

**Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007 –
Final Regulatory Impact Assessment**

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 ensure that such computers (which are not dedicated or specifically configured for gambling activities) are not treated as gaming machines, unless they are used by commercial enterprises as a means to enable persons to gamble and sidestep the gambling regulatory regime.
- 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 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 issued a 3 month consultation document in February, which ended on 28th May 2007. In response, 16 responses were received from a wide range of interested stakeholders (including trade associations, faith and representative groups and business organisations). All respondents wholly or broadly supported the approach taken to define dual-use and domestic computers set out in the consultation document. Respondents believed this was a sensible and flexible approach to exempt the majority of internet terminals and home computer equipment, which are not dedicated or specifically configured for gambling activities, from the definition of gaming machine. A summary of all the comments received and the Government's responses has been published separately on the Department for Culture, Media and Sport's website at www.culture.gov.uk/Reference_library/Publications/archive_2007/gamb. The Government also consulted the Gambling Commission who are content with the approach adopted by the Government.

3.2 However, three main issues did emerge in relation to (1) clarifying the meaning of 'presenting', particularly regarding promotional advertising material located near a computer, (2) dealing with advertising 'pop-ups' and gambling advertising over which the owner has no control, and (3) the definition of "*commercial arrangement*" being too narrow to prevent some operators in specified circumstances from providing direct access to remote gambling sites within premises that are licensed for gambling purposes.

- 3.3 On the first issue, the Government understands the concerns about the meaning and practical effect of a computer being “*presented in such a way as to facilitate or to draw attention to the possibility of its use for gambling*”. In response, the Government is still of the view that this will be a question of fact to be determined on the facts of each case, but has also invited the Gambling Commission to issue general guidance on what it considers would constitute adapting or presenting a computer to encourage gambling and will review the position at a later date. The Government also wants to prevent these Regulations from straying into the area of regulating the general advertising of gambling.
- 3.4 On the second issue, the Government has decided to revise the definition of a dual-use computer (see revised regulation 2(1)(b)) to clarify that it must not be adapted or presented etc ‘*by or on behalf of the owner or a person connected with the owner.*’ This amendment is to deal with two specific issues raised in consultation that are likely to be out of the owner’s control - i) pop-ups or other forms of promotional advertising that may appear on a computer and ii) internet gambling related material/advertising that is left next to a computer without the owner’s knowledge. The Government wishes to prevent an internet ‘pop-up’ that appears on a dual-use computer without the owner’s knowledge and/or outside his control, from causing the computer to become a gaming machine. The Government has also sought to clarify whose knowledge is relevant to the definition of ‘knowingly adapting or presenting’.
- 3.5 On the third issue of defining a ‘*commercial arrangement*’, following consultation with the Gambling Commission, the Government considers that there is a need to tighten the definition to capture the scenario where computers owned by company ‘A’ have dedicated links to the gambling website of company ‘B’, and companies ‘A’ and ‘B’ are in the same group of companies, or one is a subsidiary of the other, and company ‘A’ does not benefit from the arrangement. The definition of ‘commercial arrangement’ needs to capture this circumstance. This is because otherwise it could allow some gambling premises such as casinos to circumvent the regulations and have computers with dedicated links to the websites of parent or sister companies. This would also enable such operators to circumvent the limit on their gaming machine entitlement.
- 3.6 As such, the Government has decided to amend the definition (see revised regulation 1(3)) to include any arrangement in which a person connected to the owner makes or receives a benefit etc. The revised regulation provides that a person is connected with the owner if (a) he/she is one of a list of relations, (b) both the owner and the person are companies and one is the subsidiary of the other or they are both subsidiaries of the same company, or (c) if the person and the owner are carrying on business in common with a view to a profit (which includes partnerships).
- 3.7 A copy of the revised regulations is at **Annex A**.

Purpose of Regulation

- 3.8 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

- 3.9 The Government's proposals for the Regulations can be 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) either:-
 - (a) it is not knowingly adapted or presented by or on behalf of the owner or person connected with the owner, in such a way as to facilitate, or to draw attention to the possibility of, its use for gambling; or
 - (b) it is so adapted or presented, but only in circumstances specified in regulation 2(2) and 2(3)
 - That there is an exception to condition (ii)(a) 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)(b) 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 or any person connected to 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

- 3.10 The Government 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

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

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

(ii) either:-

- (a) it is not knowingly adapted or presented by or on behalf of the owner or person connected with the owner, in such a way as to facilitate, or to draw attention to the possibility of, its use for gambling;
- or
- (b) it is so adapted or presented, but only in circumstances specified in paragraph (2) or (3)

- 3.12 The Government 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.

- 3.13 The first condition exists to deliver the Government'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).
- 3.14 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'. 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.
- 3.15 The Government was pleased that all respondents either wholly or broadly supported the definition of a dual-use computer. However, as explained in paragraphs 3.5 and 3.6 above the Government has decided to tighten the dual-use definition to include any arrangement in which a person connected to the owner makes or receives a benefit etc. The regulations (i.e. regulations 1(3) and 2(i)(b)) have therefore been revised accordingly.

Meaning of 'Presented': Advertising

- 3.16 The majority of respondents wholly or broadly supported the Government's as pragmatic and sensible, and that the Regulations should not seek to regulate in detail the general advertising of gambling. That ultimately it is a question of fact to be determined on the facts of each case, and that the words in the Regulations '*knowingly presented in such a way as to facilitate or draw attention to the possibility of their use for gambling*' are sufficient, strike the right balance in covering material that advertises internet gambling, that is physically attached to a computer, or is inside the premises where a computer is located.
- 3.17 As explained in paragraphs 3.3 and 3.4 above, the Government is still of the view that its overall approach as set out in the consultation document is pragmatic and sensible and is pleased that this overall approach was supported during the consultation exercise. However, the Government has revised the regulations to deal with two specific issues and invited the Gambling Commission to issue general guidance.

Interactive gambling channels, mobile telephones and digital televisions

- 3.18 The Government considered the impact of the 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.
- 3.19 It emerged during the consultation exercise that there was overall approval of the Government's approach to digital televisions. In summary, digital

televisions that are not computers will 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)(ii) 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 ‘adaptation’ or ‘presentation’ test set out in the regulations.

Exceptions to Definition of Dual-Use computer

- 3.20 There will be 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 and in response to the consultation exercise, the Government has decided 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’

- 3.21 ‘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 in connection with its use.
- 3.22 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.
- 3.23 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’

- 3.24 ‘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.

- 3.25 The Regulations 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’.
- 3.26 However, as explained in paragraph 3.5, the Government has decided to amend the definition (see revised regulation 1(3)) to include any arrangement in which a person connected to the owner makes or receives a benefit etc.

Making available for use

- 3.27 The Government has decided that a computer will not 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 Government does not consider that in these circumstances it should be treated as a gaming machine.
- 3.28 The Government has therefore made 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.
- 3.29 The purpose of this exception will 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 Government 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 Government 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

- 3.30 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 2(3) makes provision): –
- (a) ‘Making available for use’ and ‘repairing’ are two distinct concepts under the Act. The exception in regulation 2(3)(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.
- 3.31 In considering the scenarios at (a) and (b), the Government 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 Government 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.
- 3.32 In carving out the exception, the Government’s intention is 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 Government’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

- 3.33 The Government 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.
- 3.34 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 Government 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.
- 3.35 The Government 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 Government 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

- 3.36 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 or person connected with the owner of the computer makes or receives a payment or 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 Government'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'.

Defining domestic computers

3.37 The Government 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 Government'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.

3.38 In this context, the Government 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.

- 3.39 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.
- 3.40 The first condition exists for the same reasons that applied to dual-use computers; it is the Government'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).
- 3.41 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.
- 3.42 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.
- 3.43 The Government has considered whether private dwellings could be used as commercial clubs offering personal computers to gamble. The Government intends that in such cases, the computers should be treated as gaming machines, requiring such clubs to obtain appropriate gambling authorisations. The Government 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 Government'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'.

4 Impact

In light of the Government's approach to defining dual-use and domestic computers, it is anticipated that the types of computers likely to be affected by the regulations (assuming that they are all capable of being used for a purpose not related to gambling and subject to the relevant exceptions in the regulations) include work computers in the workplace; computers of self-employed persons; personal computers (PCs or laptops); digital televisions that are also computers; computers in internet cafes; computers in libraries and schools; computers that are being repaired, adapted or maintained and computers that are being manufactured, installed or supplied.

- 4.1 Two options have been considered:

Option 1

- 4.2 Not to make regulations under Section 235.

- 4.3 The Government is required to make regulations by the Act. Until the Government 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 Government’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. The Government rejects this option.

Option 2

- 4.4 Implement the policy as set out above in paragraphs 3.1 to 3.43 as amended in light of consultation and prescribed in the Regulations at **Annex A**. This option would ensure consistency with previously published policy. This is the Government’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 were 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) did not respond but the Federation of Small Business (FSB) supported the proposals set out in the Regulations. The Government's objectives, within the overall framework for effective regulation, is to minimise any disproportionate impact on small businesses, and to this end, the Government's preferred option 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**.

10 Declaration

- 10.1 I have read the Regulatory Impact Assessment and I am satisfied the benefits justify the costs.

Signed.....

Date.....

Contact point

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