

Draft Gambling Bill

Memorandum on Delegated Powers from the Department for Culture, Media and Sport

February 2004

**Memorandum on Delegated Powers
Draft Gambling Bill
Department for Culture, Media and Sport**

| CONTENTS | PAGE |
|-----------------------------------|-------------|
| Introduction | 2 |
| Background | 2 |
| Main provisions of the draft Bill | 2 |
| Approach to delegated powers | 5 |
| Overview of delegated powers | 5 |
| List of delegated powers | 6 |

INTRODUCTION

1. This Memorandum is being provided to the Joint Committee on the Gambling Bill to assist it in its scrutiny of the draft Bill. A full and final Memorandum will be prepared for the Delegated Powers and Regulatory Reform Committee, to accompany the complete draft Bill, upon its introduction to the House of Lords. This Memorandum refers to the draft Bill published in February 2004.
2. This Memorandum identifies the provisions for delegated legislation in the draft Gambling Bill. It explains the purpose of the delegated powers proposed, it describes why the matter is to be dealt with in delegated legislation, and it explains the procedure proposed for each power and why it has been chosen.
3. To provide the Scrutiny Committee with additional background material on the potential subject matter of delegated legislation made pursuant to the draft Bill, certain parts of this Memorandum give policy details of the likely content in particular areas. This has been done only where it is thought to be of assistance.
4. It should be noted that this Memorandum deals with subordinate legislation only. It does not address the rationale for areas of the draft Bill where functions are delegated to other bodies to perform, such as the Gambling Commission or local authorities.

BACKGROUND

5. The draft Gambling Bill will produce a new regulatory regime for gambling in Great Britain which is modern, flexible and comprehensive. The policy proposals were set out in the Government White Paper "A Safe Bet for Success" (Cmnd 5397), published in March 2002. The White Paper was the Government's response to the report of the Gambling Review Body (Cmnd 5206) published in July 2001.
6. The draft Bill repeals three major enactments relating to gambling: the Betting, Gaming and Lotteries Act 1963 (c.2) ("the 1963 Act"), the Gaming Act 1968 (c.65) ("the 1968 Act"), and the Lotteries and Amusements Act 1976 (c.32) ("the 1976 Act"), together with a number of other smaller enactments. The draft Bill is, therefore, an important measure introducing major reform to the law of gambling in Great Britain.
7. The aim of the draft Bill is to permit gambling to take place, subject to adherence to the following three objectives:
 - a. Preventing gambling from being a source of crime or disorder;
 - b. Ensuring that gambling is conducted in a fair and open way; and
 - c. Protecting children and the vulnerable from being harmed or exploited by gambling.
8. The draft Bill establishes a new, unified regulator for betting, gaming and lotteries: the Gambling Commission ("the Commission"). The Commission will replace the existing Gaming Board for Great Britain. Local authorities are given an enhanced role in regulating certain aspects of gambling, and a new gambling appeals tribunal is established.
9. The draft Bill introduces three new licensing systems for gambling: operating, personal and premises licences. The Commission will be responsible for the first two, while local authorities will have responsibility for the third. The Bill contains a number of other

special procedures for authorising gambling at particular premises or by particular persons, and also permits private and non-commercial gaming and betting without authorisation in certain circumstances.

10. Criminal offences have been provided to protect children and the vulnerable from the harmful effects of gambling, and a number of measures taken to minimise problem gambling. Appropriate powers of inspection and enforcement are included wherever relevant.
11. Finally, and by way of background, the draft Bill contains a number of measures aimed specifically at dealing with the ways that gambling can be offered by forms of modern technology, such as the internet and interactive television.

MAIN PROVISIONS OF DRAFT BILL

12. The draft Bill published in February 2004 contains 16 Parts, and 10 Schedules. These cover:

1. Interpretation of Key Concepts
2. The Gambling Commission
3. General Offences
4. Protection of Children and Young Persons
5. Operating Licences
6. Personal Licences
7. Operating and Personal Licences: Appeals
8. Premises Licences
9. Temporary Use of Premises
10. Gaming Machines
11. Lotteries
12. Clubs
13. Premises Licensed for Supply of Alcohol
14. Inspection
15. Legality and Enforceability of Gambling Contracts
16. General

PART 1: INTERPRETATION OF KEY CONCEPTS

13. Part 1 sets out the key definitions for the Bill and certain key concepts. For example, it defines the three licensing objectives to be pursued by the Commission and by local authorities in exercising their respective functions. This Part contains delegated powers.

PART 2: THE GAMBLING COMMISSION

14. Part 2 provides for the establishment of the Gambling Commission, and sets out its essential functions and duties. Schedules 2 and 3 provide for the detailed constitution of the Commission and its transfer from the Gaming Board, its proceedings, the appointment of Commissioners and staff, and its financial and reporting arrangements. This Part does not contain delegated powers.

PART 3: GENERAL OFFENCES

15. Part 3 sets out the principle offences which are a corollary of the new regulatory regime. This Part contains delegated powers.

PART 4: PROTECTION OF CHILDREN AND YOUNG PERSONS

16. Part 4 establishes a number of specific offences that concern the participation of children and young persons in gambling, their employment in relation to gambling and their entry to premises licensed to provide gambling. This Part does not contain delegated powers.

PART 5: OPERATING LICENCES

17. Part 5 and Schedule 4 establish the principal licensing regime for the operation of commercial betting and gaming and the provision of certain lotteries. This Part contains delegated powers.

PART 6: PERSONAL LICENCES

18. Part 6 deals with the personal licences that certain individuals working in the gambling industry will be required to obtain. Personal licences operate in conjunction with operating licences. This Part contains delegated powers.

PART 7: OPERATING AND PERSONAL LICENCES: APPEALS

19. Part 7 and Schedule 5 make arrangement for appeals from decisions of the Gambling Commission to a newly established Gambling Appeals Tribunal. Schedule 5 contains delegated powers.

PART 8: PREMISES LICENCES

20. Part 8 provides for a new system of premises licensing, making local authorities wholly responsible for the licensing of gambling premises within their area. This Part contains delegated powers.

PART 9: TEMPORARY USE OF PREMISES

21. Part 9 makes provision for local authorities to permit the temporary use of premises for gambling, where those premises are not normally used for such purposes. This Part contains delegated powers.

PART 10: GAMING MACHINES

22. Part 10 sets out the regulatory regime for gaming machines. It provides a new definition, together with provisions on the manufacture and supply of gaming machines, and their use. Schedule 6 provides local authorities with powers to issue permits for certain types of gaming machine. This Part contains delegated powers.

PART 11: LOTTERIES

23. Part 11 and Schedules 7 and 8 regulate lotteries in Great Britain, other than the National Lottery. This Part contains delegated powers.

PART 12: CLUBS

24. Part 12 and Schedule 9 regulate gaming and gaming machines on club and miners' welfare institute premises. This Part contains delegated powers.

PART 13: PREMISES FOR SUPPLY OF ALCOHOL

25. Part 13 regulates gaming and gaming machines on premises which are licensed for the supply of alcohol. This Part contains delegated powers.

PART 14: INSPECTION

26. Part 14 sets out powers of entry and inspection for the Commission, the police and other authorised persons to permit proper regulation and enforcement of the Bill. This Part contains delegated powers.

PART 15: LEGALITY AND ENFORCEABILITY OF GAMBLING CONTRACTS

27. Part 15 sets out provisions relating to the enforceability of gambling contracts, and the voiding of betting contracts. This Part does not contain delegated powers.

PART 16: GENERAL

28. Part 16 makes a number of general provisions for the Bill, including an interpretation clause, and procedural requirements for the exercise of delegated powers. This Part contains delegated powers.

APPROACH TO DELEGATED POWERS

29. In considering whether matters should be specified on the face of the Bill or be prescribed in delegated legislation, and if so, in what form, the Department has balanced the following factors:

- a. The importance of the subject matter of the Bill;
- b. The need for Parliament to have proper scrutiny of Government policy and proposals in this area; and
- c. Ensuring Parliament has effective and appropriate oversight of all delegated powers;

against:

- d. The need to avoid too much procedural and administrative detail in the Bill;
- e. The desire to achieve sufficient flexibility to respond to changes, particularly in relation to technology, and
- f. The need to retain the power to act quickly in the light of experience if necessary.

OVERVIEW OF DELEGATED POWERS

30. The draft Bill contains powers to make delegated legislation in a number of areas which are set out in detail in this Memorandum. Where similar powers have been taken in relation to a subject-matter this has been noted, and the rationale for the power has only been described once to avoid unnecessary repetition. Appropriate cross-references have been provided.

31. In formulating the provisions of the draft Bill, and deciding which of these will be achieved through secondary legislation, the overall approach has been to set out in the primary legislation the essential features of the new regulatory regime for gambling. Therefore, the Bill contains the key elements of the three new licensing systems and provisions for the granting of various permits and registrations. It describes the rights and obligations of people whose activities are regulated by the draft Bill, and exempts from regulation persons whose gambling activities do not warrant express authorisation. It provides full rights of appeal, and it sets out the requisite offences to support the operation of the new regulatory regime.

32. Powers to prescribe matters in secondary legislation have then been taken where necessary to give the Secretary of State flexibility to provide for adjustments to the above provisions from time to time, and to set out technical, procedural and administrative requirements underpinning the different parts of the regime. In certain

places powers have been taken which the Department regards as “reserve powers”. This means there is no present intention to exercise them, but they have been provided as contingency measures to deal with circumstances which may, but need not, arise. The Memorandum highlights such powers.

33. The draft Bill contains certain measures which will be subject to affirmative resolution by both Houses of Parliament, and these have been noted in this Memorandum.
34. Overall, we consider that the approach taken provides flexibility for Ministers to amend detailed rules, in the light of operational experience or other developments with appropriate Parliamentary scrutiny, but without having to take up a substantial amount of Parliamentary time to amend primary legislation. The powers are described and justified individually in turn in the remainder of this Memorandum.

LIST OF DELEGATED POWERS

PART 1: INTERPRETATION OF KEY CONCEPTS

35. Part 1 contains definitions of a number of important concepts in the draft Bill. At various places provision is made for subordinate legislation to supplement or modify the relevant concepts.

Clause 3: Remote gambling

36. An essential concept in the draft Bill is that of providing facilities for “remote gambling”, meaning offering gambling via some form of communication equipment rather than in person. The draft Bill will regulate remote gambling comprehensively for the first time, and this is an area of particular innovation by commercial gambling operators.
37. **Clause 3** defines “remote gambling” by referring to the types of remote communication by which gambling may be conducted. These are the internet, telephone, television, radio or any other kind of electronic or other technology for facilitating communication. This definition is intended to be sufficiently broad to accommodate existing, known forms of technology such as interactive television and mobile telephony, as well as forms of technology that have yet to be invented, or used for the purpose of offering facilities for gambling. The definition has therefore been drafted so that it can keep pace with future technological and industry developments in this field.
38. However, when providing a broad definition it is important that there is certainty as to its scope. Therefore, **Clause 3(3)** provides for the Secretary of State to specify in regulations that a particular system or method of communication is or is not to be treated as a form of remote communication for the purpose of the definition. There is no intention to use this power for the time being, but circumstances might conceivably arise when to exercise this power would ensure that the industry, the regulators and the courts could be certain of the position.
39. Consideration has been given to producing a narrower definition, which might not require the accompanying power. However the regulation of remote gambling is of critical importance, particularly the need to prevent technology outstripping the pace of regulation. As a result this broad definition with a delegated power is a necessary protection in the Bill. Given that circumstances may require the power to be used expeditiously, and while it is desirable that there is some degree of Parliamentary

scrutiny of the arrangements, it is thought that the negative resolution procedure is sufficient.

Clause 6: Game of chance

40. **Clause 6** defines the expression "game of chance" by distinguishing playing a sport from a game, and by indicating when an element of skill will not prevent something from being a game of chance. There are a number of parts to the definition. However, the clause recognises that it is not possible to produce a definition which will provide the necessary degree of certainty as new games, and indeed sports, are constantly evolving. Therefore, **clause 6(6)** provides the Secretary of State with power to make regulations clarifying whether or not a specified activity (or activity carried on in specified circumstances) should be treated as a game, game of chance, or sport.
41. The alternative to this regulation-making power would be to leave it to case-law made by the courts to determine questions of definition, which would create undesirable uncertainty for gambling operators and participants in sports alike. In seeking to license commercial gambling the Commission will also benefit from a ruling from the Secretary of State where a question of definition arises.
42. The power is intended to supplement the definition, and is needed to accommodate unforeseen circumstances or difficulties, where to try to provide clarity by means of primary legislation would be inappropriate. It is considered that use of the negative resolution procedure offers an appropriate degree of scrutiny given the purpose to be achieved in exercising the power.

Clause 10: Casino

43. **Clause 10** defines the expressions "casino" and "casino game". It contains a power and a duty to make delegated legislation. The former (at **clause 10(4)**) enables the Secretary of State to provide that a specified activity (or activity carried on in specified circumstances) is or is not to be treated as a casino game for the purposes of the Bill. The definition of "casino game" at subsection (2) is intended to stand by itself without the need for further interpretation. However, as was the case with the definition of "games of chance" at clause 6, it is recognised that the gambling industry is constantly evolving and a degree of uncertainty could arise in the future as to the treatment which should be afforded to a new gambling product. The power in **subsection (4)** recognises that legitimate product diversification by licensed casino operators is likely to proceed at the same time as attempts by unlicensed operators to identify ways to avoid the costs and evade the safeguards of regulation. Therefore, the Secretary of State requires a reserve power to deal with such circumstances, whether it is to rule in, or rule out, a particular game from the definition of "casino game".
44. It is considered that it is appropriate to use the negative resolution procedure for exercise of this power.
45. **Clause 10(5)** places a duty on the Secretary of State to make regulations which classify casinos as "large" or "small", and establish a minimum size for any casino to be licensed under the draft Bill. These classifications are needed for the purposes of premises licensing at Part 8 of the Bill. **Subsection (6)** establishes the parameters for how the regulations will prescribe the classification.
46. The Department's current intention is that these regulations should provide that:

- a. A casino must have a minimum table gaming area of 5,000 sq ft for it be capable of being licensed under the draft Bill;
 - b. A small casino means a casino with a table gaming area larger than the minimum and up to 10,000 sq ft; and
 - c. A large casino means a casino with a table gaming area of more than 10,000 sq ft.
47. The regulations will define “table gaming area” by reference to the floor area occupied by facilities for playing casino games, and the draft Bill will include provisions which permit the continued existence of current casino operators on premises with table gaming areas of less than 5,000 sq ft. These latter clauses have yet to be published.
48. Consideration has been given to providing the classification for small and large casinos on the face of the Bill, but a number of factors point to the need for this to be dealt with by a delegated power:
- a. The regulations are likely to be technical and complex in defining the table gaming area;
 - b. Over time there may be a need to adjust the classification by amending the basis upon which the relevant tests are calculated;
 - c. Equally, the introduction of the classification system is a new measure and Ministers want to have power to amend the classification should it be necessary, to ensure that the provision neither hinders appropriate growth in the casino industry, nor allows uncontrolled proliferation.
49. Accordingly delegated powers have been taken in **clause 10(6)**, to be exercised using the negative resolution, to (a) provide Ministers with flexibility to deal with required changes in the light of further experience and changing circumstances and (b) to make technical rules which would otherwise be inappropriate for primary legislation. The negative resolution procedure is considered to provide an appropriate level of scrutiny.

PART 3: GENERAL OFFENCES

Clause 26: Use of premises

50. **Clause 26** creates a general offence of using premises for providing the various gambling activities specified in **subsection (1)**, or causing or permitting them to be so used, without appropriate authorisation under the draft Bill. The relevant gambling activities are: operating a casino, providing facilities for bingo, making a gaming machine available for use, providing other facilities for gaming or providing facilities for betting. Therefore, unless permitted by a licence, permit, or some other form of permission under the draft Bill, a person will commit an offence if he uses premises for any of these gambling activities. **Subsection (9)** allows the Secretary of State to amend this list of specified gambling activities by order.
51. There is no current intention to use this power. Its purpose is to provide a degree of protection against unforeseen developments in gambling technology or in the way in which facilities are provided for customers. As drafted the offence captures the whole spectrum of potential activities related to gambling which can be provided on premises, and which Ministers think it appropriate to regulate. However, it is conceivable that circumstances might arise in which the list of activities in **subsection (1)** leaves a loophole which can be exploited or has the effect of bringing gambling activities within the regulatory regime where there is no longer a real regulatory risk presented. Accordingly, the power at **subsection (9)** gives Ministers the ability to modify the

scope of the offence where circumstances demonstrate that it is not achieving adequate regulation.

52. The importance of this power, and its potential to amend the basic regulatory structure of the draft Bill, means that the affirmative resolution procedure is considered the appropriate means of offering Parliament scrutiny of the instrument.

Clause 28: Occasional use notice

53. Generally, people wishing to provide facilities for betting lawfully on premises (i.e. without committing an offence under clause 26) need to apply for a betting premises licence under Part 8 of the Bill, or a temporary use notice under Part 9 of the Bill (unless it is private and non-commercial betting under Schedule 1). **Clause 28** provides an exception to this general rule by providing that an occasional use notice may be served to authorise betting on tracks (as defined in Clause 236) which are used for betting on no more than 4 days a year. The clause provides the procedure for the service and validity of such a notice.
54. **Subsection (7)** allows the Secretary of State to make an order varying the maximum number of days for which a track may be used for betting under the authority of an occasional use notice. The clause is based on a similar provision in Section 6 of the Betting, Gaming and Lotteries Act 1963, with the main difference that Section 6 sets a limit of 7 rather than 4 days. A lower figure was chosen to ensure that racecourses which only run a few meetings per year are nonetheless subject to the licensing regime, while giving an appropriate exemption to tracks such as point-to-point racecourses and other tracks, such as golf courses, where betting takes place for very limited periods only.
55. The order-making provisions in **subsection (7)** recognise that circumstances may change in the usage either of mainstream racecourses or tracks where occasional betting takes place, to an extent which would make the scope of the exception too wide or too narrow, in terms of the number of occasional days. Use of the power will effect a direct amendment to primary legislation (Henry VIII clause), relating to an exception from a serious criminal offence, and the affirmative procedure is therefore considered appropriate in these circumstances.

Clause 29: Football pools

56. **Clause 29** provides an exception for authorised agents of football pool operators to use premises for the purpose of receiving coupons or payments without committing the offence under clause 26 of using premises unlawfully to provide facilities for betting. This exception is based on a similar exception in Section 1 of the 1963 Act. This was introduced by s.56 of the National Lottery etc Act 1993 (c.39) as amended by SI 1997/1073, allowing football pool competitions to be run through retail premises such as newsagents.
57. **Subsection (2)** allows the Secretary of State to make regulations which would remove the exception from specified classes of premises. The purpose of the power is to provide a safeguard in the event that problems arise with the provision of football pools facilities in certain kinds of premises, for example, if premises targeted at children were used for such activities. It is not currently intended that regulations should be made. The effect of making them would be to require those responsible for providing betting facilities at the premises concerned to obtain a premises licence (under Part 8) in the usual way, rather than being able to take advantage of this exception. It is

considered that the negative resolution procedure provides an appropriate degree of Parliamentary scrutiny for this power.

Clause 32: Provision of unlawful facilities abroad

58. **Clause 32** provides a reserve power, and there is no present intention for it to be exercised. The purpose of the power is to enable the Secretary of State to designate another country or place as a prohibited territory, with the effect that it then becomes an offence to invite or enable a person in that country or place to participate in remote gambling. The offence is committed where any person does anything in Great Britain or uses remote gambling equipment situated in Great Britain to effect the invitation or enable the gambling to take place. See clause 3 for the definition of remote gambling, and clause 25(4) for "remote gambling equipment".
59. The Government believes that a "country of origin" approach is the best approach to regulation of gambling by remote means, particularly over the internet. The general policy is that remote gambling operators based in Great Britain and licensed under the draft Bill should be free to accept business from anywhere in the world, and that it would be impractical and potentially counter-productive to try to restrict British residents' access to remote sites based abroad. The draft Bill therefore regulates remote gambling operators based in Great Britain, and not those located outside the jurisdiction.
60. However, circumstances might arise in which compelling reasons of foreign policy or international trade make it appropriate for the Government to assist a foreign administration which sought, for reasons of principle rather than protectionism, to restrict its residents' access to remote gambling opportunities offered from overseas. **Clause 32** is intended to provide a reserve power to cater for such circumstances. In the event that an order is made, the Secretary of State is also provided with power to prescribe the mode of trial for the offence, and the maximum penalty.
61. Use of this delegated power would lead to the introduction of a new criminal offence, of considerable importance. Given, additionally, that the order will prescribe the maximum penalty and mode of trial we consider that the affirmative resolution procedure should be adopted for any use of this power.

PART 5: OPERATING LICENCES

62. Part 5 of the draft Bill sets out the licensing regime for operators of commercial gambling in Great Britain. Schedule 4 makes provision for certain matters relating to such licensing.

Clause 53: The nature of the licence

63. The Gambling Commission will issue operating licences to authorise a person to undertake specified gambling activities lawfully (i.e. so as not to commit an offence under clause 21). Clause 53(2) lists the various classes of operating licence, according to the nature of the gambling activity. This list covers the full spectrum of gambling activities offered commercially in Great Britain. Each class of licence will attract different licence conditions as set out further in Part 5, and the Commission's judgement of the suitability of an applicant will also need to take account of the class of licence applied for. Different fees will be charged for different classes of licence.
64. **Subsection (4)** allows the Secretary of State to make an order amending the classes of operating licence at subsection (2) by adding, varying or deleting them. Such an order

may also make consequential amendments to other aspects of Part 5 of the draft Bill, or related provisions.

65. There is no current intention to use this order-making power, but it is considered necessary to retain flexibility to amend the classes in light of experience and in response to changing circumstances. To fix the classes in primary legislation, without the capacity to adjust them in the future, would be an unsatisfactory position for the Gambling Commission and the industry. It is conceivable, for example, that the evolution of the betting intermediary market could bring into being a new kind of business operation, requiring regulation of a different kind to that applied to existing betting exchanges. In such circumstances consideration would be given to dividing the betting intermediary class into two, to provide the appropriate degree of regulation for each. This is only one potential example, and it is impossible to foresee all the circumstances which might dictate that a change to the classes was required. It is considered that a delegated power for the Secretary of State is the most suitable means of providing for the desired flexibility.
66. Any use of this power will require the affirmative resolution procedure to be adopted. This is considered appropriate since an order will amend the scope and application of the operating licence regime which is an essential regulatory tool in the draft Bill. In addition, an order will effect direct changes to subsection (2) which should attract the greater degree of Parliamentary scrutiny offered by the affirmative procedure.

Clause 54: Form of licence

67. This clause sets out the requirements for what information must appear on an operating licence. A licence must specify: the person to whom it is issued, the period during which it is to have effect, and any conditions attached by the Commission. **Subsection (2)** then enables the Secretary of State to require the Commission to issue an operating licence in a particular form and to ensure it contains such additional information as the Secretary of State may specify, by means of regulations. In the absence of such regulations the Commission will be able to decide the form and any further content of the licence.
68. This power provides the means for the Secretary of State to add to the detail which must appear on a licence, and to require a particular form for the licence. This power provides flexibility in case future circumstances mean that the core information at subsection (1) is deemed insufficient, or a particular form of licence is recommended. It is submitted that the only sensible approach to such matters of form and procedure is to deal with them through delegated legislation. We consider that that the negative resolution procedure will provide the appropriate level of Parliamentary scrutiny.

Clause 57: Application

69. This clause sets out who may apply for an operating licence and the type of information that must be included in an application. Applications for operating licences must be made to the Commission. The applications must specify the gambling activities to be licensed, provide an address in the UK for service, state whether the applicant has been convicted of a relevant offence (see Schedule 4) or any other offence, and must also include the relevant fee (to be prescribed by the Secretary of State in regulations (dealt with further below)). The Commission may direct the form and manner of the application and may request that additional information or documents accompany the application.

70. **Subsection (4)** allows the Secretary of State to make regulations requiring applicants to notify particular persons about an application, and to provide for the consequences where an applicant fails to do so.
71. There is no current intention to make extensive use of this power. The Commission is expected to undertake information exchange with other regulatory bodies as part of the licensing process (clauses permitting statutory information gateways between relevant bodies are yet to be published), and at present it is not anticipated that there will be any need for applicants to copy their applications to any third parties (i.e. other regulators or law enforcement bodies) as part of the process. However, the licensing system is new, and experience may demonstrate that it would be sensible for a particular body to receive copies of all applications. This power has been reserved to permit the Secretary of State to prescribe accordingly. This is an entirely procedural matter, and the consequences of a failure to comply with the regulations is likely to lead to the application or any ensuing licence being invalid or, at most, a minor criminal offence. These regulations are subject to the negative resolution procedure which is considered sufficient given the nature of the power.
72. **Subsection (5)** provides a fee-setting power for the Secretary of State to prescribe application fees for operating licences, and to do so in a way which enables different fees to be charged for different classes of licence and different circumstances. This is a standard fee setting power, although some detail will be required to ensure that the right range and levels of fees are prescribed for all types of operating licence. The fees will require updating on a regular basis. This power is procedural in nature, and it is considered that it is suitable for the negative resolution procedure to apply.

Clause 65: Condition imposed by Secretary of State

73. Alongside the powers of the Commission to attach conditions to operating licences, the Secretary of State is to have power to make regulations that provide for a specific condition to be attached to a class of operating licence. **Clause 65** provides for this power.
74. There is no current intention to use this power, since, in general, it will be for the Commission to determine which licence conditions, both general and individual, it is appropriate to impose. However, it is considered prudent to retain a reserve power which would be akin to the power in Section 11 of the National Lottery Act etc. 1993 under which the Secretary of State has power to give directions to the National Lottery Commission about licence conditions. In this case, use of the proposed power would be via delegated legislation subject to the negative resolution procedure, whereas the 1993 Act direction-giving power is subject to no Parliamentary procedure at all. It is considered that the negative resolution procedure gives the appropriate degree of Parliamentary scrutiny.

Clause 67: Requirement for personal licence

75. This clause establishes the relationship between an operating licence and the need for the holder of such a licence to use people holding personal licences to undertake certain functions and offices within its gambling organisation. The clause identifies two types of position for which conditions about personal licensing may be imposed on an operating licence by the Commission (or the Secretary of State): a management office and an operational function. Subsections (5) and (6) define each term respectively. **Subsection (8)** allows the Secretary of State to amend these definitions by order.

76. It is not currently intended to use this order-making power. The definitions at subsections (5) and (6) are detailed and are intended to cover the full range of posts for which there needs to be a degree of regulatory control via personal licensing. However, it is considered important to provide the means for the type of posts covered by personal licences to be amended, either to include new offices or functions, or remove existing ones, in light of experience and future developments. The alternative to the power proposed would be to give the Commission a much wider discretion to require personal licences to be held by anyone it selected, and not to seek to define "management office" and "operational function" in the draft Bill. This was considered unsatisfactory, and the Bill gives Parliament the opportunity to consider the definitions both in the Bill, and in the event that the Secretary of State sought to make an order. The provision, being a form of Henry VIII clause, has been made subject to the affirmative resolution procedure.

Clauses 76 and 77: Pool betting operating licence & Horse-race pool betting operating licence

77. There are a number of different classes of operating licence established by clause 53 of the draft Bill. **Clause 76** provides for particular conditions to attach to a pool betting operating licence; and **Clause 77** makes similar provision for a horse-race pool betting operating licence. The need for such separate provision reflects the Government's intention that the Tote, if sold (under Part I of the Horserace Betting and Olympic Lottery Bill) to a consortium representing British horse racing, should retain an exclusive right to provide pool betting on such racing for a limited period. During this period there would therefore need to be a separate category of licence, granted under clause 77, once the draft Gambling Bill comes into force.
78. **Subsection (7) of Clause 77** enables the Secretary of State to repeal that clause by order. The Secretary of State's current intention is to do so 7 years after the start of the exclusive licence period established pursuant to the Horserace Betting and Olympic Lottery Bill. At that point it would be open to any holder of a pool betting operating licence (under clause 76) to provide pool betting on British horse racing and there will no longer be a class of operating licence solely for horserace pool betting.
79. In **clause 76(8)** a separate power is taken to permit the Secretary of State to amend the relationship between a pool betting operating licence and an occasional use notice under clause 28. Under clause 76 the holder of a pool betting licence may authorise persons (agents) to take pool bets, on their behalf, on tracks which are subject to an occasional use notice, but only if the activity at that track is horse or dog racing (and assuming the pool betting licence itself allowed pool betting on these events, which, in the case of horse-racing, it would not be until the repeal by order of clause 77). In other words, if a golf course wished to provide pool betting at an event, under an occasional use notice, the person providing the pool betting would be required to hold an operating licence himself under clause 76 in order to provide facilities at the golf course. He would not be able to rely on the authorisation procedure provided in clause 76(2).
80. The power provided at **clause 76(8)** allows the Secretary of State to amend this state of affairs, to change the types of events on a track for which an agent may be authorised to take pool bets (with an occasional use notice in force). For example, golf tournaments could be added to the list of events at clause 76(2)(e). At present there is no impetus to widen the authorisation provisions beyond horse and dog racing, but in due course this may change. Accordingly to give flexibility to cope with changed regulatory circumstances, the delegated power has been taken.

81. In relation to both powers described above the affirmative procedure is deemed appropriate given the effect of the power in changing primary legislation, as a form of Henry VIII clause.

Clause 79: Mandatory conditions of lottery operating licence

82. **Clause 79** contains particular conditions which attach to a lottery operating licence (not all lotteries require an operating licence to be lawful). For those lotteries which do require an operating licence, subsection (2) sets a minimum period which must elapse between the last sale of a lottery ticket and a draw which allocates a prize in that lottery. **Subsection (11)** enables the Secretary of State to amend that minimum period in regulations. Subsection (2) was intended to give effect to the Gambling Review Body's recommendation that there should be no more than one lottery draw a day on any premises, to prevent the growth of repeated fast-draw lotteries in social environments such as pubs and bars. The regulation-making power in subsection (11) would enable the minimum frequency of lotteries to be varied in the light of experience, so that the minimum period could be shortened if no evidence of harm were demonstrated. The ability to make a change by delegated legislation allows the Secretary of State to respond quickly in such circumstances, and the negative resolution procedure is considered appropriate given the technical nature of the regulations.
83. During the scrutiny process the Department has acknowledged that **subsection (2)** itself needs some adjustment, and as currently drafted could impose unnecessary restrictions on society lotteries. The need for **subsection (11)** in its current form will therefore be reviewed as part of that work.

Clause 80: Annual fee

84. Once an operating licence has been granted, the holder of the licence must pay a fee to the Commission for the licence to have effect ("the first annual fee"), and, thereafter must pay an annual fee to keep the licence in force for its ten year duration. The first annual fee must be paid within a prescribed period after the licence is issued. If any annual fee is not paid the Commission has the power to revoke the licence. These fees are separate from the application fee required when making an application for a licence. **Subsection (3)** gives the Secretary of State power to make regulations to set the fees and the period within which the first annual fee must be paid. Different fees may be set for different classes of operating licences and different circumstances.
85. The rationale for using delegated legislation to set such fees, and use of the negative resolution procedure is the same as that given for the fee-setting power described above in relation to clause 57(5) (application fees).

Clause 81: Change of circumstance

86. Detailed provision will need to be made which tells licence holders when they must notify the Commission about changes in their circumstances. Such a change may require an amendment to the particular licence concerned. Until the details of the application procedures, the form of the licence, and licence conditions are better established (these matters require the use of related delegated powers) it is not possible, nor would it be practical, for the Bill to set out the matters which need to be notified under this clause. In addition, consultation with the Gambling Commission (once it is established) will be needed to ascertain the extent to which the Secretary of State needs to set these matters by regulation under clause 81 (with its associated criminal sanction at subsections (6) and (7)), since the Commission can also introduce

its own procedural rules and licence conditions to achieve the same end. Accordingly, a delegated power for the Secretary of State to prescribe the changed conditions which must be notified has been provided at subsection (1).

87. This is a procedural matter relating to the detailed functioning of the licensing system, and the negative resolution procedure is considered to provide a sufficient level of scrutiny.

Clause 82: Change of corporate control

88. If the holder of an operating licence is a company limited by shares, a mechanism is needed to allow the Commission to approve a change of control of that company (i.e. following sale, transfer, allotment or issue of shares). This clause provides that mechanism. The clause applies to any kind of operating licence, but **subsection (12)** allows the Secretary of State to make regulations exempting specified kinds of operating licence from the requirement. In such circumstances a change of control could take place in relation to that licence without the need for any Commission approval.

89. There is no current intention to make regulations under this clause, but it is possible that, with experience of the operation of the new licensing system, the Commission could advise Ministers that the **Clause 82** requirement might safely be relaxed in the case, for example, of particular types of operator, such as operators with a small turnover. It is not considered that this power requires any greater level of Parliamentary scrutiny than that provided by the negative resolution procedure.

Clause 89: Initial duration

90. The duration of operating licences is intended to be a matter primarily for the Gambling Commission to determine. Clause 89 allows the Commission to set the duration of operating licences, up to a maximum period of ten years. Within this ten-year period, the Commission may determine different periods for different classes of operating licences (but may not set different periods for individual licences within a class).

91. **Subsection (5)** gives the Secretary of State power both to amend the overall maximum duration of 10 years for all operating licences, within which the Commission must work, and to prescribe the period for all, or classes of, operating licences, thereby removing the Commission's discretion to determine the length of a licence.

92. There is no current intention to use this power. However, it is needed, in reserve, to cater for circumstances in which either it becomes clear that operating licences can safely be granted for a longer period, bearing in mind the effective operation of the licence review procedures set out in Clause 94, or regulatory concerns about one or more sectors of the industry mean that a more frequent full re-licensing process would be prudent. This is a matter of some importance to the licensing structure, but it is considered that securing flexibility on this point, through a delegated power, is needed to ensure effective regulation. This power is to be exercised by order subject to the affirmative resolution procedure, and its use will not affect the position of licences already granted.

Clause 93: Renewal of licence

93. Holders of operating licences may apply to renew them at the end of their period of validity. Under clause 93 application for renewal may be made between one and three months before the licence would otherwise expire. **Subsection (8)** gives the Secretary

of State power to make an order amending the timing of the application for renewal of the licence.

94. This is a procedural matter, and there is no current intention to use this power. However the position may arise in the future where the Commission or the industry indicates that the timings are not suitable or practical, and at that point the Secretary of State can amend **subsection (8)** to substitute different periods. While the matter is an entirely procedural one, use of the power would effect amendment to primary legislation (a Henry VIII power) and therefore the affirmative resolution procedure has been adopted.

Clause 98: Levy

95. **Clause 98** empowers the Secretary of State to make regulations requiring holders of operating licences to pay an annual levy to the Commission, which is to be used by the Commission in supporting action to prevent or alleviate problem gambling, or any other action related to the licensing objectives at clause 1.
96. It is intended that this power will be exercised if and only if the industry as a whole fails to provide its independent charitable trust with an appropriate level of financial support on a voluntary basis. For this reason the draft Bill does not seek to implement a levy now, but leaves it as a matter for delegated legislation, should the need arise.
97. The power afforded to the Secretary of State allows her to prescribe the timing and amount of payments, and subsection (3) describes a number of alternative approaches the regulations can take to how the amount of the levy is to be determined. Once Parliament has approved the concept of a levy on licence holders at clause 98, it is not considered that the regulations setting out the technical detail of the arrangements need be subject to more than the negative resolution procedure.

Schedule 4: relevant offences

98. At a number of places in the draft Bill it is necessary for applicants or holders of licences to declare whether they have any criminal convictions. The Bill distinguishes between convictions for "relevant offences" (clause 101 (2)) and other offences, for a number of purposes. Schedule 4 lists those offences which are to be relevant offences, and **Part 2 of that Schedule** provides the Secretary of State with a power to amend the list of offences to add, vary or remove an entry.
99. The consequences of an offence being defined as a relevant offence are that:
- a. Under clause 100, such offences are not treated as spent within the meaning of the Rehabilitation of Offenders Act 1974 (c.53) when the Commission is considering an application for grant or renewal of an operating licence (clauses 57 and 59);
 - b. Under clause 92, a court can order forfeiture of a licence where the holder is being sentenced before it for a relevant offence; and
 - c. The Commission can take account of offences committed abroad by an applicant, where those offences equate to a relevant offence (clause 101 (2)).
100. The offences at Schedule 4 are deemed to be of sufficient seriousness to merit the particular treatment described above. The Department considers that this list is comprehensive and appropriate. Generally it is expected that the provisions of Schedule 4 can be kept up to date, where subsequent primary legislation amends a particular offence, by measures in that other primary legislation. However, to deal with

circumstances where the offences listed become obsolete or insufficient (which are expected to be rare) a power has been taken for the Secretary of State to amend Part 1 of Schedule 4. The order making power is to be exercised using the negative resolution procedure as the nature of the power is considered to be administrative.

PART 6: PERSONAL LICENCES

101. Part 6 establishes the licensing regime for personal licences to be held by persons employed by or providing services to gambling operators, where the individual holds certain offices or performs certain functions. The Gambling Commission will determine what posts within a gambling operation require a personal licence, within the terms of clause 67.

Clause 103: Application of provisions of Part 5

102. The licensing regime for personal licences is to be based, so far as possible, upon that established for operating licences under Part 5. Much of the regulatory detail, in terms of procedures, fees, information exchange, duration, retention, renewal and review of a personal licence can, and should, be similar to that established for operating licences, including, where appropriate, the use of delegated powers. This approach will enable the Commission, gambling operators, and individuals to work with uniform provisions, save where the Commission or the Secretary of State consider that different provision is necessary.

103. To achieve this position, clause 103 provides that the provisions of Part 5 shall apply to personal licences, subject to the other clauses in Part 6, and any other necessary modifications. **Subsection (2)** provides that wherever regulations have been made pursuant to Part 5, they may make different provision in respect of personal licences. **Subsection (2)** does not, of itself, provide a separate regulation-making power, but adds, to those powers identified in Part 5, the additional proviso that such regulations may deal with personal licences separately from operating licences.

104. Therefore, the delegated powers already described in Part 5 apply equally to personal licences, subject to what is said below and subject to the fact that some aspects of Part 5 can only apply to operating licences by virtue of the content of the clause. It is not thought necessary to undertake a further analysis of the Part 5 provisions as they apply to personal licences. No additional or different justification for taking delegated powers has been identified for personal licences.

105. The remainder of the clauses in this Part deal with particular modifications to Part 5 which are necessary for the regulation of a personal licence.

Clause 104: Exemption for small-scale operators

106. Under clauses 62, 64, 65 and 67, conditions may be attached to an operating licence requiring personal licences to be held in connection with that licence, and by virtue of clause 67(1) it is compulsory for at least one personal licence to be held by an operator. However, Government policy is that where an operator is a small organisation i.e. with only a few employees or a very small turnover, there is no regulatory need to require him to hold a personal licence in addition to his operating licence. The fact that a small operator has been granted an operating licence will be sufficient, it is considered, to establish the suitability of the operator and his staff, and personal licences in addition would be over-regulation.

107. Accordingly, clause 104 exempts small-scale operators from the requirement to hold a personal licence, and subsection (2) gives the Secretary of State power to prescribe by regulations the meaning of "small-scale operator". Subsection (3) sets out the criteria which are likely to be used e.g. the size or value of business carried on or the number of persons employed.
108. The Secretary of State will wish to consult the Gambling Commission before exercising this power, in order to take advantage of the Commission's expertise and ensure that the right criteria for a "small-scale" operator are set. Moreover, the criteria may change over time, and therefore amendment to the regulations may be required to achieve the right regulatory balance for personal licences. In light of this it is not considered prudent, or practical, to place a definition on the face of the Bill, and the delegated power has been taken accordingly. The negative resolution procedure is considered appropriate because the regulation-making powers are limited to stating who is to be a "small-scale operator". The consequences of being so defined are set out in the clause.

Clause 106: Initial duration

109. This clause provides that, subject to the provisions in Part 5 relating to surrender, lapse, forfeiture and renewal of the licence, all personal licences will be valid for ten years. This means that, in contrast to operating licences, the Commission will not be able to set different periods for different types of personal licence. Subsection (2) gives the Secretary of State power, by order, to replace this with a different duration. Any such order will not, however, affect licences already issued.
110. It is not currently intended to use this power, which provides flexibility in the event that circumstances demonstrate the period to be insufficient or too long. Use of this power would alter the structure of the licensing system, and effect an amendment to primary legislation and therefore the affirmative resolution procedure applies.

Clause 111: Renewal

111. This clause provides that, subject to the provisions in Part 5 relating to surrender, lapse and forfeiture, a renewed personal licence is to be valid for ten years. Subsection (2) gives the Secretary of State power to revise this term by order. The same considerations apply as for clause 106 (initial duration).

PART 7 AND SCHEDULE 5: OPERATING AND PERSONAL LICENCES APPEALS

112. Part 7 of and Schedule 5 to the draft Bill deals with appeals from decisions of the Gambling Commission to a new appellate body – the Gambling Appeal Tribunal.

Clause 122: Rules

113. This clause gives the Secretary of State the power to make rules regulating the exercise of the right of appeal to the proposed Gambling Appeal Tribunal, and about practice and procedure in relation to proceedings before the Tribunal. Rules made under this power may specify that certain classes of person are or are not eligible to be parties to Tribunal proceedings. Responsibility for the rules is expected to rest with the Department for Constitutional Affairs.
114. A non-exclusive list of the matters which may be covered by the rules is set out in **paragraph 14 of Schedule 5**. This paragraph provides that such rules may include provision for: the manner in which appeals are instituted; the President or member of the panel of Chairmen to determine interlocutory or other ancillary matters; suspension by the Tribunal of Commission decisions; disclosure; joining the

Commission to proceedings; public admission to proceedings; representation of parties; withdrawal of proceedings; the recording and promulgation of decisions; and the award of costs or expenses.

115. Rules made under this power will cover issues of practice and procedure, rather than substantive matters such as the burden of proof. It is considered appropriate for detailed procedural matters of this kind to be included in subordinate legislation, enabling amendments to be made as necessary in the light of experience or developments affecting tribunals generally. This approach has been taken by other Departments setting rules for comparable Tribunals - see, for example, the Immigration Services Tribunal Rules 2000 (SI 2000/2739). Although some degree of Parliamentary scrutiny of such procedural requirements is desirable, the negative resolution procedure is considered sufficient.

PART 8: PREMISES LICENCES

116. In addition to operating and personal licences, gambling operators will require a licence from a local authority (a "licensing authority") where they provide facilities for gambling on premises. Part 8 establishes the regime for such premises licences.

Clause 124: Form of licence

117. In order to provide facilities for gambling on premises, it will be necessary to hold a premises licence from the licensing authority. This clause sets out the information which a premises licence must include. **Subsection (2)** gives the Secretary of State power to make regulations about the form and content of such licences. In particular, the regulations may provide that any conditions attached to the licence must be set out on the licence. This power will enable the Secretary of State to require all licences to contain the key information necessary to enable the licensing authority to ensure compliance with them, which may of course change over time.
118. These are matters of form and procedure, and for the same reasons as given in respect of the power in clause 54, it is considered that this is an appropriate matter to be set out in delegated legislation and that the negative resolution procedure will provide an appropriate level of Parliamentary scrutiny.

Clause 126: Three-year licensing policy

119. This clause requires licensing authorities to publish a statement of licensing policy every three years. In the statement the licensing authority will set out the principles which they propose to apply in carrying out their functions in relation to the licensing of premises used for gambling.
120. **Subsection (4)** gives the Secretary of State the power to make regulations concerning the form and publication of such statements, and the procedure required to be followed in their preparation, review or revision. These are matters of form and procedure, and it is considered therefore that it is appropriate for such matters to be set out in delegated legislation and that the negative resolution procedure will provide an appropriate level of Parliamentary scrutiny.
121. **Subsection (5)** gives the Secretary of State a duty to appoint a day from which the first three-year period commences. All licensing authorities will be required to determine their licensing policy and to publish a statement of that policy before the new regime is implemented, and individual licensing applications are made. This is necessary, because

when determining such applications, each licensing authority will be bound to act in a way consistent with its own policy. It is therefore intended that this provision will be brought into force before those provisions of the Bill which introduce the substance of the new regime.

122. An order made under this subsection will be subject to the negative resolution procedure. It is considered that this level of Parliamentary scrutiny is appropriate, because the order will only specify a date on which a period begins to run, which is comparable to the effect of a commencement order.

Clause 129: Register

123. This clause requires licensing authorities to maintain registers of premises licences, together with other such information as may be prescribed. The aim of the register is to make information readily available for public inspection.
124. **Subsection (3)** enables the Secretary of State to make regulations about the form of the register and how it is maintained. It is likely that immediate use will be made of this power, to establish a measure of consistency across licensing areas, but there has as yet been no discussion with the local government representative bodies about what such regulations might include.
125. **Subsection (4)** enables the Secretary of State to make regulations requiring licensing authorities to give the Gambling Commission specified information concerning premises licences and to require the Gambling Commission to maintain a register of this information, with public access. Use of this power will be kept under review, and activated if there is a perceived need for a central source of information, accessible by the public. Regulations made under this power can exempt licensing authorities, wholly or partly, from the requirement to maintain, and make public, their registers.
126. Both of the powers under this clause concern matters of form and procedure, and it is considered therefore that it is appropriate for such matters to be set out in delegated legislation, and that the negative resolution procedure will provide an appropriate level of Parliamentary scrutiny. In particular, in relation to the power to make regulations concerning the form and maintenance of the register, by leaving the detail of these matters to a power, the Secretary of State will have the flexibility to react swiftly to take account of any future changes in circumstances and in local government practice, and developments in record-keeping technology.
127. Similar register-keeping provisions, including the option for the Commission to keep central registers, are provided in Part 9 (temporary use notices), Schedule 6 (category D gaming machine permits) and Schedule 9 (club gaming and club machine permits).

Clause 130: Responsible authorities

128. This clause identifies the authorities who are 'responsible authorities' for the purposes of this Part, including the chief officer of police and the fire authority for the area in which the premises are situated. These authorities have, amongst other things, the right to make representations concerning licence applications. **Subsection (1)(i)** gives the Secretary of State power to make regulations to add additional persons to that list. It is considered that secondary legislation is suitable for these matters because the Secretary of State will need to have the flexibility available to add the necessary persons to the list, should future circumstances require. There is no current intention to use this power, which would be available to reflect, for example, a change in the community's safety and public order priorities, or should new relevant authorities come

into being as a result of changes in the law. Given that these are essentially operational matters that do not go to the essential framework of the Bill, it is considered that the negative resolution procedure is appropriate.

Clause 132: Making of application

129. This clause provides for the way in which applications for premises licences must be made. Subsection (6) provides that an application must be made in the prescribed form and manner, accompanied by the prescribed information or documents, and the fee. It will be necessary for such regulations to be made at the outset, although there have not yet been discussions with interested bodies about their content.

130. Since these are operational matters concerning administrative details for the new regime, which may need to be changed over time, it is considered appropriate for these to be set out in delegated legislation. The Department considers that the negative resolution procedure will provide an appropriate level of Parliamentary scrutiny. The fee-making power is an entirely standard power.

Clause 133: Notice of application

131. This clause empowers the Secretary of State to make regulations setting out the detail of the arrangements which applicants for premises licences must follow in relation to the requirements to give notice of his application. It will be necessary for such regulations to be made at the outset, although there have not yet been discussions with interested parties about their content.

132. Again, these are operational matters concerning administrative details for the new regime, which may need to be changed over time. It is considered therefore that these are appropriate matters to be set out in delegated legislation, and that the negative resolution procedure will provide an appropriate level of Parliamentary scrutiny.

Clause 134: Representations

133. This clause provides for interested parties and responsible authorities to make representations concerning applications. **Subsection (2)** empowers the Secretary of State to make regulations setting out the period of time in which such representations must be made.

134. It will be necessary for such regulations to be made at the outset. It is considered appropriate to delegate the length of the period to be prescribed under this clause to subordinate legislation, as it is a matter of detail and one which may require amendment in the light of further experience and changing circumstances. For example, the period may need to be made longer if, in practice, it emerges that the time-period is too short to enable interested parties and responsible authorities sufficient time to prepare adequate submissions. Given that it is a matter of procedural detail, it is submitted that the negative resolution procedure provides an appropriate level of Parliamentary scrutiny.

Clause 139: Mandatory conditions

135. A key part of the regulatory system is the attachment of conditions to premises licences. This clause gives the Secretary of State power to make regulations which require all or specified kinds of premises licences to include a specified condition. Regulations may make provision which applies generally, or only in specified circumstances. This is parallel to the power in relation to operating licences under Clause 65. There is no intention to use this power widely, although the need for one mandatory condition has been identified. The Department proposes to make it a

condition of all premises licences for horserace courses that holders of general betting licences who operate on the course should not be charged more than five times the normal public admission charge for entry to the course. This is an equivalent provision to that contained in section 13 of the Betting, Gaming and Lotteries Act 1963. The Government has stated its intention to maintain this condition for a limited transitional period only, probably 5 years.

136. While this power does not in itself create a criminal offence, it should be noted that should such regulations be made imposing a mandatory condition upon all, or certain categories of, licence, breach of such a condition will bring the matter within the offence under clause 26 (use of premises). Nonetheless, it is considered appropriate to adopt the negative resolution procedure.

Clause 140: Default conditions

137. **Clause 140** provides for the Secretary of State to make regulations which would specify conditions to be attached to premises licences, unless the issuing licensing authority positively decides – by reference to the licensing objectives in Clause 1 – to exclude the condition. Regulations may make different provision for different circumstances, and may make provisions to apply to all premises licences, or only to those in a specified class, or in specified circumstances.
138. It is envisaged that this power will be used to set default conditions for the opening hours which will apply to premises on which gambling is provided. In the Government's view it would be desirable to put in place a flexible set of regulations concerning opening hours. The Department currently intends that, in general and unless a licensing authority has reason to take a different view in relation to specific premises in its area, regulations under **Clause 140** should provide for licensed bingo premises to be open – if their operators so wish – between 7am and midnight on any day; for licensed betting premises to be open between 7am and 10pm on any day; and for casinos to be open at any time.
139. These provisions would be flexible, since it would be open to a licensing authority to decide – having regard to the views of the operator, responsible authorities and interested parties – to attach conditions stipulating longer or shorter hours, either permanently or for a specified period. The default conditions would establish a benchmark against which the case for variations could be assessed on an individual basis. An authority can use clause 141 to alter the effect of a default condition.
140. It is considered appropriate to delegate the provisions to be made under this clause to subordinate legislation, since the regulations are expected to prescribe detailed and complex requirements relating to different types of premises or circumstances. The flexibility subordinate legislation affords is considered essential, to allow for amendments to be made to the regulations if, for example, circumstances were to arise which indicated that this pattern of opening had undesirable consequences. Under this clause, the Secretary of State will be empowered to make regulations setting licence conditions, breach of which will constitute an offence. For the same reasons as set out in relation to clause 139 it is considered that the negative resolution procedure should apply.

Clause 142: Gaming machines

141. **Clause 142** sets out the basic entitlements for licence holders to install gaming machines on different kinds of licensed premises. For example, a premises licence for a 'family entertainment centre' will authorise the holder to make unlimited gaming

machines in categories 'C' and 'D' available on those premises. **Subsection (10)** gives the Secretary of State power to amend these entitlements by order.

142. There is no current intention to use this power. However, it is considered necessary to reserve this power to allow the Secretary of State flexibility in case experience confirms that the machine entitlements can safely be enlarged or alternatively need to be restricted. It is, for example, conceivable that the number of gaming machines allowed in small casinos might at some future point be increased from three to four per table without risk of harm, in the light of the Commission's monitoring of the position.
143. The clause provides for a Henry VIII power, in that it permits the Secretary of State by order to make amendment to provisions of the Bill, as enacted by Parliament. Use of the power would have a material impact on the way in which the licensing system works. The Department considers that the greater degree of scrutiny offered by the affirmative resolution procedure is appropriate in this instance, allowing Parliament a proper opportunity to debate each order made under this clause.

Clause 145: Pool betting on track

144. Where a betting premises licence is held in respect of a horse or dog track, this clause allows the licence holder to provide or arrange for pool betting to be available in respect of the horse or dog racing. This provides an exception to the general prohibition on pool betting at other kinds of licensed track such as a football ground. **Subsection (3)** gives the Secretary of State power to make an order to add, amend, or remove an exception.
145. There is no immediate intention to use this power. The view currently held by Government is that the right to offer pool betting on tracks should not be extended beyond that which currently allowed under section 4 of the Betting, Gaming and Lotteries Act 1963, which this Bill will repeal. The clause preserves the current position. The justification for reserving this power is the wish to provide flexibility, so as to be able to respond to changing circumstances, should experience show that it is necessary to limit or expand this exception, or to withdraw it entirely.
146. This power allows for exceptions to the provision at clause 145(1) to be added, amended or removed, thereby allowing changes to be made directly to primary legislation. For this reason, it is considered that the negative procedure sufficient Parliamentary scrutiny. Should such an order be sought, it is considered appropriate for the affirmative resolution procedure to apply.

Clause 146: Exclusion of children from track areas

147. This clause imposes a mandatory condition on all premises licences in respect of tracks, for the licensee to ensure that persons under 18 years old are excluded from areas where betting facilities or certain types of gaming machines are provided. The clause recognises, however, as an exception to this general rule, that the obligation to ensure that children and young persons are excluded from the areas where betting facilities are provided should not apply in respect of horse or dog race-courses on race days. The reason for this exception is that such race-courses are laid out and run in such a way that betting facilities are not confined to discrete areas but are dispersed or integrated in such a way that application of the general rule would in practice prevent family participation in race going.
148. **Subsection (4)** gives the Secretary of State power to make an order to add, vary, or remove the exception. There is no current intention to use this power, it is considered

necessary to reserve it however in order to provide flexibility, so as to be able to respond to changing circumstances, should experience show that it is necessary to limit or expand this exception, or to withdraw it entirely. It is conceivable that, for example, football clubs might wish to reorganise their facilities in a way that brought them more into line with racecourses. In this case, and subject to the Gambling Commission's assessment of risk in the light of arrangements to be made by the clubs to ensure that children and young people did not get involved in betting, it would be possible to use the **subsection (4)** power to allow them to do so. For the same reasons as explained in relation to the power at clause 145, we consider that the negative procedure does not provide an appropriate level of Parliamentary scrutiny, and it is appropriate for the affirmative resolution procedure to apply.

Clause 148: Annual fee

149. **Clause 148** provides for premises licence holders to pay annual fees. **Subsection (3)** gives the Secretary of State a power to make regulations prescribing the fees. **Subsection (4)** provides a power to make regulations covering refunds or additional payments in certain circumstances. This is a standard fee-setting power, consistent with the other equivalent powers in the Bill.

150. The power enables the Secretary of State to make different provision for different circumstances, or for licences authorising different classes of activity. It is not considered appropriate to include this level of procedural detail on the face of the legislation. A further reason for these matters being left to delegated legislation is that fee amounts will need to be changed over time. The negative resolution procedure is considered sufficient.

Clause 150: Change of circumstance

151. **Clause 150** requires the holder of a premises licence to notify the licensing authority of a change of home or business address. **Subsection (2)** gives the Secretary of State power to make regulations requiring holders to notify in addition such other changes of circumstance as may be prescribed. There is no current intention to use this power, but it provides flexibility in case it is later considered that there are other matters which the licensing authority needs to be made aware of, in order to properly conduct their regulatory responsibilities. Since this is an administrative matter, it is considered appropriate for the negative resolution procedure to apply.

Clause 151: Application to vary licence

152. This clause provides for premises licence holders to apply for their licences to be varied by altering the activities the licence authorises, changing the conditions of the licence, or altering some other detail of the licence. The procedure for variation of a licence will be the same as the procedure for initial application for a licence, except where the Secretary of State makes regulations to allow for different procedures. For example, it should not be necessary for some information or documents which have already been supplied to the licensing authority to be supplied again in relation to an application to vary the licence.

153. **Subsection (4)** provides that where regulations are made under Part 8 in relation to an application for a premises licence, they may make separate provision only to apply in relation to an application for variation. It will also be possible under this power to make different provision in relation to applications for variations of different kinds.

154. It is submitted that regulations made under this power will contain detailed provision as to procedural matters, for which primary legislation would be unsuitable. A further

reason for the use of delegated legislation is that it is likely that it will be necessary to update or amend these procedures from time to time. We consider that the negative resolution procedure will provide the appropriate level of Parliamentary scrutiny.

Clause 153: Transfer – Supplemental

155. This clause supplements clause 152, which makes provision concerning the procedure by which a person may apply to the licensing authority for a premises licence to be transferred to him. Under this clause, subject to certain exceptions and necessary modifications, the provisions in this Part concerning application for a premises licence also apply in relation to an application for transfer.

156. **Subsection (4)** provides that regulations made under clause 133 (notice of application), as they have effect in relation to an application to transfer a licence, may require that notice must be given to specified responsible authorities. Please refer to the comments concerning the power in clause 133.

Clause 154: Copy of licence

157. This clause provides that where a premises licence or a summary of the terms and conditions of the licence, is lost, stolen or damaged, the applicant can apply for a further copy. **Subsection (2)** provides that this application must be accompanied by a prescribed fee. This is a standard fee-setting power, subject to the negative resolution procedure.

Clause 155: Initial duration

158. This clause provides that premises licences are not subject to a predetermined limit of time, unless the Secretary of State makes regulations under **subsection (1)** which prescribe such a limit. Regulations may make provision relating to the renewal of a licence, and may make provision applying to licences issued before the regulations were made.

159. There is no current intention to use this power, so the present policy is that a premises licence under the Bill will run indefinitely, unless it has ceased to have effect in accordance with another provision under this Part, for example, following review of the licence. It is thought necessary, however, to reserve the power in Subsection (1) in case experience demonstrates that it would be preferable to undertake a full re-licensing process periodically. Since this is an administrative matter, it is considered that the negative resolution procedure will provide sufficient Parliamentary scrutiny.

Clause 160: Reinstatement – Supplemental

160. The power at **subsection (3)** enables regulations made under clause 131 in relation to reinstatement of a licence to provide that notice must be given to specified responsible authorities. This has the same effect as the analogous power at clause 153(4) in relation to transfer. Please refer to the comments concerning the power in clause 133.

Clause 161: Application for review

161. **Clause 161** provides that a responsible authority or an interested party may apply for a review of a premises licence, as a result of which sanctions can be imposed by the licensing authority, such as revocation of the licence, or the addition of conditions. 'Responsible authorities' are the persons listed at clause 130 of the Bill who have particular rights to be involved in or consulted in relation to premises licences, for example the chief officer of police or the fire authority for the area in which the premises are situated. 'Interested parties' are persons who live close to the area affected, or have business interests which might be affected. This clause sets out the

parameters for making an application, the detail of which is to be supplied by delegated legislation.

162. **Subsection (2)** provides that an application for review must be made in the prescribed form and manner, and be accompanied by the prescribed information or documents. **Subsection (3)** gives the Secretary of State power to make regulations requiring applicants to give notice to licensees and responsible authorities. **Subsection (4)** provides that regulations may be made requiring licensing authorities to publish notices of applications for review. Regulations under these subsections will be required to set out the detailed procedural requirements to apply, in a way which strikes a fair balance between the interests of licence holders and those seeking a review. The level of detail required means that this material is not suitable for the draft Bill itself, plus further work needs to be undertaken by the Department to determine the proper content of the various regulations. A delegated power has been provided accordingly.
163. The regulations are administrative in nature, and it is considered that the negative resolution procedure is appropriate.

Clause 164: Initiation of review by licensing authority

164. This clause provides for a licensing authority itself to initiate a review of a premises licence. **Subsection (4)** gives the Secretary of State the power to make regulations governing the arrangements for a licensing authority to give notice of such a decision, with a view to ensuring that licence holders, responsible authorities and interested parties have a proper opportunity to make representations about the review. Similar considerations apply to regulations under this clause as to those under Clause 161.

PART 9: TEMPORARY USE OF PREMISES

165. Part 9 sets out the rules for temporary use notices, which are a form of permission for using non-gambling premises for gambling on a temporary basis.

Clause 176: Nature of notice

166. **Clause 176** gives the Secretary of State power to specify the types of gambling activity that may be authorised by means of a temporary use notice. It is not intended that all forms of gambling should be capable of being the subject of a temporary use notice. The power will be exercised, therefore, to permit only certain gambling activities to be covered by Part 9.
167. Such restrictions could be secured through the Bill, but, as in other areas, the Government thinks flexibility on this question to be more appropriate, particularly given the fact that these temporary authorisations are a new measure. In the first instance, the Government intends to use this power to make possible the temporary offering of some forms of gaming. Thereafter, further types of gambling may be added, if there is a demand and there is no regulatory risk attached to the addition. There are already arrangements in the Bill for betting on tracks that take place on a small number of days each year, to be permitted under the occasional use notice.
168. The power will be exercised using the negative resolution procedure, which it is considered provides the appropriate degree of Parliamentary scrutiny.

Clause 177: Form of notice

169. **Clause 177** gives the Secretary of State a power to specify in regulations the form of, and information to be contained in, a temporary use notice. Subject to the matters

listed in clause 177(2) which will be required, it is thought appropriate to leave the remaining administrative matters concerning notices to secondary legislation. This allows the necessary changes to be made to the forms and other matters over time, and avoids placing unnecessary procedural detail on the face of the Bill. Being administrative in nature, the negative resolution procedure applies to the use of these regulations.

Clause 180: Giving notice

170. **Clause 180** gives the Secretary of State a standard power to specify in regulations the fee that must accompany a temporary use notice. As with the other fee-making powers in the draft Bill (and for the reasons stated, see for example clause 57), it is thought it appropriate that this matter is dealt with in secondary legislation, pursuant to the negative resolution procedure.

Clause 185: Counter-notice

171. **Clause 185** allows for the relevant licensing authority to issue a counter notice against the original temporary use notice, to invalidate it or to alter its effect, in certain situations. **Clause 185** allows the Secretary of State to prescribe the form that such counter notices should take and what information should be included. The reasons for this power, and its procedure are the same as for clause 177 above.

Clause 188: Endorsement of notice

172. **Clause 188** provides for the approval (or 'endorsement') of a temporary use notice by the licensing authority. The Secretary of State has power to specify through regulations the way in which the temporary use notice should be approved and then returned to the applicant. The reasons for this power and its procedure are the same as for clause 177 above.

Clause 193: Register

173. **Clause 193** allows for the maintenance of a register of temporary use notices issued by each licensing authority. **Clause 193** also allows for regulations that require the Gambling Commission to maintain such a register, collating information supplied to them by licensing authorities. The basis for taking these powers, and their procedure is the same as set out for the powers associated with registers of premises licences at clause 129.

PART 10: GAMING MACHINES

174. Part 10 and Schedule 6 of the draft Bill contain provisions regulating the use and manufacture of gaming machines.

Clause 194: Gaming machine

175. This clause provides a new statutory definition of "gaming machine". The definition is intended to capture the full range of machines which are used today for the purposes of gambling, some of which are not caught by the present definition of gaming machine in section 26 of the Gaming Act 1968, but which, in the Government's view, should be. The definition gives gaming machine a broad meaning, and then excludes certain machines which should not be brought within the definition. One of these exclusions, at **subsection (2)(a)** is that a domestic or dual use computer is not a gaming machine merely because it is used to participate in remote gambling. **Subsections 3(f) and 4** give the Secretary of State the power to assign meanings to the terms "domestic computer" and "dual-use computer" in regulations.

176. The policy intention behind this provision is to ensure that a computer located at home, on which a family member can access, for example, internet gambling is not turned into a gaming machine. Equally, where a computer can be used partly in the workplace for accessing gambling, but its main purpose is to facilitate the work of an employee e.g. by word-processing and email, it is not intended that such a machine should be treated as a gaming machine. To lay out the detail of the factors which make something a domestic or dual use machine on the face of the Bill is considered impractical and inappropriate. The definitions will need to refer, at a minimum, to where the computer is sited, the purposes for which it is used, how it is used, and what software it contains. It is submitted that this detail is best contained in regulations made by the Secretary of State.
177. Moreover, with the development of technology such definitions need to be able to keep pace with modern computers (and their usage) to ensure that regulation of gaming machines neither has loop-holes nor is too burdensome. For these reasons the delegated power has been taken, to be exercised using the negative resolution procedure. It is submitted that **clause 194** itself provides sufficient parameters to make the use of these regulations a technical exercise, which, while important, does not need to be subject to a greater degree of Parliamentary scrutiny.

Clause 195: Gaming Machines: Categories A to D

178. The regulation of gaming machines in the Bill is premised on their being different categories of machine for use in different locations and by different ages of user. For example, category A machines may only be used in casinos, and Category D machines are the only class of gaming machine that can be used by children and young people. Consideration has been given to setting out the details of the categorisation in the Bill itself. Two factors mitigate against this: first, the categorisation will be technically detailed, referring to the stakes which can be used on the machines, the value and the nature of its prizes, and the premises where the machine is located, as the variables for the categorisation. Secondly, these variables require regular updating to take account of inflation and costs, and to ensure a proper balance between the commercial operation of machines and the protection of users.
179. Evidence that this is the case is provided by the existing regulation of gaming machines under the Gaming Act 1968. Sections 31, 32 and 34 of the 1968 Act set out the variables for the three types of gaming machine, and the Secretary of State has power to amend the matters set out there by regulations pursuant to the negative resolution procedure. The Department has needed to use such powers relatively frequently, there being five separate statutory instruments currently in force (and introduced between 1997 and 2001) pertaining to the stakes and prizes of different types of gaming machine. There have been no concerns about the exercise of these powers by statutory instrument, but the complexity of the resulting provisions on the fact of the 1968 Act has been a further impetus for the Department to remove these technical matters of categorisation entirely from primary legislation to delegated legislation.
180. Accordingly, **clause 195** gives the Secretary of State powers to make regulations prescribing four categories of machine, A to D, and also identifying matters about which licence conditions cannot be made. This latter power will ensure the requirements for categories of machine are not undermined or changed by any condition placed on an operating or premises licence by the Commission or a licensing authority respectively.

181. The regulations under clause 195 are to be made using the negative resolution procedure. The Bill sets out the full regime for regulation of the different categories of machine (i.e. when, where, maximum numbers and by whom each category of machine can be used), and the purpose of the regulations is to provide the technical detail for precise identification of each type. Accordingly, it is submitted that this procedure provides an appropriate degree of scrutiny, and has done so for the existing law since 1968.

182. The policy document published by the Department in November 2003 contained details of the proposed categorisation of the four types of gaming machine (paragraphs 5.52 to 4.58). Table A summarises the current proposals for the regulations:

TABLE A

| Category | Location (clauses 142 and 205) | Limits |
|----------|--|--|
| A | Casinos only (numbers subject to category of casino) | Unlimited stakes and prizes – may be linked within the casino to create potential large jackpots, but not between casinos (clause 203) |
| B | Casinos plus Bingo premises (up to four), betting offices (total of 4 machines of any category), adult gaming centres (up to four), or clubs or miners' welfare institutes (total of 3 machines of any category) | Maximum stake £1; maximum prize £500, or £250 in clubs and miners' welfare institutes. A policy issue remains outstanding on whether the maximum stake will be raised for some of these premises. |
| C | Casinos, bingo premises, betting offices (total of 4 machines of any category), adult gaming centres, clubs or miners' welfare institutes (total of 3 machines of any category) plus Licensed family entertainment centres, pubs and other premises with an alcohol on-licence | Maximum stake 50p, maximum prize £25. |
| D | Casinos, bingo premises, betting offices (total of 4 machines of any category), adult gaming centres, clubs or miners' welfare institutes, (total of 3 machines of any category) pubs and other premises with an alcohol on-licence, plus All family entertainment centres (including seaside arcades, bowling alleys, motorway services and theme parks) and other non-gambling outlets such as cafes, fish and shop shops, takeaways, cab offices, etc (all with category D permits (clause 205)) | Maximum stake 10p, maximum prize £5 (Where the machine pays out non-money, non-exchangeable prizes the maximum stake will be 30p but the maximum prize remains £5) |

Clause 199: Use of machine

183. An important aspect of the regulation of gaming machines are the rules which control how the machine operates and is used. At present these rules are contained in the Gaming Act 1968. Experience has shown that placing the detail in primary legislation has provided an inflexible tool for this form of regulation. A recent regulatory reform order (The Regulatory Reform (Gaming Machines) Order 2003 SI 2003 No. 3275)

illustrates the type of complex issue which has had to be dealt with in relation to the use of gaming machines.

184. The Department wishes to ensure that the regulation of gaming machines takes place in a manner which allows amendment to be made to the detailed rules relatively easily and swiftly, to respond to technological changes and commercial needs. However, it is not considered appropriate to delegate these matters to the Commission for inclusion in its codes or licence conditions. Instead, **clause 199** gives the Secretary of State power to make regulations which control the circumstances in which a gaming machine (of any category) is made available for use. This will include provisions on:

- a. The method by which stakes may be deposited e.g. by coin or banknote, smart-card or token;
- b. The nature of prizes and how they may be claimed e.g. whether delivered by the machine or offered in redeemable vouchers;
- c. Whether and how much stakes and prizes can be rolled over between games; and
- d. How information is displayed on the machine.

185. As with the powers under clause 195, such regulations can include identification of matters on which a condition cannot be attached to a licence, and the regulations are to be made using the negative resolution procedure. The regulations are technical in nature and it is considered that the negative procedure will provide sufficient Parliamentary scrutiny.

Clause 200: Supply, &c.

186. One category of operating licence is designed for persons who manufacture, supply, install, adapt, maintain or repair gaming machines: the gaming machine technical operating licence (clause 53). While licence conditions will be the primary regulatory tool for such activities, a power has been taken to make regulations about the supply, installation, adaptation, maintenance or repair of gaming machines should it prove necessary to introduce general provisions, and to identify matters where a condition cannot be attached to a licence. There is no current intention to use this power.

187. Regulations under this power are suitable for the negative resolution procedure.

Clause 207: Single-machine supply and maintenance permits

188. Much of the regulation set out in Part 10 is aimed at commercial operators who wish to manufacture or supply machines or offer them for use. However, there are people who wish to handle gaming machines as a hobby, or as a collector e.g. of antique machines. Such people do not present a risk, and in order to allow them to continue to conduct these activities **clause 207** sets out a procedure which enables someone to obtain a permit from the Commission authorising them to supply, repair, install or maintain a particular machine. In order for the Commission to process the application a prescribed fee has to be paid. The Secretary of State may make regulations prescribing the fee on the same basis as the other fee-making powers described in this memorandum.

Schedule 6

189. Schedule 6 provides the procedure for licensing authorities to issue category D gaming machine permits, pursuant to section 205 of the Bill.

190. **Paragraphs 5(e) and 19(2)** (read together with paragraph 1) contain fee-making powers for the Secretary of State in relation to an application for a permit, and an application for a copy of a lost, stolen or damaged permit. In both cases the fees are set by regulations pursuant to the negative resolution procedure, and the justification is the same as for all other fees under the draft Bill.
191. As was the case with premises licences, licensing authorities are required to maintain registers of category D permits and the Secretary of State may prescribe what additional information the register must contain, and the form and manner in which it is kept (**paragraphs 21(1)(a) and 3**). Moreover, the Secretary of State may make regulations excusing authorities from the requirement to keep registers, requiring licensing authorities to send specified information about permits to the Commission and requiring the Commission itself to maintain and give access to registers on this matter (**paragraph 21((4))**). The use of and basis for these powers is the same as that set out for clause 129.

PART 11 and SCHEDULES 7 and 8: LOTTERIES

Clause 208: Lottery

192. This clause sets out the definition of a lottery under the Bill. Arrangements which fall within the definition must be licensed by the Gambling Commission, unless the arrangement falls within one of the categories of 'exempt' lotteries. The definition is made up of three elements: an arrangement is a lottery if it consists of a scheme for which payment is required to enter, for a prize, which is allocated by chance.
193. The definition in **Clause 208** is the first statutory definition of a lottery in G.B. law. It is considered, however, that the definition will not necessarily cover all arrangements which the Government would wish to class as a lottery, and that having a rigid definition might create a loophole for avoidance.
194. **Clause 208(6)** provides a power for the Secretary of State to prescribe types of schemes which will qualify as lotteries for the purpose of the Bill even though they fall outside the definition in Clause 208. Such a power is considered necessary since it is regarded as essential that flexibility is preserved in order to be able to respond rapidly to attempts to devise schemes which fall outside the definition. There is no immediate intention to use this power, and it is in the nature of the issue that it is not possible to predict the exact circumstances in which it will be employed. It is considered that this is not something which will have a substantial effect on the substance of the legislation however, and that the negative resolution procedure therefore provides an adequate level of scrutiny.

Schedule 7

195. Schedule 7 makes further provision to clarify the meaning of 'payment to enter' which is one of the three elements of the definition of lottery at clause 208. At **paragraph 8**, it is provided that regulations under clause 208(6) may, in particular, provide that an activity of a specified kind or performed in specified circumstances is to be or not to be treated as paying to enter a lottery. This simply gives additional particularity as to the scope of the power at 208(6).

Schedule 8 Part 5: Registration with local authority

196. In order to operate lawfully as a lottery, where the lottery is run by a non-commercial society, it must either be licensed by the Gambling Commission if it is a 'large' lottery,

or registered with the local authority if it is a 'small' lottery. Whether a lottery is categorised as 'large' or 'small' depends on the amount of proceeds raised.

197. Where a society is required under these provisions to be registered with the local authority, **paragraph 38(2)** makes provisions as to the information the application must include. This paragraph provides that the application for registration must be in the prescribed form, be accompanied by the prescribed fee, and contain such other information and be accompanied by such other documents as may be prescribed. **Paragraph 42** provides that when the Gambling Commission is notified of the registration, a prescribed part of the application fee must accompany the notice. **Paragraph 49(2)(b)** provides that the annual fee a society must pay to a registration authority must be of the prescribed amount. **Paragraph 51** provides that in part 5, 'prescribed' means prescribed in regulations by the Secretary of State. These are matters of form and procedure, which are considered to be suitable matters to delegate to secondary legislation. The negative resolution procedure is thought to provide an adequate level of scrutiny.

Schedule 8 Part 6: Exempt lotteries

198. **Paragraphs 52 to 56** confer five separate powers for the Secretary of State in relation to exempt lotteries. The lotteries to which these powers apply have been exempted from licensing requirements, and are therefore intended to be restricted to small-scale and non-profit making activities. These powers have been held in reserve, and there is no intention for them to be used immediately. It is considered that the provisions they are subject to under the Bill should be sufficient to render very low the risk of harm presented by these lotteries. All of the powers in these paragraphs allow for additional regulatory controls should abuses occur.
199. **Paragraph 52** provides a power for the Secretary of State to make regulations to prevent the sale of tickets by post, in cases of certain types of exempt lottery (for instance, private lotteries and customer lotteries) where this would otherwise be allowed under the Bill. **Paragraph 53** provides a power to impose conditions or limitations in respect of the use of rollovers. A rollover is a situation in which a prize which is not claimed in one lottery is 'rolled over' to increase the prize in the next lottery run by that operator. This power will only apply in relation to small society lotteries, since rollovers are expressly prohibited in all other kinds of exempt lottery. **Paragraph 54** provides a power to restrict participation in exempt lotteries where that is necessary to prevent repetitive play. Whilst these powers have the potential to change the way in which the lotteries eligible for exempt status are conducted, it is considered that such rules are appropriate matters for delegated legislation, given their reserve nature. In the Department's view the negative procedure provides an appropriate level of Parliamentary scrutiny.
200. **Paragraph 55** allows the Secretary of State, by order, to raise, or lower, the amount which the promoters of a small incidental lottery can abstract from the proceeds in order to provide prizes. It is considered that the affirmative resolution procedure is necessary here, since this is a Henry VIII power, allowing changes to be made directly to primary legislation. **Paragraph 56** allows the Secretary of State, having consulted the Gambling Commission, to impose by order other conditions relating to exempt lotteries. These may relate in particular to who may sell or supply the tickets, who may buy the tickets, the nature of the tickets and the information on them, advertising, and deductions from the proceeds of a lottery. This power has the potential to be used to effect substantial changes to the way in which the lotteries eligible for exempt status

are conducted. It is therefore considered that this is a matter for which the affirmative procedure should apply.

PART 12: CLUBS

201. Part 12 makes provision for gaming and gaming machines in members' clubs, commercial clubs ("clubs") and miners' welfare institutes ("institutes"). Clause 234 contains the general provision for interpreting the meaning of "prescribed" and "regulations" in Part 12. All of the delegated powers in Part 12 are subject to the negative resolution procedure, and as they are all technical, procedural or administrative in nature, this is considered suitable.

Clauses 224 and 225: Members' Club and Commercial Club

202. Generally, for a club to be entitled to undertake gaming it must be established and conducted for purposes other than gaming. In other words, gaming is permitted where it is an ancillary activity for a club and not its *raison d'être*. However, this general rule does not apply in certain cases under the existing law, where a club which is established for the playing of bridge and/or whist can take advantage of the club gaming rules, providing that this is the only gaming it offers. **Clauses 224 and 225** set out this general rule at subsection 1(a), and at subsection (2) the Secretary of State is given power to prescribe the gaming for which a club can be established and conducted and still take advantage of the rights contained in Part 12. The present intention is to prescribe bridge and whist. As this is a minor, technical matter, it is considered that the detail is best contained in regulations.

Clauses 227 and 228: The exemption and Supplemental

203. **Clause 227** gives clubs and institutes the right to undertake certain limited, low stake gaming, without the need for any specific authorisation under the draft Bill. Thus, provided the gaming complies with a number of conditions, no offence will be committed under clause 21 or 26 by the club or institute concerned. A number of the conditions involve powers for the Secretary of State.

204. **Subsection (4)** permits the Secretary of State to set limits by regulation on the amounts that may be staked at the gaming or the value of any prizes. **Subsection (6)** permits the Secretary of State to prescribe maximum participation fees to take part in the gaming. Clause 228, subsections (4) and (5) expand upon the meaning of participation charge and amplify the detail which the regulations under clause 227(6) may contain. These are matters currently set out in Section 40 of the Gaming Act 1968, and it is now considered more appropriate for such detail to be contained in regulations, and not in primary legislation. The Secretary of State intends to use these powers to ensure that gaming under this provision remains a low level activity and will keep the charges and maximum amounts under review over time.

205. Initially, the intention is to prescribe participation fees under subsection (6), but not to prescribe stake and prize amounts under subsection (4). This latter point will be kept under review.

Clauses 229 and 230: Club Gaming Permit and Supplemental

206. Where a members' club or institute wishes to offer gaming over and above that permitted by clause 227, or it wishes to make gaming machines available for use, it may apply for a club gaming permit. Under clause 229(3)(c) a club gaming permit will authorise such games of chance as the Secretary of State may prescribe. The intention

is to use this power to prescribe games which are bankers' games or unequal chance games and which the club or institute would not be able to play without an express authorisation (clause 229(3)(b) only authorises the playing of equal chance games). The equivalent regulation under the 1968 Act allows the playing of pontoon and chemin de fer. It is proposed to specify these in a regulation under clause 229(3)(c), subject to receiving any representations that other gaming should also be included.

207. As with clause 227 the Secretary of State can set participation fees (but in this case not maximum amounts for stakes or prizes) for gaming played pursuant to a permit under clause 229. The rationale and justification for prescribing participation fees in regulations is the same as for those in clause 227. However, it is intended that the permitted fees will be higher than those allowed for gaming conducted solely under clause 227. This will be true for a club or institute relying upon a club gaming permit and clause 229(3)(b), by virtue of clause 228(5)(b).

Clause 233: Bingo

208. This clause provides that the exemption from the offence of providing facilities for gambling at clause 21, for clubs providing bingo under a club gaming permit or the clause 227 exemption, will not apply in relation to the provision of bingo in certain circumstances – where 'high turnover bingo' is played in a 'high turnover period'. 'High turnover bingo' is where the total stakes or winnings at bingo played in any one week exceed a certain amount. A 'high turnover period' is the period beginning at the end of a period of 7-days in which high turnover bingo has been played, and lasting for one year from the beginning of the 7-day period. In the Bill, this figure has been set at £1000. The effect of this is that after this first 7-day period, if the bingo exceeds these thresholds for a 7-day period in the next year, the exemption from the offence of providing facilities for gambling will not apply. To avoid liability under this offence (i.e. if it were to play further high turnover bingo), it will be necessary for the club to hold a bingo operating licence from the Gambling Commission.

209. **Subsection (9)** gives the Secretary of State a power, by regulations, to substitute these figures for different amounts. It is considered that it is necessary to have this power to give the Secretary of State the flexibility to be able to change these amounts should this be necessary. It is submitted that the negative resolution power provides the appropriate level of scrutiny.

Schedule 9

210. Schedule 9 sets out the procedures for the grant and maintenance of a club gaming permit or club machine permit pursuant to Part 12 of the draft Bill. A number of provisions are made in Schedule 9 for the Secretary of State to prescribe fees for these permits:

- a. **Paragraph 2(e)** (application fee)
- b. **Paragraph 13(2)** (annual fee)
- c. **Paragraph 14(2) (a)** (variation fee) and
- d. **Paragraph 15 (2)** (lost, stolen, damaged permits)

These powers are all standard fee making powers, subject to the negative resolution procedure.

211. **Paragraphs 3 and 4** require periods to be prescribed during which an application must be copied to certain parties, and those parties may submit objections. As yet no

decision has been taken about the appropriate duration for this period, but being a matter of administrative detail it is proposed to settle the matter in regulations.

212. **Paragraph 10** provides a fast track procedure for clubs or institutes which are in possession of a club premises certificate under the Licensing Act 2003 to obtain a club gaming or club machine permit. For a club to be able to obtain a permit using the fast track the authority needs to be satisfied that the club is not established or conducted for gaming, unless it is prescribed gaming (paragraph 10(3)(a)). This point and the accompanying regulations have been discussed for clauses 224 and 225 above and there is nothing different here.
213. **Paragraph 10(4)** allows the Secretary of State, when making other regulations for Schedule 9, to distinguish between applications for permits, and fast track applications for permits. For example, the fees under paragraph 2(e) are likely to be different.
214. **Paragraph 25** makes provision for the keeping of registers which is identical in content, and as to delegated powers, to those contained in Schedule 6 on the category D gaming machine permit. Nothing additional needs to be added to what was said in relation to those powers.

PART 13: PREMISES LICENSED FOR SUPPLY OF ALCOHOL

Clause 236: Exempt gaming

215. This clause provides that the offences at clauses 21 and 26 (of providing facilities for gambling, and using, causing or permitting premises to be used to provide facilities for gaming) shall not apply to premises which have a licence under the Licensing Act 2003 for the supply of alcohol for consumption on the premises ("an alcohol licence") and which provide 'soft' gaming. 'Soft' gaming is gaming which complies with certain conditions, which, it is considered, make it less likely to be a source of harm to the consumer, and therefore suitable for a lower level of regulation than the 'hard' gaming which may only be provided, for example, in the strictly regulated environment of a casino. The exemption will only apply if the conditions set out in this clause are complied with.
216. **Subsection (4)** provides that one of these conditions is that the arrangements must satisfy certain limits on the amounts which can be staked or won in respect of such gaming. These limits are matters which, it is considered, should be left to secondary legislation. This will allow the Secretary of State the flexibility to amend the limits when necessary, both to reflect changes in the cost of living, and to allow for changes in response to experience. It is considered that these limits are matters of detail, and that the negative resolution procedure will therefore provide an adequate level of scrutiny.

Clause 237: Section 236: Supplementary

217. This clause adds certain supplementary matters to the previous clause. In particular, **subsection (2)** provides that 'prescribed' means prescribed by regulations made by the Secretary of State, and regulations may, in particular, make different provision for different classes or descriptions of game.

Clause 238: Bingo

218. This clause provides that the exemption from the offence of providing facilities for gambling, for premises with an alcohol licence, will not apply in relation to the provision of bingo in certain circumstances – where 'high turnover bingo' is played in a

'high turnover period'. 'High turnover bingo' is where the total stakes or winnings at bingo played in any one week exceed a certain amount. A 'high turnover period' is the period beginning at the end of a period of 7-days in which high turnover bingo has been played, and lasting for one year from the beginning of the 7-day period. In the Bill, this figure has been set at £1000. The effect of this is that after this first 7-day period, if the bingo exceeds these thresholds for a 7-day period in the next year, the exemption from the offence of providing facilities for gambling will not apply. To avoid liability under this offence, it will be necessary to be correctly licensed by the Gambling Commission.

219. **Subsection (9)** gives the Secretary of State a power, by regulations, to substitute these figures for different amounts. It is considered that it is necessary to have this power in order that the Secretary of State has the flexibility to be able to change these amounts should this be required. For the same reasons as given in respect of the power at clause 236 above, it is submitted that the negative resolution power provides the appropriate level of scrutiny.

Clause 239: Gaming Machines

220. This clause gives premises with an alcohol licence the entitlement to site two gaming machines of no higher than category C on the premises. Under this clause, premises taking advantage of this entitlement will not commit an offence under clause 26 or 201 (making a gaming machine available for use). This clause also allows persons holding or applying for such a licence, to apply for the right to site additional gaming machines of no higher than category C. Any such additional rights granted will be added as conditions to the licence.

221. **Subsection (4)** gives the Secretary of State the power to make regulations prescribing the procedure to be followed in relation to an application for the right to site additional gaming machines. Such regulations may, in particular, impose an obligation upon an applicant and make provision about the consequences of failure to comply with any obligation imposed. These are matters of procedure, and it is submitted therefore that they are appropriate matters to be delegated to secondary legislation. It may be necessary from time to time to amend the procedure, which secondary legislation will enable us to do. It is considered that the negative resolution procedure is appropriate here.

Clause 240: Removal of exemption

222. This clause enables the licensing authority responsible for the issue of alcohol licences to remove the right to provide 'soft gaming' at clause 236, and the entitlement to site gaming machines under clause 239. The authority can only take away these rights on certain grounds. If such rights are taken away, this will be effected by the addition of a condition on the alcohol licence.

223. **Subsection (4)** gives the Secretary of State the power to make regulations to prescribe the procedure to be followed in relation to the addition of such a condition to the alcohol licence. In particular, such regulations may impose an obligation upon the holder of or applicant for the alcohol licence, and may make provision for the consequences of failure to comply with such an obligation. These are matters of procedure, and for the same reasons as given in respect of the power in clause 239 above, it is submitted that this is a suitable matter to be dealt with in secondary legislation, and that the negative resolution procedure will provide an appropriate level of scrutiny.

PART 14: INSPECTION

Clause 242: Authorised persons

224. This clause defines the persons who are “authorised persons” for the purposes of exercising the right to enter and inspect certain premises under the Bill. These include persons such as an officer of a licensing authority for the area in which the premises are sited. Subsection (4) lists persons who are authorised persons for purposes relating to any premises, such as Health and Safety inspectors. **Subsection (4)(e)** gives the Secretary of State power to add to the list by making regulations prescribing a new class of authorised persons. It is considered that secondary legislation is suitable for these matters, because the Secretary of State will need to have the flexibility available to reflect any changes in the community’s safety and public order priorities. Given that this is essentially an operational matter, which does not go to the framework of the Bill, the negative resolution procedure is considered appropriate.

Clause 252: Powers

225. This clause sets out the powers a constable, gambling inspector, or authorised person will have when exercising a power under this Part of the Bill to enter premises. These powers include the power to require copies of written or electronic records kept on the premises, and the power to seize and retain anything which he has a reasonable suspicion may be, or contains a record providing evidence relating to, an offence or a breach of the licence conditions. **Subsection (2)** gives the Secretary of State power to make regulations concerning the retention, use, return or destruction of items supplied or removed under these powers.

226. It is the current intention that regulations under **Subsection (2)** will be made at the outset. It is envisaged that these will, at a minimum, require inspectors and others to take necessary steps to ensure the preservation of seized items and to return any item removed from premises if no longer needed for the purpose for which it was seized. It may be necessary to amend or adjust these requirements over time in the light of experience.

227. Since the right of seizure itself is set out on the face of the Bill, and it is only the procedure relating to the use of this right which is to be dealt with in regulations, this is considered to be an appropriate matter to delegate to secondary legislation. In the Department's view the negative procedure provides an appropriate level of Parliamentary scrutiny.

PART 16: GENERAL

Clause 262: Interpretation

228. **Subsection (4)** provides that the Secretary of State may make regulations concerning the apportionment of fees for participation in gaming, where the fees serve additional non-gambling purposes. The power is considered to be administrative in nature, and the negative resolution procedure is considered appropriate here.

Clause 263: Regulations, orders and rules

229. This clause contains the necessary mechanics for the Secretary of State to make regulations, rules or orders, where she is provided with a relevant power under the Bill. **Subsection (4)** provides that regulations or rules made under the Bill are to be made by statutory instrument pursuant to the negative resolution procedure. **Subsection (5)** provides that Orders are, for the most part, to be made by statutory instrument subject

to the affirmative resolution procedure. The exception to this is an order under subsection (5) of clause 126, by which the Secretary of State shall appoint a day for the commencement of the initial three-year licensing period for premises licences. This is considered comparable to a commencement order, and therefore the negative resolution procedure is appropriate.

Department for Culture, Media and Sport
February 2004