

EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (TRANSITIONAL PROVISIONS) ORDER 2006
2006 NO. 1038

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 The Order makes transitional provision in connection with the commencement of the Gambling Act 2005 (“the 2005 Act”). That Act will replace the Gaming Act 1968 (“the 1968 Act”) for the purposes of regulating gaming in casinos. The Order applies during the period leading up to the repeal of the 1968 Act by the 2005 Act. It restricts the circumstances in which, during that period, the Gambling Commission may issue a certificate of consent under the 1968 Act authorising a person to apply for a casino licence under that Act, where the application for the certificate is made on or after 29 April 2006.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 Part 2 of the 1968 Act provides for the licensing of premises to be used for gaming. It applies to premises used for the playing of casino games and for the playing of bingo. The licensing of premises under Part 2 of the 1968 Act is governed by Schedule 2 to the 1968 Act. Before a person may apply for the grant of a licence for either a casino or a bingo club, he must obtain a certificate of consent issued by the Gambling Commission¹ under paragraph 4 of Schedule 2. The application for the certificate of consent must state whether the licence will be for a bingo club or for a casino. Where a certificate is issued, the person to whom it is issued must apply for a licence under Part 2 of the 1968 Act within the period specified in the certificate.

4.2 The 1968 Act is to be repealed by the 2005 Act. In order to operate a casino under the 2005 Act, a person must obtain a casino operating licence from the Gambling Commission and a casino premises licence from the licensing authority (ie the local authority) in whose areas the premises are situated. Section 175 of the 2005 Act places an initial limit on the numbers of casino premises licences which may be granted under that Act. Paragraph 9 of Schedule 18 to the 2005 Act (transitional provisions) allows the Secretary of State by order to provide for the conversion of

¹ The Gaming Act 1968 confers this function on the Gaming Board for Great Britain, but by virtue of the Gambling Act 2005 the function is now exercisable by the Gambling Commission. The Gambling Commission is established by section 20 of the 2005 Act. Section 21 of that Act provides for the transfer of functions, rights and liabilities of the Gaming Board for Great Britain to the Gambling Commission. Sections 20 and 21 were brought into force by S.I. 2005/2455 on 1st October 2005. Schedule 5, paragraph 4, to the Gambling Act 2005 provides for a reference to the Gaming Board in any enactment to be treated after the commencement of section 21 as a reference to the Gambling Commission.

licences under any enactment to be repealed, such as the 1968 Act, into a licence under the 2005 Act. It is the Government's stated intention to use this power to provide for the conversion of casino licences under the 1968 Act into casino premises licences under the 2005. These converted casino premises licences will not count towards the limits on numbers in section 175.

4.3 Since the enactment of the 2005 Act, with its limits on numbers of casino premises licences in section 175, there has been a significant increase in the number of applications to the Gambling Commission for a certificate of consent to apply for a casino licence under the 1968 Act. The government are concerned about the impact of a large increase in the numbers of casinos established under the 1968 Act. For this reason, the government considers it necessary to restrict the number of certificates of consent being issued so that this can only be done where the application is made by an existing operator who requires a new casino licence to replace an existing one.

4.4. Paragraph 8 of Schedule 18 to the 2005 Act allows the Secretary of State to make provision about the grant of licences and other documents under enactments to be repealed during a specified period between the passing of the 2005 Act and the commencement of the repeal. This Order restricts the circumstances in which, during the period between 29 April 2006 (the date on which the Order comes into force) and the date on which the 1968 Act is repealed for all purposes, the Gambling Commission may issue a certificate of consent where it relates to an application for a casino licence. Where the application for the certificate of consent is made on or after 29 April 2006, the Gambling Commission may only issue a certificate of consent if they are satisfied that the casino licence to which the consent application relates is intended to replace a casino licence already held by the applicant.

5. Extent

5.1 This instrument applies to England, Wales and Scotland.

6. European Convention on Human Rights

The Minister of State for the Department for Culture, Media and Sport, Mr Richard Caborn, has made the following statement regarding Human Rights:

In my view the provisions of the Gambling Act 2005 (Transitional Provisions) Order 2006 are compatible with the Convention Rights.

7. Policy background

7.1 The Gambling Act 2005 replaces the current system of regulation of casinos set out in the Gaming Act 1968. The 2005 Act creates four new categories of casino which will be defined in relation to their size: regional; large; small; and, below the minimum size for a licensed casino.

7.2 The new casinos will be much larger than existing casinos in Great Britain, with greater numbers of high prize gaming machines. They will also be permitted to offer new combinations of gambling facilities. The government, therefore, decided that it was prudent to limit the number of these new casinos so that an assessment can be made of whether their introduction leads to an increase in problem gambling. Section 175 of the Act limits the number of premises licences that may have effect at

any time in respect of the new categories of casino to one regional, eight large and eight small casinos.

7.3 Existing casinos that have been licensed under the Gaming Act 1968 will continue to be able to operate once the new Act comes into force on 1 September 2007. Their existing licences will be converted into casino premises licences under the new Act, and their gaming entitlements will remain in line with those set out in the existing legislation. Existing casinos will also have the opportunity to apply for one of the 17 new casino premises licences permitted by the 2005 Act.

7.4 Currently, there are 140 casinos operating under the existing legislation. However, the last two years have seen a significant increase in the number of applications for certificates of consent in respect of new casinos.

7.5 It was always in the interests of an orderly transition to the new arrangements for a final date to be set for applications under existing legislation. Applications for certificates of consent from new operators can take up to a year for the Gambling Commission to determine, and licensing justices only meet on a quarterly basis, and so it makes sense for there to be a long lead time for transition purposes.

7.6 However, the government has also concluded that an earlier cut off date for applications would be desirable to minimise the risks of an undue proliferation of casinos licensed under the existing legislation. Furthermore, it would not want an unusually large increase in the number of existing casinos to undermine the nature of the assessment of the introduction of the new casinos to which it is committed.

7.7 The Secretary of State announced her intention to set an early cut off date for applications for certificates of consent on 10 November 2005. A draft order giving effect to this policy was published on the DCMS website for consultation on 23 December 2005, with a closing date for the receipt of comments of 23 March 2006. In the light of the responses to the consultation, the draft Order has been amended to ensure that operators of casinos already licensed under the 1968 Act can continue to apply for a certificate of consent to relocate or substantially alter their existing premises within their existing licensing area after 29 April 2006, but without compromising the objective of preventing proliferation.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The change will have no cost impact on the public sector.

9. Contact

David Fitzgerald at the Department for Culture, Media and Sport (telephone: 020 7211 6479) can answer any queries regarding this Order.

Department for Culture, Media and Sport

Regulatory Impact Assessment

1. Title

The Gambling Act 2005 (Transitional Provisions) Order 2006.

2. Purpose and intended effect

a) Objectives

To minimise the risks of an undue proliferation of casinos licensed under the Gaming Act 1968 before the Gambling Act 2005 comes into force on 1 September 2007.

b) Background

The Gambling Act 2005 replaces the current system of regulation of casinos set out in the Gaming Act 1968. The 2005 Act creates four new categories of casino which will be defined in relation to their size: regional; large; small; and, below the minimum size for a licensed casino.

The new casinos will be much larger than existing casinos in Britain, and will be permitted to offer new combinations of gambling facilities. The government, therefore, decided that it was prudent to limit the number of these new casinos so that an assessment can be made of whether their introduction leads to an increase in problem gambling. Section 175 of the Act limits the number of premises licences that may have effect at any time in respect of the new categories of casino to one regional, eight large and eight small casinos.

Existing casinos that have been licensed under the Gaming Act 1968 will continue to be able to operate once the new Act comes into force on 1 September 2007. Their existing licences will be converted into casino premises licences under the new Act, and their gaming entitlements will remain in line with those set out in the existing legislation. Existing casinos will also have the opportunity to apply for one of the 17 new casino premises licences permitted by the 2005 Act.

c) Rationale for government intervention

The intention is that the Gambling Act 2005 will be brought formally into force on 1 September 2007. Until that time, the current law relating to casinos (the Gaming Act 1968) will remain in force, and anyone wishing to open a new casino would be required to make the relevant applications under the 1968 Act.

There is a two-stage process: application to the Gambling Commission for a certificate of consent; if the certificate of consent is granted, the operator then has six weeks from the date of issue to apply to the licensing magistrates for a casino licence.

Currently, there are 140 casinos operating under the existing legislation. They are currently limited to 54 permitted areas around Great Britain set out in the Gaming Clubs (Permitted Areas) Regulations 1971. The last two years have seen a significant increase in the number of applications for certificates of consent in respect of new casinos. The figures for the last ten years are set out in the following table:

Applications for certificates of consent in respect of new casinos	
1997-98	2
1998-99	8
1999-00	8
2000-01	6
2001-02	5
2002-03	10
2003-04	12
2004-05	23
2005- 06 (to end Feb 06)	47

Not all applications for certificates of consent necessarily result in new casinos opening. However, it is clear that there has been a significant increase in the number of new applications in recent years. A number of factors are likely to have contributed:

- new operators wanting to establish themselves in the market before the reforms brought in by the 2005 Act take effect;
- the introduction in October 2005 of changes in the current regulatory regime for casinos and the reduction in the number of regional casinos permitted by the Gambling Act 2005 to one may have helped make existing casinos more attractive commercial propositions;
- this is the last chance people will get to open a casino under the current law.

It was always in the interests of an orderly transition to the new arrangements for a final date to be set for applications under existing legislation. Applications for certificates of consent from new operators can take up to a year for the Gambling Commission to determine, and licensing justices only meet on a quarterly basis, and so it makes sense for there to be a long lead time for transition purposes.

However, the government has concluded that an earlier cut off date for applications would also be desirable to minimise the risks of an undue proliferation of casinos licensed under the existing legislation. Furthermore, it would not want an unusually large increase in the number of existing casinos to undermine the nature of the assessment of the introduction of the new casinos to which it is committed.

3. Consultation

a) Within government

We have consulted the Gambling Commission on this change, and it supports the early cut off date as part of the transition to the implementation of the new Act.

b) Public consultation

The Secretary of State announced her intention to set an early cut off date for applications for certificates of consent on 10 November 2005. A draft order giving effect to this policy was published on the DCMS website for consultation on 23 December 2005, with a closing date for the receipt of comments of 23 March 2006.

The Department has received a number of responses to the consultation, all from organisations in the casino industry: the British Casino Association; Rank Group Gaming Division; and, Stanley Casinos.

All three responses expressed concern that the order as originally drafted would not only prevent new casinos from being established, but would also prevent existing operators from being able to apply for a certificate of consent to relocate or substantially alter their existing premises during the period between 29 April 2006 and 1 September 2007, when the new Act is formally implemented. The government had previously given assurances to existing casinos they would continue to be able to apply to their licensing authority to relocate their premises within their existing licensing area once the new Act is implemented.

The Department recognised these concerns, and has sought to develop a way of delivering the broad exemption that the industry wants without compromising either the objective of preventing proliferation or discriminating in an unjustifiable way against new operators.

Under the revised approach, which is reflected in the Order, certificate of consent applications would be capable of being granted, where made on and after 29 April, provided that:

- the applicant holds an existing casino licence under the 1968 Act in relation to premises in the same licensing area; and
- they are able to satisfy the Gambling Commission that the new licence is required to replace the existing licence, and that the existing licence will be relinquished before the new casino begins operating.

4. Options

Three options have been considered:

Option 1 - Do nothing (i.e. do not impose an early cut off

date - applications could continue to be made up to 31 August 2007)

This option was rejected because it would not address the risks of an undue proliferation of new 1968 Act casinos, and would not facilitate the smooth and orderly transition to the new Act.

Option 2 - Impose an earlier cut off date than 28 April 2006

It was only appropriate to impose a cut-off date once the view had been reached that this was required to address an undue proliferation of new 1968 Act casinos. Also, it was considered that good administration required those potentially affected to be given a reasonable period of notice of the proposed decision to impose a cut-off date. An earlier cut-off date would not have met both these requirements.

Option 3 - Implement a 28 April 2006 cut off date

It was felt that this cut off date provided a good balance between ensuring fairness to potential new operators in the casino sector, and minimising the risks of an undue proliferation of existing casinos.

5. Costs and benefits

a) Sectors and groups affected

140 casinos currently operating in Great Britain and their customers. Potential new operators in the casino sector.

b) Benefits

The Order will cap the potential number of existing casinos at a maximum of around 210. However, the actual number will depend on how many new applications for certificates of consent are submitted to the Gambling Commission between now and 28 April 2006, and how many of these lead to successful applications for licences.

The government believes that this measure will ensure that the potential risks in terms of problem gambling are minimised during the run up to the implementation of the Gambling Act 2005. It will also support the orderly transition to the new Act by allowing good time for applications under the existing law to be processed, and reduce the time that the old and new systems of regulation will operate in parallel.

The Order will also ensure that the assessment of the social impact of the new casinos is not undermined by an unusual increase in casino gambling across the sector.

c) Costs

There will be no increased administrative costs falling to the public purse as a result of this change. All applications for certificates of consent require the payment of a fee, the

level of which is set on a cost recovery basis.

Anyone who might have wanted to open a new casino between 29 April 2006 and 31 August 2007 will not now be able to do so. Anyone in this position will be able to make an advance application to the Gambling Commission for an operating licence under the 2005 Act, which they will be able to do from January 2007. They will then need to bid to the relevant licensing authorities for the 17 new casino premises permitted under the Gambling Act 2005.

It is theoretically possible that the restriction of new 1968 Act casinos would in the short term increase costs to customers because of the restriction of competition. However, this potential reduction in competition during the period between the cut-off date and the start-up of the new casinos permitted under the 2005 Act is likely to be offset by the increased competition brought about by the increase in applications for new 1968 Act casinos already in the pipeline.

6. Small firms impact test

A number of casinos are small business, including 14 single casino operators. The revisions to the Order will ensure that these casinos will continue to be able to apply to relocate or substantially alter their premises during the transition to the new Act.

The Government announced its intention to make these changes on 10 November 2005, giving any small businesses who wanted to establish themselves in the sector over 6 months to submit their application to do so.

DCMS has consulted the Casino Operators' Association, which represents a number of the smaller companies in the industry, and it had no comments on the changes.

7. Competition assessment

We have conducted a competition assessment in line with OFT guidance as follows:

The key market that will be affected by the change is the British casino market. There are currently 140 casinos operating in Great Britain. The market is dominated by four major companies, who between them operate 120 casinos. Hence it is possible that a restriction on new entry which this Order represents may increase the dominant position of existing companies.

If all the current applications for certificates of consent result in a new casino opening, this figure is likely to rise to around 210. However, only around a quarter of the new applications are from existing operators, and the remainder are from new entrants to the market. It seems likely, therefore, that already the transition to the new Act will help stimulate increased competition in the existing casino sector over the next few years.

The Order will halt further expansion of the casino market in its current form. Of itself, it will not alter the structure of the casino market, rather it will cap its size until the existing casinos are joined by the 17 new casinos permitted under the 2005 Act. This was always the intention of Parliament in passing the Gambling Act. For this reason, it will curtail the ability of the casino sector to determine the price, quantity and nature of its offer to customers. This effect is, however, likely to be marginal given the strict regulation of the sector already in place.

The only change as a result of this Order is that it brings forward the cut off date for new casinos under the existing legislation. The government now believes that there are sound social policy and administrative reasons to justify this, and that these reasons override the consumer interest in permitting any further expansion of the existing casino market in advance of the implementation of the new Act.

8. Enforcement, sanctions and monitoring

The Gambling Commission will be continue to be responsible for all aspects of monitoring and enforcement in relation to existing casinos and will continue to be responsible for casino operating licences once the Gambling Act 2005 is implemented. At that point licensing authorities will assume responsibility for monitoring and enforcement of casino premises licences.

9. Implementation and delivery plan

The change will be delivered by the provisions of the Order. The change will take effect from 29 April 2006.

10. Post implementation review

The Gambling Commission will monitor any impact of the change on the gambling sector as part of its wider responsibilities.

11. Summary and recommendation

Ministers have decided to proceed with Option 3 above - to implement the changes from 29 April 2006. They are satisfied that this measure strikes the right balance between allowing further competition in the casino sector, and reducing the risks associated with the proliferation of casinos under existing legislation, and ensuring an orderly transition to the new Act.

12. Ministerial declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

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Rt Hon Richard Caborn MP
Minister of State

Date

13. Contact point

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