
- e) An objection has been lodged by the Commission or the police.

43. If the authority is satisfied that (a) or (b) are the case they must refuse the application. If (c), (d) or (e) are at issue the licensing authority must hold a hearing, unless the applicant and any person who has objected are content to proceed without a hearing (paragraph 7). In deciding whether to grant a permit in circumstances (c), (d) or (e) the authority must have regard to any relevant guidance issued by the Commission and the licensing objectives (paragraph 26).

44. Once the authority has decided to grant or refuse the permit it must notify the applicant, the Commission and the police as soon as is practicable. If the application is granted, then the authority must also issue the permit to the applicant (paragraphs 8 and 9).

45. A licensing authority has no discretion to attach conditions to a club machine permit or club gaming permit (paragraph 8(2)). Part 12 of the Bill sets out particular conditions which are to apply universally to permits of either type (clauses 229 and 231).

Paragraph 10: Fast track procedure for holder of club premises certificate

46. Paragraph 10 provides a fast track procedure for clubs or institutes which hold a club premises certificate under section 72 of the Licensing Act 2003 (authorising the sale or supply of alcohol or provision of regulated entertainment) to apply for a club gaming or club machine permit. There is no opportunity for objections to be made by

the Commission or police under the fast track procedure and this procedure reduces the grounds upon which an authority can refuse a permit. This is because the club or institute will already have been through a licensing process in relation to its club premises certificate, and to apply the permit procedure in full would lead to unnecessary duplication.

47. Paragraphs 1 and 2 and 7 to 9 (but without any reference to objections) apply to applications under the fast track procedure. Regulations made for the purposes of Schedule 9 can make different provision for fast track applications and full applications, for example on fees.

48. The only grounds for an authority refusing a club gaming or machine permit to the holder of a club premises certificate are:

- a) That the applicant is established wholly or mainly for gaming, other than prescribed gaming;
- b) That the applicant is established wholly or mainly for prescribed gaming, but also provides other forms of gaming; or
- c) That a permit has been refused to the applicant within the last 10 years.

Paragraphs 11-15: Maintenance

49. A fee will be payable following the issue of a permit, and each year thereafter, until the permit is in the year of its expiry. The Secretary of State will set the fees in regulations (paragraph 13) and the period within which the first payment must be made.

50. Permits are to be held on the premises to which they relate and produced to a constable or a Gambling Commission inspector on request. Failure to do so, without a reasonable excuse, is an offence, with a maximum penalty of a level 2 fine (paragraphs 11 and 12).

51. Where the information in the permit is no longer accurate the holder is required to apply to the licensing authority for a variation. A fee, together with the permit, or an explanation of why it is not reasonably practicable to produce the permit must accompany the application. The authority will issue a copy varied as appropriate and the copy shall be treated as the original permit. It is an offence not to seek the appropriate variation without reasonable excuse, with a maximum penalty of a level 2 fine (paragraph 14).

52. Provision is made for lost, stolen or damaged permits to be replaced at paragraph 15.

Paragraphs 16-19: Duration

53. Paragraphs 16 to 19 provide that permits, with one exception, will last for ten years unless they cease to have effect under another provision of the Schedule, or are

renewed under paragraph 23. Thus, a permit will cease to have effect where:

- a) The club or institute ceases to be an eligible club or institute under the definitions at clause 224, 225 or 226 (paragraph 17);
- b) It is surrendered voluntarily by the club or institute (paragraph 18);
- c) It is cancelled (paragraphs 20 or 21); or
- d) Its forfeiture is ordered (paragraph 22).

54. A licensing authority is required to inform the Commission and the police if it believes that a permit has ceased to have effect as a result of (a) or (b) above.

55. The exception to the ten year duration is that where a permit has been granted under the fast track procedure to a club with a club premises certificate under the Licensing Act 2003 (paragraph 10 of Schedule 9), then such permits last indefinitely unless:

- a) The club premises certificate ceases to have effect, in which case the club gaming or club machine permit lapses (paragraph 16 (2)(c));
- b) It is surrendered voluntarily by the club or institute (paragraph 18);
- c) It is cancelled (paragraph 20); or
- d) Its forfeiture is ordered (paragraph 20).

56. A licensing authority is required to inform the Commission and the police if it believes that a permit has ceased to have effect as a result of (a) or (b) above.

Paragraphs 20-22: Cancellation and forfeiture

57. A club gaming or machine permit will cease to have effect if it is cancelled or a court orders forfeiture. Under paragraph 20 the licensing authority which issued a permit may cancel it where it thinks that:

- the premises are used wholly or mainly by people under 18; or
- an offence under the Bill or a breach of a condition of a permit has been committed by the holder of the permit in the course of providing gaming activities.

58. The authority must give the holder of the licence at least 21 days' notice of its intention to cancel the permit. During that period it must also consider representations from the holder and hold a hearing if the permit holder requests one. If the licensing authority then decides to cancel the permit it must notify the holder, the Commission and the police, but the cancellation may not take effect until the 21 days has passed or until any appeal is settled.

59. Under paragraph 21 an authority must cancel a permit if the annual fee has not been paid, unless the failure is due to an administrative error.

60. Paragraph 22 enables a court to order forfeiture of a permit where it convicts the holder of the permit, or one of its officers, of an offence under the Bill.

Paragraph 23: Renewal

61. Permit holders may apply for renewal from the period beginning three months before the permit is due to expire until six weeks before expiry. The same process will apply to applications for renewal as for applications. Where the determination of an application for renewal is pending, or an appeal from a decision on such an application is pending, the permit remains valid.

Paragraph 24: Appeal

62. Paragraph 24 sets out the circumstances in which appeals may be made from licensing authority decisions relating to club gaming and club machine permits. Appeal rights are given to:

- A club or institute which has its application rejected;
- The Commission or the police in the event that they make objections and the permit is nonetheless granted;
- A permit holder whose permit is cancelled; and
- In the event that regulations are made under paragraph 20(2)(d) enabling representations to be made by third parties in relation to cancellation of a permit, such persons in the event that the permit is not cancelled.

63. Any appeal will be heard by the magistrates' court, and the magistrates may dismiss the appeal, substitute a different decision that could have been made by the licensing authority or remit the case to the licensing authority. It may also make an order about costs.

Paragraph 25: Register

64. Paragraph 25 makes provision for the licensing authority to maintain a register of club gaming and club machine permits. It also makes provision for the Commission to maintain such a register, and for licensing authorities to be excused from this function. Equivalent provisions are contained in the Bill for premises licences, temporary use notices and category D gaming machine permits.

Paragraph 26: Exercise of functions by licensing authority

65. The licensing authority must have regard to Gambling Commission guidance and the three licensing objectives in undertaking its functions under this Schedule.

Clause 233: Bingo: turnover limit for exemption or permit

66. This clause provides that the exemption for clubs providing gaming under a club gaming permit (clause 229), or the exemption (clause 227), from the offence of providing facilities for gambling at clause 21 will not apply in relation to the provision of bingo where that bingo is 'high turnover bingo' played in a 'high turnover period'. The purpose of this clause is to prevent clubs and institutes offering bingo on a commercial scale under the exemption or gaming permit provided in

Part 12 of the Bill. Where a club or institute wishes to offer such bingo it will require a bingo operating licence.

67. “High turnover bingo” is where the total stakes or winnings at bingo played in any week exceed a prescribed amount. In clause 233 this figure has been set at £1000, and the Secretary of State can amend this figure.

68. A “high turnover period” is the period beginning at the end of a period of 7-days in which high turnover bingo has been played, and lasting for one year from the beginning of the 7-day period. The effect of this is that after this first 7-day period, if the bingo exceeds these thresholds for a 7-day period in the next year, the exemption from the offence of providing facilities for gambling will not apply. To avoid liability under this offence (i.e. if a club were to play further high turnover bingo), it will be necessary for the club to hold a bingo operating licence issued by the Gambling Commission.

69. Where a club or institute plays high turnover bingo, and a high turnover period thereby commences, the club or institute must inform the Commission as soon as reasonably practicable of this fact (subsection (6)). This provision allows the Commission to monitor the playing of high turnover bingo. A club or institute which fails to notify the Commission, without reasonable excuse, commits an offence, with a maximum penalty upon conviction of a fine not exceeding level 3 ((subsections (7) and (8)). This offence is separate from the main offence of playing high turnover bingo without proper authorisation (such authorisation coming solely from a bingo operating licence).

PART 13: PREMISES LICENSED FOR THE SUPPLY OF ALCOHOL

70. Part 13 is an entire new Part to the draft Bill, published in February 2004.

71. This Part concerns gambling in premises licensed under the Licensing Act 2003 for the sale and consumption of alcohol on the premises (premises with an “alcohol licence”). In existing gambling legislation people who hold an alcohol licence for non-gambling premises (such as a pub) are afforded certain entitlements to conduct gaming, or to site gaming machines, on the premises. These alcohol-related entitlements have, in substance, been retained under the draft Bill.

Clauses 236-237: Exempt gaming

72. This clause provides that the offences at clauses 21 and 26 (of providing facilities for gambling, and using, causing or permitting premises to be used to provide facilities for gaming) shall not apply to premises with an alcohol licence which provide facilities for gaming, provided the gaming is in compliance with certain conditions. This means that provided the conditions are complied with, no further authorisation is required in addition to the alcohol licence.

73. The conditions are as follows:

- a) There must be no 'bank' involved, that is to say the gaming must take place between a number of equal participants who contribute all of the stakes;
- b) Each of the participants must have an equal chance of winning (leaving aside any skill required to play the game);
- c) Maximum stakes and / or winnings must not exceed any limits prescribed by the Secretary of State;
- d) No amount may be deducted or levied from stakes or winnings;
- e) No charge may be made for participation in the gaming;
- f) The games played may only take place on one set of alcohol-licensed premises, i.e. there may not be any linking of games between premises; and
- g) Children and young persons must be excluded from the gaming.

74. Clause 237 provides for certain additional matters to supplement clause 236. In particular, subsection (2) specifies that where something is 'prescribed', this refers to a matter prescribed in regulations to be made by the Secretary of State. Subsection (3) provides greater clarity as to what constitutes a charge for participation in the gaming. Subsection (7) defines 'linked games' in greater detail.

Clause 238: Bingo

75. This clause provides that the exemption from the offence of providing facilities for gambling at clause 21, for alcohol-licensed premises providing gaming in compliance with the conditions in clause 236, will not apply in relation to the provision of bingo, where that bingo is 'high turnover bingo' played in a 'high turnover period'. The purpose of this clause is to prevent premises with an alcohol licence from offering bingo on a commercial scale under the exemption provided at clause 236. Where premises with an alcohol licence wish to offer such bingo, it will be necessary to have a bingo operating licence.

76. "High turnover bingo" is where the total stakes or winnings at bingo played in any week exceed a prescribed amount. In clause 238, this figure has been set at £1000, and the Secretary of State can amend this figure.

77. A "high turnover period" is the period beginning at the end of a period of 7-days in which high turnover bingo has been played, and lasting for one year from the beginning of the 7-day period. The effect of this is that after this first 7-day period, if the bingo exceeds these thresholds for a 7-day period in the next year, the exemption from the offence of providing facilities for gambling will not apply. To avoid liability under this offence (i.e. if further high turnover bingo were to be played on the premises), it will be necessary to hold a bingo operating licence issued by the Gambling Commission.

78. Where high turnover bingo is played on alcohol-licensed premises, and a high

turnover period thereby commences, the alcohol licence-holder must inform the Commission as soon as reasonably practicable of this fact (subsection (6)). This provision allows the Commission to monitor the playing of high turnover bingo. An alcohol licence-holder who fails to notify the Commission, without reasonable excuse, commits an offence, with a maximum penalty upon conviction of a fine not exceeding level 3 ((subsections (7) and (8))). This offence is separate from the main offence of playing high turnover bingo without proper authorisation (such authorisation coming solely from a bingo operating licence).

Clause 239: Gaming machines

79. Subsection (1) of this clause gives premises with an alcohol licence the entitlement to site two gaming machines of category C or D on the premises. Under this provision, premises taking advantage of this entitlement will not commit an offence under clause 26 or 201 (making a gaming machine available for use).

80. Subsection (2) allows persons holding or applying for such a licence, to apply for the right to site a specified number of additional gaming machines of no higher than category C. Any such additional rights granted will be added as conditions to the licence. The licensing authority may grant or refuse such an application, or grant it in respect of a smaller number of machines than applied for. In reaching a decision, the licensing authority must have regard to the licensing objectives described in clause 1 of the draft Bill and any other matter they think relevant. Where licensing authorities refuse an application for additional gaming machines, or grant it only for a smaller number of machines than that applied for, then the applicant may appeal against the decision. The appeal will be heard by the magistrates' court.

81. Subsection (4) gives the Secretary of State the power to make regulations prescribing the procedure to be followed in relation to an application for the right to site additional gaming machines. Such regulations may, in particular, impose an obligation upon an applicant and make provision about the consequences of failure to comply with any obligation imposed.

82. Subsection (6) makes it clear that where gaming machines are made available for use, their provision must be in accordance with any code of practice issued by the Gambling Commission, and neither subsection (1), nor any condition made under subsection (2), should be read as contradicting this.

Clause 240: Removal of exemption

83. This clause enables the licensing authority responsible for the issue of alcohol licences to remove the right to provide exempt gaming at clause 236, or the entitlement to site gaming machines under clause 239. The licensing authority may do this either when they issue the alcohol licence, or later, once the licence is in effect. The authority can only take away these rights where they think that:

- a) the availability of such gaming or machines on those premises is not reasonably consistent with the pursuit of the licensing objectives set

- out in clause 1;
- b) gaming has taken place, or gaming machines have been made available, in breach of the conditions described in clause 236 or imposed as a consequence of clause 239; or
- c) the premises are used mainly for gaming at the moment, or that they are to be so used in the future.

84. If such rights are taken away, this will be effected by the addition of a condition on the alcohol licence, and the Secretary of State may make regulations prescribing the procedure to be followed where licensing authorities seek to add such a condition.

PART 14: INSPECTION

Clause 247: Clubs

85. Clause 247 confers rights upon constables and Gambling Commission inspectors to enter premises used by members' and commercial clubs and miners' welfare institutes. The entry rights allow constables and inspectors to investigate whether gaming is taking place or is about to take place on the premises, and if so, whether it is in accordance with the provisions of Part 12 of the Bill. In addition, officers of a local authority are authorised to enter premises in respect of which an application for club gaming or club machine permit has been made.

PART 15: LEGALITY AND ENFORCEMENT OF GAMBLING CONTRACTS

86. Part 15 is an entire new Part to the draft Bill, published in February 2004.

87. This Part deals with the legality and enforcement of gambling contracts. Under the provisions of the draft Bill, contracts made for gambling purposes are to be treated similarly to other contracts. Provisions in the present law that prevent such contracts from being enforced are to be repealed, but there are also to be circumstances in which the Gambling Commission is to have power to void gambling contracts that relate to betting. The purpose of these powers is to enable the Commission to take specific action in pursuit of the licensing objective related to fairness to the consumer, described in clause 1(b).

Clauses 256-257: Enforcement of contracts

88. These clauses provide for the repeal of those statutory provisions that have hitherto prevented gambling contracts from being enforceable. The provisions to be repealed reflect an attitude toward gambling that the Government considers outmoded.

89. It is the Government's intention that gambling now be considered as a normal leisure activity and that, accordingly, any debts that might arise from gambling be

capable of enforcement in a manner similar to any other personal or business debt. The clause only applies to contracts entered into after the point in time that the clause comes into effect.

90. The effect of clause 257 is that enforcement of a contract is not prevented by the fact that it relates to gambling but this is not to prevent enforcement under any other rule of law that prevents enforcement on the grounds of unlawfulness.

Clauses 258 and 260: Power of Gambling Commission to void bet

91. The Gambling Commission is to have a power to make orders that void bets accepted by, or through the holder of a general betting operating licence, a pool betting operating licence or a betting intermediary operating licence. The object of these powers is to seek to protect individuals from financial losses that are the result of unfair practices related to bets.

92. The power is to be available to the Commission for a period of six months following the point in time when the result of the bet is determined, other than in cases where there has been a conviction for cheating, where there is no time limit.

93. Where it exercises this power, the contract or other arrangement related to the bet is to be void and any money paid in relation to the bet is to be returned to the person who paid it. Therefore, for example, if a bet has been voided and a person placed a stake on that bet, and did not win, then they are to have their stake returned to them. Equally, if the bet was successful but is voided, then the winnings must be repaid to the person that accepted the bet. These repayments are to be enforceable as a debt.

94. Under clause 260(3) Commission orders that void bets may be made in relation to bets that form one part of a larger bet, or are one bet in a series. Orders may make provision about these linked bets. They might, for example, require all of the successive bets in an “accumulator” bet to be void.

95. The Commission may make voiding orders in circumstances only where it is satisfied that a bet had been made substantially unfair because:

- a) A person involved in the bet (whether they offered or accepted the bet) supplied information that was insufficient, false or misleading (to the extent that it caused the bet to become substantially unfair);
- b) The person who offered or accepted the bet believed, or ought to have believed, when doing so, that the race or event about which the bet was made was or would be conducted in contravention of the rules that ought to apply to the event. Therefore, for example, if one party to a bet believes that players in a youth football match are in fact over the legal age for participation, and nonetheless offers a bet on the match, then that bet may be regarded as substantially unfair; or

- c) A person involved in the making of the bet believed, or ought to have believed, that the offence of cheating, as set out in clause 30, had been, or was likely to be, committed in relation to the bet. Therefore, for example, where a person connected to a racehorse owner becomes aware that the horse had been deliberately injured prior to a race in which it was to run and, on the basis of that knowledge, offered an unusually attractive bet on that horse through a betting intermediary, then that bet may be seen to be substantially unfair in the light of its dependence on the cheating activity.

96. The power to void a bet is also to be available to the Commission in circumstances where a party to a bet is convicted of cheating and the Commission believes that the bet should be made void. Where there is a conviction the Commission may order a bet void regardless of the period of time that has elapsed since the determination of the bet.

97. The Commission may make such investigations as are necessary to establish whether the bet(s) concerned were substantially unfair. In the conduct of such investigations it may require any person by or through whom the bet is made or accepted to provide information or documents in relation to the bet. Any person who does not provide information requested by the Commission commits an offence. It may also take into account any other information that it receives.

98. Where the Commission exercises its powers to void a bet then a party to the betting transaction may appeal to the Gambling Appeals Tribunal established under Part 7 of the draft Bill.

Clause 259: Interim moratorium

99. The Commission is also to have a power to make an order to remove any obligation to pay money in relation to a bet where it suspects that it may wish to make that bet void. Whilst this interim moratorium is in place, a betting operator need not pay a customer any winnings, nor is the customer required to pay any stake or commission.

100. The purpose of these powers is to provide additional protection to consumers and operators whose bets or betting operations may have been made substantially unfair as a consequence of the circumstances described in clause 250(4). The intention is to allow the interim moratorium, as a precautionary measure, to prevent the flow of money that would be more difficult to recover had it been paid before a voiding order was in place. The Commission need not be certain that a voiding order will be made before imposing the interim moratorium.

PART 16: GENERAL

*These notes refer to further clauses of the Draft Gambling Bill
Published on 5 February 2004*

Clause 261: Offence: commission by body corporate

101. To accompany the publication of the clauses on clubs and institutes in Part 12, clause 261 deals with the commission of offences by bodies corporate, partnerships and unincorporated associations. Where a body corporate (including a limited partnership), partnership or unincorporated association commits an offence under the Bill, and it is proved that the offence was committed with the consent or connivance of an officer of that body, or was attributable to neglect on the part of an officer of that body, then the officer shall also be guilty of the offence. The clause defines who constitutes an officer for each of the three types of organisation.

Clause 262: Interpretation

102. To accompany publication of new material in February 2004 a number of new definitions have been provided in clause 262(1). These definitions draw together material provided elsewhere in the clauses, as described in these notes. These are matters of interpretation only.

Department for Culture, Media and Sport

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