

## GAMBLING ACT 2005

### Principal Act

Act. No. 2005-72	Commencement (LN. 2006/114)	
	except for s. 55(b)	26.10.2006
	Assent	22.12.2005

### ARRANGEMENT OF SECTIONS

#### Section

#### PART I PRELIMINARY

1. Title and commencement.
2. Interpretation.
3. Types and scope of licences, etc.
4. Terms of licences and procedural provisions.
5. The Licensing Authority.
6. The Gambling Commissioner.

#### PART II NON-REMOTE BETTING AND BETTING OFFICES

7. Prohibition on non-remote bookmaking except under bookmaker's licence.
8. Restriction on use of premises for betting transactions with persons resorting thereto.
9. Use for betting of premises not covered by bookmaker's licence.
10. Prohibition on carrying on pool betting business except under pools promoter's licence.

#### PART III NON-REMOTE GAMING AND GAMING ESTABLISHMENTS

11. Prohibition on provision of gaming facilities, etc. except under gaming operator's licence.
12. Prohibition on operation of gaming establishments except under gaming operator's licence.
13. Playing etc. in unlicensed gaming establishments.

14. Exception for social occasion in residential hotels and private dwelling.
15. Prohibition on keeping gaming machines except under licence.

**PART IV**  
**NON-REMOTE LOTTERIES**

16. Permitted non-remote lotteries.
17. Power to promote and conduct Government Lotteries.
18. Proceeds of Government Lotteries.
19. General regulations about Government Lotteries.
20. Scheduled lotteries.
21. Offences in connection with non-remote lotteries.

**PART V**  
**BETTING INTERMEDIARIES**

22. Restriction on acting as a betting intermediary except under licence.

**PART VI**  
**REMOTE GAMBLING**

23. Requirement for remote gambling licence.
24. Providing facilities for remote gambling.
25. Safeguarding and integrity of equipment.
26. Software suppliers.
27. Responsible gambling.
28. Registration of participants.
29. Information with respect to operation etc. of participants' accounts.
30. Confidentiality.
31. Aborted transactions.
32. Information to be included in websites and advertising.
33. Money laundering and other illegal acts.

**PART VII**  
**OBLIGATIONS OF ALL LICENCE HOLDERS**

34. Application.
35. Duty to publicise rules.
36. Procedures and internal controls.
37. Minimum ages for gambling.
38. Record keeping and provision of audited accounts, etc.
39. Licence holder to maintain approved banking and payment processing arrangements.
40. Complaints.
41. Payment of charges, fees and gaming taxes.

## **PART VIII** **ENFORCEMENT PROVISIONS**

- 42. Investigations, reporting and powers of entry, etc.
- 43. Suspension or revocation of licence.
- 44. Grounds for suspending or revoking a licence.
- 45. Issue of search warrant.
- 46. Offences relating to certain prize competitions.
- 47. Offence of failing to fulfil obligations.
- 48. Penalty for offences and forfeitures.
- 49. Offences by bodies corporate.

## **PART IX** **SUPPLEMENTARY**

- 50. Validity of gaming contracts and security for winnings.
- 51. Finality of decisions of Licensing Authority.
- 52. Appointment of Gambling Ombudsman.
- 53. Exemption from Shop Hours Act.
- 54. Transitional provisions.
- 55. Repeals.

## **SCHEDULES**

- Schedule 1 - General provisions applicable to licences.
- Schedule 2 - Lotteries subject to authorisation.

AN ACT TO REPEAL THE GAMING ACT AND THE GAMING TAX ACT AND TO MAKE NEW PROVISION FOR LICENSING, REGULATING AND TAXING, BETTING, GAMING AND LOTTERIES.

**PART I**  
**PRELIMINARY**

**Title and commencement.**

1.(1) This Act may be cited as the Gambling Act 2005.

(2) This Act shall come into operation on a day to be appointed by the Government by notice in the Gazette and different days may be so appointed for different provisions and different purposes.

**Interpretation.**

2.(1) In this Act, unless the context otherwise requires—

“betting” means making or accepting a bet on—

- (a) the outcome of a race, competition or other event of any description;
- (b) the likelihood of anything occurring or not occurring; or
- (c) whether anything is or is not true;

but does not include any bet made or stake hazarded in the course of or incidental to any gaming and the expressions bet, betting and bookmaking shall be construed accordingly;

“betting intermediary” means a person who carries on, whether occasionally or regularly, the business of providing a service designed to facilitate the making or acceptance of bets between others, but is not a party to any such bet and does not include a person who acts as servant or agent to another person who is the holder of a current bookmaker’s licence, pools promoter’s licence or remote gambling licence;

“betting transaction” includes the collection or payment of winnings on a bet and any transaction in which one or more of the parties is acting as a bookmaker;

“bookmaker” means any person who—

- (a) whether on his own account or as servant or agent to any other person, carries on, whether occasionally or regularly, the business of receiving or negotiating bets or conducting pool betting operations; or
- (b) by way of business in any manner holds himself out, or permits himself to be held out, as a person who receives or negotiates bets or conducts such operations;

and the expression “bookmaking” shall be construed accordingly;

“comparable jurisdiction” means any jurisdiction outside Gibraltar which in the opinion of the Licensing Authority has established a system for the regulating of persons who conduct, manage or provide facilities for gambling that is comparable to that established under this Act;

“contravenes” in relation to any requirement of this Act includes any failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“current”, in relation to a licence, means for the time being in force;

“executive manager” means except in Schedule 1 any person who has the control or management of the whole or a substantial part of the business conducted by a licence holder;

“game of chance” includes—

- (a) a game that involves an element of chance and an element of skill;
- (b) a game that involves an element of chance that can be eliminated by superlative skill;
- (c) a game that is presented as involving an element of chance;
- (d) a game where a computer generates images or data taken to represent the actions of another participant or participants in the game;

“gambling” means—

- (a) betting (including pool betting) and bookmaking;

- (b) gaming;
- (c) promoting or entering a lottery;

“the Gambling Commissioner” shall be construed in accordance with section 6;

“gaming” means playing a game of chance for a prize;

“gaming establishment” means any place opened, kept or used for the purposes of gaming by or with persons resorting thereto where any one or more of the following conditions are fulfilled, that is to say—

- (a) the gaming involves playing or staking against a bank, whether the bank is held by one of the participants or not;
- (b) the nature of the gaming is such that the chances are not equally favourable to all participants;
- (c) the nature of the gaming is such that the chances in it lie between the participant and some other person, or (if there are two or more participants) lie wholly or partly between the participants and some other person and those chances are not as favourable to the participant or participants as they are to that other person;
- (d) any commission or percentage is charged in connection with the gaming, the stakes or the winnings;

“gaming machine” means a machine constructed or adapted for playing a game of chance by means of the machine which—

- (a) has a slot or other aperture for the insertion of money or money's worth in the form of cash or tokens; and
- (b) requires no action by the player other than the actuation or manipulation of the machine or apparatus in order to play the game of chance;

and, for this purpose, “machine” includes any apparatus;

“Government Lottery” has the meaning given by section 17(1);

“instruments of gambling” includes all articles, apparatus or equipment used for the purpose of, or in connection with any gambling;

“licence” means a licence of a description specified in section 3;

“licence holder,” subject to Part VI, means a person who is the holder of a current licence;

“Licensing Authority” shall be construed in accordance with section 5;

“lottery” means any scheme for the distribution of prizes by chance or lot in which the participants or a substantial number of them make a contribution for the purposes of participation in the chances of the lottery and includes tombola, but does not include any gaming;

“minimum permitted age” in relation to gambling of any description, has the meaning given by section 37;

“Minister” means the Minister responsible for gambling;

“money” means all forms of cheques, bankers drafts, banknotes, currency notes, postal orders, money orders or negotiable instruments of any kind, whether or not transmitted or sent by electronic or other means;

“money laundering” has the same meaning as it has for the purposes of Part III of the Criminal Justice Act 1995, that is to say, the meaning given in section 6(3) of that Act;

“non-remote”, when applied in relation to any form of gambling, means gambling which is not remote gambling;

“occupier”, in relation to any premises, means any person in actual occupation of the whole or any part of the place, whether by himself, his servants, or agents;

“owner”, in relation to any premises, means the person for the time being receiving or entitled to receive the rent or his agent and includes joint tenants and tenants in common;

“participant”, in relation to a game of chance, includes a person who discharges an administrative or other function in relation to the game;

“pool betting” means betting made on terms that all or part of any winnings—

- (a) shall be determined by reference to the aggregate of stakes paid or agreed to be paid by the persons betting,

(b) shall be divided among the winners, or

(c) shall or may be something other than money;

“premises” includes the whole or part of a building, any place (whether open or enclosed) and any ship, boat or other vessel or a vehicle of any description;

“prescribe” means prescribe by regulations made by the Minister;

“registered participant”, in relation to the holder of a current remote gambling licence, means a person who, in accordance with section 29, is registered with the holder;

“remote gambling” means gambling in which persons participate by means of remote communication, that is to say, communication using—

(a) the internet,

(b) telephone,

(c) television,

(d) radio, or

(e) any other kind of electronic or other technology for facilitating communication;

“term”, in relation to a licence, includes a condition or restriction of any description;

“ticket” includes, in relation to any lottery or proposed lottery, any document evidencing the claim of a person to participate in the chances of the lottery;

“winnings” includes any kind of prize (whether or not in money or money’s worth) and any reference to the payment of winnings shall be construed accordingly;

(2) For the purposes of this Act—

(a) references to printing shall be construed as including references to writing and other modes of representing or reproducing words in a visible form whether electronically or otherwise; and

- (b) documents or other matters shall be deemed to be distributed if they are distributed to persons or places whether within or outside Gibraltar and the expression “distribution” shall be construed accordingly.

## **Types and scope of licences, etc.**

3.(1) For the purposes of this Act, the Licensing Authority may grant licences of the following descriptions—

- (a) a bookmaker’s licence;
- (b) a betting intermediary’s licence;
- (c) a gaming operator’s licence;
- (d) a gaming machine licence;
- (e) a lottery promoter’s licence;
- (f) a pools promoter’s licence;
- (g) a remote gambling licence;

and the cases in which a licence of a particular description is required are specified in the following provisions of this Act.

(2) Except in so far as the Licensing Authority specifically extends the scope of a bookmaker’s licence or a lottery promoter’s licence under section 4(2), none of the licences mentioned in paragraphs (a) to (f) of subsection (1) authorises any form of remote gambling.

(3) A remote gambling licence does not authorise any form of gambling other than remote gambling.

(4) Every licence shall be personal to the licence holder and not transferable.

(5) Every licence shall specify, in addition to the name of the licence holder, the premises on which the activities concerned are authorised; and any reference to premises covered by such a licence shall be construed accordingly.

## **Terms of licences and procedural provisions.**

4.(1) On the grant or renewal of a licence, the Licensing Authority may impose such terms as appear to the authority to be appropriate in the circumstances.

(2) The Licensing Authority may, if it thinks it appropriate—

- (a) extend the scope of a bookmaker's licence so as to authorize the taking of bets by telephone; or
- (b) extend the scope of a lottery promoter's licence so as to authorise the sale of tickets to a person placing an order by telephone.

(3) A licence holder shall be guilty of an offence if he contravenes any term to which the licence is subject.

(4) Schedule 1 shall have effect with respect to—

- (a) applications for and the form of licences;
- (b) the granting and renewal of licences and the terms to which they are subject; and
- (c) the obligation of licence holders and applicants for licenses to notify certain changes and occurrences.

#### **The Licensing Authority.**

5.(1) The Licensing Authority for the purposes of this Act shall be the Minister or such other individual or body as the Minister may appoint.

(2) In the exercise of its functions under this Act the Licensing Authority shall have regard to the general policy of the Government in relation to the carrying on in Gibraltar of gambling (whether generally or of a particular description) and shall comply with any general directions given by the Government pursuant to that policy.

(3) Nothing in subsection (2) shall be construed as authorising the Government to give any direction in respect of a particular application for a licence or any direction that inhibits the Licensing Authority from determining any application for a licence fairly.

#### **The Gambling Commissioner.**

6.(1) The Gambling Commissioner shall be the Gibraltar Regulatory Authority established under section 3(1) of the Gibraltar Regulatory Authority Act 2000 or such person or agency as the Minister may appoint.

(2) An appointment under subsection (1) shall be on such terms and conditions as the Minister considers appropriate.

(3) The Gambling Commissioner shall be required regularly to report to and keep informed the Minister on the discharge by the Gambling Commissioner of his duties under the Act, and without prejudice to the generality of the above with regard to specific matters related thereto as the Minister may request from time to time.

(4) The Gambling Commissioner shall be responsible for ensuring that the holders of licences conduct their undertakings—

- (a) in accordance with the terms of their licences;
- (b) in accordance with any other provisions made by or under this Act; and
- (c) in such a manner as to maintain the good reputation of Gibraltar.

(5) In determining for the purposes of subsection (4)(c) what is required to maintain the good reputation of Gibraltar, the Gambling Commissioner shall consult with and act on the advice of the Minister.

(6) For the purposes of achieving the objects of this Act, the Commissioner—

- (a) may bring or defend proceedings in any court (including applying to a court for any warrant that may be required);
- (b) may at any time conduct an investigation to determine whether a licence holder or executive manager is suitable to continue to hold a licence or act as an executive manager, as the case may be;
- (c) may in connection with an investigation under paragraph (b) by notice in writing require a licence holder or executive manager to provide him with information or documentation, including financial statements, relevant to the investigation;
- (d) may request that the Licensing Authority consider the suspension or revocation of a licence;

- (e) may make representations to or bring information to the attention of the Licensing Authority in connection with an application for the grant, renewal, suspension or revocation of a licence;
- (f) may, with the consent of the Minister and in consultation with the Licensing Authority (if not the Minister) and after consultation with licence holders, draw up and publish codes of practice as to good practice in the conduct of their gambling undertakings by the licence holders;
- (g) may liaise with such persons or organizations as the Commissioner considers would be useful or necessary for the performance of his functions; and
- (h) shall be able to do all things necessary for or ancillary or reasonably incidental to the exercise of his powers under this Act.

(7) Where a code of practice has been published in accordance with subsection (6)(f) the provisions of that code may be taken into account in determining relevant issues in connection with—

- (a) any proceedings before a court; and
- (b) any matter to be determined by the Licensing Authority.

## PART II

### NON-REMOTE BETTING AND BETTING OFFICES

#### **Prohibition on non-remote bookmaking except under bookmaker's licence.**

7.(1) In respect of non-remote betting, no person shall on any premises act as a bookmaker on his own account unless he is the holder of a current bookmaker's licence which covers those premises.

(2) A person who acts as a bookmaker in contravention of subsection (1) shall be guilty of an offence.

#### **Restriction on use of premises for betting transactions with persons resorting thereto.**

8.(1) No person shall keep or use any premises, or cause or knowingly permit any premises to be used as a place where persons resorting thereto may effect any betting transactions, other than pool betting transactions, unless he is the holder of a current bookmaker's licence which covers those premises.

(2) A person who contravenes any of the provisions of subsection (1) shall be guilty of an offence.

**Use for betting of premises not covered by bookmaker's licence.**

9.(1) A person who for any purpose connected with the effecting of a betting transaction, resorts to any premises which are being used in contravention of section 7 shall be guilty of an offence.

(2) For the purposes of subsection (1), proof that a person was on any premises while they were being used as mentioned in that subsection shall be evidence that he resorted to the premises for a purpose which is so mentioned, unless he proves that he was on the premises for a bona fide purpose not connected with the effecting of a betting transaction.

**Prohibition on carrying on pool betting business except under pools promoter's licence.**

10.(1) In respect of non-remote pool betting, no person shall carry on any pool betting business unless he is the holder of a current pools promoter's licence.

(2) No person shall keep or use any premises, or cause or knowingly permit any premises to be used for the purpose of carrying on any pool betting transactions, unless he is the holder of a current pools promoter's licence which covers those premises.

(3) A person who contravenes subsection (1) or subsection (2) shall be guilty of an offence.

## PART III

### NON-REMOTE GAMING AND GAMING ESTABLISHMENTS

**Prohibition on provision of gaming facilities, etc. except under gaming operator's licence.**

11.(1) In respect of non-remote gaming, no person shall manage, conduct or provide facilities for, any gaming unless he is the holder of a current gaming operator's licence.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence.

**Prohibition on operation of gaming establishments except under gaming operator's licence.**

12. A person who—

- (a) being the owner or occupier or having the use temporarily or otherwise of premises uses those premises as a gaming establishment;
- (b) suffers or permits premises of which he is the owner or occupier, or of which he has the use temporarily or otherwise, to be used as a gaming establishment;
- (c) has the conduct or management of, or in any manner assists in the conduct or management of, any premises kept or used as a gaming establishment; or
- (d) advances, furnishes or receives any money for the purpose of setting up or conducting a gaming establishment,

shall be guilty of an offence unless he or some other person is the holder of a current gaming operator's licence covering those premises.

**Playing etc in unlicensed gaming establishments.**

13.(1) A person who plays in any gaming establishment which is not covered by a current gaming operator's licence shall be guilty of an offence.

(2) For the purposes of subsection (1) a person—

- (a) found to be present in any such gaming establishment as is referred to in that subsection; or
- (b) found escaping from any such gaming establishment on the occasion of its being entered pursuant to powers granted under this Act,

shall be presumed, unless the contrary is proved, to have been playing therein.

**Exception for social occasion in residential hostel or private dwelling.**

14. The provisions of section 11 to 13 do not apply in respect of any gaming which takes place on a social occasion in a residential, hostel or private dwelling provided—

- (a) the gaming is not carried on by way of a trade or business;
- (b) the participants consist wholly of persons who are residents in that residential hostel or private dwelling and their bona fide guests;
- (c) the gaming does not involve playing or staking against a bank; and
- (d) no charge of any description is made for entry or participation in the gaming other than the stakes hazarded by the participants.

**Prohibition on keeping etc of gaming machines except under licence.**

15.(1). No person shall keep or allow to be kept on any premises a gaming machine for the purpose of gaming unless he is the holder of a current gaming machine licence which covers those premises.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence.

**PART IV**  
**NON-REMOTE LOTTERIES**

**Permitted non-remote lotteries.**

16. A non-remote lottery is unlawful unless it is—

- (a) a government lottery;
- (b) a lottery of a description specified in Schedule 2; or
- (c) a lottery promoted by a person who is the holder of a lottery promoter's licence.

**Power to promote and conduct Government Lotteries.**

17.(1) Subject to the provisions of, and of any regulations made under, this Part, it shall be lawful for the Government from time to time to promote and

conduct a lottery and a lottery so promoted and conducted is in this Act referred to as a “Government Lottery”.

(2) In relation to a Government Lottery, the Minister shall have power to do all such acts and things, prescribe all such matters and give all such directions as he may consider necessary or expedient for that purpose and, without prejudice to the generality of this power, the Minister may, in particular—

- (a) prescribe the number and price of the tickets or chances to be issued for any such lottery;
- (b) appoint and remunerate agents for the sale of those tickets or chances;
- (c) prescribe the number and value of the prizes to be distributed to the winners;
- (d) prescribe the time when, the place where and the manner in which any draw shall take place to determine the winners.

(3) Any such acts or directions as are described in subsection (2) which may have been done or given, as the case may be, at any time prior to the commencement of this Act shall nevertheless be deemed to have been done or given by virtue of the powers conferred by this section.

(4) If, at any time during the drawing of any Government Lottery, any question or dispute should arise concerning the winning number or numbers, the method of drawing or otherwise, the draw shall be suspended and the matter referred forthwith to the Minister whose decision on that matter and the further conduct of the lottery shall be final and conclusive.

#### **Proceeds of Government Lotteries.**

18. Subject to the deduction of any prize money properly payable to the winners and of such other deductions as may be prescribed, the proceeds of the sale of all tickets or chances in any Government lottery shall be paid into the Consolidated Fund.

#### **General regulations about Government Lotteries.**

19.(1) The Minister may make regulations prescribing all matters which are necessary or convenient to be prescribed for giving effect to the preceding provisions of this Part and in particular—

- (a) for designating a public officer to be responsible for the operation of Government lotteries;
- (b) for appointing a committee to advise and assist in the promotion and conduct of Government lotteries;
- (c) for prescribing the conditions to be observed by agents appointed to sell tickets for Government lotteries;
- (d) for prescribing the form or contents of such tickets;
- (e) for prescribing the information to be published concerning any Government lottery and the manner in which it shall be published;
- (f) for prescribing the time within which and the manner in which prizes shall be claimed;
- (g) for providing for the disposal of unclaimed prizes or money as to which any dispute has arisen;
- (h) for prescribing the persons who shall be present at any draw for the allotment of prizes and their powers and duties in relation to any such draw or to any dispute or difficulty which may arise in the conduct of any such draw.

(2) Regulations made under this section may prescribe that, in certain eventualities to be specified and after such time as may be specified, the proceeds of unclaimed prizes shall be forfeited to the Government and paid into the Consolidated Fund.

## **Scheduled lotteries.**

20.(1) On receipt of an application in that behalf, accompanied by the prescribed fee, the Licensing Authority may authorise the applicant to promote and conduct a non-remote lottery of a description specified in Schedule 2.

(2) A person who promotes or conducts a lottery of a description specified in Schedule 2 shall be guilty of an offence unless.

- (a) he is authorised to do so under subsection (1); and
- (b) the conditions specified in that Schedule in relation to a lottery of that description and any additional conditions specified by the Licensing Authority in the authorisation are complied with.

(3) The Licensing Authority may by order published in the Gazette add to or otherwise amend Schedule 2.

**Offences in connection with non-remote lotteries.**

21.(1) Subject to subsections (2) and (3), a person shall be guilty of an offence if, in connection with any non-remote lottery other than a government lottery, he—

- (a) prints any tickets for use in the lottery;
- (b) sells or distributes, or offers or advertises for sale or distribution, or has in his possession for the purposes of sale or distribution, any tickets or chances in the lottery;
- (c) prints publishes or distributes, or has in his possession for the purpose of publication or distribution—
  - (i) any advertisement of the lottery;
  - (ii) any list (whether complete or not) of prize winners or winning tickets in the lottery; or
  - (iii) any such matter descriptive of the drawing or intended drawing of the lottery, or otherwise relating to the lottery and is calculated to act as an inducement to persons to participate in that lottery or other lotteries;
- (d) brings, or invites any person to send, into Gibraltar for the purpose of sale or distribution any tickets in, or advertisement of, the lottery;
- (e) sends or attempt to send out in Gibraltar any money or valuable thing received in respect of the sale or distribution, or any document recording the sale or distribution, or the identity of the holder, of any ticket or chance in the lottery;
- (f) uses any premises, or causes or knowingly permits any premises to be used, for purposes connected with the promotion or conduct of the lottery; or
- (g) causes, procures or attempts to procure any person to do any of the acts mentioned in paragraphs (a) to (f).

(2) Subsection (1) does not apply to an act done in relation to a lottery which is of a description specified in Schedule 2 and for which an authorisation has been granted under section 20 unless, at the time of the act in question, there is a failure to comply with any conditions applicable to it as mentioned in subsection (2)(b) of that section.

(3) Subsection (1) does not apply to an act done in relation to a lottery promoted by a person who is the holder of a current lottery promoter's licence unless, at the time of the act in question, there is a failure to comply with any conditions subject to which the licence was granted.

(4) In any proceedings instituted in respect of an offence under subsection (1) which relates to a lottery to which that subsection applies by virtue only of such a failure to comply with conditions as is mentioned in subsection (2) or subsection (3), it shall be a defence to prove that, at the time of the alleged offence, the defendant had reasonable grounds for believing that none of those conditions had been broken.

## **PART V**

### **BETTING INTERMEDIARIES**

#### **Restriction on acting as a betting intermediary except under licence.**

22.(1) In respect of non-remote gambling, no person shall act as a betting intermediary unless he is the holder of a current betting intermediary's licence.

(2) No person shall use any premises for the purposes of carrying on the business of a betting intermediary in respect of non-remote gambling unless those premises are covered by a betting intermediary's licence held by him.

(3) A person who acts as a betting intermediary in contravention of subsection (1) or subsection (2) shall be guilty of offence.

## **PART VI**

### **REMOTE GAMBLING**

#### **Requirement for remote gambling licence.**

23.(1) Any person who in or from within Gibraltar conducts or provides facilities for remote gambling of any description shall be guilty of an offence unless—

- (a) he is the holder of a current remote gambling licence under which gambling of that description is authorised; or
  - (b) subsection (2) or subsection (3) applies.
- (2) The holder of a current bookmaker's licence shall not be guilty of an offence under subsection (1) if—
  - (a) under section 4(2), the Licensing Authority has specifically extended the licence so as to authorize the taking of bets by telephone; and
  - (b) the only remote gambling which he conducts or for which he provides facilities is betting by means of the telephone.
- (3) The holder of a lottery promoter's licence shall not be guilty of an offence if—
  - (a) under section 4(2), the Licensing Authority has specifically extended the licence so as to authorise the sale of tickets to a person placing an order by telephone; and
  - (b) the only remote gambling which he conducts or for which he provides facilities is the sale of tickets by means of the telephone.
- (4) Nothing in this Part prevents a person from holding more than one remote gambling licence where each licence authorises a different description of gambling.
- (5) In this Part “licence holder” means the holder of a current remote gambling licence.

**Providing facilities for remote gambling.**

24.(1) For the purposes of this Act, a person shall be regarded as conducting or providing facilities for remote gambling in or from within Gibraltar if and only if at least one piece of remote gambling equipment used in the provision of the facilities is situated in Gibraltar.

(2) In this Part “remote gambling equipment” means, subject to subsection (3) and (4), electronic or other equipment used by or on behalf of a person providing facilities for remote gambling—

- (a) to register a person's participation in the gambling and to store information relating thereto;

- (b) to present, to persons who are participating or may participate in the gambling, a virtual game, virtual race or other virtual event or process by reference to which the gambling is conducted;
- (c) to determine all or part of, or the effect of, a result relevant to the gambling and to store information relating thereto;
- (d) to accept payment in respect of the gambling; or
- (e) to authorise payment of any winnings in respect of the gambling.

(3) For the purposes of this Part, a computer which is used by a person to participate in remote gambling shall not be regarded as remote gambling equipment unless it is provided by or on behalf of the person who is conducting or providing the facilities for the remote gambling.

(4) For the purposes of this Part remote gambling equipment shall not include equipment operated in the ordinary course of providing banking, telecommunications, and payment processing services or such other services as may be prescribed.

(5) Without prejudice to the generality of the terms which may be imposed on the grant or renewal of a licence, a remote gambling licence may be granted or renewed subject to a term that all or such part as may be specified in the licence of the remote gambling equipment which is used in the conduct of or provision of the facilities for the remote gambling shall be situated in Gibraltar.

## **Safeguarding and integrity of equipment.**

25.(1) A licence holder shall take all reasonable steps to ensure that, as regards any premises on which is kept any computer equipment used to facilitate the carrying on of the activities authorised under the licence these are secure and free from access by unauthorised persons.

(2) A licence holder shall also take all reasonable steps to ensure that all such computer equipment as is referred to in subsection (1) and any data held therein is secure against access (by whatever means) by unauthorised persons.

(3) In accordance with the following provisions of this section, a licence holder shall furnish to the Gambling Commissioner at such intervals as are referred to in subsection (5), a certificate that the integrity of any computer

equipment used to facilitate the carrying on of the activities authorised under the licence has been properly tested by a body approved by the Minister in consultation with the Gambling Commissioner, the Licensing Authority (if not the Minister) and after consultation with licence holders.

(4) A certificate furnished to the Gambling Commissioner for the purposes of subsection (3) shall contain the following information—

- (a) the name of the owner of the equipment;
- (b) the name of any company or individual who carried out the testing;
- (c) a declaration that software forming any part of a random number generator is fair and reliable; and
- (d) such other information as the Gambling Commissioner may from time to time in writing specify.

(5) A licence holder shall not be regarded as complying with subsection (3) unless he secures that a certificate required by that subsection is received by the Gambling Commissioner within the period of one year beginning on the date on which the licence was first granted and thereafter, for so long as the licence remains in force, at such intervals as may be required by the Licensing Authority.

#### **Software suppliers.**

26.(1) On receipt of a request from the Gambling Commissioner asking for information concerning software of a particular description, the holder of a licence shall give the Commissioner in such form and manner as may be specified in the request, information concerning any person who supplies to the licence holder software of that description and of the specification of any such software.

(2) If the Gambling Commissioner is not satisfied with the information provided by a licence holder in pursuance of subsection (1), the Commissioner may by notice in writing prohibit the licence holder from contracting, or continuing to carry on business, with a software supplier specified in the notice.

#### **Responsible gambling.**

27. (1) Any remote gambling website operated by or on behalf of a licence holder shall contain on the home page a direct link to the websites of at least one organisation dedicated to assisting problem gamblers.

(2) The Minister, after consulting the Gambling Commissioner, the Licensing Authority (if not the Minister) and licence holders, may by regulations make further provisions relating to responsible gambling.

(3) A licence holder shall ensure that systems are in place—

- (a) to enable a person to request to be self-excluded from gambling with the licence holder;
- (b) to designate a named person to be responsible for formulating responsible gambling policies, including, but not limited to, providing training for staff on the implementation of those policies;
- (c) to warn persons that they should not gamble beyond their means to pay and to discourage them from so doing;
- (d) to cooperate with the Licensing Authority, Gambling Commissioner and other licence holders to establish and refine techniques to identify and discourage problem gambling; and
- (e) to seek to prevent a person from participating in any remote gambling activity who is under the minimum permitted age.

## **Registration of participants.**

28.(1) A licence holder shall not permit a person to participate in any gambling activity, unless that person has registered with the licence holder in the form specified by the Licence Authority, giving his full name, residential address, age and any other particulars which may from time to time be so specified.

(2) A licence holder shall inform every person who is a registered participant that it is that person's responsibility to ensure that, under the laws of the jurisdiction to which he is personally subject (by virtue of residence or otherwise), it is lawful for him to use the facilities provided by the licence holder.

(3) A licence holder shall take all reasonable steps to ensure that any information supplied by a registered participant is kept up to date.

## **Information with respect to operation etc of participants' accounts.**

29. A licence holder shall provide the Gambling Commissioner, with such information concerning the accounts of his registered participants as the Gambling Commissioner may reasonably require.

**Confidentiality.**

30. Information provided by, or relating to, a registered participant may not be disclosed to a third party or used for a purpose other than the purpose for which it was given or obtained unless the disclosure or use is—

- (a) approved in writing by the participant;
- (b) reasonably necessary for the conduct of the activities authorised under the licence; or
- (c) required in order to comply with a provision made by or under this or any other Act or is related to an official investigation.

**Aborted transactions.**

31.(1) If a registered participant's participation in a remote gambling transaction is interrupted by a failure of the licence holder's equipment in such a manner as to prevent the participant from continuing with the transaction, the licence holder shall refund any amount staked or wagered by that participant in respect of that particular transaction to his account as soon as practicable or, if possible, ensure that the transaction is resumed as soon as practicable if this may be done without detriment to the participant.

(2) If a transaction is interrupted as a result of a failure of the licence holder's equipment and, as a result, a detriment is caused to a registered participant or there is a suspicious circumstance, the licence holder shall—

- (a) promptly inform the Gambling Commissioner of the circumstances of the failure; and
- (b) not conduct a further transaction if that transaction is likely to be affected by the same failure.

(3) If a licence holder has reason to believe or to suspect that an interruption to, or the result of, a transaction has been caused or affected by any illegal activity, the licence holder may withhold any winnings that might otherwise be due pending investigation.

(4) If a licence holder withholds any winnings under subsection (3), the licence holder shall—

- (a) immediately inform the Gambling Commissioner of the circumstances of the alleged illegal activity; and
- (b) suspend all further transactions if a recurrence of the interruption or alleged illegal activity is likely.

(5) If the Gambling Commissioner decides to carry out an investigation into any alleged illegal activity, the Gambling Commissioner may by notice in writing to the licence holder—

- (a) direct the licence holder to pay any winnings withheld under subsection (3); or
- (b) confirm the licence holder's decision to withhold the winnings, but direct the licence holder to refund amounts staked or wagered by any registered participant affected thereby.

**Information to be included in websites and advertising.**

32.(1) The home page of any remote gambling website maintained by a licence holder shall contain a link to a page which displays the following information—

- (a) the full name of the licence holder and the address from which he carries on business under the licence;
- (b) a statement that the licence holder is licensed by the Gibraltar Licensing Authority and is regulated under this Act; and
- (c) a statement in the prescribed form to the effect that persons under the minimum permitted age, within the meaning of the Gambling Act 2005, are not permitted to participate in the gambling activities provided by the licence-holder.

(2) The Minister, after consulting the Gambling Commissioner, the Licensing Authority (if not the Minister) and licence holders, may prescribe rules governing the advertising of the gambling activities authorised under a remote gambling licence.

(3) Without prejudice to the generality of subsection (2) any such rules may prohibit under penalty advertisements that are—

- (a) indecent, pornographic or offensive;
- (b) false, deceptive or misleading;

- (c) intended to appeal specifically to persons under the minimum permitted age ; or
- (d) in breach of copyright laws.

**Money laundering and other illegal acts.**

33.(1) If a licence holder become aware, or has reason to suspect, that a registered participant has obtained a benefit for himself or another person by any illegal conduct, the licence holder may take all reasonable and proportionate steps in relation to that person's account, including the immediate suspension or closure of that account.

(2) If, in connection with any gambling activity, a licence holder becomes aware, or has reason to suspect, that any money laundering or other activity which is illegal has taken or is about to take place, the licence holder shall within twenty four hours or as soon as is reasonably practicable give written notification of the alleged money laundering or other activity to the Gambling Commissioner advising him of all the facts known in relation to this matter.

(3) In any case where the Gambling Commissioner receives a notification under subsection (2) the Commissioner shall send a copy of the notification to the Financial Intelligence Unit and any other law enforcement authority in Gibraltar which he thinks appropriate.

(4) Where under subsection (2) a licence holder is required to give a notification of any money laundering or other illegal activity and an investigation into the money laundering or other activity is being or is to be carried out by the Gambling Commissioner, the Financial Intelligence Unit or any other law enforcement body in Gibraltar, the licence holder shall, if called upon to do so, co-operate in that investigation.

**PART VII****OBLIGATIONS OF ALL LICENCE HOLDERS****Application.**

34. The obligations set out in this Part apply to the holder of every description of licence and are without prejudice to any obligations which, under any other provision of this Act, are relevant only to a particular description of licence.

**Duty to publicise rules.**

35. The licence holder shall ensure that his rules are so displayed that they may readily be seen by those who enter his premises, or in the case of the holder of a remote gambling licence that they may readily be accessed by persons visiting his remote gambling website.

## **Procedures and internal controls.**

36. In order to monitor the activities authorised under the licence and, in particular, to comply with its obligations under the Criminal Justice Act in respect of any transactions which may give rise to any suspicions of money laundering on the part of participants, a licence holder shall establish and at all times maintain in operation an effective system of internal controls and procedures.

## **Minimum ages for gambling.**

37.(1) A licence holder shall take all reasonable steps to prevent any person from participating in the gambling activities provided by the licence holder unless he is at least of the minimum permitted age.

(2) In this Act “the minimum permitted age” means, subject to subsection (3)–

- (a) in relation to a lottery of a description specified in Schedule 2, sixteen; and
- (b) in the case of any other description of gambling, eighteen.

(3) The Minister may by regulations amend paragraph (a) or paragraph (b) of subsection (2) so as to substitute a different age from that for the time being set out in that paragraph; and different ages may be so substituted for different descriptions of gambling and different circumstances.

(4) If the licence holder becomes aware that a person under the minimum permitted age is or has used the licence holder’s gambling facilities–

- (a) the stake (whether by fee, stake or otherwise) paid in respect of any such gambling shall be returned to the person by the licence holder as soon as is reasonably practical; and
- (b) any winnings to be paid in respect of such gambling shall be forfeited to the Government and paid into the Consolidated Fund, provided that any winnings paid or payable to the person before the licence holder became aware that the participant was

under the minimum permitted age shall not be forfeited to the Government; and

- (c) the licence holder shall not require a person to return any winnings paid in respect of such gambling before the licence holder became aware that the participant was under the minimum permitted age.

**Record keeping and provision of audited accounts, etc.**

38.(1) A licence holder shall, by notice in writing to the Gambling Commissioner nominate a place for the safe keeping of his transaction records.

(2) A licence holder shall keep those records in a manner that allows—

- (a) true and fair financial statements and accounts to be prepared annually; and
- (b) those financial statements and accounts to be audited.

(3) A licence holder shall prepare and deliver to the Minister quarterly financial returns in such form as may from time to time be specified by the Minister.

(4) A licence holder shall keep transaction records for not less than five years from the date of the event giving rise to the record.

(5) Within 28 days of their becoming available to him, a licence holder shall provide the Gambling Commissioner and the Licensing Authority with a copy of the holder's audited financial statements and accounts for each financial year or other period for which the licence holder makes up accounts and shall provide the Gambling Commissioner with such additional information as he may in writing require.

**Licence holder to maintain approved banking and payment processing arrangements.**

39.(1) For all banking or similar transactions relevant to the activities authorised under his licence, a licence holder shall maintain banking and payment processing arrangements of a description approved by the Licensing Authority at the time the licence was granted or last renewed.

(2) A licence holder shall not change the banking arrangements approved in accordance with subsection (1) insofar as they relate to the

jurisdiction in which those arrangements are established unless he obtains the prior consent in writing of the Licensing Authority.

(3) Any change by a licence holder to the payment processing arrangements approved in accordance with subsection (1) shall be notified to the Licensing Authority as soon as is reasonably practicable.

(4) Before giving consent in accordance with subsection (2) the Licensing Authority shall consult the Gambling Commissioner and take into consideration any representations that he may make on the proposed alterations or changes to the approved arrangements.

## **Complaints.**

40. A licence holder shall promptly inquire into—

- (a) any complaint made to the licence holder by a participant regarding a transaction; or
- (b) a complaint referred to the licence holder by the Gambling Commissioner.

## **Payment of charges, fees and gaming taxes.**

41.(1) Every licence holder shall pay such charges, fees and gaming taxes as may be prescribed by the Minister in connection with the carrying on of the activities authorised by the licence; and different charges, fees duties and levies may be so prescribed in relation to different licences and different circumstances.

(2) All such charges, fees and gaming taxes shall be paid into the Consolidated Fund.

## **PART VIII** **ENFORCEMENT PROVISIONS**

### **Investigations, reporting and powers of entry, etc.**

42.(1) The Minister, after consultation with the Licensing Authority and the Gambling Commissioner, may appoint one or more persons (an appointed person) to investigate and report on the affairs of any licence holder suspected of carrying on its activities contrary to the provisions of his licence or of this Act, or in a manner which is otherwise prejudicial to the public interest, the interest of any customer or potential customer or to the reputation of Gibraltar.

(2) For the purpose of investigating and reporting as provided for under subsection (1), an appointed person may, on production, if requested, of the notice of his appointment but, if necessary, without the consent of the occupier of any place, enter—

- (a) a place where a licence holder carries on business; or
- (b) any other place where he has reason to believe that gambling activities of any description may be being, or may have been, conducted,

at any time when the place is open for carrying on business or otherwise open for entry.

(3) For the purpose of investigating and reporting in accordance with this section, an appointed person may, pursuant to a warrant issued by a justice of the peace —

- (a) search all or any part of a licence holder's place of business;
- (b) inspect, measure, test, photograph or film any part of a licence holder's place of business or anything at that place;
- (c) take any item, or a sample from any item, found at a licence holder's place of business for analysis or testing;
- (d) copy any document found at a licence holder's place of business;
- (e) access, electronically or by some other means, a system used at a licence holder's place of business for conducting remote gambling or for administrative purposes related to the conduct of remote gambling;
- (f) take into or on to a licence holder's place of business any person, equipment and materials which the inspector requires for exercising a power under this section;
- (g) require any occupier of a licence holder's place of business, or a person at that place, to give the inspector reasonable assistance to exercise the inspector's powers under paragraphs (a) to (f); or
- (h) require any occupier of a licence holder's place of business, or a person at that place, to give the inspector information to assist the inspector to ascertain whether any provision made by or

under this Act or any other law applicable within Gibraltar is being complied with.

- (4) A person shall be guilty of an offence if he—
  - (a) obstructs an appointed person in the exercise of his functions under this section; or
  - (b) otherwise fails to comply with any requirement made on him under this section.

## **Suspension or revocation of licence.**

43.(1) Subject to subsection (6), if at any time the Licensing Authority considers it appropriate to suspend or revoke a licence, it shall give the licence holder notice in writing to that effect.

(2) A notice given to the licence holder under subsection (1) shall give him such opportunity as is reasonable in all the circumstances to make representations concerning the proposed suspension or revocation of the licence.

(3) The Licensing Authority shall not take a final decision on any matter relating to the suspension or revocation of a licence until it has considered any representations made by the licence holder as mentioned in subsection (2).

(4) Instead of suspending or revoking a licence, the Licensing Authority may add, remove or amend a term of the licence.

(5) If the Licensing Authority finally determines to suspend or revoke a licence or to add, remove or amend any term, the authority shall within seven days of reaching its decision provide the licence holder with a notice in writing of the reasons for its decision.

(6) If at any time the Licensing Authority considers that a licence holder is carrying on his activities in a manner which is prejudicial to the public interest, it shall have power immediately and without prior notice to suspend that licence on such terms as it considers appropriate.

## **Grounds for suspending or revoking a licence.**

44. Without prejudice to the powers set out in section 43(6) the Licensing Authority may suspend or revoke a licence on any ground on which it could refuse a renewal of the licence under paragraph 7 of Schedule 1.

**Issue of search warrant.**

45.(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground to suspect that any gaming establishment or other place is kept or used as a place in which gambling of any description is taking place contrary to any provision of this Act, he may grant a warrant under his hand authorising the Gambling Commissioner or any person or persons (including a police officer) designated by the Commissioner at any time or times within seven days from the date of the grant to enter the place, if necessary by force, and take such steps as are referred to in subsection (2).

(2) The steps referred to in subsection (1) are to search for, seize and remove—

- (a) any documents, money or valuable thing; and
- (b) any instruments of gambling,

which are found in the place specified in the warrant and which the person making the seizure has reasonable ground to suppose are in that place for a purpose which constitutes an offence under any provision of this Act and to retain the same for the purpose of a prosecution in respect of such an offence.

**Offences relating to certain prize competitions.**

46.(1) Unless authorised by a licence, it shall be an offence to conduct, in or through a newspaper or any other medium, or in connection with any trade or business or the sale of any article to the public—

- (a) any competition in which prizes are offered for forecasts of the result either of a future event or of a past event the result of which is not generally known; or
- (b) any other competition success in which does not depend to a substantial degree upon the exercise of skill.

(2) The fact that a person may be guilty of conduct giving rise to an offence under subsection (1) does not affect any liability he may have in respect of that conduct under the provisions of Part IV.

**Offence of failing to fulfil obligations.**

47.(1) A licence holder shall be guilty of an offence if he fails to comply with any obligation imposed on him by or under Part VI or Part VII.

(2) In any case where there is such a failure as is mentioned in subsection (1) and it is shown that the failure was the result of an act or omission on the part of the executive manager of the licence holder concerned, the executive manager shall be guilty of an offence.

(3) Nothing in subsection (2) affects the operation of section 51 in a case where the licence holder is a body corporate.

## **Penalty for offences and forfeitures.**

48.(1) A person guilty of an offence under any provision of this Act for which no other penalty is provided shall be liable—

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both such fine and imprisonment; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(2) The court before which a person is convicted of an offence against any provision of this Act may order to be forfeited any money, valuable thing or instruments of gambling seized in connection with the offence and shall order to be destroyed all documents (other than currency) produced to the court which are shown to the satisfaction of the court to relate to the conduct of unlawful gambling.

## **Offences by bodies corporate.**

49. Where an offence under any provision of this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, secretary or other officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

## **PART IX SUPPLEMENTARY**

### **Validity of gaming contracts and security for winnings.**

50.(1) Section 18 of the Gaming Act 1845 (which renders wagering contracts unenforceable) shall not form part of the law of Gibraltar.

(2) The following enactments of the Parliament of the United Kingdom shall no longer form part of the law of Gibraltar—

- (a) section 1 of the Gaming Act 1710 (which renders void securities given for money won by gaming or for the repayment of money lent for gaming); and
- (b) section 1 of the Gaming Act 1835 (which provides that securities rendered void by the Gaming Act 1710 shall be deemed to be given for illegal consideration).

**Finality of decisions of Licensing Authority.**

51. The decision of the Licensing Authority on any matter relating to—

- (a) the grant, refusal, renewal, suspension or revocation of a licence; or
- (b) the addition, removal or amendment of any term subject to which a licence is held,

shall be final and conclusive.

**Appointment of Gambling Ombudsman.**

52.(1) The Minister may by regulations appoint a Gambling Ombudsman to undertake such functions and to exercise such powers as may be prescribed in relation to any activity licensed under this Act.

(2) An appointment under subsection (1) shall be on such terms and conditions as the Minister considers appropriate.

**Exemption from Shop Hours Act.**

53. The Shop Hours Act shall not apply in respect of any premises covered by a current bookmaker's licence, a gaming operators licence or a remote gambling licence.

**Transitional provisions.**

54.(1) In this section—

- (a) “Gaming Act authorisation” means a certificate, licence, permit or agreement entered into issued under Part I of the Gaming Act;

- (b) “relevant appointed day” means the day appointed under section 2(2) for the coming into operation of the repeal of the Gaming Act or, if more than one day is so appointed for different provisions of that Act, the first such day; and
- (c) “new licence”, in relation to a Gaming Act authorisation, means a licence relating to activities similar to those to which the Gaming Act authorisation related and so far as compatible with the Act, on the same terms and conditions as the authorisation.

(2) A Gaming Act authorisation shall have effect as if granted or entered into by the Minister (or Licensing Authority if not the Minister) under this Act, and the provisions of this Act shall apply accordingly.

(3) A Gaming Act authorisation will cease to have effect upon the issue of a new licence issued by the Minister (or Licensing Authority if not the Minister) under this Act, whether or not the holder of the authorisation has applied for such a licence.

(4) A lottery permit granted under Part II of the Gaming Act and current on the relevant appointed day shall have effect as an authorisation under section 20.

(5) The Minister may by regulations make such further or other provisions as he considers appropriate to provide for the transition from the system of licensing and regulation provided for in the Gaming Act to the provisions of this Act.

(6) The Minister may by regulations make such provisions as he considers appropriate to provide for the transition from the Gaming Tax Act and regulations made thereunder to regulations made under section 41.

## **Repeals.**

55. The following Acts are repealed—

- (a) The Gaming Act; and
- (b) *The Gaming Tax Act.*

**SCHEDULE 1**

## Section 4

**GENERAL PROVISIONS APPLICABLE TO LICENCES****Application for and form of licences.**

1.(1) An application for the grant of a licence shall be made to the Licensing Authority in such form and manner and shall contain such information and be accompanied by such documents as may be prescribed by the Licensing Authority.

(2) Different forms of application and different descriptions of documents may be prescribed in relation to different types of licence.

(3) Nothing in subparagraph (1) shall prevent the Licensing Authority from requiring any description of documents or other information for the purpose of considering a particular application.

(4) A licence shall be in such form as may be determined by the Licensing Authority but, in particular, shall contain—

- (a) the name and address of the licence holder and, where relevant to the type of the licence, the address of the premises covered by the licence;
- (b) the date and issue of licence and the date of its expiry;
- (c) a description of the gambling activity authorised by the licence;
- (d) a statement that the licence is not transferable;
- (e) the licence number as designated by the Licensing Authority;  
and
- (f) any terms to which the licence is subject.

**Grant or refusal of licences.**

2.(1) Subject to paragraphs 3 and 9, the Licensing Authority shall at all times have a complete discretion to grant or refuse an application for a licence.

(2) On receipt of an application, the Licensing Authority shall proceed to consider the application and then either—

- (a) grant the application by the issue of a licence of the description applied for;
- (b) give notice in writing to the applicant refusing the application; or
- (c) give notice in writing to the applicant that, before the Licensing Authority can reach a decision on the application, the authority requires, within such reasonable time as is specified in the notice, such further information as is so specified.

(3) If, in a case where the Licensing Authority has given notice as mentioned in subparagraph (2)(c), the authority receives the required information, it shall then again proceed in accordance with paragraphs (a) to (c) of subparagraph (2) but, if the required information is not received within a reasonable time, the authority shall refuse the licence.

**Specific matters to be considered by the Licensing Authority.**

3.(1) The Licensing Authority shall refuse to grant a licence if—

- (a) it considers that it would be in the public interest to do so;
- (b) it is not satisfied that the applicant for the licence and, where applicable, each shareholder, director of the applicant, each executive manager and interested person is a fit and proper person; or
- (c) it is not satisfied as to any of the matters specified in subparagraph (4).

(2) Without prejudice to the concept of the “public interest”, in considering whether it would be in the public interest to refuse to grant a licence, the Licensing Authority shall have regard to the question whether the technological, human, property and any other resources necessary for any proposed operations under the licence applied for are currently available in Gibraltar without significantly prejudicing the supply of those resources to other enterprises.

(3) In this Schedule—

- (a) “executive manager” means any person who, if the licence were to be granted, would have the control or management of

the whole or a substantial part of the business of the licence holder; and

- (b) “interested person” means any person who, if the licence were to be granted, would, in the opinion of the Licensing Authority, be able or likely to be able to influence (whether by the holding of securities or otherwise) the conduct of the business of the licence holder.

(4) In determining for the purposes of this paragraph whether the applicant for a licence or any other person is a fit and proper person, the Licensing Authority may take into account to such extent as may be appropriate—

- (a) the person’s character, honesty and integrity;
- (b) his business reputation, current financial position and financial background;
- (c) the business plan in respect of the activities;
- (d) his experience of conducting the gambling activity to which the proposed licence would relate; and
- (e) his conduct, or that of any person associated with him, under any similar licence granted by the appropriate authorities in any comparable jurisdiction outside Gibraltar;
- (f) the actual or proposed ownership and the structure of the business;
- (g) the ability to maintain a minimum required reserve so as to ensure that all winnings or prizes, as the case may be, are paid;
- (h) the technical infrastructure and ability to conduct the gambling which would be authorised under the proposed licence;
- (i) the proposed control measures to ensure that any internet website proposed to be operated by the licence holder would contain no obscene or indecent content nor any links to such content;
- (j) the proposed control measures to ensure that, so far as is reasonably practicable, compulsive gamblers and persons under the minimum permitted age are not able to gain access to any

of the gambling facilities which would be authorised under the proposed licence; and

- (k) the proposed control measures and procedures to seek to identify money laundering and other suspicious transactions,

and in paragraph (e) “similar licence” means a licence to conduct activities which are similar to those in respect of which a licence is sought in Gibraltar.

**Duty to obtain approval for, or notify, certain changes and occurrences.**

4.(1) If a licence holder or an applicant for the grant or renewal of a licence whose application is pending (in this paragraph called “the responsible person”) proposes, or becomes aware that another person proposes, to do any act which, if done, would have the effect of causing a material change, as defined in subparagraph (2), in relation to the responsible person, then—

- (a) the responsible person shall forthwith give notice of the proposal to the Licensing Authority and, if the proposal is that of another person, shall also inform that other person that the Licensing Authority has been so notified; and
- (b) neither the responsible person nor any other person shall proceed with the proposal without the consent of the Licensing Authority.

(2) In this paragraph “material change” means—

- (a) a change in the shareholders, directors or executive managers of the responsible person or in the persons who are, or might reasonably be regarded as, interested persons in relation to the responsible person;
- (b) a change in relation to any share capital of, or shareholding in, the responsible person;
- (c) any change in the information provided to the Licensing Authority with respect to any of the shareholders, directors or executive managers of the responsible person or any person identified by the Licensing Authority as an interested person; or
- (d) any other change prescribed for the purposes of this paragraph.

(3) The Licensing Authority shall have a complete discretion to give or refuse approval for the purposes of subparagraph (1)(b) and an approval

given for those purposes may be made conditional on such matters as seem appropriate to the Licensing Authority.

(4) If an act is done or an event occurs which (in either case) causes or is likely to cause a material change and the circumstances of the act or event are such that the responsible person could not give notice in advance as required by subparagraph (1), then, as soon as he becomes aware of the act or event, the responsible person shall give notice in writing of the act or event to the Licensing Authority and, if required to do so by the Authority, shall furnish it with such information as the Authority may reasonably require (whether with respect to the act or event or the reason why no advance notice was given or any other matter).

(5) If, on receipt of a notice under subparagraph (4), the Licensing Authority considers that the material change resulting from the act or event brings into question the continuation, grant or renewal of the licence in question, the Authority may give notice to the responsible person requiring the taking of such steps as may be specified by or agreed with the Authority and, if the matter cannot be resolved in this way, the Authority may proceed under section 45 to suspend or revoke the licence or, as the case may be, may refuse to grant or renew the licence.

**Amendments to licence.**

5.(1) Subject to the provisions of this paragraph, the Licensing Authority may add, remove or amend any term subject to which a licence is held whether of its own motion or on the application of the Gambling Commissioner or the licence holder.

(2) Before acting under subparagraph (1) on the application of the Gambling Commissioner or of its own motion, the Licensing Authority shall give the licence holder notice in writing stating its intention to do so and affording to the licence holder such opportunity as is reasonable in all the circumstances to make representations concerning any proposed addition, removal or amendment of the terms subject to which the licence is held.

(3) The Licensing Authority shall not take a final decision on any issue relating to the addition, removal or amendment of any term until it has considered any representations made by the licence holder as mentioned in subparagraph (2).

(4) If the Licensing Authority finally determines to add, remove or amend any term of a licence, it shall within seven days of reaching its decision provide the licence holder with a notice in writing of the reasons for its decision.

**Applications for renewal of licence.**

6.(1) An application for the renewal of a licence shall be made to the Licensing Authority in such form and manner and shall contain such information and be accompanied by such documents as may be prescribed by the Licensing Authority.

(2) Different forms of applications and different descriptions of documents may be specified by the Licensing Authority in relation to different types of licence.

(3) Any such application shall be submitted to the Licensing Authority not later three months prior to the date of the expiry of the current licence.

(4) Subject to paragraph 9, on receipt of an application which complies with the requirements of subparagraphs (1) and (3), the Licensing Authority shall proceed to consider the application and shall then either–

- (a) grant the application by renewing the licence for such period as may be specified in the licence, either subject to the existing terms or subject to such other terms as the authority considers appropriate;
- (b) give notice in writing to the applicant refusing the application; or
- (c) give notice in writing to the applicant that, before the Licensing Authority can reach a decision on the application, the authority requires, within such reasonable time as is specified in the notice, such further information as is so specified.

(5) If, in a case where the Licensing Authority has given notice as mentioned in subparagraph (4)(c), the authority receives the required information, it shall then again proceed in accordance with paragraphs (a) to (c) of subparagraph (4) but, if the required information is not received within a reasonable time, the authority may refuse to renew the licence.

## **Grounds for non-renewal of licence etc.**

7. The Licensing Authority may refuse to renew a licence if–

- (a) the Licensing Authority is no longer satisfied either that the licence holder is a fit and proper person to hold the licence or, as the case may be, as to the matters specified in paragraph 3(4);

- (b) the licence holder or any shareholder, director, executive manager or interested person has been convicted of an offence which, in the opinion of the Licensing Authority, affects the fitness of the licence holder to hold the licence;
- (c) the licence holder is or has been concerned in any transaction which, in the opinion of the Licensing Authority, is either illegal or improper or has been guilty of any other conduct which, in the opinion of the Licensing Authority, is liable to bring Gibraltar into disrepute; or
- (d) the licence holder has contravened any term relating to the licence;
- (e) the licence holder has failed to discharge financial commitments relevant to his gambling activities including commitments to participants or the Licensing Authority has reasonable grounds to believe that such a failure is imminent;
- (f) the licence holder has become or is about to become insolvent, has been or is about to be petitioned into bankruptcy or insolvency or has applied to take advantage of the protection of any bankruptcy or insolvency law;
- (g) a trustee, receiver, liquidator or administrator has been appointed in respect of the licence holder under the provisions of the laws of any jurisdiction;
- (h) the licence holder has applied for a winding-up order, or is compelled by any means or for any reason either to discontinue or to wind up his operations;
- (i) the licence was directly or indirectly obtained by a materially false or misleading representation or in some other improper way;
- (j) the licence holder has failed to maintain a physical presence in Gibraltar;
- (k) the licence holder has failed to make timely payment of any fees, duties or levies payable pursuant to this Act;
- (l) the licence holder has failed to comply with any provision made by or under this Act or any regulation as may be prescribed; or

- (m) there is, in the opinion of the Licensing Authority, some other relevant and sufficient reason in the public interest for not renewing the licence.

## **Licence holder to be given an opportunity to make representations.**

8.(1) If the Licensing Authority is minded not to renew a licence or to renew it subject to a term to which the licence was not held at the time of the application for renewal, the authority shall give the licence holder notice in writing notice to that effect.

(2) A notice given to the licence holder under subparagraph (1) shall give him such opportunity as is reasonable in all the circumstances to make representations in support of the application for renewal or concerning any term mentioned in the notice, as the case may be.

(3) The Licensing Authority shall not take a final decision on any issue relating to the renewal of a licence until it has considered any representations made by the licence holder as mentioned in subparagraph (2).

(4) If the Licensing Authority finally determines not to renew the licence, or to renew it subject to any term to which it was not held at the time of the application for renewal, the authority shall within seven days of reaching its decision provide the licence holder with a notice in writing of the reasons for its decision.

## **Applications to be accompanied by prescribed fee.**

9.(1) The Licensing Authority shall not consider any application, whether for the grant or renewal of a licence, unless it is accompanied by such fee as may be prescribed.

(2) Different fees may be so prescribed in relation to different descriptions of applications.

## SCHEDULE 2

Sections 16 and 20

## LOTTERIES SUBJECT TO AUTHORISATION

1. Small lotteries incidental to certain entertainments such as bazaars, sales of work, fetes and other entertainments of a similar character, whether limited to one day or extending over two or more days.

Conditions:

- (a) the whole proceeds of the entertainment (including the proceeds of the lottery) after deducting—
  - (i) the expense of the entertainment, excluding expenses incurred in connection with the lottery;
  - (ii) the expenses incurred in printing tickets in the lottery; and
  - (iii) such sum, if any, not exceeding £50, as the promoters of the lottery think fit to appropriate on account of any expenses incurred by them in purchasing prizes in the lottery,shall be devoted to purposes other than private gain;
- (b) none of the prizes in the lottery shall be money prizes;
- (c) tickets or chances in the lottery shall not be sold or issued, nor shall the result of the lottery be declared, except on the premises on which the entertainment takes place and during the progress of the entertainment; and
- (d) the facilities afforded for participating in lotteries shall not be the only, or the only substantial, inducement to persons to attend the entertainment.

2. Private lotteries promoted by a society established and conducted for purposes not connected with gaming, wagering or lotteries.

The expression “society” includes a club, charity, institution, organization or other association of persons by whatever name called and each local or

affiliated branch or section of a society shall be regarded as a separate and distinct society.

Conditions:

- (a) the whole proceeds after deducting only expenses incurred for printing and stationery shall be devoted as to part for the provision of prizes and as to the other part for purposes which are purposes of the society provided that the amount allocated for the purposes of the society shall not exceed the amount allocated to prizes;
- (b) none of the prizes in the lottery shall be money prizes;
- (c) there shall not be exhibited, published or distributed any written notice or advertisement of the lottery other than—
  - (i) a notice thereof exhibited on the premises of the society;
  - (ii) such announcement or advertisement thereof as is contained in the tickets, if any;
- (d) the price of every ticket or chance shall be the same and the price of any ticket shall be stated on the ticket;
- (e) every ticket shall bear upon the face of it the names and addresses of the secretary and treasurer of the society;
- (f) no ticket or chance shall be issued or allotted except by way of sale and upon the receipt of the full price;
- (g) no tickets in the lottery shall be sent through the post;
- (h) no ticket or chance shall be sold by or to a person under the age of sixteen.

### 3. Lotteries by a person engaged in a trade or business.

Conditions:

- (a) the lottery must be in connection with the trade or business;
- (b) the tickets or chances must be by way of gift coupons only;
- (c) none of the prizes in the lottery shall be money prizes.

4. Lotteries in connection with the Gibraltar Fair.

Conditions:

- (a) none of the prizes in the lottery shall be money prizes;
- (b) tickets or chances in the lottery shall not be sold or issued, nor the result of the lottery declared, except in the Fair Grounds and during the course of the Fair.

5. Lotteries in a newspaper and organized by the publisher of that newspaper; and for the purposes of this paragraph “newspaper” includes any journal, magazine or other periodical publication.

Conditions:

- (a) tickets in the lottery shall not be sold or issued other than in the newspaper;
- (b) tickets shall be issued free of charge;
- (c) none of the prizes in the lottery shall be money prizes.

6. Bingo or Tombola conducted by a society as defined in paragraph 2.

Conditions:

- (a) no person under the age of sixteen shall be admitted or take part in it;
- (b) no money shall be accumulated (in the manner commonly known as “snowballs” from one day to another).