



Government of Gibraltar
Office of the Chief Minister
No.6 Convent Place

Consultation paper

Proposed draft Gambling Bill

17 June 2005

17 June 2005
GAMBLING BILL

Gaming is currently licensed and regulated under the terms of the Gaming Ordinance which was originally enacted in 1958. Given the growth in the gaming industry over the last few years (in particular as a result of the relocation of major gaming groups to Gibraltar) the Government of Gibraltar has come to the view that it is an appropriate time to review and modernise Gibraltar's gaming legislation. This Consultation Paper relates to a proposed draft Gambling Bill, the text of which is attached.

The proposed Gambling Bill will update Gibraltar legislation and cover important aspects, in particular by making specific and detailed provision for remote gambling activities. Much of the provisions relating to domestic gambling remain unaffected, though there has been some modification to aspects of domestic gambling where appropriate.

Set out below is a description of the relevant sections and schedules of the legislation. Furthermore, attached to this note is a table outlining by way of guidance, the appropriate licensing requirements for the different types of gaming activities provided for under the proposed legislation.

Representations and/or views are invited from interested parties. The Government of Gibraltar is keen to publish a bill and proceed to enactment of the new legislation as promptly as possible. Representations (in writing) should be addressed to the Private Secretary (Finance), Office of the Chief Minister, No.6 Convent Place, Gibraltar, by 31st July 2005.

DESCRIPTION OF THE DRAFT LEGISLATION

PART I

The opening Part of the draft Bill contains the long and short titles and a number of provisions relevant to the interpretation and understanding of the rest of the Bill. The long title makes it clear that, in form, the Bill is to replace the whole of the existing Gibraltar legislation on Gambling (The Gaming Ordinance and the Gaming Tax Ordinance) with new provisions. Nevertheless, as will appear below, many of the provisions of the Gaming Ordinance are, in effect, consolidated, being reproduced in largely unchanged form in the draft Bill.

Section 2 is the main interpretation section. In the main it is free standing and reproduces several definitions which were in the Gaming Ordinance. Section 2 does, however, contain some important new definitions which refer to later sections of Part I. In particular, -

- (a) the definition of "the Gambling Commissioner" takes the reader to section 6;
- (b) the definition of "licence" takes the reader to section 3; and

(c) the definition of “the Licensing Authority” takes the reader to section 5.

These provisions apart, one of the most significant of the definitions which has not appeared in previous legislation is that of “remote gambling”.

Section 3 of the Bill sets out the various types of licence required by later sections and that all licences must specify not only the holder of the licence but also the premises on which the activities permitted by the licence may be carried on. Section 4 deals with the imposition of terms on a licence and the power of the Licensing Authority to permit the holder of a bookmaker’s licence to take bets by telephone (which is a form of “remote gambling”). The section also introduces Schedule 1 which, in addition to dealing with applications and the form of licences, contains provisions about the grant and renewal of licences and certain notification requirements. Schedule 1 is dealt with in more detail below.

PART II

This Part of the Bill deals with the regulation of “domestic” betting and betting offices. “Domestic”, in relation to gambling, is defined in section 2(1) as being gambling which is not remote gambling: in effect it relates to betting by persons in Gibraltar with other persons in Gibraltar, primarily on a face-to-face basis. Essentially, the provisions cover the same areas as two sections of the Gaming Ordinance but the provisions of the Bill are, of course, drafted in terms of the new licensing system established by the Bill.

Section 7 corresponds to section 5B of the Gaming Ordinance in its requirement for every bookmaker to have a bookmaker’s licence. Section 8 corresponds to section 5A(1) of the Gaming Ordinance in providing that premises used for bookmaking purposes must be premises covered by the bookmaker’s licence. This is a reflection of section 3(5) of the Bill. Section 9 of the Bill corresponds to subsections (2) and (3) of section 5A of the Gaming Ordinance. It penalises people who, for betting purposes, frequent premises which are not covered by a bookmaker’s licence.

Section 10 does not reflect any provision of the earlier legislation. It imposes a requirement that a person carrying on “domestic” pool betting must hold a pools promoter’s licence.

PART III

This Part of the Bill deals with domestic gaming and gaming establishments. As with Part II, some of the provisions of Part III have their origin in the Gaming Ordinance.

Sections 11 to 13 make provision which broadly corresponds to that previously made by sections 3, 4 and 5 of the Gaming Ordinance. Section 11 requires any person managing, conducting or providing facilities for domestic gaming to hold a gaming operator’s licence. Moreover, since, under section 3(5) of the Bill, a gaming operator’s licence (along with all other licences) specifies the premises which are licensed as well as the holder, section 12 provides that premises used as a gaming establishment must be premises covered by a gaming operator’s licence. Section 13 of

the Bill penalises people who play in unlicensed gaming establishments. Accordingly, sections 11 to 13 make provisions in relation to gaming which broadly correspond to the provisions made in relation to betting by sections 7 to 9.

Section 14 of the Bill excludes from the requirements of a gaming licence gaming conducted “on a social occasion” in private houses etc. The exclusion depends upon the fulfilment of various conditions. This provision does not follow anything in the Gaming Ordinance but is similar to an exclusion in the (United Kingdom) Gambling Act 2005.

Section 15 relates to gaming machines and provides that any person who keeps a gaming machine on any premises or allows such a machine to be kept on premises must have a gaming machine licence covering those premises. This provision corresponds to that made by sections 3A and 5 of the Gaming Ordinance.

PART IV

This Part of the Bill relates to three types of domestic lottery. They are listed in section 16 of the Bill and are (1) Government Lotteries, (2) lotteries of a description specified in Schedule 2 to the Bill and (3) lotteries promoted by a person who holds a lottery promoter’s licence. The substance of the provisions of Part IV correspond closely with that of sections 6 to 12 in Part II of the Gaming Ordinance.

Section 17 empowers the Government to promote and conduct a lottery (that is to say a “Government Lottery”) and confers various supplementary powers on the Minister (as defined in section 2(1)). Section 18 provides that, after paying out prize money etc. the proceeds of a Government Lottery are to be paid into the Consolidated Fund. Section 19 empowers the Minister to make regulations prescribing matters relating to Government Lotteries.

Section 20 relates to the Lotteries specified in Schedule 2. On an application to the Licensing Authority the applicant may be authorised by the Authority to conduct a lottery of a description specified in Schedule 2. Under section 20(2), a person authorised to conduct a lottery of a description specified in Schedule 2 must comply with the appropriate conditions as set out in the Schedule and any additional conditions which may be imposed by the Licensing Authority. Under section 20(3) the Licensing Authority may by order add to or otherwise amend Schedule 2.

Section 21 contains a number of offences which police the earlier provisions of Part IV of the Bill.

PART V

This Part consists of one section only. In relation to domestic gambling, section 22 prohibits a person from acting as a betting intermediary unless he is the holder of a betting intermediary’s licence. The definition of “betting intermediary” is to be found in section 2(1).

PART VI

This Part establishes the regulatory regime for conducting remote gambling from Gibraltar.

Section 23 imposes the requirement that anyone conducting or providing facilities for remote gambling must hold a remote gambling licence. The only exceptions are (1) the taking of telephone bets by the holder of a bookmaker's licence which specifically authorises the taking of such bets and (2) the taking of orders for the sale of lottery tickets by the holder of a lottery promoter's licence which similarly specifically authorises the taking of such orders- section 4(2) of the Bill. Section 24 explains what is meant in the Bill by "conducting or providing remote gambling in or from within Gibraltar".

Section 25 is concerned with the safeguarding and integrity of computer equipment used to facilitate the carrying on of remote gambling. In particular it requires the holder of a remote gambling licence to send annually to the Gambling Commissioner a certificate that the equipment has been tested by a testing house approved by the Commissioner.

Section 26 requires a licence holder to supply information to the Gambling Commissioner with regard to the supplier and specification of software which is used by the licence holder for the purposes of remote gambling. The information is to be supplied on receipt of a request from the Gambling Commissioner describing the software with respect to which he requires information and the information is to be supplied in such form and manner as is specified in the request.

Section 27 is directed at preventing under-age gambling. The holder of a remote gambling licence is to take all reasonable steps to ensure that participants in the remote gambling which he conducts are over 18 or whatever greater age may be relevant in the jurisdiction of a particular participant.

Section 28 continues the theme of protection by dealing with any website which is operated by the holder of a remote gambling licence. Subsection (1) requires such a web site to contain a warning of the addiction possibilities of gambling together with information about at least one organisation dedicated to assisting compulsive gamblers. Subsection (2) requires the licence holder to take various steps to guard against problem gambling.

Sections 29 to 31 deal with the registration of participants in remote gambling. Section 29 requires the holder of a remote gambling licence to obtain and keep up to date a register of specific information relating to persons who participate in the gambling and also to inform participants of their individual responsibility to ensure that, under the law of the jurisdiction which governs them personally, they are legally entitled to engage in the remote gambling provided by the licence holder. Under section 30, every licence holder must provide the Gambling Commissioner with such information relating to the accounts of registered participants as the Commissioner may by notice reasonably require. Under section 31, information relating to a registered participant may not be disclosed to a third party except in three cases. First, with the approval in writing of the participant, secondly, where it is reasonably

necessary for the conduct of the licence holder's business and, thirdly, where it is required by or under any Ordinance or for the purpose of an official investigation.

Section 32 deals with the situation where there is an interruption in a remote gambling transaction as a result of a failure of the licence holder's remote gambling equipment or telecommunications equipment. The section provides for refunds of stakes in appropriate cases and for notification to the Gambling Commissioner of any failure which caused detriment to a participant or if there is any suspicious circumstance. Equally, if the licence holder believes or suspects that an interruption to a transaction has been caused or affected by some illegal activity, he may withhold any prize pending an investigation. The matter must be reported to the Gambling Commissioner who may direct the payment of the prize or confirm the withholding.

Section 33 requires any website maintained by a licence holder to contain certain information, including particulars relating to himself and his business address. It also empowers the Minister to prescribe rules with respect to the advertising of the activities carried out under a remote gambling licence.

Section 34 is concerned with money laundering or other illegal acts arising in connection with remote gambling. Under subsection (1), where the licence holder becomes aware or reasonably suspects that a participant has obtained a benefit as a result of any illegal conduct he can take action in relation to the account of the participant concerned. The rest of the section is concerned with ensuring that the facts of any money laundering or other illegal activity are notified to the Gambling Commissioner and that appropriate action can be taken by the law enforcement bodies of Gibraltar. Finally the licence holder is required to co-operate in investigations arising out of any illegal activity which he is called upon to notify to the Commissioner.

PART VII

As explained in section 35, this Part sets out certain obligations common to all licence holders.

Section 36 seeks to ensure that the rules under which the licence holder runs his gambling operations are brought to the attention of those who seek to participate in the gambling.

Section 37 outlaws the giving of credit by a licence holder to a person participating in the gambling activities concerned and also forbids a licence holder from acting as agent for some other person who might provide such a person with credit.

Section 38 imposes a duty on a licence holder to establish a system of internal controls and procedures to seek to prevent money laundering and other suspicious transactions by persons taking part in remote gambling conducted by the licence holder.

Section 39 requires licence holders to take all reasonable steps to prevent under-age gambling. Winnings which would otherwise be due to a person who is under age are forfeited to the Government and paid into the Consolidated Fund

Section 40 requires the licence holder to inform the Gambling Commissioner of the place where his transaction records are to be kept and requires those records to be kept in such a manner as to enable true and fair financial statements and accounts of his business to be prepared and audited. Every licence holder is also required to provide the Gambling Commissioner with a copy of his audited financial statements and accounts together with any additional information which the Commissioner may request in writing.

Section 41 is concerned with ensuring that every licence holder maintains banking arrangements which are for the time being approved by the Licensing Authority. Before giving any such approval the Licensing Authority is required to consult the Gambling Commissioner.

Section 42 requires every licence holder to inquire promptly into any complaint from a participant concerning a transaction and also any complaint referred to the licence holder by the Gambling Commissioner.

Section 43 requires every licence holder to pay such charges, fees and gaming taxes as may be prescribed by the Minister. All the sums due are to be paid into the Consolidated Fund.

PART VIII

Section 44 empowers the Minister, after consulting with the Licensing Authority and the Gambling Commissioner to appoint investigators to look into the affairs of any licence holder suspected of carrying on business contrary to the provisions of the Ordinance. The inspectors are given wide powers of entry and search of premises and associated powers to obtain information. There is a criminal penalty for obstruction, or failure to comply with a requirement, of an inspector.

Section 45 gives the Licensing Authority power to suspend or revoke a licence. In principle, by virtue of section 46, a licence may be suspended or revoked on any ground on which a renewal of it could be refused under Schedule 1 but, additionally, under subsection (6) of section 45, the Licensing Authority can suspend or revoke a licence immediately if the Authority considers that the licence holder is carrying on his activities in a manner prejudicial to the public interest. The power in subsection (6) of section 45 can be exercised without prior notice but, in all other cases, the Licensing Authority must give notice to the licence holder of the intention to suspend or revoke the licence and give him an opportunity to make representations. As an alternative to revoking or suspending a licence, the Licensing Authority may add, remove or amend a term of the licence.

Under section 47 a justice of the peace, on being satisfied that gambling is taking place on any premises contrary to any provision of the Ordinance, may issue a warrant authorising the Gambling Commissioner or any person designated by him (including a police officer) to enter the premises and search for, seize and remove for possible use in a criminal prosecution any material documents, money etc. or instruments of gaming.

Section 48 reproduces the substance of section 15 of the Gaming Ordinance but that section applied only to prize competitions in newspapers (as defined in the section). Section 48 covers prize competitions conducted in any medium. The section makes it an offence to conduct, through a newspaper or other medium or in connection with a trade or business, any competition in which prizes are offered for forecasts of the results of future events or in which success does not depend to a substantial degree on the exercise of skill. The section preserves the possibility of any additional liability which may arise under Part IV of the Bill (the provisions about Domestic Lotteries).

Section 49 is a general provision making it an offence for a licence holder to fail to comply with the obligations in Parts VI and VII of the Bill. These are the Parts about remote gambling and the general obligations of all licence holders. In a case where the failure to comply is the result of an act or omission on the part of the executive manager of the licence holder, the executive manager will himself also be criminally liable. The section preserves any liability which may arise under section 51 by reason of the licence holder being a body corporate.

Section 50 establishes the level of penalties appropriate on summary conviction and on conviction on indictment for the majority of offences under the Bill, that is to say, all offences other than those for which the Bill already provides a specific penalty.

Section 51 is a “common form” provision in the legislation of Gibraltar dealing with cases where a body corporate is guilty of an offence and the offence is proved to have been committed with the consent or connivance of any director, secretary or other officer of the body corporate. The director, secretary or other officer can be prosecuted for the offence and be punished accordingly. The section is a more modern formulation of the provision which appeared in section 17 of the Gaming Ordinance.

PART IX

Section 52 provides that the decisions of the Licensing Authority on matters relating to the grant, renewal, suspension or revocation of licences or the addition removal or amendment of any term of a licence are final and conclusive. This form of words does not prevent the possibility of judicial review.

Section 53 gives the Minister power by regulations to appoint a Gambling Ombudsman to carry out functions specified in the regulations.

Section 54 continues an exception from section 5E of the Gaming Ordinance. It excludes premises covered by a bookmaker’s licence or a gaming machine licence from the provisions of the Shop Hours Ordinance.

Section 55 provides for the repeal of the existing legislation, namely the Gaming Ordinance and the Gaming Tax Ordinance. It also allows for the making of regulations to provide (1) for a transition from the system of licences and permits under the Gaming Ordinance to the licensing system provided for in the Bill and (2) for the transition from the Gaming Tax Ordinance and regulations made under that Ordinance to regulations made under section 43.

SCHEDULES

SCHEDULE 1

This Schedule contains the details about applying for the grant and renewal of a licence under the Bill. The required documentation will be prescribed, i.e. by regulations, by the Licensing Authority - see paragraphs 1(1) and 6(1). But no application (for the grant or renewal of a licence) will be considered unless accompanied by the fee prescribed by the Minister (paragraph 9). In principle the Licensing Authority has a complete discretion as to the grant of a licence (paragraph 2) but paragraph 3 sets out in detail a number of matters as to which the Licensing Authority must be satisfied: otherwise the Authority must refuse a licence.

Under paragraph 4 a licence holder or an applicant for a licence (“the responsible person”) is required to obtain in advance the approval of the Licensing Authority to any proposal which would have the effect of making a material change in relation to the responsible person. Subparagraph (2) of the paragraph defines what is meant by a material change. The Licensing Authority has a complete discretion whether to approve the proposal or not. In any case where the circumstances of an act or event giving rise to a material change were such that the responsible person could not give advance notice, there is a procedure for notification of the act or event and for action by the Licensing Authority in appropriate cases.

Under paragraph 5, the Licensing Authority is given power, after notice to a licence holder, to add, remove or amend a term of his licence. Before acting, the Authority must consider any representations made by the licence holder. If, after considering any representations, the Authority decides to proceed to add, remove or amend a term of the licence, the Authority must give the licence holder notice of its decision

Paragraph 6 deals with the renewal of licences. The Authority can renew the licence or refuse the application for renewal or seek further information. Paragraph 7 sets out series of specific grounds on which the Authority may refuse a licence. Under paragraph 8 the Licensing Authority must give a licence holder notice if it is minded to refuse a renewal or to make a renewal subject to a new condition. The purpose of this notice is to give the licence holder an opportunity to make representations - which the Authority must consider. If the Authority decides to hold to its original decision it must within even days give reasons in writing to the licence holder.

SCHEDULE 2

This Schedule, when taken with section 20 of the Bill, reproduces the provisions of the Schedule to the Gaming Ordinance. With one exception, the various types of lottery listed in the Schedule must not offer money prizes. But bingo or tombola run by the type of club, charity or society listed in paragraph 2 of the Schedule can offer money prizes in their lotteries.

17 June 2005