

# **BETTING, GAMING, LOTTERIES AND AMUSEMENTS (AMENDMENT) BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department for Communities in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It does not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. Northern Ireland law in respect of gambling is contained in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (the 1985 Order). The 1985 Order is broadly modelled on much older law from Great Britain (the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976).
4. The 1985 Order regulates a wide range of betting, gaming, lotteries and amusement activity in Northern Ireland. This includes:- betting in bookmaking offices and on tracks; the use, supply and maintenance of gaming machines; gaming in bingo clubs; small scale amusements with prizes; and lotteries other than the National Lottery.
5. The 1985 Order also sets out the procedures for the licensing and certification of betting, gaming, lottery and amusement activities and the offences and penalties for breaches of associated licensing and other conditions. The courts and district councils license and certify most of these activities. The Department is responsible for issuing track-betting licences. Responsibility for enforcement of gambling law lies with the Police Service of Northern Ireland (PSNI).
6. The 1985 Order has remained largely unchanged since it was enacted thirty-five years ago. As a result, gambling legislation here has not kept pace with industry and technological changes. As well as being outdated, the current law is complex and inflexible, even with minor amendments requiring changes to primary legislation.
7. Public demand has also been growing for new regulatory controls on gambling to be introduced, especially to strengthen protections for the young and other vulnerable members of society. There is strong evidence, too, that the public is supportive of

legislation which could oblige the gambling industry to help fund research, education and treatment of problem gamblers. A gambling prevalence survey here in 2016 identified 2.3% of the population as having a gambling problem, over four times higher than that recorded in Great Britain. In many jurisdictions, gambling problems are increasingly being viewed as a public health matter.

8. In addition to these issues, the 1985 Order is silent in relation to the regulation of remote (online) gambling. On-line advertising of gambling products and services is regulated under the 2014 Gambling (Licensing and Advertising) Act. This allows an online gambling operator to advertise to consumers here provided they hold the appropriate GB Gambling Commission licence and comply with its codes of practice. (It should be noted that broadcast advertising is primarily a reserved matter.)
9. This Bill is intended to amend certain provisions of the 1985 Order in relation to: - the opening days of licensed bookmakers' offices and bingo clubs; the requirements around membership of commercial bingo clubs; the rules on society lotteries; qualifications and other requirements for the grant of certain licences, certificates and permits; the operation of promotional prize competitions; the definition of 'cheating'; and the enforceability of gambling contracts.
10. In addition, the Bill is designed to put the operation of pool betting in licensed bookmakers' offices on a firm legislative footing and create a new offence to discourage persons under 18 from being allowed to play high stakes gaming machines. A further intention is to enable the Department both to impose a financial levy on the gambling industry and to issue mandatory codes of practice in relation to the manner in which facilities for gambling are provided.
11. The overarching objective of the Bill is to address a number of specific anomalies with regard to the current regulation of land based betting, gaming, lottery and amusement activities. It is also designed to strengthen existing regulatory protections for operators and consumers as well as young people and those who may be vulnerable to gambling harm.

## **CONSULTATION**

12. In December 2019, the Department launched a public consultation on the regulation of gambling in Northern Ireland. The consultation which ran until February 2020, sought the public's views on the appropriateness of current gambling law here. This was to help identify areas of gambling activity that might be included in any future legislation.
13. With no Ministers in place, the consultation did not contain any proposals but sought views from all interested individuals and organisations on whether any changes to the law could be made in the future to allow a more flexible and modern framework to develop.
14. It was evident from the consultation that the public believes that existing law needs to be substantially reformed and modernised, and that greater regulation of gambling,

including on-line gambling, is required. Respondents agreed that more needs to be done to protect vulnerable groups (especially children) from problem gambling.

15. There was a general consensus that the gambling industry should help fund research, education and treatment of problem gamblers through the imposition, if necessary, of a statutory levy.
16. A clear majority of respondents backed the removal of some restrictions on gambling. These included that the law be amended to permit casinos to operate here, the relaxation of bookmaker and bingo club opening hours including Sunday opening and some increase to statutory limits on stakes and prizes.
17. A report on the results of the consultation and a summary of the responses received can be found on the Department's website [Consultation on Regulation of Gambling in Northern Ireland | Department for Communities \(communities-ni.gov.uk\)](https://www.communities-ni.gov.uk/consultation-on-regulation-of-gambling-in-northern-ireland).

## **OPTIONS CONSIDERED**

### **Option 1:- Make no changes to current law**

18. It is considered that it would be irresponsible to fail to respond to public demand for reform and modernisation of existing gambling law. In addition, a survey carried out in 2016 suggests that 2.3% of the population in Northern Ireland have a gambling problem. This figure is very high relative to other regions which have undertaken similar surveys. Problem gambling is likely to have increased as well with the restrictions placed on society over the past year to tackle the spread of COVID-19.
19. The 1985 Order equally sets the regulatory framework for the operation of society lotteries and local charities. Aspects of the existing legislation dealing with the sale of lottery tickets, prize values and organisational expenses are cumbersome and do not reflect present day economic realities. Leaving the law as it stands is likely to result in diminishing returns for small-scale charities and voluntary organisations and threaten their long-term viability.
20. Furthermore, as well as being both outdated and out of step with industry and technological developments since 1985, the present law is silent on remote or on-line gambling which is a growing feature of the gambling economy.

### **Option 2:- Repeal and replace the 1985 Order**

21. It is considered desirable to repeal and replace the 1985 Order with new, more agile legislation which reflects the realities of the modern betting, gaming, lotteries and amusements industry. Such legislation would deal fully and comprehensively with all of the shortcomings identified in current law as well as provide a new and more effective regulatory framework fit for the 21<sup>st</sup> century.

22. However, this Option involves the development of a sizeable piece of legislation. The 1985 Order comprises 187 separate articles and over 20 schedules governing all aspects of licensing, certification, permits, incorporation as well as court, district council, police and Departmental powers and responsibilities. As the present Executive and Assembly mandate is due to end in 2022, it will not be feasible to complete all the considerations needed to ensure that replacement legislation of the scale demanded is robust both in legal and policy terms.
23. Allied to this challenge, is the fact that gambling regulation in Great Britain and the Republic of Ireland is already subject to review. The outcome of these could significantly affect the direction of any future changes here.

### **Option 3:- Introduce medium sized amending legislation**

24. Medium sized legislation would not establish a new regulatory framework, but would amend parts of the 1985 using its existing structures. Whilst this would not comprehensively address all of the issues associated with the 1985 Order, it would offer much needed immediate relief for small scale society lotteries and charities and help guarantee their longer term viability. Medium sized legislation could also deal with some aspects of existing gambling law which remain a source of significant public concern. It would equally assist in addressing a wider desire for the industry to both do more to protect the vulnerable from gambling exploitation and support efforts to assist those with gambling problems.
25. Medium sized legislation of this type is, by its very nature, much more likely to be deliverable within the timeframe of the present Assembly mandate. It could equally form part of a first phase in a two phased approach to reforming gambling law. Much larger legislation to deal with remaining issues could then be taken forward during a future mandate.
26. The Bill implements Option 3 as the most feasible option in the circumstances.

## **COMMENTARY ON CLAUSES**

### **Clause 1 Interpretation**

Clause 1 confirms that all references to “the 1985 Order” within the Bill mean the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985.

### **Clause 2 Opening of licensed offices on Sunday and Good Friday**

Clause 2 amends Article 31(1) of the 1985 Order by removing all reference to Sunday (with the exception of Christmas Day) and Good Friday as days when licensed offices may not be open.

The above Article relates to the closing of licensed offices on certain days during which an office shall not be opened or kept open for the transaction of business at any time or at such other times, if any, as may be prescribed by regulations. The amendment allows licensed offices to be opened for the transaction of business on Sundays and Good Fridays, but not on Christmas Day including Christmas Days which fall on a Sunday.

### **Clause 3 Sunday working in a licensed office**

Clause 3(1) and (2) amend the definition of betting work in Schedule 8A of the 1985 Order (rights of betting workers as regards Sunday working) to include work in a licensed office. The Schedule is construed as one with the Employment Rights (Northern Ireland) Order 1996 which consolidates employment rights laws in a range of areas including Sunday working.

Clause 3(3) therefore substitutes the definition of “commencement date” in paragraph 1(4) of Schedule 8A so as to include betting work under the meaning of Clause 3(2).

Clause 3(4) amends paragraph 8(4) of Schedule 8A to also include “betting work” as work at a licensed office on a Sunday which is open for business.

Clause 3(5) inserts an additional provision into Article 53B of the 1985 Order (Sunday observance) to states that the Sunday Observance Act (Ireland) 1695 does not apply to any person who has effected a betting transaction on a non-sporting event at either a track or a licensed office which is open on a Sunday.

The rights of individuals employed in a licensed bookmakers’ office now mirror those of individuals who work at a track for a bookmaker with respect to Sunday working.

### **Clause 4 Pool betting**

Clause 4 introduces new paragraphs (3A) and (3B) of Article 44 of the 1985 Order (Restriction of pool betting) which restricts any person, other than a registered pool promoter, from carrying on any pool betting business except at a licensed track and except by means of a totalisator operated in accordance with Article 45.

New paragraph (3A) exempts licensed offices from the restriction that prevents any person, other than a registered pool promoter, from carrying on any pool betting business other than at a licensed track and except by means of a totalisator operated in accordance with Article 45.

New paragraph (3B) stipulates the conditions under which the restriction is dis-applied to a licensed bookmaker. These are namely that: - persons placing bets at licensed offices are allowed to do so on the same terms and conditions as if they were placed by means of a totalisator at the licensed track; and the bookmaker displays a notice at the premises which contains information as to the name of the track concerned and information corresponding to that required to be posted under Schedule 8 (Totalisators on Licensed Tracks) of the 1985 Order.

### **Clause 5 Persons who may participate in bingo at bingo club**

Clause 5 amends Article 75 of the 1985 Order by repealing specified parts of paragraphs (3)(a) and (3)(b) and the whole of paragraph (4), all of which limit the eligibility of persons who may participate or take part in bingo at a bingo club premises.

As a result of these amendments only bona fide members of a bingo club or a guest of a bona fide member are allowed to participate or take part in bingo at a bingo club premises. Members and bona fide guests of members may also take part in bingo at the premises irrespective of any time elapsing since application for club membership was made. The exemption to restrictions on participation that applies to employees of the club, including cleaners under paragraph (4) (b) is further removed.

### **Clause 6 Days when bingo and use of gaming machines permitted on bingo club premises**

Article 76 of the 1985 Order (Conditions applying to bingo) sets conditions applying to bingo taking place on bingo club premises. Article 108 (Use of gaming machines on other premises) sets conditions on the use of gaming machines on premises other than registered clubs.

Clause 6 of the Bill is intended to allow bingo to take place and gaming machines to be made available on bingo club premises on Sundays and Good Fridays, but not on Christmas Day including Christmas Days which fall on a Sunday.

Clause 6(1) thus removes the prohibition contained within Article 76(7) of the 1985 Order on any bingo taking place on bingo club premises on any Sunday (with the exception of Christmas Day) and Good Friday.

Clause 6(2) likewise removes the prohibition contained within Article 108(3) of the 1985 Order on any gaming machine being made available for gaming on any bingo club premises on any Sunday (with the exception of Christmas Day) and Good Friday.

### **Clause 7 Offence of inviting, etc. person under 18 to play gaming machine**

Clause 7 inserts a new entry into the 1985 Order to create a new offence in relation to the playing of gaming machines by persons under the age of 18.

Paragraph (1) of Article 124A creates a new offence of inviting, causing or permitting a person under 18 to play anything other than a lower limit gaming machine.

Paragraph (2) of Article 124A makes it a defence for a person charged with an offence under paragraph (1) to prove that there was good reason to believe that the person under 18 had attained that age.

Paragraph (3) provides a definition for a “lower limit gaming machine” as meaning a machine installed on premises for which an amusement permit is in force and where the prize limits comply with those limits established under Article 108(7) of the 1985 Order (Use of gaming machines on other premises).

Clause 7(2) of the Bill inserts a new entry into Schedule 18 of the 1985 Order (Table of offences with mode of prosecution and punishments) setting the mode of prosecution for an offence committed under Article 124A as summary and the punishment as Level 5 or imprisonment for 6 months or both.

### **Clause 8 Arrangements not requiring persons to pay to participate**

Clause 8(1) renumbers Article 131 of the 1985 Order (illegality of lotteries) as Article 131(1) and introduces a new paragraph (2) to that Article specifying that a prize competition arrangement is not a lottery unless persons are required to pay to participate.

Clause 8(2) adds a new Schedule 15A (Lotteries and Competitions: Requirements to Pay in Order to Participate) to the 1985 Order setting out what does and does not constitute a requirement to pay to participate in order to be deemed a lottery.

Clause 8 thereby removes free to enter prize competition arrangements from the definition of a lottery.

### **Clause 9 Rules for societies' lotteries**

Clause 9(a) amends Article 137 of the 1985 Order (Rules for societies' lotteries) by repealing paragraph (5) of the Article which establishes a £1 ticket price limit for society lotteries.

Clause 9(b) alters the limit set under paragraph (14) of Article 137 on the amount which may be appropriated for the expenses of a society lottery to 20% of the whole proceeds whilst Clause 9(c) repeals paragraph (15) which specified the previously applicable amounts.

### **Clause 10 Qualifications by age, residence or corporate status for licences, certificates and permits**

Clause 10(1) reduces the lower age limit for grant of a bookmaker's licence, bingo club licence, a gaming machine certificate and permit and a lottery certificate specified under Articles 7(5)(a), 61(5)(a), 84(4)(a), 141(4)(a) respectively of the 1985 Order from 21 to 18 years of age.

Clause 10(2) removes the residency restrictions for grant of a bookmaker's licence, bingo club licence, a gaming machine certificate and permit and a lottery certificate specified under Articles 7(5)(b), 7(5)(c) and 7(7), 61(5)(b) and 61(5)(c), 84(4)(b) and 84(4)(c), 141(4)(b) and 141(4)(c) respectively of the 1985 Order.

Clause 10(3) repeals Articles 7(5)(5)(d) and 7(6), 61(5)(d) and 61(6), 84(4)(d) and 84(5) and Article 141(4)(d) and 141(5) of the 1985 Order to allow certain corporate bodies to hold a bookmaker's licence, bingo club licence, a gaming machine certificate and permit and a lottery certificate.

Clause 10(4) amends 109(2) of the 1985 Order to allow a body corporate to be granted an amusement permit.

Clause 10(5) similarly amends Article 155(2) of the Order to allow a body corporate to be granted a pleasure permit.

### **Clause 11 Prize competitions not requiring persons to pay to participate**

Clause 11 amends Article 168 of the 1985 Order which prohibits the conduct of certain prize competitions.

Clause 11(2) and (3) introduce a new paragraph (2A) to Article 168 which specifies that a prize competition arrangement is not prohibited by Article 168 unless persons are required to pay to participate in the arrangement and refers to new Schedule 15A (Lotteries and Competitions: Requirements to Pay in Order to Participate) of the 1985 Order, introduced under Clause 8, as setting out what does and does not constitute a requirement to pay to participate in such an arrangement.

### **Clause 12 Cheating**

Clause 12 replaces the existing offence in Article 169 of the 1985 Order (Cheating) with a new Article 169.

Clause 12 introduces paragraphs (1)(a) and (b) to new Article 169 which respectively make it an offence for any person to either cheat at gambling or do anything to enable or assist another person to cheat at gambling.

Clause 12 also introduces paragraphs (2) (a) and (b) to new Article 169 to make it an offence for person to cheat under paragraph (1) irrespective of whether that person improves his chances of winning anything or wins anything.

Clause 12 introduces paragraphs (3)(a) and (b) to new Article 169 which state that cheating at gambling may, in particular, consist of actual or attempted deception or interference with the process of gambling or any game, sport, pastime etc to which gambling relates.

Clause 12 further introduces a paragraph (4) to Article 169 clarifying what is meant by “gambling” for the purposes of this Clause.

### **Clause 13 Enforceability of gambling contracts**

Clause 13(1)(a) repeals Article 170 of the 1985 Order (Gaming and wagering contracts void) and Clause 13(1)(b) repeals Article 171 (Securities in connection with gaming or wagering deemed given for an illegal consideration).

Clause 13(2) and (3) provide for contracts relating to gambling to be legally enforced without prejudice to any law which prohibits the enforcement of contracts on unlawfulness grounds.

Clause 13(4) clarifies that the repeal of Articles 170 and 171 under 13(1) does not allow for the enforcement of contractual rights arising from agreements made before Clause 13 comes into operation.



Clause 13(5) clarifies what is meant by “gambling” for the purposes of this Clause.

#### **Clause 14 Industry Levy**

Clause 14(1) inserts a new Article 172A (Industry Levy) after Article 172 of the 1985 Order.

Article 172A(1) and (2) allow the Department to make regulations with regard to the payment of a levy to the Department by every person who intends to apply for the grant or renewal of a bookmakers’ licence, bookmaking office licence, bingo club licence, gaming machine certificate or permit and amusement permit.

New Article 172A(2) further allows the Department to make regulations with regard to the payment of a levy by every person who intends to have the provisional grant of a bookmaking office licence, bingo club licence or amusement permit declared final.

New Article 172A (3) requires that any regulations made for the payment of a levy make provision for the amount of the levy and its general administration. Article 172A (3) also allows any regulations made to, make provision for determining the amount of the levy according to a specified formula or other means, require the Department to issue a receipt in relation to levy payments, enable repayment of levies to those whose applications are refused and modify the Order as necessary or expedient to give full effect to the levy.

New Articles 172A(4) and (5) specify that the proceeds of a levy are to be expended on projects related to gambling addiction or other associated forms of harm and exploitation and that financial assistance may be provided by grants, loans or any other form of financial assistance. Before any such financial assistance can be paid, the Department of Communities must seek the consent of the Department of Finance to the expenditure.

New Article 172A(6) requires that, before making regulations in relation to the levy, the Department must consult such organisations as appear to it to represent the interests of the gambling industry in Northern Ireland.

New Article 172A (7) clarifies what is meant by “gambling” for the purposes of this Article.

Clause 14(2) of the Bill introduces a new paragraph (3A) to Article 186 of the 1985 Order (Orders and regulations) which requires that regulations made under new Article 172A of the Order be laid before and approved by resolution of the Northern Ireland Assembly.

#### **Clause 15 Code of Practice**

Clause 15 inserts a new Article 180A (Code of practice) after Article 180 of the 1985 Order (Provision for inspection and rights of entry).

New Article 180A (1) requires the Department to issue one or more codes of practice about the manner in which facilities for gambling are provided.

New Article 180A (2) requires that the code in particular describe the arrangements that should be made to ensure gambling is conducted in a fair and open way, that persons

under the age of 18 years and other vulnerable persons are protected from gambling harm or exploitation and that assistance is made available to those who are or may be affected by gambling related problems.

New Articles 180A (3) and (4) respectively allow the Department to include provisions within the code in respect of how gambling facilities are advertised or described and to revise or revoke a code.

New Articles 180A(5) and (6) respectively require that a code and any revision must state when it comes into force and that the Department must publish a code and revision in a manner which it thinks is likely to bring it to the attention of those whose activities it concerns.

New Article 180A (7) allows the Department, in issuing a code, to make different provision for different cases or circumstances (whether or not by way of separate codes of practice).

New Articles 180A(8) and (9) respectively make clear that failure to comply with a provision of the code does not of itself make a person liable to criminal proceedings but that a code:- is admissible in evidence in both civil and criminal proceedings; must be taken into account by a court or tribunal in any case in which it appears to them to be relevant; and must be taken into account by the Department, court or district council in the exercise of a function under the 1985 Order.

New Article 180A (10) requires that, before issuing or revising a code, the Department must consult with:- organisations and persons that appear to it to represent the gambling industry in Northern Ireland; persons who have knowledge about social problems relating to gambling; persons representing district councils; the Chief Constable; and, in such a manner as the Department thinks appropriate, members of the public.

New Article 180A(10) also requires the Department to consult persons who appear to have a relevant responsibility for regulating the advertising industry in cases where any provision of a code relates to advertising as set out in Article 180A(3).

New Article 180 A (11) clarifies the meaning of gambling for the purposes of this clause.

## **FINANCIAL EFFECTS OF THE BILL**

27. There are no financial implications associated with bringing forward this Bill. The Bill as a whole will be delivered within existing resources.

## **HUMAN RIGHTS ISSUES**

28. The proposals have been screened for compatibility with the European Convention on Human Rights. No human rights implications were identified.

## **EQUALITY IMPACT ASSESSMENT**

29. In accordance with its duty under section 75 of the Northern Ireland Act 1998 to have due regard to the need to promote equality of opportunity, the Department conducted a screening exercise on the proposals, concluding that they did not have significant implications for equality of opportunity and that an equality impact assessment was therefore not necessary.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

30. The Department included in its consideration the potential regulatory impacts of the Bill as part of a regulatory impact screening exercise carried out on the proposals. This concluded that no Regulatory Impact Assessment was required.

## **DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN**

31. The proposals do not provide for the collection, use or storage of individual data. Therefore the Department concluded that a Data Protection Impact Assessment was not required.

## **RURAL NEEDS IMPACT ASSESSMENT**

32. The proposals apply to all licensed betting, gaming, lotteries and amusement activities across Northern Ireland. The measures recognise the role licensed premises have in their communities, particularly for people in the more remote rural areas where they are a focus for much social activity. Rural communities will benefit from greater protections with the policy proposals. The Department concluded that no Rural Needs Impact Assessment was required.

## **LEGISLATIVE COMPETENCE**

33. At Introduction the Minister for Communities had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Betting, Gaming, Lotteries and Amusements (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly.”*



Northern Ireland  
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**ISBN: 978-1-78619-456-5**