



## **Non Commercial Gambling and Gambling Without a Licence under the Gambling Act 2005 (the Act)**

This guidance does not constitute legal advice. It is a general description that is not intended to be definitive in particular situations. If you have any queries over and above this guidance then you should seek advice from a solicitor. Please see the general *exclusion of liability* below.

Gambling is regulated by the Gambling Act 2005 and in general a licence or permit is required (whether from the gambling Commission, the Licensing Board or both) to provide gaming, betting or lottery facilities. Certain other gambling facilities may also be covered by other measures like a temporary use notice. However the Act does provide for certain gaming/betting to take place without the need for a licence, permit or other form of permission. It is the responsibility of the provider of the facilities to ensure that gambling remains within the law.

### **What is Gambling?**

The Gambling Act 2005 regulates all gambling, which includes any form of gaming, betting (except spread betting) and participating in any form of lottery (except the national lottery). Gaming means playing a game of chance or a game of skill and chance combined. However a game of pure skill (even to win a prize) is not regulated by the Act.

### **Private Gambling**

Private gambling is not regulated by the Act and as such does not require a licence. Private gambling may only occur in a place to which the public does **not** have access. No profits can be made from private gambling, irrespective of the purpose to which any profit could be put. No charge may be made for participating in private gambling (including entrance fee or other admission charge) and no amounts can be deducted from stakes or prizes. Private gambling may include residential gambling e.g. in a hall of residence provided the majority of participants are resident and the premises is not operated as a trade or business.

### **When Is a Licence Required?**

As stated above, anyone providing gambling facilities generally requires a licence or permit.

However there are two main situations where no licence or permit would be required:

1. Private betting or gaming – basically this is betting or gaming amongst friends, generally at home;
2. Organisations that wish to provide certain gaming facilities for charitable or other non-commercial purposes (generally described as good causes e.g. to raise funds for a club or society) may do so under the provisions in **Part 14** of the Act. No licence, permit or other form of permission is required to operate this kind of gaming provided that the statutory conditions are complied with.

**Exclusion of Liability** - In no event does the Moray Licensing Board or the Moray Council or their employees or agents offer legal advice or accept liability of any description, including liability for negligence for any damages or losses (including, without limitation, loss of business, revenue, profits, or consequential loss) whatsoever resulting howsoever including but not limited to the use of or inability to use this information. We accept no responsibility for keeping the information in these pages up to date or liability for any failure to do so. **If you are in any doubt you must seek advice from a solicitor.**

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## **What Conditions Apply for Non Commercial Gambling to be Exempt?**

### **It Must be Non Commercial**

Non-commercial gaming of this kind may **only** take place at an **event**. The gaming can be either the principal activity at the event or incidental to the event. The event cannot take place on gambling premises where a licence (including temporary use notice) is already in force.

**None** of the proceeds from the event itself are used for private gain. For these purposes, the proceeds of an event constitute the sums raised by its *organisers* (including sums raised by way of participation fees, sponsorship, commission from traders, or otherwise) minus the costs reasonably incurred in organising the event. However, sums raised by other persons will not form part of the proceeds of the event and so may be appropriated for private gain. An example would be refreshments provided at the event by an independent third party.

### **Non Commercial Prize Gaming**

The gaming must be non commercial – see above. To qualify as prize gaming under section 299 of the Act, the prizes (whether in cash or in kind) should be put up in advance, and must not be dependent on the number of players taking part or the amount of money staked. The players participating in non-commercial gaming must also be told what “good cause” is to benefit from the profits from the gaming.

There are no statutory limits on stakes, prizes, participation fees or other charges for this type of non-commercial gaming.

### **Non Commercial Equal Chance Gaming**

The gaming must be non commercial – see above. Where the prizes awarded are dependent on the number of players taking part, or on the amount of money staked on a race, the non-commercial equal chance gaming provisions in section 300 of the Act apply. The players participating in non-commercial gaming must also be told what “good cause” is to benefit from the profits from the gaming. For this type of gaming there are limits\* on the amounts that players may be charged to take part, and on the amount or value of the prizes. The maximum amount that a player may be charged is £8 per day\* (and this includes entrance or participation fees, stakes and any other payments in relation to the gaming). The total amount paid out in prizes may not exceed £600\*, although where an event is the final one of a series in which all of the players have previously taken part, a higher prize fund of up to £900\* is permitted.

\*These limits are prescribed by Regulations and organisers should ensure they stay within the law by satisfying themselves that limits are correct at the time of the event.

### **Other Examples of Gaming that Do NOT Require a Licence**

1. Incidental Non Commercial Lotteries. In this regard please see our separate leaflet on lotteries for the definition of what is a lottery and the conditions for a lottery to be exempt;
2. Private lotteries being private society, work, residents’ or customer lotteries again as long as all conditions of exemption are met. Please see our separate leaflet on lotteries;
3. Free prize draws. Again see our separate leaflet on this subject. The draw must be genuinely free to enter but to count as ‘free’ it may still include certain, limited requirements e.g. to post an entry.

## **What Common Types of Gaming might be Covered by Non Commercial Provisions?**

### **1. Race Nights**

Depending upon how it is run a race night could be either an incidental non commercial lottery or non commercial gaming (equal chance or prize gaming) under the provisions set out above. If the public are not admitted and other conditions are met, a race night could also be private gaming.

Note that if odds and form are available prior to betting then an occasional use notice must be obtained by a fully licensed (licensed by the Gambling Commission) betting operator;

## **2. Poker**

Please see our separate leaflet on poker. Poker is mainly a casino game. However, **equal chance poker** (no banker) can be played as a private game (if conditions above are met). Equal chance poker may also be played as non commercial equal chance gaming (if conditions including the financial limits detailed above are met) where it is intended that a charity or non commercial society will benefit. Equal chance poker may also be non commercial prize gaming where the prize is fixed and offered in advance (irrespective of the number of players). Low level, equal chance poker may also take place in Clubs and Pubs with an alcohol licence under the equal change gaming provisions and this is subject to strict limits.

## **3. Casino Nights**

Again this has to be non commercial prize gaming or private gaming provided relevant conditions are met.

## **4. Bingo**

Bingo is similar to poker. Bingo for good causes may take place under the non commercial gaming provisions, whether prize gaming or equal chance, as long as all conditions described above are met. Pubs and Clubs with an alcohol licence have an automatic entitlement to offer low level bingo where the maximum stake is £5 – there can be no participation fee and no sums deducted – no linking of games with other premises – no under 18's. High turnover bingo is regulated by the Gambling Commission.

## **5. Tombolas / Raffles**

Note also that Tombolas and Raffles are likely to fall within the category of incidental non commercial lotteries (see above) and where alcohol is offered as a prize it should be in a sealed container and should not be offered to under 18's

## **6. Non Commercial Betting**

A person does not commit an offence by making or accepting a bet, or by offering to make or accept a bet, if he acts otherwise than in the course of a business i.e. neither party must be acting in the course of a business or even holding him/herself out to be in business.

## **What Type of Gaming is Not Covered?**

Common examples of gaming where a licence or permit is likely to be required include:

1. Anything classed as a lottery that is not exempt – including things like a 100 club – for example where tickets are sold to members of the public in advance of a draw;
2. Gaming machines – machines cannot be offered without a licence, permit or registration;