

**EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (COMMENCEMENT NO. 6 AND TRANSITIONAL
PROVISIONS) (AMENDMENT) (NO. 2) ORDER 2007**

2007 No. 2169 (C. 81)

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 amends the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 (S.I. 2006/3272). The amendments include:

- delaying the commencement of provisions of the Gambling Act 2005 to the extent that they relate to the grant of premises licences in respect of the new categories of casino established under the Act;
- delaying the commencement of provisions relating to temporary use notices in respect of gambling premises;
- amendments which modify provisions of Part 1 of the Horserace Betting and Olympic Lottery Act 2004 concerning the exclusive licence for horserace pool betting under that Act, and amendments which modify the Gambling Act 2005 to take account of the exclusive licence;
- amendments to the transitional arrangements for the personal licensing regime under the Gambling Act 2005;
- extending the scope of the conditions which apply to certificates issued under section 27 of the Gaming Act 1968 when those certificates have effect on and after 1st September 2007;
- amendments consequential on the provisions specifying the period for paying the first annual licence fee for club gaming and machine permits and alcohol licensed premises gaming machine permits; and
- amendments relating to grandfathered premises licence applications.

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

3.1 None.

4. Legislative Background

4.1 The Gambling Act 2005 (“the 2005 Act”) gives effect to the Government's proposals for reform of the law on gambling. It contains a new regulatory system to govern the provision of all gambling in Great Britain, other than the National Lottery and spread betting. It effectively replaces and updates regulation of gambling under the Betting, Gaming and Lotteries Act 1963 (“the 1963 Act”), the Gaming Act 1968 (“the 1968 Act”) and the Lotteries and Amusements Act 1976 (“the 1976 Act”).

4.2 The 2005 Act introduces a unified regulator for gambling in Great Britain, the Gambling Commission, and a new licensing regime for most forms of commercial gambling. A person providing facilities for gambling will generally require an operating licence from the Commission. Except in the case of small-scale operators (as defined in the 2005 Act), it will be a condition of each operating licence that at least one person occupying a specified management office holds a personal licence issued by the Commission. Where premises are used to provide commercial gambling, a premises licence must be obtained from the licensing authority (which is the local authority) for the area in which the premises are situated.

4.3 In general, the permissions under the 2005 Act replace permissions previously required under the 1963, 1968 and 1976 Acts, although in many cases the nature of the permission is quite different.

4.4 The Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 (“the Principal Commencement Order”) provides for all of the provisions of the 2005 Act (except for a few limited exceptions) to be in force by 1st September 2007, the date on which gambling will begin to be regulated under the 2005 Act rather than the existing legislation. To ensure a smooth transition from regulation under the existing legislation to regulation under the 2005 Act, the Principal Commencement Order also provides for certain provisions of the 2005 Act to come into force on dates before 1st September 2007. This is to enable advance applications to be made for permissions under the 2005 Act which operators will need to authorise gambling on and after 1st September 2007.

4.5 The Principal Commencement Order contains transitional provisions which give effect to the commitment made by the Government to convert premises based permissions under the existing legislation into the equivalent permission under the 2005 Act. An operator is required to make an application for the equivalent permission under the 2005 Act, but provided he holds the relevant permission under the existing legislation, the licensing authority is required to grant the application and issue him with the relevant permission (these are commonly referred to as “grandfather rights”). The Principal Commencement Order also contains provisions which ensure that existing operators who have made an advance application for a permission under the 2005 Act by a specified date are able to continue operating if that application has not been determined by 1st September 2007 (referred to as “continuation rights”).

4.6 The transitional provisions in the Principal Commencement Order provide for some permissions granted under the 1968 Act to continue to have effect on and after 1st September 2007 (being the date when that Act is repealed for most purposes). Two instances of this are certificates issued under section 19 which are required under the 1968 Act to authorise individuals to carry out specified functions in casinos and bingo halls, and certificates issued under section 27 which are required under the 1968 Act to authorise persons to supply and repair gaming machines. In both cases, the certificate continues to have similar effect on and after 1st September 2007 but under the framework of the 2005 Act.

4.7 Part 1 of the Horserace Betting and Olympic Lottery Act 2004 (“the 2004 Act”) provides for the Horserace Totalisator Board (“the Tote”) to be dissolved, and for a company to be established (“the successor company”) to take over the exclusive right to conduct horserace pool betting under an exclusive licence issued by the Gambling

Commission. Part 1 of the 2004 Act has not yet been brought into force, and provision has been made which enables the Tote to continue operating within the framework of the 2005 Act on and after 1st September 2007¹. But provision is required to ensure that, when the Tote is dissolved and the exclusive licence is issued to the successor company, the rights conferred by that licence are capable of being exercised under the 2005 Act.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State for the Department for Culture, Media and Sport, Mr Gerry Sutcliffe, has made the following statement regarding Human Rights:

In my view the provisions of the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) (Amendment) (No. 2) Order 2006 are compatible with the Convention Rights

7. Policy background

7.1 The explanation of the policy background set out in the explanatory memorandum to the Principal Commencement Order is unchanged so far as the Department's commitment to crafting transitional arrangements which implement swiftly and effectively the new system of regulation of gambling brought into force by the Gambling Act 2005. The Principal Commencement Order has previously been amended to reflect changes in circumstances and policy². The primary purpose of this Order is to address a number of further practical and policy issues which have arisen since the Principal Commencement Order was made.

Casinos

7.2 As things stand, the provisions relating to the new categories of casino will come into force on 1st September 2007. However, the rejection of the Gambling (Geographical Distribution of Casino Premises Licences) Order 2007 by the House of Lords on 28th March 2007 has inevitably caused some delay in implementation of casino policy while Ministers reflect on how best to respond to that defeat. For this reason, the Order amends the Principal Commencement Order to exclude provisions of the 2005 Act relating to the new categories of casino from coming into force on 1st September 2007.

Temporary Use Notices

7.3 Part 9 of the 2005 Act makes provision for the use of premises for gambling where there is no premises licence in respect of those premises, but an operating licence holder wishes to use the premises, temporarily, for providing facilities for gambling. Temporary use notices are issued by licensing authorities and could cover hotels, exhibition centres or entertainment centres. The nature of gambling activities that can be

¹ The Gambling Act 2005 (Horserace Totalisator Board) Order (S.I. 2007/2102) was made on 19th July 2007 following its approval by both Houses of Parliament.

² See in particular the Gambling Act 2005 (Commencement and Transitional Provisions) (Amendment) Order 2007 (S.I. 2007/1157).

provided under such notices are controlled by regulations issued by the Secretary of State for Culture, Media and Sport. This is a new provision and there is no corresponding provision in the old legislation.

7.4 The Department is still considering the policy issues around the introduction of this new provision. As this is a brand new provision, the Government is of the view that a small delay in commencing these provisions beyond 1st September 2007 is appropriate and will not disadvantage any operators.

Amendments relating to the Tote successor company

7.5 The 2005 Act does not include any provisions which take account of the fact that, when the Tote is dissolved, facilities for horse-race pool betting will be provided by the successor company to the Tote under the exclusive licence to be issued under section 8 of the 2004 Act. The Order amends the Principal Commencement Order to ensure that, where the exclusive licence is issued to the successor company, the Gambling Commission will be required to issue it with the necessary operating licence under the 2005 Act. The amendments also modify provisions of the 2004 and 2005 Acts to ensure consistency between those Acts in their application to horse-race pool betting provided under the exclusive licence.

7.6 Another amendment made by the Order removes references to sections 12, 14, 15 and 24 to 30 of the 1963 Act in article 3(2) of the Principal Commencement Order. These amendments are consequential on orders made in respect of the Tote and the Horserace Betting Levy³.

Certificates under section 19 of the 1968 Act

7.7 The Principal Commencement Order contains transitional provisions with respect to certificates under section 19 of the 1968 Act which authorise individuals to carry out functions in casinos and bingo halls. There are two aspects to the transitional provisions: firstly, to prevent new certificates being granted where the application is made on or after 1st June 2007; and, secondly, to allow certificates which are in force immediately before 1st September 2007 to continue in force on and after that date. These provisions are intended to help manage the workload of the Gambling Commission which is responsible for issuing the personal licences which will replace section 19 certificates.

7.8 One of the features of the system under section 19 of the 1968 Act is that it allows a person who requires a new certificate (because, for example, they are moving to work in premises not covered by their existing certificate) to be treated as holding the appropriate certificate as soon as the application for the new certificate is made. This process of enabling an existing certificate holder to be treated as holding a new certificate which applies to different premises has been impeded with the introduction of the 1st June cut-off date. The Department has been informed by the Gambling Commission that this is causing difficulties for operators and the government believes it is right to take action to deal with this. The Order does so by amending the Principal Commencement Order to allow applications for section 19 certificates made after 1st June 2007 to be

³ The Gambling Act 2005 (Horserace Totalisator Board) Order and the Gambling Act 2005 (Horserace Betting Levy) Order 2007 (S.I. 2007/2159).

granted where the person applying already holds a certificate and the new certificate authorises the same functions but in different premises.

7.9 Other amendments are made to the transitional provisions relating to section 19 certificates which have effect on and after 1 September 2007. These amendments are in part consequential on the amendment referred to in paragraph 7.9 above and in part correct minor errors in the Principal Amendment Order.

Certificates under section 27 of the 1968 Act

7.10 The Principal Commencement Order contains transitional provisions relating to certificates under section 27 of the 1968 Act. These enable such certificates to continue to have effect on and after 1st September 2007 subject to any general conditions attached by the Gambling Commission to gaming machine technical operating licences under section 75 of the 2005 Act. The government now considers that such certificates should also be made subject to the condition imposed under section 82 of the 2005 Act (which requires compliance with any relevant social responsibility code of practice), and conditions attached under regulations made by the Secretary of State under section 78. The amendments in the Order address these issues.

First annual licence fee for club and licensed premises gaming and gaming machine permits

7.11 The 2005 Act makes provision for the payment of annual fees in respect of club gaming and machine permits and licensed premises gaming machine permits issued under that Act. The Principal Commencement Order makes transitional provision for the payment of annual fees where a club or pub gaming machine permit under the 2005 Act is granted before 1st September 2007. Because the permit cannot have effect until 1st September, transitional provisions provide for the first annual fee also not to be payable until that date. Because of the way in which the 2005 Act works it is necessary to specify the period within which the fee is to be paid, and for these transitional cases it will be the period of 30 days beginning on 1st September 2007. This reflects what generally happens in those cases where the permit is issued after 1st September 2007 where in most cases the fee has to be paid within a period of 30 days after issue. However, because the regulations specifying the fees for permits⁴ (which were made after the Principal Commencement Order) have provided for circumstances in which a different period applies, it is necessary to amend that Order to reflect this. In particular it is necessary to make it clear that the relevant period is the 30 day period which applies in those cases where the permit comes into force on issue.

Grandfathered premises licence applications

7.12 The transitional provisions in the Principal Commencement Order for grandfathering premises licences include provisions which allow the licensing authority to request further information where the application is incomplete. It is intended that, where the person making the application enjoys continuation rights, the licensing authority can request the information to be provided within a specified period. The provision giving effect to this is paragraph 55(4) to Schedule 4 to the Principal Commencement Order. That provision however wrongly refers to the date of 28th July 2007 instead of 31st July 2007. The latter date is the date before which applications have

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SI 2007/1833 and 2007/1834.

to be made in order to benefit from continuation rights, and therefore a reference to that date is necessary to apply the provision to all cases where the applicant benefits from continuation rights. The Order corrects this mistake.

7.13 Ordinarily in grandfather rights cases the licensing authority is required under the transitional provisions in the Principal Commencement Order to grant the application. However, where the operator concerned is refused an operating licence, the premises licence is required to lapse. The Department now considers that, given this fact, the licensing authority ought to be able also to refuse an application for a premises licence where they become aware that the operator's associated application for an operating licence is rejected before they determine the premises licence application. The amendments made by the Order achieve this. They also ensure that, where an operator enjoys continuation rights in respect of a grandfathered premises licence application, those rights lapse where the operating licence application is rejected.

7.14 The Order includes some amendments which make corrections to the Principal Commencement Order. Since the main function of the Order is to make the changes which reflect subsequent changes in policy and circumstances, this Order is not being made available free of charge to persons who purchased the Principal Commencement Order.

8. Impact

8.1 The Regulatory Impact Assessment which accompanied the Gambling Act 2005 (Commencement No.6 and Transitional Provisions) Order 2006 is not affected by these amendments and should be referred to in respect of these amendments.

9. Contact

Donald Sproson at the Department for Culture, Media and Sport (Tel: 020 7211 6535) or e-mail: (donald.sproson@culture.gsi.gov.uk) can answer any queries regarding the instrument.