

**EXPLANATORY MEMORANDUM TO
THE GAMBLING APPEALS TRIBUNAL RULES 2006**

2006 No. 3293

THE GAMBLING APPEALS TRIBUNAL FEES REGULATIONS 2006.

2006 No. 3287

1. This Explanatory Memorandum has been prepared by the Department for Constitutional Affairs ('DCA') and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The statutory instrument for the Gambling Appeals Tribunal Rules 2006 ('the Procedural Rules') sets out the practice and procedures to be followed in relation to proceedings before the Gambling Appeals Tribunal. The overall objective of the Rules is to ensure the fair and timely hearing of appeals.

2.2 In particular these Rules set out the procedure for:

- bringing an appeal to the Tribunal;
- the Gambling Commission to file a statement of case and for the appellant to provide a written response;
- direction-making powers of the Tribunal;
- summoning of witnesses, dealing with hearings, publishing decisions and awarding costs; and
- dealing with appeals from the Tribunal's decisions.

2.3 The Gambling Appeals Tribunal Fees Regulations 2006 ('the Fees Regulations') set out the fee to be charged to an appellant for bringing an appeal to the Tribunal. This instrument also contains provisions covering exemptions, waivers, reductions and refunds of the fee. The aim is to ensure that a proper balance is struck between those benefiting from the right of appeal paying for it and assisting those who would suffer undue hardship if they were obliged to pay the fee.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 In line with Government charging policy the Gambling Appeals Tribunal will operate at full cost recovery. The fees contained in the Schedule of the Fees Regulations represent the one-off fee to be charged to appellants for bringing an appeal. The policy background to the Fees is discussed in Section 7.

4. Legislative Background

4.1 The Gambling Act 2005 ('the 2005 Act') introduced a new independent regulator, the Gambling Commission ('the Commission'), which was established on 1 October 2005. From 1 January 2007 the Commission will be able to issue operating licences (for

organisations and individuals) and personal functional licences and personal management licences (for certain individuals working in the gambling industry, for instance croupiers, or managers of a casino).

- 4.2 The 2005 Act allows for a right of appeal against determinations of the Commission in relation to operating or personal licences (or applications for them) to a new independent tribunal, the Gambling Appeals Tribunal ('GAT') to be administered by the Tribunals Service. The Lord Chancellor has the power under section 146 and Schedule 8 of the 2005 Act to make rules in respect of the conduct of proceedings before the GAT.
- 4.3 Under section 147 of the 2005 Act, the Lord Chancellor may make regulations providing for a fee to be charged for bringing an appeal before the Tribunal.
- 4.4 The Gambling Appeals Tribunal Rules 2006 and the Gambling Appeals Tribunal Fees Regulations 2006 have been drafted further to these provisions of the Act.
- 4.5 During the Standing Committee debate on GAT, the then clause 139 was debated. The debate focused on what is now Section 146(3) to clarify why failure to comply with a requirement of a specified kind imposed by or in accordance with the Rules could lead to Summary Conviction. The power is provided in rule 17(7) which provides that if a person, without reasonable excuse, fails to comply with a summons, he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

5. Extent

- 5.1 This instrument applies to England, Wales and Scotland.

6. European Convention on Human Rights

- 6.1 As the instruments are subject to the negative resolution procedure, and do not amend primary legislation, no statement is required.

7. Policy Background

- 7.1 The 2005 Act establishes a new regime for the regulation of commercial gambling in Great Britain. The Commission, which has replaced the Gaming Board for Great Britain, has been set up to regulate betting, gaming (which includes casinos, bingo halls, gaming machines and arcades) and lotteries. Subject to specified exemptions, it is an offence under the 2005 Act to provide facilities for gambling without the appropriate permissions, which include operating and personal licences.
- 7.2 The 2005 Act sets out different types of operating licence, which can be issued to organisations or individuals, that cover the full spectrum of commercial gambling activities conducted in Great Britain. In addition there are two types of personal licence personal functional and personal management as detailed in paragraph 4.1. The Commission may specify conditions under which these licences are granted and will issue codes of practice directed at those providing facilities for gambling.

- 7.3 Any organisation or individual directly affected by a decision of the Commission in relation to their operating or personal licence (or an application in respect of that licence), will have a right to refer the matter to the GAT within 1 month of the date of the decision or action appealed against. Parties to a bet also have a right to appeal to the GAT if the Commission voids the bet. It is legally important that such a Tribunal should exist.
- 7.4 The GAT will consider each case afresh, either on a point of law or fact and it may consider any evidence, whether or not it was available at the time of the Commission's determination. The GAT will have a wide-ranging jurisdiction as to how it implements its determinations of matters arising from the Commission's decision or action.
- 7.5 The GAT will be the first Tribunal within the Tribunals Service to operate at full cost recovery. The Schedule to the Fees Regulations outlines the one-off fees to be charged to appellants for bringing each type of appeal. The fee levels set reflect the estimated number of appeals, the likely complexities of each appeal and the judicial input required to hear the case. The fees have been agreed with HM Treasury.
- 7.6 It is intended that the fees will be reviewed annually after the first full year of operation.
- 7.7 The decision to charge fees is politically important and was made during the passage of the 2005 Act. The Government have since decided that, to save any burden on the public purse or the wider gambling industry, the GAT will operate by charging fees to its appellants on a full cost recovery basis. The rationale for this is set out below.
- 7.8 The Department for Culture, Media and Sport ('DCMS') sponsor the gambling industry and their policy is that it should bear the costs of its own regulation, including the GAT. The Government ruled that the funding of the GAT should be borne by those who bring appeals and not, for instance, the licence fees paid by all operators and personal licence holders to the Gambling Commission: since that would represent cross subsidisation. Separate fees for licences and for appeals are also considered a more transparent system and one which would also deter speculative appeals.
- 7.9 The Fees Regulations were drafted based on Civil Proceedings Fees Order 2004 (SI 2004/3121) and in part on the secondary legislation in a small number of Tribunals currently charging fees, such as the Lands Tribunal.
- 7.10 To protect access to justice for all appellants there is an exemption scheme providing that individuals in receipt of certain benefits will not be required to pay the appeal fee. This is based on exemption schemes that already exist in other Courts.
- 7.11 There is also a reduction and waiver scheme to allow appellants to apply to the Tribunal for a reduced or remitted fee, if they believe that they will experience financial hardship in paying the set fee; it is expected that this will mainly help individuals and small businesses. The Tribunal has discretion as to whether to remit or reduce the fee on the basis of undue financial hardship.
- 7.12 A consultation on the Procedural Rules has been carried out. DCA ran a limited consultation exercise, seeking and receiving comments from a range of interested

parties, including organisations and representative bodies from the gambling industry, lawyers, the judiciary and the Council on Tribunals. The consultation began 11 September 2006 and ended on 16 October.

- 7.13 All due consideration was given to the responses received and where appropriate the Rules have been amended. There were no contentious or controversial issues following consultation. The nature and level of the public interest in the procedural rules is reflected in the persons consulted. Those interested are persons who work in the gambling industry.
- 7.14 DCA did not hold a public consultation exercise on the Fees Regulations, as there were no genuine alternatives to charging fees and the Tribunal needed to cover its costs by charging fees at full cost recovery levels. DCA did not want to raise expectations that alternative funding would be an option because it knew that would not be feasible. The reasons behind this decision are explained in more detail in the following section and also relate to the Regulatory Impact Assessment.
- 7.15 The Fees Regulations were circulated to key stakeholders, including the Gambling Commission, DCMS, HM Treasury and the Council on Tribunals for comment. These comments, which were largely technical drafting points, were considered and some were taken forward to the final Regulations.

8. Impact

- 8.1 A Regulatory Impact Assessment (RIA) was prepared for the 2005 Act. The Procedural Rules provide the framework within which the GAT works and is administered. The Rules alone do not have any impact on business, charities or voluntary bodies and, therefore, an additional RIA was not prepared.
- 8.2 DCA considered at length whether to prepare a RIA for the fees regulations. A RIA, under current guidance, would need to present alternative options for funding the GAT. As set out in paragraph 7.5 above, the costs of the GAT are to be met by full cost recovery. Since there are no genuine options other than full cost recovery, the drafting and publication of a RIA would have presented options to stakeholders that could not have been realised and which may have set up false expectations.
- 8.3 This decision not to produce a RIA was only made following extensive discussions with the DCMS and DCA's Better Regulation Unit. The Better Regulation Executive within the Cabinet Office was also advised of our decision.
- 8.4 Overall, a low number of appeals is anticipated, since the Commission intends to take care to discuss negative or contentious decisions with the relevant parties before they are formally determined and will make use of an internal review procedure in such instances. Hence, those appeals that do reach the GAT should cover issues and risks of a nature that the appellant understands and is willing to pursue – and for most operators, in what is a profitable industry, the fees should be affordable.
- 8.5 The fees may impact on some persons, most likely small businesses and individuals, to an extent that is not affordable and, were the full fee to be payable, potentially deter (or

prevent) them from making an appeal. We believe that the Exemption and Waiver Scheme contained in the Fees Regulations will allow any such potential appellants the right to apply for reduced or waived fee and so ensure that all potential appellants have the same access to justice.

9. Contact

9.1 Jenny Patterson at the Department for Constitutional Affairs (telephone: 020 7340 6572; email jenny.patterson@tribunals.gsi.gov.uk, can answer any queries about the Procedural Rules.

9.2 Claire Troughton at the Department for Constitutional Affairs (telephone 020 7340 6568); email claire.troughton@tribunals.gsi.gov.uk, can answer any queries about the Fees Regulations.