EXPLANATORY MEMORANDUM TO

THE NATIONAL LOTTERY (ANNUAL LICENCE FEES) REGULATIONS 2010

2010 No. 17

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

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

2. Purpose of the instrument

2.1 These Regulations prescribe the annual fees that must be paid by the person who holds licences under sections 5 and 6 of the National Lottery etc. Act 1993. A first annual fee is payable within twelve months of the issue of a licence and thereafter annual fees are payable before the first anniversary and before each subsequent anniversary of the issue of the licence. With respect to section 6 licences the fees payable differ according to the type of licence issued.

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

3.1 These regulations prescribe the annual licence fees payable by the National Lottery operator, Camelot, as the person who is licensed to run the National Lottery under section 5 of the National Lottery etc Act 1993, and as the person authorised to promote certain lottery games under section 6 of the 1993 Act. Fees are payable to the regulator, (the National Lottery Commission) and held in the Consolidated Fund. The purpose of charging licence fees is to recoup, in some measure, the costs incurred by the regulator in exercise of its functions under Part 1 of the 1993 Act.

3.2 These regulations prescribe fee levels which will apply to Camelot during the 3rd national lottery licence term. The 3rd term commenced on 1st February 2009 and operates for 10 years. The fees payable do not represent an increase in fee levels. The policy aim has been to ensure that the fee burden placed upon Camelot reflects in broad measure i) the fee levels payable previously by Camelot under the old licence fee regime (set down in the National Lottery (Licence Fees) Order 2001 – SI 2001/2506 as amended by SI 2003/3124 and SI 2003/2771) and ii) the amount Camelot budgeted to pay for licence fees in its bid for the 3rd licence term taking account of both existing games and new portfolio games.

4. Legislative Context

4.1 These regulations are made under section 7A of the National Lottery etc Act 1993, inserted into the 1993 Act by section 5 of the National Lottery Act 2006. This is the first exercise of this power and the aim of the regulations is to prescribe the fees payable under the annual licence fee regime. It was intended that the annual licence fee regime would apply to the National Lottery operator during the 3rd licence term which commenced on 1st February 2009. The fees payable do not represent an increase in fee levels; however they are set to achieve broad equivalence with the amounts the National Lottery operator had envisaged would be paid in licence fees during the 3rd licence term.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. .

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 The policy objective is to bring into force the annual fee regime set out within the 2006 Act to accord with Parliamentary intent and to collect annual fees from the person/body who is holding a licence under section 5 and 6 of the 1993 Act, so that, the National Lottery Operator, Camelot, contributes to the cost of their regulation during the 3rd licence term. The policy aim has been to set fees at a level that ensures that there is no windfall gain for Camelot whilst not placing an additional burden on Camelot beyond what they had broadly anticipated at the time they submitted their bid. We have therefore set the fees at a level that ensures that the fee burden placed upon the National Lottery operator, Camelot, at least within the early years of the 3rd licence term, reflects in broad measure i) the fee levels payable previously by Camelot under the old licence fee regime (set down in the National Lottery (Licence Fees) Order 2001 – SI 2001/2506 as amended by SI 2003/3124 and SI 2003/2771) and ii) the amount Camelot budgeted to pay for licence fees in its bid for the 3rd licence term taking account of both existing games and new portfolio games.

- ***Consolidation***

7.2 These regulations do not consolidate any legislation.

8. Consultation outcome

8.1 A consultation was undertaken with the National Lottery Commission and the National Lottery operator, Camelot. Agreement was reached as to the appropriate level of fees to be prescribed in the regulations. It was also agreed that the fee levels would be reviewed and amendments made if considered necessary, during the 3rd licence term.

9. Guidance

9.1 Guidance can be provided to Camelot by the National Lottery Commission with respect to the licence fees set down in the regulations, but having consulted Camelot fully about this new fees regime it is not thought necessary at this stage.

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The licensing fees set down in the regulations will be reviewed periodically during the 10 year, 3rd licence term which commenced on 1st February 2009. It will first be reviewed no later than the end 2012.

13. Contact

Andy Birleson at the Department for Culture, Media and Sport Tel: 0207 211 6528 or email: andy.birleson@culture.gsi.gov.uk can answer any queries regarding the instrument.

FINAL IMPACT ASSESMENT

Summary: Intervention & Options

Published: December 2010

Department /Agency:DCMS /National Lottery Commission	**Title: Proposals for National Lottery Licence Fees from January 2010**	
Stage: Review	**Version: 1**	**Date: December 2009**
Related Publications: National Lottery Act 2006 (Commencement No 5) Order 2010.		

Available to view or download at: www.culture.gov.uk

Contact for enquiries: Andy Birleson **Telephone: 0207 211 6528**

What is the problem under consideration? Why is Government intervention necessary?

To provide a new statutory regime for the National Lottery Commission to collect annual licence fees from those holding Section 5 and Section 6 licences under the National Lottery etc Act 1993 ("the 1993 Act"). The existing licensing provisions set out in the 1993 Act have been repealed due to an error made when certain provisions in the National Lottery Act 2006 (the 2006 Act) were commenced. The intention was to commence the new annual fee licensing regime when the old system was repealed. Due to a technical error the repeal was made before the new system was brought into effect. To remedy this situation, we need to commence the annual fee arrangements set out within the 2006 Act.

What are the policy objectives and the intended effects?

The objective is to bring into force the annual fee regime set out within the 2006 Act to accord with Parliamentary intent and to provide a proper legal basis to collect fees from the person/body who is holding a licence under section 5 and 6 of the 1993 Act. In addition by commencing the fee regime in the 2006 Act the the National Lottery Operator contributes towards the cost of the regulator, the National Lottery Commission. The overarching principle of our approach to setting the fees was to set them at a level that achieved broad equivalence with what Camelot, the current the National Lottery Operator, had budgeted for in their bid for the 3rd National Lottery licence. The 3rd licence period commenced on 1 February 2009. This ensures that there is no windfall gain for Camelot whilst not placing an additional burden on Camelot beyond what they had broadly anticipated at the time they submitted their bid.

What policy options have been considered? Please justify any preferred option.

1. Do nothing. Do not commence the fee provisions in the 2006 Act (and therefore charge no fee). This wasn't a viable option as Parliament had clearly intended for the National Lottery Operator to contribute towards the cost of their regulation through a licence fee.
2. Do not commence the fee provisions in the 2006 Act, and arrange through an amendment to the retention arrangements (the mechanism which sets the amount of sales return retained by the operator or provided to Good Causes) so that the amount that Camelot had budgeted to pay in their bid was taken off at source and paid directly to the Good Causes. We felt again that we couldn't pursue this option as Parliamentary intention was that there would be a Licence Fee regime, and that this arrangement would seem less than transparent.
3. Setting the fees at a level which achieves broad equivalence with what Camelot had budgeted to pay in their bid for the 3rd National Lottery Licence. This is our preferred option. We are proposing this as the level of return that Camelot offered to Good Causes during the bidding process was based on paying licence fees of £939k over the course of the 3rd Licence.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

We will review no later than the end of 2012.

Ministerial sign-off

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the Minister for Creative Industries:

Signed: Siôn Simon

Date: 6th January 2010

Summary: Analysis & Evidence

Policy Option: 3	**Description:** Introduction of a new annual fee regime. That sets fees at a level that will achieve broad equivalence with what Camelot had budgeted for	

COSTS	**ANNUAL COSTS**	The cost of this proposal falls on the single National Lottery operator. This proposal sets the fees of a standard Section 6 licence at £2,500 per annum; a Class Licence at £8,000 pa and Multi –Jurisdictional licence at £16k pa. The Section 5 Licence will remain at £70k and be frontloaded by 50%. A First Annual Fee is payable within twelve calendar months of the award of the licence and then on each anniversary of the award of the licence, except during the last year of the licence where no fee is payable.	
	One-off **Yr** **£0k**		
	Average Annual Cost (excluding one-off) **£ 88.3k**	**Total Cost** (PV)	**£ 745k (956k cash)**
	Key non-monetised costs by main affected groups. None identified.		
BENEFITS	**ANNUAL BENEFITS**	The only monetised benefits from the preferred option is the saving of costs of managing the licence to operate. Under the previous fees regime Licence fees were payable in full on issue of the licence, this proposal allows the costs to be spread across the term of the duration of Licence. The overall level of fee is broadly equivalent with what Camelot had budgeted to spend.	
	One-off **Yr** **£0**		
	Average Annual Benefit (excluding one-off) **£88.3**	**Total Benefit** (PV)	**£745k (£956k cash)**

Key Assumptions/Sensitivities/Risks Inflation is assumed to be 2% per annum from 2009/10 to 2018/19 and a discount rate of 3.5% real is used.

Price Base Year	Time Period Years	**Net Benefit Range** (NPV)	**Net Benefit** (NPV Best estimate) **£**

What is the geographic coverage of the policy/option?	United Kingdom
On what date will the policy be implemented?	28 January 2010
Which organisation(s) will enforce the policy?	National Lottery Commission
What is the total annual cost of enforcement for these	n/a
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU	n/a
What is the value of the proposed offsetting measure	n/a
What is the value of changes in greenhouse gas	n/a
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off) (approximate)	**As above**

Impact on Admin Burdens Baseline (2006)					**(Increase – Decrease)**
Increase of	**£ 0**	**Decrease of**	**£ 0**	**Net Impact**	**£ 0**

Evidence Base

What is the problem under consideration?

Summary

1. Under the Act, persons holding Section 5 and Section 6 licences granted by the National Lottery Commission are required to pay a licence fee to the National Lottery Commission. On commencement of certain provisions of the National Lottery Act 2006, the enabling powers to collect fees under the National Lottery Act 1993 were inadvertently repealed. Camelot, the National Lottery operator agreed that they wouldn't seek the recovery of fees paid during the period from December 2006 to January 2009 as these were collected in good faith and it was clear that Parliament intended fees would be paid by the person holding a licence under section 5 and 6 of the National Lottery Act 1993. Once the error was identified the National Lottery Commission stopped collecting fees. New fee provisions exist in the 2006 Act and it was always intended that these would be brought into force at a future point. We will now be commencing them. The Fee levels are prescribed by the Secretary of State for Culture, Media and Sport. It is proposed that they are set at a level that will achieve broad equivalence with the amount Camelot had budgeted to pay in licence fees over the 3rd National Lottery licence. This ensures that there is no windfall gain for Camelot whilst not placing an additional burden on Camelot beyond what they had broadly anticipated.

Background

2. The National Lottery Act 2006 includes provision for a new Annual licence fee regime. It was intended that this would be commenced when the fee regime set out in the 1993 Act was repealed. Due to a technical error made in the commencement of certain provisions contained in the 2006 Act, the existing fee regime contained in the 1993 Act was repealed but the new annual licensing fee regime was not commenced. The aim therefore is to commence the annual licence fee regime so that the National Lottery Commission is able to collect fees from the National Lottery operator

Why is Government intervention necessary?

3. To ensure that the National Lottery Commission receives a contribution from the National Lottery operator towards the cost of their regulation.

Policy Objectives

4. The objective of this intervention is to provide the National Lottery Commission with the necessary powers to collect National Lottery licence fees. The fees will be set at a level that will achieve broad equivalence with the amount Camelot had budgeted to pay in licence fees over the 3rd National Lottery licence. The fees are to defray some of the costs incurred by the NLC in managing the licence to operate over the term of the Third Licence.

Consultation

5. Discussions undertaken with parties directly affected – Camelot, the National Lottery operator, and the National Lottery Commission, the regulator. Both of whom were content with these arrangements.

Impact of these changes

6. The impact of these changes will be neutral for both Camelot and the NLC as the fees will be set at a level that achieves broad equivalence with the amount that Camelot had budgeted to pay over the 3rd licence period.

Cost and Benefits

Background

7. The Government set up the National Lottery (NL) by the National Lottery etc. Act 1993. In doing so, it asserted three distinct interests which are managed by the National Lottery Commission (NLC).

8. First, the 1993 Act established an ownership interest in an asset that, in 2008-09, raised £1,382.6 millions for good causes and paid a further £617.9 millions in Lottery Duty.1 Second, it asserted a regulatory interest. The history of lotteries is littered with instances of fraud because it is very difficult for individual players of a lottery to ensure that the results are fairly achieved and the correct prizes have been paid out. Also, the Government is concerned that in promoting the NL it does not increase problem gambling.2 Third, the Government has a fiduciary interest in assuring that the correct monies have been collected and paid to good causes.

9. The NLC manages the Government's ownership interest by conducting a competition *for* the operation of the NL. Once the best available operator is found, the NLC relies

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[1] NLC Annual Report and Accounts 2008/2009, Appendix A, p. 18.

[2] The Government's regulatory interest is, therefore, related to concerns about bounded rationality and asymmetrical information.

on the financial incentives contained in the licence to operate and by providing the operator maximum scope to compete with other types of spending.

10. Regulatory efforts aim at making sure that games are fair to players and do not lead to excessive or problem gambling and that gambling by children is minimised. This is achieved through approval of characteristics of games permitted under the licence to operate. Repeated checks on the randomness of games have found nothing untoward[3], the latest study of under-age gambling found that only 5% of children had purchased a NL ticket in the previous week[4] and the British Gambling Prevalence Survey 2007 showed that, despite its being by far the most widespread form of gambling, very few adults who played the NL were problem gamblers.[5]

11. In its fiduciary role, the NLC makes sure that the correct amount of net proceeds is paid to the National Lottery Distribution Fund and the Olympics Lottery Distribution Fund by the operator. These amounts are contained in a Statement of Assurance which is supplied to the Secretary of State each year.

12. Managing the licence to operate is part of the NLC's regulatory activities. This measure relates to that portion of the costs incurred in managing the licence to operate for which annual licence fees are charged.

Special Characteristics of the National Lottery

13. Should the NL operator fail, there would be a significant risk that returns to good causes would be lost. Hence, the Government's ownership interest means that the NLC must ensure that the operator remains commercially viable.

14. There is only one operator of the NL. This is because there are significant economies of scale in lotteries resulting from the fact that participants want to play for the largest prizes possible.[6]

15. Finally, the relationship between the NLC and the operator takes on many of the features of a contract. The operator has to win a tender process for the right to operate and the NLC has to ensure that the terms of the licence are met.

Consideration

16. Although, the National Lottery operator is sole monopoly it is subject to a number of restraints. First, there is competition *for* the licence to operate even if there is not competition *within* it. Camelot's gross revenue is the outcome of a retention structure

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[3] The NLC has commissioned the University of Salford to test for signs of non-randomness in NL games. Reports have been published on the NL (2000, 2002), Lotto (2004), Lotto Lucky Dip (2005), Thunderball (2005) and Lotto Extra (2005).

[4] Ipsos MORI (2009): "British Survey of Children, the National Lottery and Gambling 2008-09: Report of a quantitative survey", London, NLC, July.

[5] Heather Wardle, Kerry Sproston, Jim Orford, Bob Erens, Mark Griffiths, Rebecca Constantine and Sarah Pigott (2007): "British Gambling Prevalence Survey 2007", Birmingham, Gambling Commission, September.

[6] Cook, Philip J and Clotfelter, Charles T (1993): "The Peculiar Scale Economies of Lotto", *The American Economic Review,* Vol 83, No 3, June, pp 634-643.

which was determined by a process of competitive bidding during the competition for the Third Licence. Second, the terms and conditions of the products on offer are subject to regulation by the NLC. Third, the NL is in direct competition with many other forms of gambling.

17. A number of studies have found that the elasticity of demand for Lotto is in the region of -1. This suggests that Camelot does indeed operate as a net proceeds maximising monopolist.[7] Hence, while it would be incorrect to suggest that all elements of monopoly power are absent from the operation of the NL it would also be wrong to argue that Camelot's ability to absorb licence fees is unlimited.

Options Considered

18. Two options have been considered as follows:

- **Option 1: Do Nothing:** Regulation is not enacted. Hence, there is no commencement of Section 5 of the 2006 Act and no schedule of annual fees is set.

- **Option 2: Change in the retention level arrangements so that the contribution the National Lottery Operator made achieves broad equivalence with what they had budgeted for in their bid**

- **Option 3: Setting fees at a level that achieves broad equivalence with what the National Lottery Operator had budgeted for in their bid:** Regulation commences Section 5 of the 2006 Act and annual licence fees are those agreed with both the regulator and operator, and contained in the draft schedule.

Option 1
Costs: The full cost of the management of the licence to operate falls upon the National Lottery Good Cause Funds (NLDF/OLDF). Hence, there is no direct financial incentive for Camelot to ensure that it satisfies licence conditions.

Benefits: Camelot made its bid for the Third Licence on the assumption that it would be charged annual fees. This option provides a windfall gain for Camelot.

Option 2 & 3
Costs: Part of the costs of managing the licence to operate the NL fall directly upon the operator.

Benefits: National Lottery Good Cause Funds spending is reduced by amount of fees collected. A direct financial incentive for compliance is established. The fee levels are expected by the operator so are unlikely to change behaviour.

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[7] David Forrest, O. David Gulley and Robert Simmons (2000): "Elasticity of Demand for UK National Lottery Tickets", *National Tax Journal,* Vol 53, No 4, Part 1, December, pp 853-863 and David Paton, Donald S Siegel and Leighton Vaughan Williams (2003): "The demand for gambling: A review", Chapter 18, pp247-263 in Leighton Vaughan Williams ed: "The Economics of Gambling", London, Routledge. Although more recent estimates have not been made, there appears to be no reason to suppose that a significantly different result would be obtained using more recent data.

These are summarised below:

	OPTION 1	OPTION 2 & 3
Costs:		
Operator costs	0	£744,680(1)
Government costs	0	0
Good Causes Fund (NLDF/OLDF) costs	All costs of licence management	Reduced by amount of licence fees
Benefits:		
Windfall gain to operator	£744,680(1)	0
Operator incentive	None	Small
No effect on operator	Yes	Yes

Note:

1. Net present value of the proposed schedule of fees expressed at 2009/10 prices assuming inflation at 2% p.a. between 2009/10 and 2018/19 and discounted at 3.5%.

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Competition assessment

Summary Assessment

19. Does the proposed measure:

- Directly limit the number or range of suppliers? No.
- Indirectly limit the number or range of suppliers? No.
- Limit the ability of suppliers to compete? No.
- Reduce suppliers' incentive to compete vigorously? No.

Explanation

20. The proposed measure does not raise competition concerns. The licence to operate the National Lottery is awarded as a result of an open competition. The last competition for the Third Licence to operate the National Lottery occurred in 2006-07 and Camelot was the successful bidder. The Third Licence commenced on 1 February 2009 and will last for 10 years.

21. This measure gives effect to Section 5 of the National Lottery Act 2006 which requires that an annual fee be paid to the National Lottery Commission for the exercise of licences to operate the National Lottery granted under Sections 5 and 6 of the National Lottery etc Act 1993. The state of competition in the operation of the National Lottery has already been determined by previous decisions which decreed that the NL shall be operated by a monopoly provider. This measure has no effect on those decisions. Thus, the state of competition in the provision of the National Lottery is not altered by this measure.

Small firms impact test

22. Not applicable

Legal aid

23. Neither the Department nor the Commission consider that the regulation will have any impact on demand for legal aid. Under the provisions of the Act, the National Lottery operator is required by law to pay fees to obtain and maintain licences.

Sustainable development and environmental impact

24. Neither the Department nor the Commission consider that there are any significant environmental considerations (such as in respect of sustainable development or carbon emissions) attributable to actions taken by the operator to comply with the regulation.

Health impact

25. The introduction of a new fee regime for the National Lottery does not in itself have implications for health.

Impact on equality and human rights

26. As a public body the National Lottery Commission has specific responsibilities to promote equality and eliminate unlawful discrimination, and must assess all of its proposed policies and practices in relation to their consequences in this regard.

27. Neither the Department nor the Commission consider that the introduction of a new fee regime will have any impact on equality or human rights issues; but the Commission will provide the operator with any advice and support they may need to adjust to the new fee structure.

Impact on rural areas

28. Not applicable .

Sectors and groups affected by the regulation

29. The National Lottery operator, Camelot and the National Lottery regulator the National Lottery Commission.

Future considerations

30. The affect of these arrangements will be kept under review and the structure and level of fees will be revisited during the 10 year licence. It will first be reviewed no later than the end of 2012.

Specific Impact Tests: Checklist		
Type of testing undertaken	***Results in evidence base?***	***Results annexed?***
Competition assessment	Yes	No
Small firms impact test	Yes	No
Legal aid	Yes	No
Sustainable development	Yes	No
Carbon assessment	Yes	No
Other environment	Yes	No
Health impact assessment	Yes	No
Race equality	Yes	No
Disability equality	Yes	No
Gender equality	Yes	No
Human Rights	Yes	No
Rural proofing	Yes	No