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## SUMMARY OF RESPONSES TO 'GAMBLING ACT 2005 – DEFINITION OF DUAL-USE AND DOMESTIC COMPUTERS – CONSULTATION PAPER'

### Contents

- Summary of consultee responses and Government response to Questions 1-11 and on other matters
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**NB:** Please note that where the document refers to a computer being '*adapted or presented to encourage gambling*', for ease of reference this is shorthand for the complete wording in revised regulation 2(b), which is 'not knowingly adapted or presented... in such a way as to facilitate, or draw attention to the possibility of, its use for gambling..'

**Question 1: Do you agree with the definition of a dual-use computer in regulation 2? If not, please explain why.**

**Summary of consultee responses**

All respondents wholly or broadly support the purpose of Regulation 2 to define a dual-use computer with reference to (i) being capable of being used for a purpose that is not related to gambling; and (ii) not knowingly adapted or presented in such a way as to facilitate, or draw attention to the possibility of, its use for gambling. They believe it is a sensible and flexible approach to exempt the majority of internet terminals which are not dedicated or specifically configured for gambling activities, and home computer equipment, from the definition of gaming machine. However, the following issues were raised:-

- (i) whether the words "*or presented in such a way as to facilitate*" are sufficiently broad, and suggest that consideration be given to incorporating reference to the concept of advertising under section 327 of the Gambling Act, which includes reference to doing anything to encourage one or more persons to take advantage of facilities for gambling, or, with a view to increasing the use of facilities for gambling, brings them or information about them to a person's attention (which includes entering into an arrangement by way of sponsorship or branding);
- (ii) concern that the definition is too wide and could have unforeseen and negative consequences. Suggest alternative wording like "*not knowingly adapted or presented in such a way as to have as its main purpose or one of its main purposes the facilitation of its use for gambling*";
- (iii) one respondent on behalf of the betting industry suggested an exception to the definition. They commented that section 235(2)(c) of the 2005 Act, (which exempts from the definition of gaming machine betting machines for future, real events), does not preclude the use of internet terminals. However, because these internet terminals would be pointed at betting websites that offer other forms of gambling, they would not satisfy the proposed dual-use definition and consequently be regarded as gaming machines. To overcome this an exception should be provided by stating in the Regulations that "*Licensed betting premises are allowed to operate internet linked computers which comply with Section 235 (2)(c) of the 2005 Act, irrespective of whether they are or are not considered to be dual-use computers*'

**Government response**

The Government is pleased that all respondents are either wholly or broadly in support of the definition of a dual-use computer as set out in Regulation 2 and has considered carefully the issues raised.

On the first point, the Government has concluded that it would not be appropriate at this stage to incorporate concepts from section 327 on advertising into the definition of a dual-use computer. This is because it considers the words are sufficiently broad to address the policy aims set out in the consultation. In addition, the Government considers that a dual-use computer should be easily recognizable as such, and that the provisions in section 327 (which are concerned with the wider activities of individuals in relation to advertising) would undermine this approach.

On the second point, the Government is not convinced that the definition will have unforeseen and negative consequences. The respondent did not explain precisely what they meant by this or the concept of 'main purpose', but in the Government's view the concept of a 'main purpose' would (a) introduce too much uncertainty, and (b) create a potential loophole in respect of the overall purpose of the regulations.

On the third point, about providing an exception on the basis of Section 235(2)(c), the Government is of the view that this would not be acceptable in terms of what the definition of dual-use computer is trying to achieve in regulatory terms. Section 235(2)(c) was only ever intended to prevent equipment, such as automated betting terminals, through which people place bets on future real events, from being counted as gaming machines. It was not designed to allow bookmakers to offer computers dedicated to other forms of gambling on the internet. If bookmakers wish to use a computer linked to the internet to take advantage of the Section 235(2)(c) exemption, they must ensure that the computer does not allow access to other forms of gambling. If bookmakers use an internet terminal 'pointed to' their website, and that site enables persons to undertake other forms of gambling (in addition to betting on future real events), the Government takes the view that this fails the test of the definition of a dual-use computer in regulation 2(b) in that the computer will be adapted in such a way as to facilitate its use for gambling. It should also be noted that depending on the type of premises, a licensed operator is entitled to a certain type and number of gaming machines. If the bookmaker adapts a computer in such a way to facilitate its use for gambling, it will be counted towards the number of gaming machines allowed under the Gambling Act 2005.

The Government has decided to revise the definition of a dual-use computer in two areas. First, refer to the Government's response to Question 2 on advertising and promotional material. A revised regulation 2(1)(b) clarifies that a dual-use computer must not be adapted or presented etc *'by or on behalf of the owner or person connected with the owner'*. Second, refer to the Government response to Question 5 on tightening the definition of a commercial arrangement in revised regulation 1(3) to include any arrangement in which a person connected to the owner makes or receives a benefit etc.

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

#### **Summary of consultee responses**

The majority of respondents wholly or broadly support the Government's approach for being pragmatic and sensible, and agree that Regulations under section 235 of the Gambling Act do not and should not seek to regulate the general advertising of gambling. Whether a computer is adapted or presented to encourage gambling is ultimately a question of fact to be determined on the facts of each case, and the proposed wording is sufficient and strikes the

right balance in covering material that somehow encourages a computer to be used for internet gambling, and that may be physically attached to a computer, or sufficiently near to where the computer is located. Respondents acknowledged that if required the Government does have a separate power under section 238 of the Gambling Act to make regulations controlling the advertising of gambling.

However, a number of points of concern were raised:

- (i) request for clarification on the positioning of internet promotional material and what is considered 'sufficiently near';
- (ii) bookmakers who wish to provide dual-use computers would struggle with DCMS' conditions. Betting shops have a limited floor area and it would not be practicable to create a 'cordon sanitaire' around a computer so that there was no promotional information nearby;
- (iii) whether "presented to encourage gambling" is sufficiently specific. Suggest that the word "encourage" be replaced with "permit"; and
- (iv) what is the position of 'pop-ups' and other online advertising material over which owners of computers may not have any control. Could they cause the computer to fall foul of regulations?

#### **Government response**

The Government is pleased that its overall approach was supported by the majority of respondents, but at the same time understands the concerns raised in relation to the meaning and the practical effect of a computer being '*knowingly presented in such a way as to facilitate, or to draw attention to the possibility of its use for gambling.*' The Government response to the issues raised is as follows:

- (i) although it will be a question of fact in each case whether a computer is adapted or presented to encourage gambling, the Government will ask the Gambling Commission to consider whether it would be helpful to issue general guidance on what it considers would constitute adapting or presenting a computer to encourage gambling;
- (ii) the Government understand the concern of bookmakers but to comply with the regulations bookmakers will simply have to take a view and remove any material that presents or promotes the computer for gambling. In any event, any plans of bookmakers will be fail the definition of a dual-use computer if they have direct links to their gambling websites;
- (iii) the phrase 'adapted or presented to encourage gambling' was only used as short-hand throughout the consultation document. This was highlighted at paragraph 3.8 of the consultation document. The draft regulations were published with the consultation and the revised wording may be seen in full in regulation 2;
- (iv) the Government has considered the position of 'pop-ups' and other online advertising material over which owners of computers may not have any control, and concludes that these may have the unintended effect of causing the computer to be presented or adapted to encourage gambling. The

Government has therefore revised the definition of a dual-use computer by providing that it must not be knowingly adapted or presented '*by or on behalf of the owner or person connected with the owner*'. A person connected with the owner is defined in revised regulation 1(3), and is either a connected company (if the owner is also a company), carrying on a business in common with the owner with a view to profit, or a spouse, civil partner, sibling, ancestor or descendant of the owner. A company will be connected to the company that owns a computer if one is a subsidiary of the other, or they are both subsidiaries of the same company. The effect of this amendment is that if a pop-up advertising online gambling appears on the screen whilst in use, and the owner or person connected with the owner is not the source of the advertisement, the computer will still be a dual-use computer. The same can be said for material promoting online gambling that is not intentionally placed on or near the computer by or on behalf of the owner or connected person.

The Government has also considered the following points:-

- (i) should the regulations specifically ban material promoting online gambling from being on the same premises as the computer in question?;
- (ii) whether to include and define the concept of advertising and promotional material in the Regulations?;
- (iii) whether a computer should be treated as being presented to encourage gambling only if the promotional material is visible to the user of the computer?; and
- (iv) to issue general guidance on the issue and review the position at a later date.

The Government concluded the following:

- (i) whilst an outright ban on material promoting internet gambling on premises with dual-use computers would create greater certainty, the Government considers that this would be a disproportionate step in light of its policy aims. It will be a question of fact whether a computer is adapted or presented to encourage gambling, and persons and businesses that make internet terminals available for use are capable of taking a view on the issue without being subject to a complete ban;
- (ii) as mentioned above, the Government has concluded that it would not be appropriate at this stage to incorporate concepts from section 327 on advertising into the definition of a dual-use computer (see Government response to question 1);
- (iii) the concept of what is visible to the person using the computer would not capture cases where owners facilitate, or draw attention to, the computer's use for gambling in another part of the premises that is hidden from view. This would undermine the Government's policy that persons should not be encouraged to gamble on dual-use computers; and
- (iv) see comment above on Gambling Commission guidance.

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

**Summary of consultee responses**

There is overall approval of the Government's approach towards digital televisions that are also computers. It is accepted that digital televisions that are not computers are already exempt from the definition of gaming machine under s235(2)(b). However, a number of issues were raised:-

- i) that the test for digital televisions that are also computers should be equivalent to that which has been applied to Fixed Odds Betting Terminals (FOBTs), i.e. if a machine or game appears to be a gaming machine to a consumer it should be seen as a gaming machine;
- ii) that the Department's approach towards digital televisions that are also computers is comparable to licensed gambling operators offering direct access to their remote gambling sites within premises which are licensed for gambling purposes. The latter appears to be ruled out and would urge Government to reconsider and allow, for instance, a licensed betting office operator to provide computers that offer direct links to an internet betting operation that is in the same ownership and which is also licensed by the Gambling Commission; and
- iii) dual-use computers cannot promote interactive gambling services and the same should be true for digital televisions that can be interactive. It is inconsistent to allow them to be directly promoted from the broadcast channel or the operating menu screens.

**Government response**

The Government is pleased that its overall approach has met with approval from respondents. In response to the points raised:

- (i) the comparison with FOBTs is not a relevant one and is rejected. FOBTs are category B2 gaming machines, and are only available in casinos and betting shops and subject to mandatory and default conditions. The crucial issue is whether or not a digital television that is also a computer satisfies the 'adaptation or presentation' test. If it fails, then it is a gaming machine;
- (ii) please refer to the Government's response to question 1; and
- (iii) the power to make these regulations extends only to 'computers', and does not extend to digital televisions that are not also computers – these are already exempted from the definition of a gaming machine by primary legislation (see section 235(2)(b) of the Act). Televisions

that are also computers are, of course, covered by these regulations.

The Government will therefore be adopting the approach towards digital televisions that are also computers as set out in the consultation paper.

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

**Summary of consultee responses**

The Government is pleased that all respondents agree with the proposed definition in regulation 2 for computers that are supplied, installed or manufactured.

**Government response**

The Government does not intend to make any further changes to regulation 2 for computers that are supplied, installed or manufactured.

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

**Summary of consultee responses**

There is overall approval of the approach taken by the Government in respect of computers adapted or presented to encourage gambling and used by others under a commercial arrangement. However, a number of issues were raised:-

- (i) whether the definition covers the following scenario: where computers owned by 'A' have dedicated gambling links to the gambling website of 'B', and there is no connection between A and B, and A does not benefit from the arrangement;
- (ii) whether the definition covers the following scenario: where computers owned by company 'A' have dedicated links to the gambling website of company 'B', and A and B are in the same group of companies, or one is a subsidiary to the other, and A does not benefit from the arrangement.
- (iii) the definition is too restrictive and goes further than present arrangements allowed under guidance and with the agreement of the Gaming

Board for Great Britain (now the Gambling Commission) in 2005 which allow the provision of computers in casinos with a direct link to an operator's gambling website;

- (iv) the definition of commercial arrangement would require operators to allow customers unrestricted access to the internet, including access to undesirable sites such as those providing illegal gaming, pornography and terrorism; and
- (v) the regulations would deny the industry legitimate commercial opportunity because they prevent casinos from offering terminals on their premises which are linked to remote gaming sites, without them counting towards their total number of gaming machines, and deny the Government the opportunity of conducting controlled research on on-line gambling in a venue over which it has control.

#### **Government response**

The Government is pleased that its approach to defining the meaning of 'commercial arrangement' has been met with overall approval. The Government acknowledges the concerns raised and in response:-

- (i) the Government accepts that this scenario would not be caught by the definition of a 'commercial arrangement' if the owner did not in some way make or receive some benefit under the arrangement. However, the Government is currently of the view that this is highly unlikely to occur in practice and some form of benefit will always exist in such circumstances (and thus be captured by the Regulations). The Government does not consider that there is any incentive for a business to configure its computers so they have dedicated links to gambling websites, without there being some kind of benefit for that business. The Government will monitor the position and review it if necessary;
- (ii) The Government accepts that this scenario would not have been caught by the proposed definition of a commercial arrangement and has therefore decided to amend the definition to capture it. The Government does wish to capture situations in which, although the owner of the computer does not draw any benefit from setting up links to a gambling website, he may nonetheless set up such links to benefit an associated company. The definition of a 'commercial arrangement' in regulation 1(2) has therefore been amended to include any arrangement in which a person connected to the owner makes or receives a benefit etc.. Regulation 1(3) provides that a person is connected with the owner if he is one of a list of relations (see paragraph (3)(b)), carrying on a business in common with the owner with a view to profit, or, if both the owner and the person are companies, one is the subsidiary of the other, or they are both subsidiaries of the same company, This amendment is set out in the revised Regulations at Appendix 2;
- (iii) the Government rejects the argument that gambling premises such as casinos should be entitled to offer computers with dedicated links to gambling websites without such computers being treated as gaming machines. One of the aims of the Regulations is to ensure that someone offering the public access to the internet, via computer terminals, and configuring them to encourage gambling, is treated as

making a gaming machine available for use (unless any other exception applies, such as betting on real events) and the machine will be subject to the regulatory requirements imposed on gaming machines. This is also intended to ensure that operators do not circumvent the limits on numbers and other restrictions relating to gaming machines by providing access to machines that have characteristics of gaming machines, under the guise of dual-use computers;

- (iv) the argument is not accepted that the definition of a commercial arrangement would allow customers unrestricted access to unsuitable sites. The implication is that the definition will somehow allow exposure to these sites, which would not apply in other circumstances. Exposure to undesirable sites can happen in many circumstances where computers have a link to the internet. Many computer programmes now have filters to protect the consumer which block, guard and warn before any such site is viewed. The Government would expect dual-use computers located at gambling premises to have similar protections; and
- (v) with regards to the first point, see the Government response to issue (iii) above. In relation to the second point, the Gambling Commission is already undertaking research into gambling (through prevalence studies) and the Government does not accept that research will be impeded if gambling premises are prevented from making available for use computers with dedicated gambling links.

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

#### **Summary of consultee responses**

All responses agree that the Government's proposal to have an exception to Regulation 2(b) in respect of private use is sensible. A few points of clarification were raised:-

- (i) the recreational use made of the computer by an employee may not involve gambling, even though the computer is deemed to be "adapted or presented to encourage gambling". Suggest that such a computer should only be considered a gaming machine if it contained direct links to gambling websites; and
- (ii) clarification is required regarding the meaning of "private use". Current drafting refers to persons using a computer with the owner's permission without reference to whether such permission is expressed or implied. Believe that clarity would be achieved by referring to concepts in Part 14 of the Gambling Act.

**Government response**

The Government is pleased that its approach to the exception to Regulation 2(b) where a computer is being made available for use, and where that use is restricted, or intended to be restricted to private use, is accepted. The Government is satisfied that the regulation as currently drafted is clear for the purpose intended and avoids any confusion, and does not need to be amended by reference to direct links to gambling websites or linked to Part 14 of the Gambling Act.

On the first point, the Government does not see that there is any need to restrict the requirement that a dual-use computer should not be adapted or presented to encourage gambling, where that computer is provided by an employer for recreational purposes.

On the second point, the Government does not intend to specify the type of permission that is required, and is content that, in the absence of any express provision, and for the purpose of the Regulations, such permission may be either express or implied. It is worth noting that the Government has looked at Part 14 of the Act, but in relation to defining a domestic computer. In that respect, the Government has drawn from Schedule 15 to the Act (which defines private betting and gaming for the purposes of Part 14 of the Act) and utilised the provisions in paragraph 2(1) of Schedule 15, which provide that gaming is domestic if it takes place in a private dwelling, and on a domestic occasion. These concepts have been imported into the definition of 'domestic computer' in Regulation 4.

The Government therefore does not intend to make any further changes to the exception to regulation 2(b) in respect of computers that are made available for use, where this is 'private use'.

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

**Summary of consultee responses**

All respondents agree with the proposed exception to regulation 2(b) for computers that are maintained, adapted or repaired.

**Government response**

The Government does not intend to make any further changes to regulation 2(b) for computers that are maintained, adapted or repaired.

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

**computer to be used for gambling? If not, please explain why?**

**Summary of consultee responses**

All respondents agree that the purpose behind the exception to regulation 2(b) is sensible in relation to repair, adaptation or maintenance of a computer and its 'private use'. They also support the conditions that would be applied to this exception - (i) the computer is being repaired, adapted or maintained; (ii) at that time, its use is connected to the repair, adaptation or maintenance; (iii) other than whilst it is being adapted, repaired or maintained, the computer would be only for private use; and (iv) the main purpose of the adaptation, repair or maintenance must not be to enable the computer to be used for gambling. However, concern was raised about the meaning of 'private use' being too broad for this purpose and to avoid confusion the definition of 'private use' should be linked to the concept of private use in Part 14 of the Gambling Act 2005.

**Government response**

The Government is pleased that its definition of 'private use' as set out in the Regulations is considered a sensible approach for the purpose intended and avoids any confusion. For the same reason set out in relation to Question 6 above, the Government does not intend to make a link to Part 14 of the Gambling Act. The Government therefore does not intend to make any further changes to the exception to regulation 2(b) for computers that are adapted, repaired or maintained.

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

**Summary of consultee responses**

No respondent identified any other circumstance which would justify an exception from the definition of a dual-use computer in regulation 2.

**Government response**

The Government does not intend to make any further exceptions to regulation 2.

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

**Summary of consultee responses**

The majority of responses believe that the proposed regulations are sufficient.

**Government response**

The Government does not intend to make any further changes to the definition of a dual-use computer in regulation 2.

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

**Summary of consultee responses**

All the respondents except one agree with the Government's proposed criteria for defining domestic computers.

One respondent argued that paragraph 3.36(b) of the consultation document lists one of the conditions as being that the computer is 'located in a private dwelling'. This raises a practical difficulty given the increasing use of laptop computers and similar where the users access the internet by wireless technology. It appears that a computer of this kind would be 'domestic' until it was carried out of the home or other private dwelling and would then (see paragraph 3.39 of the consultation document) automatically become a 'dual-use computer'. It is suggested that the condition on the regulations should be modified so that a computer of this kind should continue to be classed as 'domestic' as long as it is purely for private use irrespective of whether it is physically 'in a private dwelling'.

**Government response**

The Government does not accept that the Regulations should be amended in the way suggested so a laptop computer continues to be classed as 'domestic' irrespective of whether it is physically in a private dwelling. This is because the purpose of the Regulations is to exempt domestic and dual-use computers from the definition of a gaming machine and whether a computer is referred to as a domestic or a dual-use computer, is immaterial to achieving that overall purpose. A laptop within a private dwelling that is not adapted or presented to encourage gambling will also meet the definition of a dual-use computer, without the owner being required to take any specific action. The Government expects that most laptops within private dwellings that *are* adapted or presented to encourage gambling are still likely to be dual-use computers once they are taken out of those dwellings because they are likely to fall within the exception for private use. The Government is of the view that if a laptop that is adapted or presented to encourage gambling, is made available to others under a commercial arrangement; it should be treated as a gaming machine, regardless of whether it was originally in a private dwelling.

### Comments on other aspects of the consultation document

#### Summary of consultee responses

A number of points were made:-

- (i) irrespective of the potential restrictions set out in these proposed regulations in respect of providing internet access, customers will still be able to access all services using their own mobile phones etc, especially as technology progresses; and
- (ii) because it is a fast changing environment, as technology advances, a number of possible loopholes may develop which could increase the number of machines that can be used for gambling and gaming machines. Who will monitor whether the use of a machine for gambling is being encouraged or not? Will the position be reviewed again in the near future?

#### Government response

(i) Mobile phones and other communication devices are exempt from the definition of gaming machine under section 235(2)(b) of the Gambling Act 2005. Under the Gambling Act 2005.

(ii) It is the responsibility of the Gambling Commission to ensure that gaming machines are appropriately used within the legal entitlements provided by the Gambling Act. The Commission is also responsible for compliance by machine manufacturers and suppliers, and will advise the Government on possible future changes to these Regulations to take account of technological changes.

**Appendix 2**

**List of Respondents**

1. Association of British Bookmakers
2. BACTA
3. Bingo Association
4. British Casino Association
5. Channel 4
6. Channel Five
7. Federation of Small Businesses
8. Gala Coral Group
9. Gambling Commission
10. ITV plc
11. Methodist Church
12. Museums, Libraries and Archives Council
13. Professor Jim Orford
14. Remote Gambling Association
15. Riley's Uk
16. Salvation Army

**Appendix 2**

The Regulations to be laid following consultation.

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STATUTORY INSTRUMENTS

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**2007 No.**

**BETTING, GAMING AND LOTTERIES**

**The Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007**

*Made* - - - -

*Laid before Parliament*

*Coming into force* - - *1st September 2007*

The Secretary of State makes the following regulations in exercise of the powers conferred by sections 235(3)(f), 235(4) and 355(1) of the Gambling Act 2005<sup>(1)</sup>:

**Citation, commencement and interpretation**

**1.**—a. These Regulations may be cited as the Gambling Act 2005 (Gaming Machines) (Definitions) Regulations 2007 and shall come into force on 1st September 2007.

(1) In these Regulations—

“the Act” means the Gambling Act 2005;

“commercial arrangement”, in connection with the use of a computer—

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<sup>(1)</sup> 2005 c. 19

- (a) includes any arrangement under which the owner of the computer or a person connected with the owner—
  - (i) makes or receives (or intends to make or reasonably expects to receive) any payment or reward (whether by way of commission, rent or otherwise), in connection with making the computer available for use, or
  - (ii) otherwise receives (or reasonably expects to receive) any benefit in connection with making the computer available for use by virtue of it being adapted or presented in such a way as to facilitate or draw attention to the possibility of its use for gambling;
- (b) does not include an arrangement between an employer and his employee in connection with that employment, other than where a computer is made available to the employee by his employer for use wholly or mainly for recreational purposes;

“company” has the meaning given in section 735(1)(a) of the Companies Act 1985<sup>(2)</sup>;

“owner”, in relation to a computer, means any person who owns the computer or has any right to control (directly or indirectly) by whom it is used.

“private use” in relation to a computer means use of the computer by—

- (a) the owner, or
- (b) persons using it subject to the owner’s permission, other than under any commercial arrangement in connection with its use;

“subsidiary” has the meaning given in section 736 of the Companies Act 1985.

(2) In these Regulations, a person is connected with the owner where—

- (a) the person and the owner are both companies and—
  - (i) one is a subsidiary of the other, or
  - (ii) both are subsidiaries of the same company;
- (b) the person and the owner are carrying on a business in common with a view to profit; or
- (c) the person is the owner’s spouse, civil partner, sibling, ancestor, or lineal or collateral descendant.

### Dual-use computers

2.—b. A computer is a dual-use computer within the meaning of section 235(2)(a) of the Act if—

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

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<sup>(2)</sup> 1985 c. 6

(b) either—

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

(2) The circumstances specified in this paragraph are that the computer is being made available for use (other than in circumstances where it is being adapted, maintained or repaired), but its use is restricted or intended to be restricted to private use.

(3) The circumstances specified in this paragraph are that the computer is being adapted, maintained or repaired (whether or not it is also being made available for use), but its use is restricted or intended to be restricted to persons using it in connection with its adaptation, maintenance or repair in circumstances where—

- (a) but for its adaptation, maintenance or repair, its use would otherwise be restricted or intended to be restricted to private use, and
- (b) enabling or facilitating the use of the computer for gambling is not the main purpose of the adaptation, maintenance or repair.

### **Domestic computers**

3. For the purposes of section 235(2) of the Act, a domestic computer is a computer that—

- (a) is capable of being used for a purpose that is not related to gambling,
- (b) is located in a private dwelling, and
- (c) is used on a domestic occasion.

Parliamentary Under Secretary of State  
Department for Culture, Media and Sport

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations assign meanings to the terms “dual-use computer” and “domestic computer” for the purposes of section 235(2)(a) of the Gambling Act 2005 (‘the Act’).

Section 235(1) of the Act defines a gaming machine as a machine that is designed or adapted for use by individuals to gamble (whether or not it can also be used for other purposes). The manufacture, supply, installation, adaptation, maintenance or repair of a gaming machine, and making a gaming machine available for

use, are all regulated activities under the Act, and the Act establishes offences relating to such activities if they are undertaken without the appropriate authorisation.

There are a number of exceptions to the definition of a gaming machine, to ensure that it does not capture specified types of machine. One of the exceptions (in section 235(2)(a) of the Act) is that a domestic or dual-use computer is not a gaming machine by reason only of the fact that it can be used to participate in remote gambling.

Regulation 2(1) defines a dual-use computer, subject to the exceptions set out in paragraphs (2) and (3).

Regulation 4 defines a domestic computer.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Gambling and National Lottery Licensing Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH, telephone 020 7211 X6368.