



department for
**culture, media
and sport**

GAMBLING ACT 2005

DEFINITION OF DUAL-USE AND DOMESTIC COMPUTERS

CONSULTATION

March 2007

Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007 – Joint Consultation Document
and draft Regulatory Impact Assessment paper

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Introduction and Background

1. The Gambling Act 2005 (the Act) introduces a new system of regulation for the gambling industry. The formal implementation date for the new Act has been set for 1st September 2007.
2. Section 235(1) of the Act provides a definition of a gaming machine, which is a machine that is designed or adapted for use by individuals to gamble (whether or not it can be used for other purposes). It is significantly broader than the definition of gaming machine in Section 26 of the Gaming Act 1968, which the Act repeals. The new definition of gaming machine accommodates developments in technology that have taken place since the 1968 Act.
3. Section 235(2) then sets out a number of exceptions to Section 235(1) to ensure that the gaming machine definition does not capture certain specified types of machine. The first exception, set out in section 235(2)(a), is that a domestic or dual-use computer is not a gaming machine by reason only of the fact that it can be used to participate in remote gambling. Subsection (3)(f) requires the Secretary of State to make regulations to define the meaning of 'domestic' and 'dual-use' computer. The purpose of such regulations is to exempt internet terminals and home computer equipment, which are not dedicated or specifically configured for gambling activities, from the definition of gaming machine.
4. The mere fact that a home computer can be used to access gambling facilities should not render the computer a gaming machine. However, someone offering the public access to the internet, via terminals, and configuring them to encourage gambling, is making a gaming machine available for use (unless other exceptions apply). The Regulations to be made under this power will therefore:-
 - set out the relevant criteria for determining whether a machine is a domestic or dual use computer (which may refer to matters such as the location of the computer, the purposes for which it is used, the circumstances in which it is used, the software installed on the computer, or any other matter); and
 - determine some of the machines that will be excluded from the definition of a gaming machine for the purposes of the Act.
5. The manufacture, supply, maintenance, repair, installation and adaptation of a gaming machine, as well as making a gaming machine available for use, are all regulated activities under Part 10 of the Act, and any computer that falls within the definition of a gaming machine will be subject to the full regulatory weight of the Act.
6. Failure to comply with the regulatory requirements under the Act, which include the need for specific authorisations (such as a relevant operating licence or permit for example), may also amount to a criminal offence. The principal offence of unlawfully making a gaming machine available for use is set out in Section 242 of the Act. A person will commit an offence if he

makes any gaming machine available for use (unless the machine does not offer a prize or offers a limited prize, as defined in sections 248 and 249 of the Act) unless he holds a relevant operating licence, permit, or is otherwise authorised to do so under the Act. A person also commits an offence under section 243 of the Act, if he manufactures, supplies, installs, adapts, maintains or repairs a gaming machine or part of a gaming machine, unless he acts in accordance with an operating licence, the machine does not offer a prize, or he holds a single-machine supply and maintenance permit under section 250 of the Act. These Regulations will therefore go some way in clarifying:-

- whether persons who make computers that may be used to gamble, available for use, will be required to obtain a relevant authorisation under the Act to avoid criminal or other regulatory sanctions; and
- similarly, whether a person requires a relevant authorisation (for example, in the form of a 'gaming machine technical operating licence') to manufacture, supply, maintain, repair, install or adapt a computer.

Purpose of consultation

7. These Regulations would fulfil the Secretary of State's obligation to define a domestic and dual-use computer for the purposes of Section 235(2) of the Act. This Joint Consultation Document and draft Regulatory Impact Assessment paper, and the draft Regulations, are the subject of this consultation exercise.
 8. This Joint Consultation Document and draft Regulatory Impact Assessment paper explains the Government's approach to defining a domestic and dual-use computer, which are exceptions to the definition of a gaming machine. We anticipate that this paper and the draft Regulations will be of particular interest to:
 - existing operators in the gambling industry;
 - potential new operators in the gambling industry
 - businesses and organisations offering computer terminals for use by their customers and the general public (e.g. internet cafes, libraries, hotels, airports etc);
 - computer manufacturers, installers and suppliers;
 - persons or businesses who repair, adapt or maintain computers;
 - the Broadcasting sector.
 9. In addition, these Regulations will be of interest to a significant proportion of the population, given that in defining 'domestic' and 'dual-use' computer, their general aim is to cover (and therefore exclude from the definition of gaming machine) the majority of work computers, domestic computers and personal and work laptops.
 10. The Department would welcome any comments or feedback on the Joint Consultation Document and draft Regulatory Impact Assessment paper and the draft Regulations. Please send your comments by e-mail to Donald.Sproson@culture.gsi.gov.uk or:
- Donald Sproson
Gambling and National Lottery Licensing Division
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH
11. The **closing date for responses is 27th May 2007**. These regulations will come into force on 1 September 2007.
 12. All information in responses, including personal information, may be subject to publication or disclosure under Freedom of Information legislation. If a correspondent requests

confidentially, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentially is necessary. Any automatic confidentially disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

**Draft Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007
– Joint Consultation Document and draft Regulatory Impact Assessment
paper**

1. Title

1.1. Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007

2. Purpose and intended effect

(a) Objective

2.1. Under Section 235(3)(f) of the Gambling Act 2005, the Secretary of State is required to make regulations to assign the meaning of 'domestic computer' and 'dual-use computer'; the purpose of which is to exempt internet terminals and home computer equipment, which is not dedicated or specifically configured for gambling activities, from the definition of a gaming machine.

2.2. Subsection (4) indicates matters by reference to which the regulations may be classified:

- the location of a computer;
- the purposes for which a computer is used;
- the circumstances in which a computer is used;
- the software installed on a computer; or
- any other matter.

2.3. These Regulations would fulfil the Secretary of State's obligation to define the meaning of domestic and dual-use computers for the purposes of section 235(2) of the Act.

(b) Background

2.4. The full background to the regulation of gaming machines under the Act was set out in the Regulatory Impact Assessment (RIA) that was published to accompany the Act in April 2005. The earlier RIA charted the development of policy from the current system of regulation of gaming machines contained in the Gambling Act 2005, which is based around four categories of gaming machine defined according to their stake and prize limits. It also contained the likely impact of the regulatory measures included in the Act.

2.5. The Government first set out its substantive proposals for defining the new categories of gaming machine in its response to the First Report of the Joint Committee on the Draft Gambling Bill published in June 2004 (Cm 6253). These proposals were reflected in the RIA for the Gambling Act.

2.6. Section 235 of the Act (Gaming machine) provides a definition of a gaming machine for the Act. It is significantly broader than the definition of gaming machine in section 26 of the

Gaming Act 1968, which the Act repeals. The new definition accommodates developments in technology that have taken place since the 1968 Act. It also covers a wide range of gambling activities which can take place on a machine, and includes betting on virtual events.

- 2.7. Subsection (1) defines a gaming machine as a machine that is designed or adapted for use by people to gamble (whether or not it can be used for other purposes). This is a wide definition. Subsection (3)(b) contains further detail about how the words “designed or adapted” are to be interpreted, particularly in relation to a computer.
- 2.8. Subsection (2) then sets out a number of exceptions to subsection (1) which ensures that the gaming machine definition does not capture certain specified types of machine.
- 2.9. The definition at subsection (1) does not depend on any concept of players depositing payments into a machine, or on the gambling activity being generated from within the machine itself (as opposed to being transmitted to the machine from other equipment). Nor is it restricted solely to gaming. To the extent that these were requirements under 1968 Act, they are no longer part of the definition.
- 2.10. These various exemptions prevent the broad definition of gaming machine from capturing equipment unintentionally. The definition in subsection (1) is intended to cover a gaming machine that is used for taking part in virtual gaming, virtual betting or a virtual lottery (where the draw is part of the activity determined by the machine).
- 2.11. The exclusions at subsection (2) provide that the following are not gaming machines although one should refer to the relevant provisions within the Act for the full definitions:
 - A domestic or dual-use computer;
 - A telephone or other communications device;
 - A machine which is designed or adapted for betting only on future real events;
 - A machine upon which someone enters a lottery;
 - A machine for playing bingo;
 - A machine for playing bingo prize gaming, which is used by the holder of a gaming machine general operating licence (for an adult gaming centre or a family entertainment centre);
 - A machine for playing bingo prize gaming used by an unlicensed family entertainment centre, or pursuant to a prize gaming permit.;
 - A machine which is used for playing manual games of chance;
 - A machine which is used for playing automated games of chance in a casino.
- 2.12. In relation to the first exception, the Secretary of State will assign the meaning of “domestic computer” and “dual-use computer” in regulations. The purpose of this exception is to exempt internet terminals and home computer equipment, which are not dedicated or specifically configured for gambling activities, from the definition of gaming machine. However, the intention is that someone offering the public access to the internet, via terminals, and configuring them to encourage gambling, is making a gaming machine available for use (unless any other exception applies, such as betting on real events).

(c) Rationale for Government intervention

2.13. The rationale for Governmental intervention was again set out in the RIA covering the whole of the Act. The proposals for prescribing the meaning of domestic and dual-use computers from the definition of gaming machine must be viewed against the overall objectives for the regulation of gambling as a whole:

- *ensuring gambling remains crime free;*
- *ensuring that gambling is conducted in a fair and open way; and*
- *protecting children and other vulnerable people from harm.*

2.14. While for many, gambling is a normal leisure activity that many people enjoy, it also brings with it inherent risks of personal and social harm. The proposed definitions of domestic and dual-use computers in relation to the meaning of 'gaming machine' seek to strike the right balance between ensuring that children and adults are not exposed to the risk posed by gambling, whilst also seeking to ensure that personal computers are excluded from the gaming machine definition.

3. **Consultation**

3.1. The Government has consulted the Gambling Commission on the specific proposals covered by this SI and the Commission was content with the approach proposed here. In developing the proposal further, the Department will also be consulting existing and potential operators in the gambling industry, other Government Departments, faith and voluntary groups, and individuals, all of whom may have an interest in these Regulations. We also anticipate that this paper and the draft Regulations will be of particular interest to:

- existing operators in the gambling industry;
- potential new operators in the gambling industry
- businesses and organisations offering computer terminals for use by their customers and the general public (e.g. internet cafes, libraries, hotels, airports etc);
- computer manufacturers, installers and suppliers;
- persons or businesses who repair, adapt or maintain computers;
- the Broadcasting sector.

Purpose of Regulation

3.2. The main reasons for assigning the meaning of domestic and dual-use computers for the purposes of section 235(2) are:

- *To set out the relevant criteria for determining whether a computer is a domestic or dual use computer.*
- *To exempt some activities carried out on personal and work computers from the regulatory regime relating to gaming machines.*

Summary of Proposals

3.3. The Department's proposals for the draft Regulations are summarised as follows:

- *That a computer is a dual-use computer if it meets both of the following conditions:*
 - (i) that it is capable of being used for a purpose that is not related to gambling; and*
 - (ii) it is not knowingly adapted or presented in such a way as to facilitate, or to draw attention to the possibility of, its use for gambling;*
- *That there is an exception to condition (ii) where a computer is being made available for use.*
- *That this exception only applies where use of the computer is restricted to 'private use'.*
- *That there is an exception to condition (ii) where a computer is being adapted, repaired or maintained.*
- *That this exception applies where the computer is being used in order to be repaired, adapted or maintained, but only if:*
 - *The computer is otherwise for 'private use'; and*
 - *The purpose of the adaptation, repair or maintenance is not to enable the computer to be used for gambling.*
- *That there is no exception to condition (ii) where a computer is being manufactured, supplied or installed.*

- *That 'private use' means use by the owner or, if used by other persons, this is with the owner's permission and otherwise than under a commercial arrangement.*
- *That 'commercial arrangement' has a wide meaning and includes any arrangement in which the owner receives payment or benefit in connection with making the computer available for use.*
- *That 'commercial arrangement' does not include an employment arrangement between an employer and his employee, but does include situations where an employer makes a computer available to employees for mainly recreational purposes.*
- *That domestic computers are computers that are capable of being used for a purpose that is not related to gambling, are located in a private dwelling and used only on domestic occasions.*

Issues considered

- 3.4. The Department has considered a number of related issues in deciding upon an approach for assigning the meaning of domestic and dual-use computers, which are excluded from the definition of gaming machine under Act.

Defining a dual-use computer

- 3.5. The Department considers that the purpose of the Regulations would be met by defining a dual-use computer with reference to meeting the following conditions:

(a) it must be capable of being used for a purpose that is not related to gambling; and

(b) it must not be knowingly adapted or presented in such a way as to facilitate, or to draw attention to the possibility of, its use for gambling.

- 3.6. The Department believes that these criteria will meet its purpose of exempting relevant computers from the definition of a gaming machine under the Act, where they are not dedicated or specifically configured for gambling activities. The regulations do not contain a definition of a 'computer'. Computers are not defined in the Act and will have its ordinary English meaning. It will therefore depend on the facts of each case whether a machine is a computer.
- 3.7. The first condition exists to deliver the Department's policy that a computer that is not capable of being used for any purpose other than gambling should be treated as a gaming machine under the Act and be subject to the full regulatory regime for gambling (unless any of the exceptions in section 235(2) apply).
- 3.8. With respect to the second condition, it will be a question of fact in each case whether a computer is 'adapted or presented to facilitate or draw attention to the possibility of its use for gambling' (for ease of reference, this test will be referred to as 'adapted or presented to encourage gambling' throughout the remainder of this paper). There are, however, numerous ways in which a computer may be adapted or presented to encourage gambling. As explained below, this condition would also have the effect of capturing computers that have, for example, promotional material for internet gambling either attached to or in sufficient proximity to them. See also paragraphs 3.11 to 3.13 below.
- 3.9. It is the Department's view that the mere fact that a computer has access to the internet and can, therefore, be used to access a remote gambling website, is not sufficient to meet the test of whether it is adapted or presented to encourage gambling, as the 'adaptation' or 'presentation' must, in some way, promote the computer's use for gambling. However, the test would be met if, for example, a direct link to a gambling website is set up on the computer desktop; in this case, it can be said that the computer itself has been somehow changed or adapted, and that the adaptation is such as to facilitate the computer's use for gambling (accessing the gambling website will be easier using a direct link from the desktop). See also paragraphs 3.14 to 3.18 below.
- 3.10. It is the Department's intention that the definition of a dual-use computer will capture the majority of internet terminals and personal computers (including home computers), which, whilst they may be used by persons to gamble, are normally used for other purposes and will not normally be configured to encourage gambling.

Question 1: Do you agree with the definition of a dual-use computer in regulation 1? If not, please explain why.

Meaning of 'Presented': Advertising

- 3.11. There is a further question to consider in relation to the advertising and promotion of dual-use computers for gambling purposes, and whether such computers can be said to be 'presented so as to facilitate or draw attention to the possibility of their use for gambling'.
- 3.12. In assessing whether a computer is 'presented' to encourage gambling, there may be a question about the proximity of any advertising material to that computer. The Department is of the opinion that the words in the draft Regulations 'presented in such a way as to facilitate or draw attention to the possibility of their use for gambling' are sufficient to cover material that advertises internet gambling and that is physically attached to a computer, or is inside the premises where the computer is located and sufficiently near to the computer. However, it will ultimately be a question of fact, to be determined on the facts of each case, whether a computer is so adapted or presented. Where the location of promotional material is more remote, and not necessarily attached to or near the computer or on the premises, (for example a newspaper advertisement or a promotional letter to club members), this does not automatically mean that the computer is not presented to encourage gambling.
- 3.13. The Department is of the view that these Regulations under s235 of the Act do not and should not seek to regulate the general advertising of gambling. The Secretary of State has a separate power under section 328 of the Act to make regulations controlling the advertising of gambling, which the Secretary of State is currently holding in reserve.

Question 2: Do you agree with the Department's approach to promotional or advertising material on or near dual-use computers? If not, please explain why.

Interactive gambling channels, mobile telephones and digital televisions

- 3.14. The Department has considered the impact of the draft Regulations in respect of mobile telephones and digital televisions that offer links to remote gambling sites. Section 235(2) of the Act already excludes telephones or other communications devices from the definition of gaming machine, and so there is no need to make specific provision for telephones.
- 3.15. With respect to digital televisions, the Department considers that a digital television on its own will be excluded from the definition of a gaming machine by virtue of Section 235(2)(b), as it is a machine for facilitating communication (other than a computer). The fact that, with modern technology, an interactive television can be used to participate in remote gambling will not, therefore, automatically mean that it is a gaming machine. However, where a digital television is also a computer, section 235(2)(b) will not apply. Therefore these regulations will be relevant to digital televisions that are also computers. Although a digital television may be distinct from a computer, there are computers that are capable of receiving digital broadcast

services and likewise there are digital televisions that are capable of being used as computers.

- 3.16. The question arises as to whether a digital television that is also a computer and has an interactive channel (which offers a menu of gambling options as a gateway into facilities provided by licensed operators), can be described to be 'adapted or presented in such a way as to facilitate, or draw attention to the possibility of its use for gambling'. It is the Department's view that the mere fact that such a television can be used for gambling is not sufficient to meet this test, as the 'adaptation' or 'presentation' have to be such as in some way to promote the computer's use for gambling. Similarly, the Department considers that a computer which is capable of receiving a digital television broadcast service cannot automatically be assumed to be adapted or presented to encourage gambling; although it may be capable of linking to a gambling service, no change or adaptation has been made to the computer itself.
- 3.17. This approach can be said to be comparable to a computer with access to the internet; the computer itself has not been adapted or presented merely by virtue of the fact that it can be used to access a remote gambling website on the internet. However, the test would be met if, for example, a direct link to a gambling website is set up on the computer desktop. Although a digital television may have a menu of gambling options, this will not trigger the test if that menu does not appear by virtue of an adaptation made to the computer, and if it is there as part of the service provided by the digital broadcaster.
- 3.18. In summary, mobile telephones and other communication devices are exempt from the definition of gaming machine under section 235(2)(b) of the Act. Digital televisions that are not computers will also be exempt under section 235(2)(b). A digital television that is also a computer will not automatically fail the 'adaptation or presentation' test in regulation 2(b) merely by virtue of the fact that it is capable of linking to an interactive gambling channel, and may still fall within the definition of a dual-use computer, providing it satisfies the relevant test set out in the regulations.

Question 3: Do you agree with the Department's approach towards digital televisions that are also computers? If not, please explain why.

Exceptions to Definition of Dual-Use computer

- 3.19. There are exceptions to the requirement in Regulation 2(b) that a dual-use computer is not adapted or presented to encourage gambling and these are set out in regulation 3. In relation to these, the Department proposes the following: (1) The exceptions will only apply where a computer is either being made available for use, or being maintained, adapted or repaired, (not where a computer is being supplied, installed or manufactured). (2) Where a computer is made available for use, the exception will only apply if its use is restricted to 'private use'. (3)

Where a computer is maintained, adapted or repaired, the exception will only apply if its use would otherwise be restricted to 'private use', and as long as the purpose of the repair, adaptation or maintenance is not to enable the computer to be used for gambling.

Meaning of 'private use'

- 3.20. 'Private use' is defined in regulation 1, and is use of a computer by
- *the owner; or*
 - *persons using it with the owner's permission, but not under any commercial arrangement with respect to its use.*
- 3.21. The owner is a person who owns or has a right to control who uses the computer (see definition in regulation 1) and there may be more than one owner in respect of a computer.
- 3.22. The intention here is to capture within the meaning of 'private use' a person using his own computer, or lending it to friends or family. That person may choose to allow strangers to use his computer, but its use will only be considered private if he does not stand to gain from allowing them to do so.

Meaning of 'commercial arrangement'

- 3.23. 'Commercial arrangement' has a wide meaning which is not exhaustively defined in the Regulations, and will be a question of fact on each case. However, the regulations do clarify that its meaning includes any arrangement in which the owner and any other person who is part to the arrangement:
- *makes or receives any payment or reward (or intends to do so) in connection with making the computer available for use; or*
 - *receives any benefit (or intends to do so) in connection with making the computer available for use, by virtue of it being adapted or presented to encourage gambling.*
- This is to clarify that a commercial arrangement is not limited to situations in which the user of the computer pays the owner or any other person who is party to the arrangement for permission to use it, but will extend to situations in which use of the computer is free to the user, but the owner or any other person still receives a benefit from its use. For example, this will extend to situations where:*
- *a gambling operator or any other party to the arrangement makes his own computers available to users for free, and they are adapted so as to take a user directly to that operator's gambling website.*
 - *computer owners or any other party to the arrangement are paid by a gambling operator for their computers to be adapted so as to take a user directly to his gambling website.*
 - *computer owners or any other party to the arrangement are paid by a gambling operator to display promotional material on or next to their computers relating to his gambling website.*

- 3.24. Regulation 1 also clarifies that 'commercial arrangement' does not include an arrangement between an employer and his employee, but does include situations where an employer makes a computer available to employees for mainly recreational purposes. The effect of this is that the meaning of 'private use' extends to situations in which an employee is using a computer at work for purposes connected with his employment; if, however, an employer provides his employees with computers at work that are mainly to be used by employees for recreational purposes, then it will not be treated as 'private use'.

Making available for use

- 3.25. The Department does not intend that a computer should be treated as a gaming machine and fall under the regulatory regime of the Act if it is only for 'private use', even where it is knowingly adapted or presented to encourage gambling. For example, a private individual who regularly uses his computer to access gambling websites may have specially configured it to provide a direct link to those sites. The computer may be a laptop and if the person lends it to friends or family, he is making his laptop 'available for use' (this could also take place outside the home). The laptop will be adapted or presented to encourage gambling but the Department does not consider that in these circumstances it should be treated as a gaming machine.
- 3.26. The Department therefore proposes to make an exception to the requirement in regulation 2(b) that a dual-use computer should not be adapted or presented to encourage gambling. This exception only applies where a computer is 'being made available for use', and where that use is restricted, or intended to be restricted to private use. The effect is that a computer that is adapted or presented to encourage gambling will still be a dual-use computer if it is only for private use.
- 3.27. The purpose of this exception therefore, is to ensure that the following machines are still included in the definition of a dual-use computer, even where they are adapted or presented to encourage gambling:
- *Personal computers (including portable laptops) - as long as they are used only by the owner, or with the owner's permission other than for profit or any other benefit to the owner. This will include circumstances in which owners lend their personal computers to friends and family, but will exclude situations in which owners allow others to use their computers and receive any sort of payment or benefit for doing so.*
 - *Work Computers – this is to allow employers to make computers available for use to their employees to be used for work, and for those computers to be adapted or presented for gambling. The Department does not intend that such computers should be treated as gaming machines under the Act. This is particularly pertinent if an employee's work relates in any way to the gambling industry, and his computer may have to be so adapted or presented for*

reasons connected to his employment. The only exception to this is where a computer is made available by the employer to be used mainly for recreational purposes (see the definition in regulation 1); the Department considers that if an employer were to make available computers for employees to be used mainly for recreational activities, and such computers were adapted or presented to encourage gambling, they should be treated as gaming machines and appropriately regulated under the Act.

Adapting, repairing and maintaining

3.28. A computer that is adapted or presented to encourage gambling, but that is only for private use, may at times need to be adapted, repaired or maintained, often by someone other than the owner. This may give rise to two situations (for which regulation 3(2)(b) makes provision) – using the example of a personal computer that is adapted or presented to encourage gambling and that requires repairs:

(a) ‘Making available for use’ and ‘repairing’ are two distinct concepts under the Act. The exception in regulation 3(2)(a) only applies where a computer is ‘made available for use’ and will not apply where a person is repairing the computer. This means that the computer would be treated as a gaming machine and the repair-man would be committing an offence under section 243 unless he has the appropriate operating licence or permit.

(b) A repair-man may ‘repair’ a computer, but may also have to ‘use’ it in connection with that repair job. If the person who repairs the computer also uses it (for example, to check that the repairs are successful), the owner will have ‘made the computer available for use’ to that person. In this case, the exception for making computers available for use will not apply if the repairs were carried out under a commercial arrangement.

3.29. In considering the scenarios at (a) and (b) in paragraph 3.28 above, the Department does not intend that computers for private use that are repaired, adapted, or maintained, should be treated as gaming machines and be subject to regulation under the Act. The Department considers that it would place an undue burden on persons who repair, adapt or maintain computers if they were required to either ensure the computers they work on are not adapted or presented to encourage gambling. To this end, regulation 3(2)(b) makes an exception for computers that are being repaired, adapted or maintained. The exception applies whether or not the computer is also being made available for use (the exception in regulation 3(2)(a) specifically excludes circumstances where a computer is adapted, maintained or repaired).

3.30. In carving out the exception, the Department intends to capture persons who repair, adapt or maintain (whether as part of their business or in a non-commercial context) computers that are for private use – some of which may have been adapted or presented by their owners or by other persons. However, it is the Department’s view that any business that repairs, adapts or maintains computers for the purpose of facilitating or enabling their use for gambling – even where they are restricted to private use – should not be entitled to do so other than under the regulatory framework of the Act. To meet these requirements, the exception to regulation 2(b) in relation to repair, adaptation or maintenance of a computer applies subject to the following conditions:

- The computer is being repaired, adapted or maintained;
- At that time, its use is connected to the repair, adaptation or maintenance;
- Other than whilst it is being adapted, repaired or maintained, the computer would be only for private use.

- The main purpose of the adaptation, repair or maintenance must not be to enable the computer to be used for gambling.

Supply, Installation and Manufacture

- 3.31. The Department does not consider that any exceptions to the definition of a dual-use computer in regulation 2 need to be made in relation to computers that are:
- *supplied;*
 - *installed; or*
 - *manufactured.*
- 3.32. The exceptions for maintenance, adaptation and repair of a computer, and making it available for use, take into account the fact that any of these actions may be carried out during the lifetime of a computer, and should not necessarily require express gambling authorisation merely because the computer is for private use and has been configured to encourage gambling. The supply, installation and manufacture of a computer normally take place before that computer is assigned a use, and before a private user has had a chance to configure it. Any attempt by the supplier, installer or manufacturer to adapt or present the computer to encourage gambling, should be strictly regulated under the Act. The Department does not consider that an undue burden would be placed on computer suppliers, installers or manufacturers if they were required either to ensure that the computers on which they undertake those activities are not adapted or presented to encourage gambling, or to obtain a relevant gaming machine authorisation under the Act.
- 3.33. The Department considers that whilst a computer is being supplied, installed or manufactured, it will not need to be adapted or presented to encourage gambling. Persons and businesses who supply, install or manufacture dual-use computers are expected to meet the two limbs of the definition of a dual-use computer if they want their computers to be excluded from the definition of a gaming machine. Moreover, if a computer that is being supplied, installed or manufactured, were to be so adapted or presented, the Department would want, in light of the licensing objectives, for it to fall under the full regulatory regime of the Act and be treated as a gaming machine.

Computers that will not be subject to exceptions

- 3.34. The following are examples of computers that will not be dual-use computers if they are adapted or presented to encourage gambling, (regardless of whether they are adapted, maintained, repaired, supplied, installed, manufactured or made available for use), and to which no exception applies:
- *Computers in internet cafes and other businesses offering computer terminals to paying customers. In practice, such businesses will have a responsibility to ensure that their computers are not set to take users directly to a gambling website, or that that website is not set as the computer's homepage or screen saver for example. They must also ensure that the computer is not promoted for gambling in a wider sense. A computer in an internet café that is only being used for gambling by a customer may still fall within the definition of a dual-use computer as long as it is not adapted or presented to encourage gambling.*

- *Computers made available to users free of charge, but where the owner of the computer will make or receive a payment or receive a benefit in allowing persons to use those computers.*
- *Computers in commercial clubs used by persons under a ‘commercial arrangement’ – A commercial club is defined in section 267 of the Act, and differs from a members’ club because it may operate as a commercial enterprise which benefits a class of people different to the members. These clubs can also be known as proprietary clubs, and an example would be snooker clubs. The Department’s position is that such clubs would have to comply with the full regulatory regime in the Act relating to gaming machines if they allowed persons to use their computers under a commercial arrangement, and those computers were adapted or presented to encourage gambling. On the other hand, if only the club owner or employees of the club were to use those computers (and they were not made available to employees for mainly recreational reasons) they would be dual-use computers and would not be treated as gaming machines under the Act.*
- *Computers that are being repaired, adapted or maintained, and are not for ‘private use’.*

Question 4: Do you agree with the Department’s proposal that there should not be an exception to the definition in regulation 2 for computers that are supplied, installed or manufactured?

Question 5: Do you agree that the regulations meet the Department’s intentions that computers in businesses that make computers available for use should not be dual-use computers if they are adapted or presented to encourage gambling and used by others under a commercial arrangement? If not, please explain why.

Question 6: Do you agree with the Department’s proposal that there should be an exception to regulation 2(b) (the requirement for a dual-use computer not to be adapted or presented to encourage gambling) for computers that are made available for use, as long as they are only for private use? If not, please explain why.

Question 7: Do you agree with the Department's proposal that there should be an exception to regulation 2(b) for computers that are maintained, adapted, or repaired? If not, please explain why.

Question 8: Do you agree that such computers may still be adapted or presented to encourage gambling, as long as they would otherwise be for 'private use', and the purpose of the adaptation, repair or maintenance is not to enable the computer to be used for gambling? If not, please explain why.

Question 9: Do you believe there are other circumstances where an exception from the definition in regulation 2 should be made for a computer, but no exception applies under the proposed regulations? If so, please provide details and explain why the computer should not be treated as a gaming machine.

Question 10: Do you believe there are circumstances in which a computer will satisfy the definition of dual-use computer, but should be treated as a gaming machine? If so, please give details and explain why the relevant computer should be treated as a gaming machine?

Defining domestic computers

- 3.35. The Department considers that domestic computers should not be subject to the restrictions on how they are adapted or presented. These are essentially home computers and it is the Department's policy that they do not need to be regulated as gaming machines, regardless of how they are configured. It is important to note that if such home computers are not configured to encourage gambling, they are likely to be dual-use computers as well.

- 3.36. In this context, the Department considers that the purpose of the Regulations would be met by defining domestic computers with reference to meeting the following conditions:

That the computer-

(a) is capable of being used for a purpose that is not related to gambling;

(b) is located in a private dwelling; and

(c) is used only on domestic occasions.

- 3.37. This definition of a domestic computer will cover home computers that are being used by their owners or that their owners allow friends and family to use.
- 3.38. The first condition exists for the same reasons that applied to dual-use computers; it is the Department's policy that a computer that is not capable of being used for any other purpose than gambling should be treated as a gaming machine under the Act (unless any of the other exceptions in section 235(2) apply).
- 3.39. The second condition, which relates to the location of the computer, is central to the definition – personal computers outside the home would have to satisfy the test in regulation 2 to be dual-use computers.
- 3.40. The purpose of the condition that it should be used only on 'domestic occasions' is to ensure that computers located within a private dwelling are not then adapted or presented to encourage gambling, and made available for use to members of the public as part of a business. 'Domestic occasion' will have its ordinary English meaning.
- 3.41. The Department has considered whether private dwellings could be used as commercial clubs offering personal computers to gamble. The Department intends that in such cases, the computers should be treated as gaming machines, requiring such clubs to obtain appropriate gambling authorisations. The Department is of the view that the use of computers by commercial clubs does not constitute a domestic occasion, even if they are used in a person's home. Although it is not relevant to the definition of a domestic computer, whether others are permitted to use the computer under a commercial arrangement, it is the Department's view that there is a presumption that a home computer that is used by others under a commercial arrangement is not being used 'on a domestic occasion'.

Question 11: Do you agree with the Department's approach for defining the criteria for domestic computers? If not, please explain why.

4. Impact

4.1. In light of the Department's approach to defining dual-use and domestic computers, listed below are some examples of the types of computers that are likely to be affected by the regulations (assuming that they are all capable of being used for a purpose not related to gambling):

- *Work computers in the workplace*

These are likely to be dual-use computers, regardless of whether or how they are adapted or presented. The only exception is that where they are adapted or presented to encourage gambling, they must not have a mainly recreational purpose.

- *Computers of self-employed persons*

These are likely to be dual-use computers, and are likely to satisfy the test for private use, as long as they are not made available to others under a commercial arrangement.

- *Commercial Clubs*

Computers made available for use in commercial clubs will be dual-use computers as long as they are not adapted or presented to encourage gambling or their use does not in some way benefit the computer owner.

- *Personal computers (PCs or laptops)*

These are likely to be dual-use computers and may be adapted or presented to encourage gambling if they are restricted to private use. A personal computer within the home may also be a domestic computer.

- *Digital television that is also a computer*
These may be dual-use or domestic computers, depending on where they are located.
- *Computers in internet cafes*
These will be dual-use computers as long as they are not adapted or presented to encourage gambling. Internet café owners will be responsible for monitoring their computers and ensuring they are not so adapted or presented. Computers in internet cafes that are deliberately adapted or presented to encourage gambling will not be dual-use computers if the owner stands to benefit from this in any way.
- *Computers in libraries and schools*
These will be dual-use computers as long as they are not adapted or presented to encourage gambling. Schools and libraries will be responsible for monitoring their computers and ensuring they are not so adapted or presented.
- *Computers that are being repaired, adapted or maintained*
These will be dual-use computers if they are not adapted or presented to encourage gambling. If (a) they are adapted or presented, they will still be dual use computers if they are for private use (aside from when they are being repaired, maintained or adapted) and (b) the purpose of the adaptation, repair or maintenance is not to enable the computer to be used for gambling.
- *Computers that are being manufactured, installed or supplied*
These will be dual-use computers and exempt from the definition of a gaming machine for the purposes of the Act so long as they fulfil Regulation 2 and are not adapted or presented to encourage gambling. (It is worth noting that 'supply' is defined in the Act as including 'sale, lease and placing on premises with permission in accordance with a contract or other arrangement').

4.2. Two options have been considered:

Option 1

4.3. Not to make regulations under Section 235.

4.4. The Secretary of State is required to make regulations by the Act. Until the Secretary of State makes such Regulations, the meaning of the exception of “domestic computer” and “dual-use computer” in relation to the definition of gaming machine, will not be defined. This would compromise a central objective of the Department’s policy of providing an exception from the regulatory definition of gaming machine for internet terminals and home terminals and home computer equipment, which are not dedicated or specifically configured for gambling activities.

Option 2

4.5. Implement the policy as described in this consultation paper and prescribed in the draft Regulations at **Appendix 1**, with appropriate consultation.

4.6. This option would ensure consistency with previously published policy. However, these particular Regulations have the potential to be of interest to a wider range of groups (for example, internet cafes and libraries, the broadcasting sector, etc) than the usual stakeholders, and to be of interest to a significant proportion of the population given that their aim is to exclude work computers, personal computers and laptops from the definition of gaming machine. The expected level of representations is therefore uncertain at this stage, but potentially it could result in significant changes to the assigned meanings of domestic and dual-use computers. The Department is therefore of the view that the Regulations should be finalised once comments from the consultation exercise have been considered and any amendments made. This

would enable the purposes of the Regulations set in paragraph 3.2 to be more closely met.

This is the Department’s preferred option.

5. Costs and benefits

(a) Sectors and groups affected

- 5.1. There are implications for existing and potential operators who manufacture, supply, maintain, repair, install and adapt gaming machines, and make gaming machines available for use, arising from the Government's wider policy on gaming machines. They require the relevant authorisation - usually in the form of a *'gaming machine technical operating licence* (which was fully explored in the wider Gambling Act RIA) - but these specific regulations will establish when an operating licence or other gambling authorisation is not required in relation to a computer.
- 5.2. Other groups that will need to know whether their computers are caught by the regulations include:
- Internet cafes and libraries offering computer terminals;
 - Other businesses offering computer terminals by use of their customers (e.g. hotels, airports etc);
 - Computer manufacturers; and
 - the Broadcasting sector.
- 5.3. In addition, the regulations will be of interest to a significant proportion of the population, given that their aim is also to define (and therefore exclude from the definition of gaming machine) work computers, domestic computers and laptops.

(b) Benefits

- 5.4. The proposed regulations will assign the meaning of domestic and dual-use computers, and therefore clarify the definition of gaming machine under the Act. This will avoid some of the potential anomalies that could arise if it were unclear what domestic computers and dual-use computers are excluded from the definition of a gaming machine, and at the same time it will ensure that the regulations do not inadvertently catch computer equipment that should be treated as a gaming machine under the Act.

(c) Costs

- 5.5. It is not expected that assigning the meaning of domestic and dual-use computers will of itself cause any costs to operators or individuals. However, on the one hand it is important that the definitions within these Regulations catch all the dual-use and domestic computers that should be excluded from the gaming machine definition because operators or individuals whose computers are not excluded from the definition of a gaming machine may be required

to pay fees to obtain the appropriate gambling authorisations. On the other hand, it is important that the Regulations do not inadvertently catch equipment that should be treated as a gaming machine under the definition in the Act.

- 5.6. There will be no increased administrative costs falling to the public purse as a result of these Regulations. The regulation of gaming machines will be undertaken by the Gambling Commission and licensing authorities, and this will be funded through fees paid by the industry on a cost recovery basis.

6. Small firms impact test

- 6.1. Trade organisations that have both large and small operators as members will be consulted on the proposals, but it is considered that these proposals are likely to significantly benefit a number of small businesses that could otherwise be caught by the regulations governing gaming machines. The Small Business Service (SBS) and the Federation of Small Business (FSB) will also be invited to participate in this consultation exercise. The Department's objectives, within the overall framework for effective regulation, will be to minimise any disproportionate impact on small businesses, and to this end, the Department's preferred option above should assist in achieving this objective by ensuring that the definitions of dual-use and domestic computers are adequate to cover relevant businesses.

7. Competition assessment

- 7.1. A simple competition assessment of this proposal has been undertaken in accordance with Better Regulation Executive/Office of Fair Trade guidance and has concluded that a full assessment is unnecessary. In reaching this conclusion, four questions were specifically asked about the proposals:-

i) Do they directly limit the number or range of suppliers?;

ii) Do they indirectly limit the number and range of suppliers?;

iii) Do they limit the ability of suppliers to compete? And

iv) Do they reduce incentives for suppliers to compete vigorously?

- 7.2. To these questions it was concluded that none of the proposals exclude small businesses from the regulations governing gaming machines that might otherwise be covered. They do not impose an administrative burden on those affected and so does not involve administrative

costs. In addition, the proposals will apply to all qualifying apparatus equally. It is therefore concluded that the proposals will neither directly nor indirectly limit the numbers of suppliers.

8. Enforcement, sanctions and monitoring

- 8.1. The operators of gaming machines will require various types of permission to make gaming machines available for use. Many will require operating and the appropriate personal licences from the Gambling Commission, along with a premises licence from their licensing authority. The manufacturers and suppliers of gaming machines will require operating and appropriate personal licences from the Gambling Commission.
- 8.2. In terms of enforcement of the Regulations, the Commission and licensing authorities will both have a role to play in ensuring that gaming machines are appropriately used within the legal entitlements provided by the Gambling Act. The Commission is also responsible for compliance by machine manufacturers and suppliers.

9. Implementation and delivery plan

- 9.1. The intention is to bring the Regulations into force on **1 September 2007**. This consultation will start on 5 March 2007, and end on 4 June 2007.

10. Consultation questions

- 10.1. You are invited to comment freely on any aspect of this consultation document. However, you may find it useful to refer to the checklist of questions below, which cover the main points on which we would particularly welcome views. Where possible, please do:

- *Be as specific as possible in your responses;*

- *Explain, where appropriate, the reasons behind your agreement or disagreement with a proposal;*

- *Suggest what alternative you would prefer in place of any proposals you may disagree with.*

10.2. In summary, the questions asked in the consultation document are:

Question 1: Do you agree with the definition of a dual-use computer in regulation 1? If not, please explain why.

Question 2: Do you agree with the Department's approach to promotional or advertising material on or near dual-use computers? If not, please explain why.

Question 3: Do you agree with the Department's approach towards digital televisions that are also computers? If not, please explain why.

Question 4: Do you agree with the Department's proposal that there should not be an exception to the definition in regulation 2 for computers that are supplied, installed or manufactured?

Question 5: Do you agree that the regulations meet the Department's intentions that computers in businesses that make computers available for use should not be dual-use computers if they are adapted or presented to encourage gambling and used by others under a commercial arrangement? If not, please explain why.

Question 6: Do you agree with the Department's proposal that there should be an exception to regulation 2(b) (the requirement for a dual-use computer not to be adapted or presented to encourage gambling) for computers that are made available for use, as long as they are only for private use? If not, please explain why.

Question 7: Do you agree with the Department's proposal that there should be an exception to regulation 2(b) for computers that are maintained, adapted, or repaired? If not, please explain why.

Question 8: Do you agree that computers that are adapted, repaired or maintained may still be adapted or presented to encourage gambling, as long as they would otherwise be for 'private use', and the purpose of the adaptation, repair or maintenance is not to enable the computer to be used for gambling? If not, please explain why.

Question 9: Do you believe there are other circumstances where an exception from the definition in regulation 2 should be made for a computer, but no exception applies under the proposed regulations? If so, please provide details and explain why the computer should not be treated as a gaming machine.

Question 10: Do you believe there are circumstances in which a computer will satisfy the definition of dual-use computer, but should be treated as a gaming machine? If so, please give details and explain why the relevant computer should be treated as a gaming machine?

Question 11: Do you agree with the Department's approach for defining the criteria for domestic computers? If not, please explain why.

Contact point

Donald Sproson

Gambling and National Lottery licensing Division

Department for Culture, Media and Sport

2-4 Cockspur Street

London

SW1A 5DH

Tel: 0207 211 6535

Email: Donald.Sproson@culture.gsi.gov.uk



department for
**culture, media
and sport**

2-4 Cockspur Street
London SW1Y 5DH
www.culture.gov.uk