

**EXPLANATORY MEMORANDUM TO  
THE GAMBLING ACT 2005 (LICENSED PREMISES GAMING MACHINE PERMITS)  
(ENGLAND AND WALES) REGULATIONS 2007**

**2007 No. 1833**

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 These Regulations set the fees in relation to licensed premises gaming machine permits (“permits”), and specify the form of the permit.

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

- 3.1 These regulations are the first made under the Gambling Act 2005 (the Act) concerning these provisions.

4. **Legislative Background**

- 4.1 The Act introduces a new system of regulation for gambling in Great Britain, which will replace the system of regulation set out in the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.

- 4.2 The formal implementation date for the Gambling Act 2005 will be 1 September 2007. On this date, the majority of permissions issued under existing legislation will expire and be replaced by the new licences and permits prescribed by the new Act.

- 4.3 It is an offence under the Act to use premises, or cause or permit premises to be used to make gaming machines available for use (section 37), and to make gaming machines available for use by another (section 242), unless this is done in accordance with a relevant operating licence or permit, or it falls under one of the exceptions provided in the Act.

- 4.4 Section 283(1) of the Act makes an exception from the above offences where gaming machines of Category C or D are made available in accordance with a licensed premises gaming machine permit. Such permits are available to premises with an on-premises alcohol licence. An ‘on-premises alcohol licence’ is defined in section 277 of the Act as a premises licence under Part 3 of the Licensing Act 2003 (c. 17), which authorises the supply of alcohol for consumption on the premises.

- 4.5 Holders of an on-premises alcohol licence may apply to their licensing authority for a permit under Schedule 13, which sets out the procedural requirements for the administration of such permits. On granting a permit, licensing authorities have powers to specify the number and category (limited to category C and D) of gaming machines

authorised by the permit (see paragraph 4(2) of Schedule 13). It is a condition of the permit that the holder comply with any relevant provision of a code of practice issued by the Gambling Commission under section 24 of the Act, about the location and operation of a gaming machine (section 283(3)).

4.6 Schedule 13 makes provision for applying for a permit, paying annual fees, obtaining a copy, varying, cancelling, forfeiting, and transferring a permit. Provision is also made in relation to appealing decisions of licensing authorities in relation to a permit, and for maintenance by the authority of a register of permits.

4.7 Schedule 13 has effect only in England and Wales, and these Regulations only apply to England and Wales. Scottish Ministers may make regulations applying to permits in place of Schedule 13, if the applicant for or holder of the permit is the holder of a relevant Scottish licence (defined in section 277 (c) of the Act).

4.8 These regulations give full effect to Schedule 13 by prescribing various fees that must be paid for some of the procedures, and the form of the permit that is issued by licensing authorities.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The objectives of the Gambling Act 2005 are: to prevent gambling from being a source of crime and disorder; to ensure that it is conducted in a fair and open way; and to protect children and other vulnerable persons from being harmed or exploited by it.

7.2 These regulations, which are made under the Act, are purely procedural and deal with the administration of the regime for issuing and monitoring licensed premises gaming machine permits.

7.3 A licensed premises gaming machine permit will entitle the holder, under section 283 of the Act, to make further category C or D gaming machines available on their premises, in addition to the two machines that such alcohol-licensed premises are automatically entitled to provide under section 282 of the Act.

7.5 No limit is imposed by the Act on the number of category C and D gaming machines that can be made available under a licensed premises gaming machine permit, but the permit will specify the number of machines authorised by the licensing authority.

7.6 A licensing authority has no discretion to add conditions to a licensed premises gaming machine permit, other than in relation to the number and category of machines.

7.7 Licensed premises gaming machine permits will be issued by local licensing authorities and last indefinitely. A permit will continue unless and until it ceases to have effect under a provision of Schedule 13 of the Act.

*Consultation on draft regulations*

7.8 These regulations have been drawn up following eight weeks of formal consultation, which began in March 2006 and involved licensing authorities, the industry and other interested parties. As the Regulations are procedural, and in line with previous proposals on which we have consulted in relation to premises licensing and other permits to be issued under the Act, we agreed with stakeholders at the outset that it was appropriate in this case to shorten the formal consultation period. A list of those who responded is attached as an annex to this memorandum.

7.9 These regulations simply concern the administration process for acquiring a licensed premises gaming machine permit. They prescribe the form of permit and the administration fees payable. The fees prescribed here have been set on the basis of separate consultation, so this consultation exercise simply sought the input of stakeholders about the practical aspects of establishing the administration process. Our aim, consistently, has been to develop practical, user-friendly proposals which strike a balance between the need to be prescriptive, to provide consistency and clarity to licensing authorities, enforcement agencies, the gambling industry and the public, and the need of those same groups for flexibility and proportionate regulation. In this consultation, in which we drew heavily on similar proposals made in relation to premises licences and other permits issued under the Act, we asked three basic questions about what should be prescribed in the regulations. These concerned:

- the proposed form of the permit;
- whether stakeholders agreed with our proposal that, in relation to hearings in the event of a permit being refused, licensing authorities should follow the procedures prescribed in relation to premises licensing, rather than have procedures prescribed specifically for these permits;
- whether stakeholders agreed that licensing authorities should be allowed discretion in relation to cancelling and varying a permit.

We did not ask a specific question about the fees to be prescribed here, which were set on the basis of our separate consultation on Premises Licences and Permits Fees (carried out between July-September 2006), but stakeholders did have a second opportunity to comment on them.

7.10 Under the Act, licensing authorities must hold a hearing before refusing to grant a permit and the Secretary of State has a discretionary power to make regulations about the proceedings which must be followed in any such hearings (see paragraph 28 of Schedule 12 to the Act, and section 9 of the Licensing Act 2003). However, the Department considers that local authorities may rely on their power under section 9(3) of the Licensing Act 2003, which allows them to regulate their own procedures and has not prescribed the procedure in these regulations. We anticipate that local authorities will, however, wish to adopt existing procedures, including those set out in the regulations

relating to premises licences. The Gambling Commission will be issuing guidance to local authorities in this respect.

7.11 These Regulations do not prescribe the form of register that the licensing authorities and the Gambling Commission should maintain (or the information passing between them) to monitor and oversee the permit process. Responses to earlier consultation exercises indicated that if we were to be prescriptive about the details that these registers must hold there was a danger that this aspect of the process could become onerous for both licensing authorities and the Gambling Commission, and result in unnecessary duplication of records. The licensing authorities and the Commission will both maintain such registers, but we concluded that it would be appropriate to allow them discretion about the details that they contain. The Gambling Commission has published guidance on the appropriate information exchange with the licensing authorities, and we expect that this should be followed. We will, however, keep the procedure under review

7.12 As anticipated, the consultation exercise did not provoke a large response (there were six replies in all) but those who did respond included representative bodies able to speak for a good cross-section of stakeholders, who largely endorsed by our proposals. We received several suggestions concerning the form of the permit and the information to be included in it, and although we were able to take some of these on board, most of the points raised were either already addressed in the body of the Regulations, or concerned the sort of user guidance that will more properly be provided in the explanatory leaflets that DCMS is producing, or the fact sheets produced by LACORS (the Local Authorities Coordinators of Regulatory Services) and individual licensing authorities. There were, however, two areas in which respondents took issue with our proposals.

7.13 The first was in relation to hearings in the event of a permit being refused. Both the British Beer and Pub Association (BBPA) and the Association of Licensed Multiple Retailers (ALMR) disagreed with our proposal that local authorities should follow existing procedures established for premises licensing, rather than have a separate hearings procedure prescribed in these Regulations. Although we gave due consideration to these comments, we decided to go ahead with our original proposal, which was endorsed both by licensing authorities and our other respondents. We believe that to regulate in this instance would be at odds with our aim to take a light-touch approach to this aspect of the regulatory regime.

7.14 The second concerned fees. Unlike premises licence fees we are prescribing the precise fee for these permits. We have set the figures on the basis of our separate consultation on Premises Licences and Permits Fees, which was informed by a comprehensive fees costing exercise and sought the views of licensing authorities and the industry. We did not, therefore, ask a specific question concerning fees in this exercise, but we circulated draft regulations in which the fees were included so that stakeholders would have an opportunity to comment on them again. Two of the fees that we are prescribing here are higher than those that we proposed in the fees consultation: we have set both the transitional application fee and the variation fee at £100, rather than at £70 and £25 respectively. Following consultation, we concluded that it was appropriate to make these two fees the same because the process for varying the number and category of machines authorised by a permit is the same as that for considering an initial application. We also consider that the figure on which we settled simply meets the criteria for ensuring that local authorities are able to recover the costs of the administration process. Costs to industry under the new regime will be broadly comparable to those for

equivalent permissions under existing legislation where licensees pay £32 (a figure last revised in 1992) for a permit which lasts three years, whereas there is no limit on the duration of a permit under the new regime. The BBPA was the only one of our respondents to comment that they considered the fees too high, although, following discussion of their concerns, they were content with our reasoning in setting the two fees at the same level.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

## **9. Contact**

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## **Department for Culture, Media and Sport**

### **Draft Regulatory Impact Assessment**

#### **1. Title of proposal**

The Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England And Wales) Regulations 2007

#### **2. Purpose and intended effect**

##### **Objectives**

These Regulations make provisions relating to the administration of the process for issuing licensed premises gaming machine permits. In particular, it concerns the following powers contained in Schedule 13 of the Gambling Act 2005 for the Secretary of State to prescribe:

- the fee to accompany the permit application - paragraph 2(e)
- the form of permit, and other information to be specified on the permit – paragraph 7(1)
- the period within which the first annual fee is to be paid – paragraph 9(a)
- the first annual fee – paragraph 9(2)
- the annual fee - paragraph 9(2)
- the fee for changing the name on a permit - paragraph 7(2)(a)(i)
- the fee to obtain a copy of a permit - paragraph 11(2)

##### **Background**

The Gambling Act 2005 introduces a new system of regulation for gambling, which will replace the current system of regulation set out in the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.

The government has previously announced that the formal implementation date for the Gambling Act 2005 will be 1 September 2007. On this date, the majority of permissions issued under the existing legislation will expire and be replaced by new licences and permits issued under the 2005 Act.

Schedule 13 of the Gambling Act 2005 (the Act) deals with the procedure for the administration of licensed premises gaming machine permits (or 'Pub' machine permits). These regulations are made under Schedule 13; they are purely administrative and replicate existing provisions. They deal with the process which will allow the holder of an on-premises alcohol licence, or a person who has applied for an on-premises alcohol licence, under the Licensing Act 2003, to apply to the same licensing authority for a licensed premises gaming machine permit.

A licensed premises gaming machine permit will entitle the holder, under section 283 of the Act, to make further category C or D gaming machines available on their premises, in addition to the two machines to which their premises licence automatically entitles them under section 282.

No limit is imposed on the number of category C and D gaming machines that may be made available under section 283. The permit will provide in each case for the number of machines that it authorises.

Applications may not be made under Schedule 13 in relation to premises which hold a premises licence under Part 8 of the Gambling Act.

Licensing authorities have no discretion to add conditions to a licensed premises gaming machine permit, other than in relation to the number and category of machines that it authorises. Once granted there is no limit on its duration; it continues unless and until it ceases to have effect under a provision of Schedule 13 of the Act.

##### **Rationale for government intervention**

The intention behind these proposals is to ensure that we have in place consistent, light-touch and user-friendly procedures to enable businesses to obtain licensed premises gaming machine permits, which do not place unnecessary burdens on businesses, licensing authorities or the Gambling Commission.

### **3. Consultation**

#### **Within government**

DCMS has consulted the Gambling Commission on our proposals.

#### **Public consultation**

The proposals in relation to these permits drew heavily on similar proposals on which we have consulted in relation to premises licences and other permits issued under the Act. These in turn were based on informal consultation with the Department's Premises Licence Working Group, comprising representatives of licensing authorities and the industry. The proposals also drew on a number of presentations given by the Department to LACORS policy fora and working groups, and ongoing liaison with these groups.

Our aim, consistently, has been to develop practical, user-friendly proposals which strike a balance between the need to be prescriptive, to provide consistency and clarity to licensing authorities, enforcement agencies, the gambling industry and the public, and the need of those same groups for flexibility and proportionate regulation.

This consultation exercise simply sought the input of stakeholders about the practical aspects of establishing the administration process for these permits, and asked three basic questions about what should be prescribed in the regulations. These concerned:

- the proposed form of the permit;
- whether stakeholders agreed with our proposal that, in relation to hearings in the event of a permit being refused, licensing authorities should follow the procedures prescribed in relation to premises licensing, rather than have procedures prescribed specifically for these permits;
- whether stakeholders agreed that licensing authorities should be allowed discretion in relation to cancelling and varying a permit.

We did not ask a specific question about the fees to be prescribed here, which were set on the basis of separate consultation, but stakeholders did have a second opportunity to comment on them.

As anticipated, the consultation exercise did not provoke a large response (there were six replies in all), but those who did respond included representative bodies able to speak for a cross-section of stakeholders. We received several suggestions concerning the form of the permit and the information to be included in it, and were able to take some of these on board. However, some of the points raised were already addressed in the body of the Regulations, and the majority concerned the sort of user guidance that will more properly be provided in the explanatory leaflets that DCMS is producing to accompany the regulations, or in the fact sheets produced by LACORS (the Local Authorities Coordinators of Regulatory Services) and individual licensing authorities. There were only two areas in which respondents disagreed with our proposals.

The first was in relation to hearings in the event of a permit being refused. Both the British Beer and Pub Association (BBPA) and the Association of Licensed Multiple Retailers (ALMR) disagreed with our proposal that local authorities should follow existing procedures established for premises licensing, rather than have a separate hearings procedure prescribed in these Regulations. Although we gave due consideration to these comments, we decided to go ahead with our original proposal, which was endorsed by licensing authorities and our other respondents. We believe that to regulate in this instance would be at odds with our aim to take a light-touch approach to this aspect of the regulatory regime.

The second concerned fees. We are prescribing the precise fee for these permits and have set the figures on the basis of our separate consultation on Premises Licences and Permits Fees, which was informed by a comprehensive fees costing exercise and sought the views of licensing authorities and the industry. Two of the fees that we are prescribing here are higher than those that we proposed in the fees consultation: we have set both the transitional application fee and the variation fee at £100, rather than at £70 and £25 respectively. Following consultation, we concluded that it was appropriate to make these two fees the same because the process for varying the number and category of machines authorised by a permit is the same as that for considering an initial application. We also consider that the figure on which we settled simply meets the criteria for ensuring that local authorities are able to

recover the costs of the administration process. Costs to industry under the new regime will be broadly comparable to those for equivalent permissions under existing legislation. The BBPA was the only one of our respondents to comment that they considered the fees too high, although, following discussion of their concerns, they were content with our reasons for setting the two fees at the same level.

A list of respondents is attached as an annex to this document

#### **4. Options**

##### Option 1. Do nothing

While many of the powers relating to the administration of the application process are reserve powers and, as such, optional, not to use them would be likely to result in inconsistency of approach between licensing authorities on matters like the design of permits. This would increase costs for licensing authorities and so increase costs for businesses.

Doing nothing would also mean that regulation of this sector would not be modernised, as envisaged under the Gambling Act.

##### Option 2. Implement regulations

By adopting light touch regulations we will ensure that the application process for licensed premises gaming machine permits will be administered in a consistent way nationally. Costs for licensing authorities, which are then passed on to businesses, will be kept to a minimum.

#### **5. Costs and benefits**

##### Sectors and groups affected

These regulations will apply only to holders of, and applicants for, on-premises alcohol licences issued under the Licensing Act 2003.

##### Benefits

These regulations will ensure a straightforward, light-touch administration process for licensed premises gaming machine permits, which will keep the costs to industry to a minimum.

##### Costs

It is not anticipated that costs to industry will be significantly higher than under current gambling legislation. The processes for obtaining permits under the Gambling Act are broadly comparable to those which exist under current law.

#### **6. Small firms impact test**

Applicants for licensed premises gaming machine permits will be the holders of, or applicants for, on-premises alcohol licences under the Licensing Act 2003.

The new permits regime set out under the Gambling Act to a large degree replicates the provisions of the existing law.

#### **7. Competition assessment**

The proposed regulations will not limit or influence the number or range of operators. This is because if the operator satisfies the criteria for issue of a permit, then the permit will be issued.

#### **8. Enforcement, sanctions and monitoring**

A licensing authority officer will be able to request the holder of a licensed premises gaming machine permit to produce a copy of the permit for inspection (as will a constable or a Gambling Commission enforcement officer).



Failure to produce the permit could result in summary conviction or a fine not exceeding level 2 on the standard scale.

The Act requires licensing authorities to keep a register of permits, make the register and information available for the public to inspect and to allow the public to have copies of entries in the register, for which they may charge a fee. Although the Secretary of State has the discretionary power to prescribe the form of the licensing authority's register and the manner in which it is maintained, we have not prescribed this in regulations. On the basis of our discussions with the licensing authorities in relation to registers of other forms of permit and premises licence issued under the Act, we have concluded that these details should be left to the discretion of the licensing authorities.

The Secretary of State also has the discretionary power to require licensing authorities to give the Gambling Commission specified information about the permits they have issued, and to require the Commission to maintain this information in their own register, and make copies of it available to members of the public. We have not prescribed this in the regulations either. The Gambling Commission has published guidance on the information exchange between themselves and the licensing authorities, and we propose that this should be followed.

The Gambling Commission will have overall responsibility for monitoring compliance with the requirements of the Gambling Act 2005 from 1 September 2007. The Commission will continue to advise and work closely with licensing authorities in the exercise of their own monitoring and enforcement functions under the Act.

## **9. Implementation and delivery plan**

The Department is compiling guides for industry and licensing authorities about the transfer to the new system of regulation.

DCMS continues to work closely with LACORS, licensing authorities and key industry bodies in designing the content and layout of application forms and permits. Although administrative in nature, all interested parties attach much importance to ensuring consistency and clarity in these forms.

The Department will continue to keep the industry informed about these changes through its established industry, community and licensing authority networks. They will continue to be kept informed at all key stages, e.g. results of consultations and when regulations are being laid and brought into effect.

## **10. Post-implementation review**

The introduction of the permits regime will be monitored through the information on permits that will be maintained in registers held by the licensing authorities and the Gambling Commission. We will also get feedback through three key formal mechanisms: the DCMS Industry Liaison Group; the DCMS Premises Licence Working Group; and, the LACORS Gambling Reform Policy Forum. These fora comprise key representatives from industry and licensing authorities.

## **11. Summary and recommendation**

Ministers have decided to proceed with option 2 above, to proceed with bringing in regulations on licensed premises gaming machine permits with effect from 1 August 2007.

## **12. Declaration and publication**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Richard Caborn  
Minister of State

Date

### **13. Contact point**

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## **Annex**

### **List of those who responded to the DCMS Consultation on: The Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007**

- 1 British Amusement Catering Trades Association  
(BACTA)  
Alders House  
133 Aldersgate Street  
London  
EC1A 4JA
  
- 2 British Beer and Pub Association  
Market Towers  
Nine Elms Lane  
London  
SW8 5NQ
  
- 3 Association of Licensed Multiple Retailers  
9B Walpole Court  
Ealing Studios  
London  
W5 5ED
  
- 4 Local Authority Co-ordinators of Regulatory Services (LACORS)  
Local Government House  
Smith Square  
London SW1P 3HZ
  
- 5 St Alban's District Council  
St Albans District Council  
Council Offices  
Civic Centre  
St Peters Street  
St Albans  
Hertfordshire  
AL1 3JE
  
- 6 Wolverhampton City Council  
Civic Centre  
St Peter's Square  
Wolverhampton  
WV1 1DA