

REPUBLIC OF SOUTH AFRICA

NATIONAL GAMBLING AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); prior notice
of introduction and explanatory summary of Bill published in
Government Gazette No. 41787 of 20 July 2018)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 27—2018]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

— Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Gambling Act, 2004, so as to amend and delete certain definitions; to transfer the regulation of bets on national lottery, foreign lottery, lottery results and sports pools to the National Lotteries Commission; to prohibit dog racing and bets on dog racing; to strengthen the regulation of casinos, limited pay-out machines and bingo; to provide for the procedure for the forfeiture of unlawful winnings to the National Gambling Regulator; to provide for the regulation of the horseracing industry; to provide for broad-based black economic empowerment in the gambling industry; to provide for the repositioning of the National Gambling Board as a National Gambling Regulator; to enhance the powers and duties of the gambling inspector; to provide for certain new offences; to provide for transitional arrangements; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 7 of 2004, as amended by section 1 of Act 10 of 2008

1. Section 1 of the National Gambling Act, 2004 (hereinafter referred to as the “principal Act”), is hereby amended—

(a) by the substitution for the definition of “bingo” of the following definition:

“**bingo**” means a game played by two or more players, including a game played in whole or in part by electronic means—

(a) that is played for consideration, using cards or devices, including any electronic form of bingo—

(i) that are divided into spaces each of which bears a different number, picture or symbol; and

(ii) with numbers, pictures or symbols arranged randomly such that each card [or], similar device or electronic screen contains a unique set of numbers, pictures or symbols;

(b) in which either—

(i) an operator or announcer calls or displays a series of numbers, pictures or symbols in random order and the players match each such number, picture or symbol to numbers, pictures or

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- symbols appearing on the card or other device as [it] such series is called or displayed; or
- (ii) an electronic or similar device generates and displays a series of numbers, pictures or symbols and on behalf of the players, matches each such number, picture or symbol to the numbers, pictures or symbols appearing on the electronic card or other similar device after such number, picture or symbol is generated or displayed; and
- (c) in which either—
- (i) the player who is first to match all spaces on the card or other similar device, or who matches a specified set of numbers, pictures or symbols on the card or device, wins a prize; or
- (ii) the player on whose behalf the electronic or similar device referred to in subparagraph (i) first matches all the spaces on the card or similar device, or matches a specified set of numbers, pictures or symbols on the electronic card or similar device, wins a prize,
- or any other substantially similar game declared to be bingo in terms of section 6(4);”;
- (b) by the deletion of the definition of “board”; 20
- (c) by the substitution for the definition of “Chief Executive Officer” of the following definition:
- “**Chief Executive Officer**” means the person appointed by the **[board]** Minister in terms of section **[73(1)(a)] 65A(1)**;”;
- (d) by the insertion after the definition of “money laundering” of the following 25 definition:
- “**National Gambling Regulator**” means the National Gambling Regulator established in terms of section 64;” and
- (e) by the substitution for the definition of “regulatory authority” of the following definition: 30
- “**regulatory authority**” means the **[board]** National Gambling Regulator or a provincial licensing authority.”.

Amendment of section 8 of Act 7 of 2004

- 2.** Section 8 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection (1): 35
- “(2) A person must not engage in, conduct or make available betting on a lottery, lottery results or sports pools, except in terms of a license issued by the Board of the National Lotteries Commission in terms of section 44C.
- (3) A financial institution must not process payment transactions for any gambling activities that are not licensed in terms of this Act.
- (4) A person must not provide Internet services or other technological support for any gambling activities that are not licensed in terms of this Act.”. 40

Amendment of section 10 of Act 7 of 2004

- 3.** Section 10 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 45
- “A person must notify a provincial licensing authority and the **[board]** National Gambling Regulator, if the person—”.

Amendment of section 11 of Act 7 of 2004, as amended by section 10 of Act 10 of 2008

- 4.** Section 11 of the principal Act is hereby amended— 50
- (a) by the substitution for the heading of the following heading:
- “Unauthorised interactive gaming **[unlawful]** and betting on dog racing”; and

- (b) by the addition of the following subsection:
- “(2) Dog racing, including betting on dog racing and making available of such activities, is unlawful in the Republic of South Africa.”.

Amendment of section 14 of Act 7 of 2004, as amended by section 14 of Act 10 of 2008

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5. Section 14 of the principal Act is hereby amended—
- (a) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:
“The [board] National Gambling Regulator must—”;
- (b) by the substitution for subsection (8) of the following subsection:
“(8) The [board] National Gambling Regulator may not charge a fee for registering a person as an excluded person.”; and
- (c) by the addition of the following subsection:
“(13) All operators must remove excluded persons from their marketing mail list after being informed of the exclusion.”.

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Amendment of section 15 of Act 7 of 2004, as amended by section 15 of Act 10 of 2008

6. Section 15 of the principal Act is hereby amended by the deletion in subsection (1)(a) of the word “or” at the end of subparagraphs (i) and (ii), and by the addition of the following subparagraphs:

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- “(iii) at a location or time other than as prescribed by the Minister;
(iv) by unsolicited short message service, multi-media messaging service or facsimile enticing a person to participate in gambling activities; or
(v) by conducting education programmes aimed at providing gambling teaching services through the electronic media and free plays aimed to entice people; or”.

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Amendment of section 16 of Act 7 of 2004

7. Section 16 of the principal Act is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) Any person who is prevented from paying winnings referred to in subsection (2) must remit those winnings to the [board] National Gambling Regulator in the prescribed manner and form, to be held by the [board] National Gambling Regulator in trust, pending a decision in terms of subsection (4).

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(4) Upon receiving any winnings under subsection (3), the [board] National Gambling Regulator must investigate the circumstances of the relevant gambling activity, and either—

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- (a) deliver the winnings to the person who won [them], if the [board] National Gambling Regulator is satisfied that—
(i) the gambling activity was lawful [, and];
(ii) the winner [was] is not a minor [or]; and
(iii) the winner is not an excluded person at the time of the activity; or
- (b) [apply to the High Court for an order declaring the winnings forfeit to the State] subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), declare the winnings to be forfeited to the National Gambling Regulator.”.

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Amendment of section 17 of Act 7 of 2004, as amended by section 17 of Act 10 of 2008

8. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No person may place or operate a cash dispensing machine contrary to this Act [— (a)] within a designated area [; or

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(b) within a prescribed distance from such a designated area].”.

Insertion of section 17A in Act 7 of 2004

9. The following section is hereby inserted in the principal Act after section 17:

“Restrictions on gambling premises and location of automated teller machines

17A. (1) Gambling premises located inside general public places such as shopping malls, arcades, complexes or centres must be accessed through entrances which are separate from such public places and which must—
 (a) not be visible from the general floor; and
 (b) be hidden from the surroundings.
 (2) A gambling venue located in a multi-storey business building must be on a separate floor from the general shopping floors.
 (3) Cash automated teller machines must not be located where they are visible from the gambling floor.
 (4) A lessor of private or business premises must not permit a lessee of such premises to engage in or conduct any gambling activity at such premises without being licensed to engage in or conduct such gambling activity in terms of this Act.”.

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Amendment of section 18 of Act 7 of 2004

10. Section 18 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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“(2) The operation of limited pay-out machines must be incidental to and not be the primary business conducted in any premises licensed as a site, if that site falls within an incidental use category determined by the Minister in terms of section [26(1)(b)] 26(2)(e).”.

Amendment of section 19 of Act 7 of 2004

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11. Section 19 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Every gambling machine or gambling device made available for play [by the public] in the Republic of South Africa must be certified in accordance with the requirements of this Act [as complying] and must consistently comply with the relevant standards for such [a] device, as [determined in terms of the Standards Act, 1993 (Act No. 29 of 1993)] prescribed.”.

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Amendment of section 21 of Act 7 of 2004

12. Section 21 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

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“The [board] National Gambling Regulator must—”.

Insertion of section 21A in Act 7 of 2004

13. The following section is hereby inserted in the principal Act after section 21:

“Register of unlawful gambling operators

21A. (1) The National Gambling Regulator must keep a register of unlawful gambling operators.

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(2) Any gambling operator listed in the register of unlawful gambling operators will be disqualified from obtaining a licence for a period of five years, from the day of being listed in the register.

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(3) Any gambling operator listed wrongfully in the register may motivate for the removal from the register to the National Gambling Regulator.

(4) Any decision listing a gambling operator in the register by the National Gambling Regulator, is subject to review by the courts.”.

Amendment of section 22 of Act 7 of 2004

14. Section 22 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) A person who imports a gambling machine or gambling device into the Republic, or who manufactures such a machine or device within the Republic, must register that machine or device by providing the information required in terms of section 20(2) in the prescribed manner and form to the [board] National Gambling Regulator.

(2) The [board] National Gambling Regulator must not register a gambling machine or gambling device unless that type of machine or device has been certified in accordance with the requirements of this Act as complying with the relevant standards for such a machine or device, as determined in terms of the [Standards Act, 1993 (Act No. 29 of 1993)] applicable legislation.”.

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Amendment of section 23 of Act 7 of 2004

15. Section 23 of the principal Act is hereby amended by the substitution in subsection (7)(c) for the words preceding subparagraph (i) of the following words:

“must advise the [board] National Gambling Regulator in the prescribed manner and form when it has—”.

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Amendment of section 24 of Act 7 of 2004

16. Section 24 of the principal Act is hereby amended—

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(a) by the substitution for paragraphs (b) and (c) of the following paragraphs, respectively:

“(b) is currently accredited for technical competency [by the South African National Accreditation System, in terms of ISO / IEC 17025 and ISO 9000] as prescribed;

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(c) is able to conduct tests and perform calibrations to ensure compliance with applicable standards [established by the South African Bureau of Standards in terms of the Standards Act, 1993 (Act No. 29 of 1993)] as prescribed;; and

(b) by the substitution in paragraph (e) for subparagraph (iii) of the following subparagraph:

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“(iii) the [South African Bureau of Standards] National Regulator for Compulsory Specifications.”.

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Amendment of section 25 of Act 7 of 2004

17. Section 25 of the principal Act is hereby amended—

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(a) by the substitution in subsection (1)(c) for subparagraphs (iii) and (iv) of the following subparagraphs, respectively:

“(iii) the [board] National Gambling Regulator; and

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(iv) the [South African Bureau of Standards] National Regulator for Compulsory Specifications.; and

(b) by the substitution for subsection (2) of the following subsection:

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“(2) Upon receiving a test report in terms of this section, the [South African Bureau of Standards] National Regulator for Compulsory Specifications must analyse the test results relative to the standards referred to in section 24(c), and applicable standards for the machine or device concerned, and if the machine or device complies with the applicable standards, issue a letter of certification in respect of the machine or device to—

(a) the person requesting the certification;

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(b) the applicable provincial licencing authority; and

(c) the [board] National Gambling Regulator.”.

Amendment of section 26 of Act 7 of 2004

18. Section 26 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (e) of the following paragraph:

“(e) after consulting the [Board] National Gambling Regulator, determine the circumstances in which a site may be licensed, and for that purpose, may establish different categories of sites, and different requirements with respect to each such category; and”.

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Amendment of section 27 of Act 7 of 2004

19. Section 27 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 10

“(1) The [board] National Gambling Regulator must establish and maintain a national central electronic monitoring system capable of—
 (a) detecting and monitoring significant events associated with any limited pay-out machine, casino, bingo or betting activity that is made available for play in the Republic; [and]
 (b) analysing and reporting that data in accordance with the prescribed requirements; and
 (c) collecting and retaining the monitoring fees.”;

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(b) by the substitution for subsection (2) of the following subsection:

“(2) The [board] National Gambling Regulator may contract with any person who must acquire a national licence to supply any or all of the products or services required to fulfil its obligations in terms of subsection (1), but any such contractor must not be a person who, or firm that, is disqualified as a licensee in terms of section 50.”;

(c) by the substitution in subsection (3) for paragraphs (b) and (c) of the following 25 paragraphs, respectively:

“(b) the frequency and nature of reports to be produced by the [board] National Gambling Regulator in respect of the operation of the system; [and]

(c) other matters related to the functioning of the national electronic 30 monitoring system [.]; and”;

(d) by the addition in subsection (3) of the following paragraph:

“(d) the implementation date for the national central electronic monitoring system for casino, bingo and betting activities.”;

(e) by the substitution for subsection (4) of the following subsection: 35

“(4) (a) Every limited pay-out machine that is made available for play must be electronically linked to the national central electronic monitoring system, and the licensee of that machine must pay the prescribed monitoring fees in relation to that machine.

(b) The Minister may for purposes of subsection (1) and after consultation with the Council, determine any extent of the operation of the national central electronic monitoring system.”; and

(f) by the substitution in subsection (5) for paragraph (a) of the following paragraph: 45

“(a) the provincial licensing authority of each province access to all data on the system that originated in that province, without charge by the [board] National Gambling Regulator; and”.

Amendment of section 30 of Act 7 of 2004, as amended by section 19 of Act 10 of 2008

20. Section 30 of the principal Act is hereby amended by the addition of the following 50 subsection:

“(3) Despite the provisions of subsections (1) and (2), no provincial licensing authority has jurisdiction to issue a lottery licence, any other licence related to a lottery activity or any licence that permits betting on local or foreign lottery results, including sports pools.”.

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Amendment of section 31 of Act 7 of 2004, as amended by section 20 of Act 10 of 2008

21. Section 31 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subject to any requirements set out in applicable provincial law, a provincial licensing authority may, by agreement with the [board] National Gambling Regulator or with another provincial licensing authority, delegate to the [board] National Gambling Regulator or to that other provincial licensing authority any power or duty that is to be exercised or performed by the provincial licensing authority in terms of this Act or applicable provincial law, in the manner contemplated in section 238 of the Constitution.”.

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Amendment of section 32 of Act 7 of 2004, as amended by section 21 of Act 10 of 2008

22. Section 32 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading: 15

“**Jurisdiction of [board] National Gambling Regulator**”;

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The [board] National Gambling Regulator has exclusive jurisdiction to—”; and 20

(c) by the substitution for subsection (2) of the following subsection:

“(2) In accordance with this Act and subject to the direction of the Council provided for in Chapter 4, the [board] National Gambling Regulator may exercise the powers and perform the duties assigned to it in terms of this Act.”.

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Amendment of section 33 of Act 7 of 2004, as amended by section 21 of Act 10 of 2008

23. Section 33 of the principal Act is hereby amended by the deletion of the word “and” at the end of paragraph (j), the insertion of the word “and” at the end of paragraph (k) and the addition of the following paragraph:

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(l) consider applications and motivations from the provincial licensing authorities for acquisition of additional limited pay out machines, for purposes of compliance with the approved criteria,”.

Amendment of section 34 of Act 7 of 2004

24. Section 34 of the principal Act is hereby amended—

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(a) by the substitution for the heading of the following heading:

“**[Oversight functions of board] Functions of National Gambling Regulator**”;

(b) by the substitution for subsections (1) and (2) of the following subsections, respectively:

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“(1) The [board] National Gambling Regulator must ensure that its functions and those of the Chief Executive Officer set out in this section are exercised in a manner consistent with the requirements of section 41(1)(e), (g) and (h) of the Constitution.

(2) The [board may direct the Chief Executive Officer to] National Gambling Regulator may carry out an oversight evaluation of the exercise by a provincial licensing authority of its responsibilities and functions in terms of this Act.”;

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(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

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“Before conducting an evaluation in terms of subsection (2), the [Chief Executive Officer] National Gambling Regulator must notify the relevant provincial licensing authority, in writing, of—”;

- (d) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
- “(a) [a direction given by the board] its intention to carry out the oversight evaluation; and”;
- (e) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
- “The [Chief Executive Officer] National Gambling Regulator must—”;
- (f) by the substitution in subsection (5) for the words preceding subparagraph (i) of the following words:
- “If, as a result of an evaluation conducted in terms of subsection (2), the [Chief Executive Officer] National Gambling Regulator has reason to believe that a provincial licensing authority has failed to comply with any provision of this Act, [the Chief Executive Officer] it—”;
- (g) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
- “If an agreement contemplated in subsection (5)(b) is reached between the provincial licensing authority and the [board] National Gambling Regulator, the Chief Executive Officer must monitor progress achieved in terms of that agreement, and—”;
- (h) by the substitution in subsection (6) for subparagraph (i) of the following subparagraph:
- “(i) report to the [board] Minister at intervals determined by [it] the Minister; and—”; and
- (i) by the substitution for subsections (7) and (8) of the following subsections, respectively:
- “(7) A provincial licensing authority may request the [board] National Gambling Regulator to set aside all or part of a deficiency report issued [by the Chief Executive Officer] in terms of subsection (5) or (6).
- (8) The [board] National Gambling Regulator may refer the matter to the Council for consideration in terms of section 62(2)(c), if—
- (a) a provincial licensing authority does not respond to a deficiency report issued by the [Chief Executive Officer] National Gambling Regulator in terms of subsection (5) or (6);
- (b) the provincial licensing authority and the [board] National Gambling Regulator fail to reach an agreement contemplated in either subsection; or
- (c) the provincial licensing authority is persistently in default in terms of that agreement.”.

Amendment of section 35 of Act 7 of 2004, as amended by section 23 of Act 10 of 2008 40

25. Section 35 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

- “(2) Each provincial licensing authority must report to the [board] National Gambling Regulator, at the prescribed intervals, on the prescribed information kept by that licensing authority in terms of subsection (1). 45
- (3) The [board] National Gambling Regulator must submit upon request to a provincial licensing authority any prescribed information reported to it in terms of subsection (2).”.

Amendment of section 36 of Act 7 of 2004

26. Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Council may, as contemplated in section 41(2) of the Constitution, facilitate the settlement of any dispute between the [board] National Gambling Regulator and one or more provincial licensing authorities concerning the powers and duties to be exercised and performed by them relating to casinos, racing, gambling and wagering.”. 55

Amendment of section 40 of Act 7 of 2004, as amended by section 29 of Act 10 of 2008

27. Section 40 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A provincial licensing authority that has received a notice in terms of subsection (2)(b) may request the [Chief Executive Officer] National Gambling Regulator, except in respect of a licence contemplated in section 38(2A)(a), to conduct an oversight evaluation contemplated in section 42.”. 5

Amendment of section 42 of Act 7 of 2004

28. Section 42 of the principal Act is hereby amended— 10

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“After receiving a notice from a provincial licensing authority that it proposes to issue a national licence, the [Chief Executive Officer] National Gambling Regulator—”; 15

(b) by the substitution in subsection (2) for the words preceding subparagraph (i) of the following words:

“If a direction is given for an oversight evaluation, the [Chief Executive Officer] National Gambling Regulator must issue a notice of intent to evaluate the proposed licence in the prescribed form to—”; 20

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“After conducting an oversight evaluation in terms of subsection (1), the [Chief Executive Officer] National Gambling Regulator may—”; 25

(d) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) [without referring the application to the board,] advise the provincial licensing authority in the prescribed manner that there are no objections to the issue of the national licence as proposed;”; 30

(e) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“A provincial licensing authority may issue the licence as proposed by it, if the [Chief Executive Officer] National Gambling Regulator—”; and 35

(f) by the substitution for subsections (5), (6) and (7) of the following subsections, respectively:

“(5) If the [Chief Executive Officer] National Gambling Regulator issues a request in terms of subsection (3)(b), the provincial licensing authority may—

(a) issue the licence with the altered conditions as requested [by the Chief Executive Officer]; or 40

(b) request the [board] Minister to set aside the request of the [Chief Executive Officer], National Gambling Regulator and permit the issuing of the licence as initially proposed.

(6) If the [Chief Executive Officer] National Gambling Regulator issues a deficiency report in terms of subsection (3)(c), the provincial licensing authority must either— 45

(a) consider the application afresh; or

(b) request the [board] Minister to set aside the deficiency report and permit the issuing of the licence as initially proposed.

(7) If a matter is referred to the [board] Minister in terms of subsection 50

(5) or (6), the [board] Minister may—

(a) confirm the request or deficiency report of the [Chief Executive Officer] National Gambling Regulator;

(b) set aside all or part of the request or the deficiency report; or

(c) permit the issuing of the licence with or without conditions.”. 55

Amendment of section 43 of Act 7 of 2004, as amended by section 30 of Act 10 of 2008

- 29.** Section 43 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “A provincial licensing authority may, with the prior concurrence of the [board] National Gambling Regulator, suspend or revoke a national licence as if that licence were a provincial licence issued by that licensing authority, if—”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) A provincial licensing authority must immediately advise each other and the National Gambling Regulator if the provincial licensing authority [of a suspension or revocation of] suspends or revokes a national licence.”.

Insertion of sections 44A, 44B and 44C in Act 7 of 2004 15

- 30.** The following sections are hereby inserted in the principal Act after section 44:

“Restrictions in structure and allocation of bingo licenses and machines

- 44A.** (1) The Minister may prescribe—
- (a) a maximum number of bingo licenses and machines that can be granted in the Republic and in each province; and
 - (b) after consultation with the Council, the traditional and electronic form of bingo that must be allocated.
- (2) The server for electronic bingo must be located within the licensed premises. 25

Horseracing and betting

- 44B.** (1) A self-regulatory body that operates within the horseracing industry must be recognised, accredited and monitored by the National Gambling Regulator, provided that it meets the criteria set and adopted by the Council in terms of subsection (2).
- (2) The National Gambling Regulator, after consulting with the provincial licensing authorities and stakeholders in the horseracing industry, must design the criteria that must be approved by the Council, which criteria must operate as the minimum standards to guide a self-regulating body within the horseracing industry. 30 35

- (3) Bookmakers must—
- (a) contribute a reasonable amount towards the development of the horseracing industry and usage of products belonging to totalisator operators, as prescribed by the provincial licensing authorities, in accordance with the criteria contemplated in subsection (2); and
 - (b) when determining the rates of contribution, provincial licensing authorities must consider all other contributions made by bookmakers in the industry. 40

Bets on lottery and sports pools

- 44C.** (1) Bets on lottery, lottery results and sports pools are only permitted under a licence and licensing conditions issued by the Board of the National Lotteries Commission: Provided that licensees contribute such amount as may be prescribed by the Minister from time to time, as contemplated in the Lotteries Act, 1997 (Act No. 57 of 1997). 45
- (2) The Minister must prescribe a maximum limit of licences to be issued for bets on lottery results and sports pools.”. 50

Insertion of section 53A in Act 7 of 2004

31. The following section is hereby inserted in the principal Act after section 53:

“Promoting broad-based black economic empowerment in gambling industry”

53A. (1) All participants in the gambling industry must achieve the broad-based black economic empowerment targets in the gambling industry to advance the objectives of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), as contemplated in the said Act.

(2) Provincial licensing authorities must impose the broad-based black economic empowerment targets as licence conditions.

(3) A provincial licencing authority may suspend or withdraw a licence in the event of non-compliance by any person with licence conditions set in terms of subsection (2).”.

Amendment of section 57 of Act 7 of 2004, as amended by section 37 of Act 10 of 2008 15

32. Section 57 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Each provincial licensing authority must submit to the [board] National Gambling Regulator a copy of every probity report it prepares in terms of this Act or provincial law, and the [board] National Gambling Regulator must compile all such reports into a national probity register in the prescribed manner and form.”.

Amendment of section 61 of Act 7 of 2004

33. Section 61 of the principal Act is hereby amended by the substitution in subsection (2)(b) for subparagraph (i) of the following subparagraph:

“(i) the [chairperson of the National Gambling Board] Chief Executive Officer; and”.

Amendment of section 62 of Act 7 of 2004

34. Section 62 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs, respectively:

“(e) the resolution of any dispute that may arise among provincial licensing authorities, or between a provincial licensing authority and the [board] National Gambling Regulator, regarding the regulation and control of gambling activities; [and]

(f) other matters that may be referred to it by a member of the Council; and”;

(b) by the addition in subsection (1) of the following paragraph:

“(g) policy and legislative amendments before the Council to ensure alignment.”;

(c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) may provide oversight and direction to the [board] National Gambling Regulator in the exercise of its powers and the performance of its duties;”; and

(d) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) may make a finding that a provincial licensing authority has failed to comply with this Act and, if it does so, may direct that provincial licensing authority to enter into an agreement with the [board] National Gambling Regulator in respect of the steps to be taken by the provincial licensing authority to ensure compliance with this Act.”.

Amendment of section 63 of Act 7 of 2004

35. Section 63 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) At a meeting of the Council to which supplementary members are called, a supplementary member may be represented by an alternate, chosen by that supplementary member from among the other [board] National Gambling Regulator members of the applicable regulatory authority.”.

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Insertion of section 63A in Act 7 of 2004

36. The following section is hereby inserted in the principal Act after section 63:

“Meeting quorum

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63A. Despite section (63)(6), if a motion has been tabled at a meeting of the Council at which less than five voting members contemplated in section 61 are present, the motion may be passed at the next meeting of the Council, if it is supported by—

- (a) the Minister; and
- (b) the majority of the other voting members of the Council present at that meeting.”.

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Substitution of heading of Part B of Chapter 4 of Act 7 of 2004

37. The heading to Part B of Chapter 4 of the principal Act is hereby substituted for the following heading:

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*“Part B
National Gambling Regulator”*

Substitution of section 64 of Act 7 of 2004

38. The following section is hereby substituted for section 64 of the principal Act:

“Establishment of National Gambling Regulator

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64. (1) The National Gambling Regulator is hereby established as a public entity.

(2) The National Gambling Regulator is a juristic person and has jurisdiction throughout the Republic.

(3) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the National Gambling Regulator.

(4) The National Gambling Regulator is governed by the Chief Executive Officer.”.

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Amendment of section 65 of Act 7 of 2004, as amended by section 38 of Act 10 of 2008

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39. Section 65 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

“Objects and functions of [board] National Gambling Regulator”;

- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The [board] National Gambling Regulator has the following powers and duties to be exercised and performed in accordance with this Act.”;

- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The [board] National Gambling Regulator may—”;

- (d) by the substitution for subsection (3) of the following subsection:

“(3) The [board] National Gambling Regulator may liaise with any foreign or international authorities having any objects similar to the objects of the [board] National Gambling Regulator.”;

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(e) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:	
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“In exercising its powers and performing its duties set out in this Act, the [board] <u>National Gambling Regulator</u> —”;	
(f) by the substitution in subsection (4) for paragraph (c) of the following paragraph:	
“(c) may consult any person, organisation or institution with regard to any matter deemed necessary by the [board] <u>National Gambling Regulator</u> ; and	
(g) by the addition in subsection (4) of the following paragraphs:	10
“(e) may monitor the socio-economic patterns of gambling activity within the Republic, and in particular, conduct research and identify factors relating to gambling, patterns, causes and consequences of—	
(i) the socio-economic impact of gambling; and	15
(ii) addictive or compulsive gambling;	
(f) must carry out the responsibilities set out in section 33;	
(g) must exercise any other powers and perform any other duties assigned to it in terms of this Act;	20
(h) may advise the Council, in consultation with the Minister, on the maximum number of any kind of licences relating to casinos, racing, gambling and wagering that may be awarded in the Republic or in any particular province;	
(i) may advise the Council, in consultation with the Minister, on matters of national policy relating to casinos, racing, gambling and wagering and on the determination of national norms and standards regarding any matter in terms of this Act that should apply generally throughout the Republic;	25
(j) may recommend to the Council, in consultation with the Minister, changes to bring about uniformity in the laws of the various provinces in relation to casinos, racing, gambling and wagering;	30
(k) must advise the Council, in consultation with the Minister, in respect of any matter referred to it by the Council;	
(l) may monitor market share and market conduct in the gambling industry and refer any concerns regarding market share or possible prohibited practices to the Competition Commission in terms of the Competition Act, 1998 (Act No. 89 of 1998);	35
(m) may provide a broad-based public education programme about the risks and socio-economic impacts of gambling;	
(n) must comply with directions issued to it by the Council relating to casinos, racing, gambling, wagering or any other related matter, in exercising its powers and performing its duties set out in this Act; and	40
(o) may conduct education and awareness relating to gambling activities.”.	45

Insertion of sections 65A, 65B and 65C in Act 7 of 2004

40. The following sections are hereby inserted in the principal Act after section 65:

“Chief Executive Officer and Deputy Chief Executive Officer

65A. (1) The Minister may appoint a suitably qualified and experienced person as the Chief Executive Officer of the National Gambling Regulator, who—	
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(a) holds office for an agreed term not exceeding five years;	
(b) may be re-appointed for a second term of office at the expiry of the term of office contemplated in paragraph (a).	
(2) For a person to be eligible for appointment or designation as a Chief Executive Officer, and to continue to hold that office, he or she must—	
(a) be a fit and proper person;	
(b) not be subject to any disqualification set out in subsection (3); and	
(c) have submitted to the Minister a written declaration stating that—	55

(i) he or she is not disqualified in terms of subsection (3); and	
(ii) he or she does not have any interests referred to in subsection (3)(c).	
(3) A person may not be a Chief Executive Officer if that person—	5
(a) is a political office bearer;	
(b) is listed in the register of excluded persons by order of a court;	
(c) personally or through a spouse, partner or associate—	
(i) has or acquires a direct or indirect financial interest in a licence issued in terms of this Act, or in premises used for an activity that must be licensed in terms of this Act; or	10
(ii) has or acquires an interest in a business or enterprise that may conflict or interfere with the proper performance of the duties of a Chief Executive Officer;	
(d) is an un-rehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of his or her estate;	15
(e) has ever been, or is, removed from an office of trust on account of misconduct;	
(f) is subject to an order of a competent court holding that person to be mentally deranged;	
(g) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, or an offence involving dishonesty; or	20
(h) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect and sentenced to imprisonment without the option of a fine.	25
(4) The Minister must determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of the Chief Executive Officer.	30
(5) The Minister may appoint at least one person who satisfies the requirements in terms of subsections (2) and (3) as Deputy Chief Executive Officer to assist the Chief Executive Officer in carrying out the functions of the National Gambling Regulator.	35

Functions of Chief Executive Officer

65B. (1) Subject to the provisions of the Public Finance Management Act, the Chief Executive Officer may exercise power or perform functions in terms of this Act.	
(2) The Chief Executive Officer is responsible for—	40
(a) all responsibilities pertaining to the functions of the National Gambling Regulator;	
(b) all income and expenditure of the National Gambling Regulator;	
(c) all revenue collected by the National Gambling Regulator;	
(d) all assets and the discharge of all liabilities of the National Gambling Regulator; and	45
(e) the appointment of staff of the National Gambling Regulator in accordance with section 73.	
(3) The Chief Executive Officer must—	
(a) report to the Minister on all matters contemplated in subsection (2);	
(b) assign management of certain functions to employees of the National Gambling Regulator who must have appropriate skills to assist the Chief Executive Officer with the performance of his or her functions.	50

Committee of National Gambling Regulator

65C. (1) The Minister may from time to time establish such committee as he or she considers necessary to perform specified functions of the National Gambling Regulator.	55
(2) A committee consists of—	

(i) not more than five persons who are independent from the National Gambling Regulator and who are appointed by the Minister; and	
(ii) the Chief Executive Officer.	
(3) A member of a committee established in terms of subsection (1) must have the appropriate skill and expertise in the gambling industry and of the function which that member will perform on the committee.	5
(4) A member of a committee, other than a person who is in the full-time employment of the National Gambling Regulator or any other organ of state, is appointed on the terms and conditions of service determined by the Minister in consultation with the Minister of Finance.	10
(5) A committee may—	
(a) be established for a period determined by the Minister when the committee is established; and	
(b) determine its own procedures, provided that the committee is chaired by a member of the committee.	15
(6) Members of a committee must be impartial, fit and proper persons and may not—	
(a) expose themselves to any situation in which the risk of a conflict may arise between their responsibilities and any personal or financial interest; or	20
(b) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.	
(7) A member ceases to be a member of a committee if the—	
(a) member resigns from the committee;	
(b) Minister terminates the person's membership because the member no longer complies with subsection (6); or	25
(c) member's term has expired.	
(8) A member of a committee who has personal or financial interest in any matter on which the committee performs a function, must disclose that interest and withdraw from the proceedings of the committee when that matter is discussed.”.	30

Amendment of section 66 of Act 7 of 2004, as amended by section 39 of Act 10 of 2008

- 41.** Section 66 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “At the request of the relevant Member of the Executive Council of a province, or the provincial licensing authority, the [board] National Gambling Regulator—”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) At the request of the Member of the Executive Council or provincial licensing authority, the [board] National Gambling Regulator may engage with that authority in co-operative activities to detect and suppress illegal gambling activities if there are good grounds to believe that those activities may be occurring across provincial boundaries.”;
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- “At the direction of the Council, the [board] National Gambling Regulator must engage with any relevant provincial licensing authority in co-operative activities to detect and suppress illegal gambling activities occurring—”;
- (d) by the substitution for subsections (4) and (5) of the following subsections, respectively:
- “(4) The [board] National Gambling Regulator may liaise with provincial licensing authorities on matters of common interest.
- (5) The [board] National Gambling Regulator may request any provincial licensing authority to submit any report or information related to the activities of that licensing authority [to the board].”;

(e) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

“(b) the [board] National Gambling Regulator concludes, on reasonable grounds, that the provincial licensing authority is unable to perform any such function effectively.”.

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Insertion of section 66A in Act 7 of 2004

42. The following section is hereby inserted in the principal Act after section 66:

“Inter-governmental relations in relation to gambling activities

66A. For purposes of supporting the objects and functions of the National Gambling Regulator and to strengthen collaborative work with other government departments or institutions responsible for matters related to gambling, the department—

- (a) may enter into agreements with any other organ of state as contemplated in the Constitution, to provide for the joint exercise or performance of their respective powers and functions contemplated in this Act; and
- (b) may establish a forum or similar body for such purposes.”.

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Repeal of section 67 of Act 7 of 2004

43. Section 67 of the principal Act is hereby repealed.

Amendment of section 68 of Act 7 of 2004

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44. Section 68 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) [A member of the board] The CEO or a staff member of the National Gambling Regulator must [promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in section 67(3)(c)(ii)] not acquire an interest in a business or enterprise that may conflict or interfere with the proper performance of his or her duties.

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(2) [A member of the board] The CEO or a staff member of the National Gambling Regulator must not—

- (a) engage in any activity that may undermine the integrity of the [board] National Gambling Regulator;

- (b) [attend, participate in or influence the proceedings during a meeting of the board, if, in relation to the matter before the board, that member has] perform duties on behalf of the National Gambling Regulator while having an interest—

 - (i) contemplated in [section 67(3)(c)(ii)] subsection (1); or
 - (ii) that precludes the Chief Executive Officer or staff member from performing the duties [of a member of the board] in a fair, unbiased and proper manner;

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 - (i) contemplated in [section 67(3)(c)(ii)] subsection (1); or
 - (ii) that precludes the Chief Executive Officer or staff member from performing the duties [of a member of the board] in a fair, unbiased and proper manner;

- (c) [vote at any meeting of the board in connection with a matter contemplated in paragraph (b);]

- (d) make private use of, or profit from, any confidential information obtained as a result of performing that person’s duties [as a member] on behalf of the [board] National Gambling Regulator;

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- or

- (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person’s official functions [as a member of the board] on behalf of the National Gambling Regulator.”; and

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- (b) by the deletion of subsections (3), (4) and (5).

Repeal of sections 69, 70, 71 and 72 of Act 7 of 2004

45. Sections 69, 70, 71 and 72 of the principal Act are hereby repealed.

Substitution of section 73 of Act 7 of 2004

46. The following section is hereby substituted for section 73 of the principal Act:

"Staff of [board and remuneration] National Gambling Regulator

- 73.** (1) The [board] Chief Executive Officer—
 (a) [in consultation with the Minister,] must appoint [a] suitably qualified and experienced [person as Chief Executive Officer] persons as staff of the National Gambling Regulator in line with the structure approved in consultation with the Minister who—
 (i) [subject to direction and control of the board, is responsible for all financial administrative responsibilities pertaining to the functions of the board] must satisfy the requirements set out in section 65A(2) and (3) to assist in the administration and running of the National Gambling Regulator; and
 (ii) [is] are accountable to the [board] Chief Executive Officer; and
 (b) [may appoint any other staff as may be necessary to enable the board to perform its duties] must comply with section 65A(2) and (3).
 (2) Sections **[67(2) and (3) and section 68]** 65A(2) and (3), read with changes required by the context, apply to [the Chief Executive Officer and] each staff member to be appointed in terms of this Act.
 (3) The [board] Chief Executive Officer, in consultation with the Minister, may determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of [a person appointed in terms of subsection (1)] staff members of the National Gambling Regulator.
 (4) Subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the [board] Chief Executive Officer may delegate to any member of the staff any power or duty that the [board] National Gambling Regulator may exercise or perform in terms of this Act.”.

Substitution of section 74 of Act 7 of 2004

47. The following section is hereby substituted for section 74 of the principal Act:

- "Finances** 35
- 74.** (1) The [board] National Gambling Regulator is financed from—
 (a) money appropriated by Parliament for the [board] National Gambling Regulator;”;
 (b) any fees payable to the [board] National Gambling Regulator in terms of this Act;
 (c) income derived by the [board] National Gambling Regulator from its investment and deposit of surplus money in terms of subsection (6); and
 (d) other money accruing to the [board] National Gambling Regulator from any source. 40
 (2) The financial year of the [board] National Gambling Regulator is the period from 1 April [in any] each year to 31 March in the following year.
 (3) Each year, at a time determined by the Minister, the [board] National Gambling Regulator must submit to the Minister a statement of the [board's] National Gambling Regulator’s estimated income and expenditure, and [requested] request appropriation from Parliament, in respect of the next ensuing financial year. 50
 (4) The [board] National Gambling Regulator must open and maintain an account in the name of the [board] National Gambling Regulator with a registered bank or other registered financial institution in the Republic and— 55

- (a) any money received by the [board] National Gambling Regulator must be deposited to that account; and
 (b) every payment on behalf of the [board] National Gambling Regulator must be made from that account.
- (5) Cheques drawn on the account of the [board] National Gambling Regulator must be signed on its behalf by two persons authorised for that purpose by resolution of the [board] Minister. 5
- (6) The [board] National Gambling Regulator may invest or deposit money of the [board] National Gambling Regulator that is not immediately required for contingencies or to meet current expenditures—
 (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
 (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).". 10
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Amendment of section 75 of Act 7 of 2004

- 48.** Section 75 of the principal Act is hereby amended—
 (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “The [board] Chief Executive Officer is responsible to—”; 20
 (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) account for State and other money received by, or paid for or on account of, the [board] National Gambling Regulator; and”; and
 (c) by the substitution for subsection (3) of the following subsection: 25
 “(3) The [board] Chief Executive Officer must report to the Minister at least once every year on its activities.”.

Amendment of section 76 of Act 7 of 2004

- 49.** Section 76 of the principal Act is hereby amended—
 (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “The [board] National Gambling Regulator—”; 30
 (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) may appoint any suitably qualified person as an inspector and assign the inspector to monitor, investigate or evaluate any matter on behalf of the [board] National Gambling Regulator subject to the control and direction of the [board] National Gambling Regulator; and”; and
 (c) by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words: 35
 “must provide each inspector with a certificate signed on behalf of the [board] National Gambling Regulator and stating—”.
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Insertion of section 76A in Act 7 of 2004

- 50.** The following section is hereby inserted in the principal Act after section 76: 45

“Powers of national inspectorate”

- 76A.** (1) An inspector may with or without an inspector appointed in terms of a provincial law and together with other enforcement agencies—
 (a) investigate illegal gambling activities in South Africa;
 (b) serve the suspected illegal operators with a notice to stop operating pending an investigation, litigation or prosecution;
 (c) have powers to interact with related inspectorates to investigate and report cases related to illegal gambling activities;
 (d) upon proof of an illegal operator, inform the landlord to lawfully evict the illegal operator from the premises; 50
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(e) ensure compliance of gambling institutions with gambling laws; and
 (f) work collaboratively with relevant institutions to monitor and establish measures to curb illegal or unlicensed gambling activities.

(2) The National Gambling Regulator must notify a financial institution including a bank contemplated in the Banks Act, 1990 (Act No. 94 of 1990), and any internet service provider to cease business with an operator that has been operating in contravention of this Act.

(3) No financial institution may process payment transactions for illegal gambling activities to which this Act applies and which are prohibited under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).".

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Amendment of section 77 of Act 7 of 2004

51. Section 77 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"[Powers and duties of] Inspections by inspector"; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) Without prior notice, an inspector, with or without an inspector appointed in terms of provincial law, may do [any thing] anything contemplated in subsection (2) for the purpose of carrying out the responsibilities of the [board] National Gambling Regulator in terms of section 65(1)(a) or (b).".

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Amendment of section 87 of Act 7 of 2004, as amended by section 42 of Act 10 of 2008

52. Section 87 of the principal Act is hereby amended by the insertion in subsection (1) of the following paragraph after paragraph (f):

"(fa) criteria to be observed by the National Gambling Regulator to approve pay out machines in excess of five;".

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Repeal of item 5 of Schedule 1 to Act 7 of 2004

53. Item 5 of Schedule 1 is hereby repealed.

Transitional arrangements

54. (1) For purposes of section 44C, licences of operators that were issued in terms of the principal Act for bets on lottery and sports pools immediately before the commencement of this Act, must be transferred and regulated by the Board of the National Lotteries Commission within 12 months after the National Gambling Amendment Act, 2018, comes into operation.

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(2) (a) The board established in terms of section 64 of the principal Act as it existed immediately before this Act took effect, is hereby dissolved.

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(b) Employees of the board that is in office immediately before the commencement of this Act will be deemed to be the employees of the National Gambling Regulator.

(c) Immovable property of the board used by the board and its employees immediately before the date of commencement of this Act must be transferred to the National Gambling Regulator.

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(d) All movable assets of the State which were used by or which were at the disposal of the board and its employees become the property of the National Gambling Regulator.

(e) All contractual rights, obligations and liabilities of the board which relate to the activities of the board, are vested in the National Gambling Regulator.

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(f) All financial, administrative and other records of the board which relate to its activities, including all documents in the possession of the board are hereby transferred to the National Gambling Regulator.

Short title and commencement

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55. This Act is called the National Gambling Amendment Act, 2018, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL GAMBLING AMENDMENT BILL, 2018

1. BACKGROUND

- 1.1 The National Gambling Amendment Bill ('the Bill') addresses various challenges that were identified as hampering the effectiveness of the National Gambling Act, 2004 (Act No. 7 of 2004) ("principal Act"). The Bill focuses on enhancing existing gambling activities and no new gambling activities are introduced. The proposed provisions are strategically aligned with the priorities outlined in the National Development Plan ("NDP") with its aim of ensuring effective governance, social protection, employment creation, recreation and leisure.
- 1.2 The Bill gives expression to the policy proposals aimed at reviewing the gambling landscape in South Africa. The Bill's proposals are premised partly on the Gambling Review Commission ("GRC") Report, reports from Parliament on the GRC Report, stakeholder engagements, benchmarks and excursion conducted.

2. OBJECTIVES OF THE BILL

The primary objective of the Bill is to protect society from over-stimulation of latent gambling through the limitation of gambling by providing for the—

- (a) protection of players and integrity and fairness of the industry through strict control and supervision of the industry;
- (b) uniformity and harmonisation of policy and legislation at all levels of government across provinces through minimum norms and standards, cooperation and coordination;
- (c) generation of revenue and taxes for provincial governments and for good causes;
- (d) economic empowerment of the historically disadvantaged; and
- (e) promotion of economic growth, development and employment.

3. OVERVIEW OF THE BILL

- 3.1 **Clause 1** proposes amendments to certain definitions embodied in section 1 of the principal Act.
- 3.2 **Clause 2** excludes bets on lottery or lottery results or sports pools, except in terms of a license issued by the Board of the National Lotteries Commission.
- 3.3 **Clauses 3, 5, 7, 12, 14, 15, 17, 18, 19, 21, 22, 24, 25, 26, 27, 28, 29, 32, 34, 35, 38, 39, 41, 44, 46, 47, 48, 49, 51 and 52** all contain amendments consequential to the substitution of 'the National Gambling Board' with 'the National Gambling Regulator'.
- 3.4 **Clause 4** proposes an amendment to section 11 and introduces a statutory prohibition on dog racing, betting on dog racing and the making available of such activities.
- 3.5 **Clause 5** proposes an amendment to section 14 of the principal Act by compelling all operators to remove excluded persons from their marketing mail list.
- 3.6 **Clause 6** proposes an amendment to section 15 of the principal Act to enhance restriction on advertising and promotion of gambling activities. The advertising provision should be amended to include restrictions on unsolicited promotions and advertising to ensure that they are not deliberately sent to minors and other vulnerable persons. Offenders must be held responsible for transgressing the legislative guidelines on advertising. The offender could however be allowed to re-enter the market and apply for a licence five years after being found guilty of such an offence.

- 3.7 **Clause 7** proposes an amendment to section 16 so as to provide for forfeiture of unlawful winnings to the National Gambling Regulator after the expiry of three (3) years. It is proposed that after determining the unlawfulness of the winnings, the winnings should automatically be forfeited to the National Gambling Regulator to be used for the treatment of problem gamblers.
- 3.8 **Clause 9** proposes the insertion of a new section 17A to provide for restrictions on gambling premises and on the location of automated teller machines.
- 3.9 **Clause 10** proposes an amendment to section 18 of the principal Act to effect a technical correction empowering the Minister in terms of section 26(2)(e).
- 3.10 **Clause 11** proposes and amendment to section 19 of the principal Act so as to provide for the compulsory certification of gambling machines or devices in accordance with the prescribed standards.
- 3.11 **Clause 13** proposes an insertion into the principal Act of section 21A requiring the Regulator to keep a register of unlawful gambling operators.
- 3.12 **Clause 16** proposes an amendment to section 24 of the principal Act so as to broaden the application of criteria applicable in respect of a testing agent licence.
- 3.13 **Clause 19**, apart from consequential changes mentioned in paragraph 3.3 above, empowers the Minister to determine, after consultation with the council and the industry, the extent of the operation of the National Central Electronic Monitoring System.
- 3.14 **Clause 20** proposes an amendment to section 30 of the principal Act so as to exclude the jurisdiction of provincial licensing authorities in respect of the issuing of lottery licences or any license related to lottery activities.
- 3.15 **Clause 23** proposes an amendment to section 33 of the principal Act so as to extend the responsibilities of the Board.
- 3.16 **Clause 30** proposes the insertion of three new sections into the principal Act:
- (a) Section 44A restricts the structure and allocation of bingo machines and the recognition of the electronic form of bingo. Electronic Bingo Terminals (EBTs) will be permitted as an advancement of a bingo game. The proposed amendment to the definition of bingo will consequently accommodate the electronic version.
 - (b) Section 44B is inserted into the principal Act to provide for the recognition of self-regulation within the horseracing industry. The self-regulation will operate in line with the standard operation criteria set by the provincial licensing authorities as facilitated by the National Gambling Regulator and approved by the National Gambling Policy Council. The respective provincial licensing authorities will be responsible to monitor compliance by the self-regulating body with the standard operation criteria. The principal Act must also be amended to ensure that the industry players pay towards the Intellectual Property Rights of others. Where some products are to be shared between industry players and are not protected by Intellectual Property Rights, the licensing authorities must prescribe the reasonable rate the other party is to pay towards usage of such products.
 - (c) Section 44C imposes a limitation clause indicating that betting on contingencies excludes taking bets on lottery and lottery results. Further provisions must be included in the principal Act to expressly state that provincial licensing authorities are not empowered to issue licences in relation to lotto or any activity related to lottery, like sports pools. Any operators who wish to offer betting on lottery, lottery results and sports pools must be licensed by the National Lottery Commission. All licences issued, authorising bets on lottery activities must cease to exist over time

and be replaced by licences issued by the National Lottery Commission. The provision will ensure that the authority of the Lotteries Act, 1997 (Act No. 57 of 1997), is not undermined. Bookmakers contribute to the National Lotteries Distribution Trust Fund (“NLDTF”) in instances where they offer lottery betting. The totalisator operators must also contribute towards the NLDTF for operating sports pools which are a competence of the lottery operator.

- 3.17 **Clause 31** proposes the insertion of section 53A into the principal Act to make provision for promoting broad-based black economic empowerment in the gambling industry.
- 3.18 **Clause 34** proposes an addition in section 62 of the principal Act to further clarify the role of the Policy Council.
- 3.19 **Clause 36** proposes the insertion into the principal Act of section 63A to enhance the effectiveness of the Council in relation to meeting a quorum. The Bill recommends that, both national and provincial governments should be bound to consult through the National Gambling Policy Council on matters of gambling policy and legislation. Where there is no quorum for two consecutive meetings, the Chairperson of the Council and members that are present at the third meeting should be empowered to make resolutions on outstanding issues from the previous meeting’s agenda as if there was quorum for the meeting, after a round robin of the documents has taken place. These resolutions will be binding on the non-attending members.
- 3.20 **Clause 38** substitutes the current section 64 of the principal Act so as to provide for the establishment of the National Gambling Regulator.
- 3.21 **Clause 39** proposes the insertion of new subsections into section 65 of the principal Act to enhance the functions of the National Gambling Regulator.
- 3.22 **Clause 40** proposes the insertion into the principal Act of section 65A so as to provide for the appointment of the Chief Executive Officer (CEO) and Deputy Chief Executive Officer. It furthermore provides for the functions of the Chief Executive Officer as well as a committee to be established by the Minister (Sections 65B and 65C respectively).
- 3.23 **Clause 42** proposes the insertion of a new section 66A into the principal Act to introduce inter-government relations to interdepartmental co-ordination, on gambling activities.
- 3.24 **Clause 43** proposes the repeal of section 67 of the principal Act.
- 3.25 **Clause 44** proposes the deletion of subsections (3), (4) and (5) of section 68 of the principal Act.
- 3.26 **Clause 45** proposes the repeal of sections 69, 70, 71 and 72 of the principal Act.
- 3.27 **Clause 50** proposes the insertion of a new section 76A into the principal Act so as to enhance the powers of the inspectorate. Additional provisions are proposed to enhance the capabilities of the inspectorate operating within the National Gambling Regulator to fight unlawful gambling practices including illegal online gambling. The inspectorate will be required to work collaboratively with financial institutions to monitor and curb payment transactions for illegal gambling activities including combatting cyber-crimes and taking measures to block online gambling sites.
- 3.28 **Clause 51** proposes an amendment to section 77 of the principal Act pertaining to the functioning of the inspectors.

3.29 **Clause 52** proposes an amendment to section 87 of the principal Act by enabling the Minister to make regulations regarding the criteria to be observed by the National Gambling Regulator in approving limited payout machines.

3.30 **Clause 53** proposes the repeal of item 5 of Schedule 1 of the principal Act.

3.31 **Clause 54** deals with certain transitional arrangements in respect of licenses issued as well as the dissolution of the Board.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

National Treasury; Department of Justice; Department of Public Enterprise; Department of Tourism; Department of Transport; Department of telecommunications; COGTA; National Gambling Board; Kwazulu-Natal Bookmakers' Society; Gauteng Off-Course Bookmakers' Association; Gold Circle; Hollywood Sportsbook; GPI Investments Slots; Western Cape, Treasury; CASA; Phumelela Gaming and Leisure Limited; Kenilworth Racing Proprietary Limited; Galaxy Gaming and Entertainment; Mpumalanga Gambling Board; Responsible Gambling Foundation; PASA; The Racing Trust; KZN—Finance Trotting South Africa-TSA; Route Gaming Solutions; Eastern Cape Gambling Board and K N Harvey (Private).

5. IMPLICATIONS FOR PROVINCES

The Department of Trade and Industry holds the view that the subject matter of the Bill substantially impacts on issues addressed at provincial level. The Bill prescribes norms and standards to be observed by provinces when issuing bingo licences. The provinces have a significant interest in these matters.

6. FINANCIAL IMPLICATIONS FOR STATE

To be accommodated within the existing budget.

7. PARLIAMENTARY PROCEDURE

7.1 The Constitution of the Republic of South Africa, 1996 (“Constitution”), regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment.

7.2 Section 76(3) of the Constitution provides that a Bill falling within a functional area listed in Schedule 4 of the Constitution must be dealt with in accordance with the procedure set out in section 76. Schedule 4 lists the functional areas of concurrent national and provincial legislative competence. Schedule 5 of the Constitution lists the functional areas of exclusive provincial legislative competence.

7.3 In the Constitutional Court judgment of *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others*¹ (“Tongaone judgment”), the Court determined the proper test for the tagging (i.e. classification) of Bills. This case concerned the tagging of the Communal Land Rights Act, 2004 (Act No. 11 of 2004) (“CLARA”) which was being contested by the Applicants.

“[59] The tagging test is distinct from the question of legislative competence. It focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4 and not on whether any of its provisions are incidental to its substance.

¹ CCT 100/09 [2010] ZACC 10.

...

[60] *The test for tagging must be informed by its purpose. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how the Bill should be considered by the provinces and in the NCOP, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content.*

...

[71] *[T]he “substantial measure” test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces.*

...

[72] *To summarise: any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76. This naturally includes proposed legislation over which the provinces themselves have concurrent legislative power, but it goes further. What must be stressed, however, is that the procedure envisaged in section 75 remains relevant to all Bills that do not, in substantial measure, affect the provinces. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)-(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.”.*

- 7.4 In applying the test of the Tongaone judgment to the tagging of the Bill, which requires one to determine whether the purpose and the effect of the Bill in a substantial measure regulates matters falling within Schedule 4 of the Constitution. If so, the Bill must be tagged in terms of section 76 of the Constitution.
- 7.5 Part A of Schedule 4 to the Constitution lists the functional areas of concurrent national and provincial legislative competence and includes “*Casinos, racing, gambling and wagering, excluding lotteries and sports pools*”. The purpose and effect of the Bill in a substantial measure is concerned with the regulation of casinos, racing, gambling and wagering, excluding lotteries and sports pools. We are therefore of the view that the Bill is an ordinary Bill affecting provinces and must be dealt with in accordance with the procedure set out in section 76 of the Constitution.
- 7.6 The State Law Advisers and the Department of Trade and Industry are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely “gambling”.
- 7.7 Furthermore, the State Law Advisers and the Department of Trade and Industry are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No.41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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