

EXPLANATORY DOCUMENT TO
THE PUBLIC BODIES (MERGER OF THE GAMBLING COMMISSION AND THE
NATIONAL LOTTERY COMMISSION) ORDER 2013

2013 No. [XXXX]

1. This explanatory document has been prepared by the Department for Culture, Media and Sport ('the Department') and is laid before Parliament under section 11(1) of the Public Bodies Act 2011 ('the 2011 Act').

2. Purpose of the instrument

2.1 The purpose of this instrument is to merge the Gambling Commission (GC) and the National Lottery Commission (NLC). This will be achieved by the abolition of the NLC and the transfer of its functions, property, rights and liabilities to the GC.

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

3.1 None.

4. Legislative context

4.1 The Government is proposing to use the powers in the 2011 Act to abolish the National Lottery Commission and create a transfer scheme by which its functions, property, rights and liabilities are transferred to the Gambling Commission. The draft order relies in particular on the power to merge under section 2 of the 2011 Act; the GC and NLC are specified accordingly in Schedule 2 as a group of bodies to which that power is relevant.

4.2 The draft order also amends primary and secondary legislation in consequence of this reorganisation in a way which maintains the existing legislative position as far as is sensible. For example, the order preserves the scope of the existing disclosure gateways in section 4B of the National Lottery etc. Act 1993 and section 30 of the Gambling Act 2005, both of which relate to the disclosure of information between the Commissioners for Her Majesty's Revenue and Customs and, respectively, the NLC and the GC: see paragraphs 4 and 12 of the Schedule to the draft order.

4.3 The order does make limited changes to the existing legislative position. The NLC is at present funded by Votes, while the GC is funded – to the extent that its fee income does not cover its expenses – by grant. The order proposes that the merged Commission should be funded solely by grant, again to the extent that its expenses are not covered by income from fees paid to it under the 2005 Act. In addition, the effect of paragraph 15 of the Schedule is to import the NLC's ability to delegate certain activities to a committee of the NLC consisting of one or more members of the NLC and one or more employees, something which the GC at present has no power to do.

4.4 This modification to the way in which the NLC's functions are funded gives rise to the need for Treasury consent under section 6(4) of the 2011 Act: harmonising the mechanism by which the merged Commission is funded is the only change in this respect. The merged Commission will continue to charge the same fees on the same basis as before the merger. The draft order cannot be made unless this consent has been obtained.

4.5 Nothing in the draft order requires the consent of any devolved administration under section 9 of the 2011 Act (see below). As required by section 10 of the 2011 Act, the UK Government has consulted on the proposed merger with the Scottish and Welsh Ministers and, in Northern Ireland, with the Department of Culture, Arts and Leisure and the Department for Social Development. The Welsh Ministers have also been consulted in accordance with section 63(1) of the Government of Wales Act 2006.

4.6 The Scotland Act 1998 provides (sections 29 and 30, paragraph B9 of Part 2 of Schedule 5) that legislative competence for betting, gaming and lotteries is reserved. The draft order amends the Rehabilitation of Offenders Act 1974 (Exclusions and Exemptions) (Scotland) Order 2013 (S.S.I. 2013/50), by substituting references to the Gambling Commission for the National Lottery Commission. Although the subject matter of the 2013 Order is devolved, this latter provision in the draft merger order does not require the consent of the Scottish Parliament for the purposes of section 9(1)(a) of the 2011 Act as the question of whether something falls within the legislative competence of the Scottish Parliament must be considered in the wider context of the merger, not in isolation. The primary purpose of the amendment to the 2013 Order proposed by the draft order, having regard to its effect in all the circumstances, is clearly consequential on a reserved purpose – that is, to ensure that the merger does not alter the effect of the current legislation.

4.7 Similarly, the Government of Wales Act 2006 provides (section 108, paragraph 16 of Part 1 of Schedule 7) that while provision in relation to 'sport and recreational activities' is within the National Assembly for Wales' legislative competence, 'betting, gaming and lotteries' are excepted. The draft order also amends the text of the Welsh Language Schemes (Public Bodies) Order 2008 (S.I. 2008/1890) to remove the reference to the National Lottery Commission. Although the Welsh language is a devolved matter, the draft order does not require the consent of the Assembly or the Welsh Ministers for the purposes of section 9(6) and (7) of the 2011 Act because this amendment is incidental to and consequential on a non-devolved matter – the merger of non-devolved bodies – having regard to its effect in all the circumstances.

4.8 Under the Northern Ireland Act 1998, the National Lottery is a reserved matter (section 4(1), paragraph 30 of Schedule 3). The draft order amends the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 (S.R. 1979/195), a transferred matter on which the Northern Ireland Assembly is competent to legislate, by substituting references to the Gambling Commission for the National Lottery Commission. Section 9(3)(a) of the 2011 Act provides that the consent of the Northern Ireland Assembly is required to make provision which would be within its legislative competence if it were contained within an Act of the

Assembly. This is qualified by section 9(5), which provides that no such consent is required if the provision satisfies two conditions: first, that the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998 would be needed for such a provision to be made in a Bill for an Act of the Assembly; and secondly, the provision does not affect, other than incidentally, a transferred matter. Both of these conditions are met. As the primary purpose of amending the 1979 Order is to effect the merger, a Bill which sought to achieve the same would be concerned with a reserved matter, and so require the consent of the Secretary of State: section 8(b) of the 1998 Act. In addition, the effect on the 1979 Order of the relevant amendment in the draft order is incidental, being a consequence of the merger.

5. Territorial extent and application

5.1 The National Lottery etc. Act 1993 extends to the United Kingdom, while the Gambling Act 2005 extends (so far as is relevant) to Great Britain. Accordingly, the National Lottery Commission exercises its functions throughout the UK, while the Gambling Commission operates only in Great Britain. A number of amendments in the Schedule to the draft order introduce the concept of “national lottery functions” (or “relevant functions”) so that the proposed merger does not change this position in practice.

6. European Convention on Human Rights

6.1 The Secretary of State has made the following statement regarding Human Rights: “In my view, the provisions of the Public Bodies (Merger of the Gambling Commission and the National Lottery Commission) Order 2013 are compatible with the Convention rights.”

7. Policy background

Background on the GC and NLC

7.1 **The National Lottery Commission**, a Non-Departmental Public Body, was established through amendments to the National Lottery etc. Act 1993 (‘the 1993 Act’) by the National Lottery Act 1998 and is responsible in the United Kingdom for licensing and regulating the National Lottery. The NLC operates at arm’s length from Government and its decisions are independent. The NLC is funded through the Consolidated Fund, which is reimbursed by the National Lottery Distribution Fund (NLDF), net of any fees paid into the Consolidated Fund by the National Lottery operator. With the Secretary of State, its overriding statutory duties are to exercise its functions in a manner it considers will secure that:

- a. the National Lottery is run, and every lottery that forms a part of it is promoted, with all due propriety; and
- b. the interests of every participant in the lottery are protected.

Subject to these two duties, the Secretary of State and the NLC shall each in exercising those functions do their best to secure that the net proceeds of the National Lottery are as great as possible.

7.2 The NLC has the following additional primary functions:

- a. Running the competition process to select the operator of the National Lottery, and granting the operator's licence (which may include such conditions as the NLC considers appropriate).
- b. Licensing each game that the operator wishes to promote, under such conditions as the NLC considers appropriate.
- c. Reviewing the terms of the licences it issues and granting consents under those licences in response to changing circumstances or proposals from the operator (for example, in cases of change of ownership; organisational structure; introduction of new technologies; or to facilitate significant investment).
- d. Checking that the operator meets the conditions of its licences and taking enforcement action where conditions are not met. The range of available actions includes imposing financial penalties, seeking an order from the High Court and, in extreme cases, revoking licences.
- e. Overseeing the operator's performance to ensure that returns are maximised, in line with its duty to secure net proceeds are as great as possible, subject to its propriety and player protection duties.
- f. Checking that the operator those who manage National Lottery business those who financially benefit from the National Lottery are fit and proper.

7.3 The NLC is responsible for licensing games, vetting the operator and its suppliers, protecting players and protecting the National Lottery brand. It has access to the operator's systems and records and performs checks on a broad range of the operator's activities. It closely monitors National Lottery sales, and commissions independent research to inform the exercise of its functions, particularly in the area of protection of players' interests. The NLC also ensures that it remains capable of running effective competitions for future licences and providing continuity of the National Lottery between licensees – for example, the NLC is the registered owner of all National Lottery intellectual property.

7.4 The Secretary of State is also subject to the duties described in paragraph 7.1, and these provide the context for her functions of making regulations and issuing Directions to the NLC under section 11 of the 1993 Act. The NLC must comply with those Directions in the exercise of its National Lottery licensing functions. There are presently 13 Directions which relate to: types of Lottery; limits on ticket price; unclaimed prizes; mandatory conditions in licences; financial penalties; performance standards; raising public awareness; and Olympic Lottery proceeds.

7.5 **The Gambling Commission** was set up under the Gambling Act 2005 ('the 2005 Act') to regulate commercial gambling in Great Britain and became fully operational on 1 September 2007. It is an independent non-departmental public body sponsored by the Department which is in practice entirely funded through licence fees paid by gambling operators, with contingency provision for the Secretary of State to provide funding in the event of a shortfall in fee income.

7.6 The GC regulates:

- a. around 600 arcade operators holding 750 arcade licences, with over 2,100 premises
- b. over 400 off-course bookmakers with over 9,000 premises and over 600 on-course bookmakers
- c. over 200 bingo operators with nearly 700 [bingo](#) clubs
- d. around 50 casino operators with nearly 150 [casinos](#)
- e. over 600 [gaming machine](#) and gambling software providers
- f. nearly 500 [lottery](#) operators (but not the National Lottery) holding between them over 700 society lottery licences (including society lottery ancillary licensees including over 250 remote society lottery licences), and 34 external lottery managers holding 48 ELM licences (30 non-remote, 18 remote)
- g. over 200 [British-based remote gambling operators](#) conducting around 300 remote licensed activities. These figures exclude the numbers of remote society lottery and remote ELM licenses (included in (f) above).

The GC does not regulate spread betting, which is a [Financial Services Authority](#) responsibility.

7.7 As well as providing advice to Government and local government on gambling and its regulation, the GC has a statutory duty to aim to permit gambling in so far as it thinks reasonably consistent with the licensing objectives:

- (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
- (b) ensuring that gambling is conducted in a fair and open way, and
- (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

7.8 The GC issues operating licences to organisations and individuals who are providing facilities for gambling, and personal licences to certain individuals working within the industry. The GC also imposes licence conditions and publishes codes of practice (LCCP) setting out the manner in which facilities for gambling should be provided. The Secretary of State can impose licence conditions and make regulations prescribing the parameters within which the GC operates.

7.9 The GC works closely with licence holders to ensure they comply with the LCCP and have procedures in place to comply with the law. The 2005 Act gives the GC legal powers to deal with licensed operators who do not comply with licence conditions, operate in a manner inconsistent with the licensing objectives, fail to co-operate with a GC review or are otherwise unsuitable; these may include imposing financial penalties, and suspending or

revoking a licence. The GC also has powers to investigate and prosecute illegal gambling under the 2005 Act, and to initiate criminal proceedings in relation to cheating.

7.10 The GC works closely with licensing authorities (generally local authorities, who are responsible for issuing operators with premises licences and permits) and local gambling premises, as well as Her Majesty's Revenue and Customs (HMRC) and local law enforcement. The GC is the primary advisory body to local and national Government on gambling including: the incidence of gambling; the manner in which gambling is carried out; effects of gambling; and regulation of gambling.

7.11 The Government announced planned reforms to public bodies on 14 October 2010, updating the proposals in March 2011, with a view to increasing transparency and accountability, cutting out duplication of activity, and discontinuing activities which are no longer needed. The Government believes that merging the GC and the NLC will help achieve these aims while preserving the appropriate and effective regulation of gambling and the National Lottery, and will deliver other organisational benefits, such as making evidence-based regulation easier to achieve and create synergies in understanding game and technological developments. Power to merge the two bodies was therefore included in the Public Bodies Bill, which received Royal Assent on 14 December 2011.

What is being done and why

7.12 The Government has committed to increasing the accountability and reducing the number and cost of public bodies. Merging the GC and NLC will help to achieve this aim whilst preserving the appropriate and effective regulation of both sectors. The GC considers that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) will have effect to transfer to the Gambling Commission the rights and liabilities of NLC staff under their existing contracts of employment with the NLC.

7.13 In line with the requirements of the 2011 Act, an order merging two bodies under section 2 can only be made if the Minister considers that the Order serves the purpose of the improving the exercise of public functions. In considering this, the Minister must have regard to efficiency, effectiveness, economy, and securing appropriate accountability to Ministers.

7.14 The merger of the NLC and the GC is an administrative reorganisation with the aim of ensuring that the regulator for gambling and the National Lottery continues to be as effective and efficient as it can be. In terms of effectiveness, there are strategic benefits from the merger given that the organisations currently undertake a similar role and consider some shared regulatory issues such as underage play and excessive play. The merged Commission would provide a single authoritative source of advice for Ministers across these sectors, and will help ensure where appropriate a common regulatory response to similar issues and risk factors. In addition, a merged regulator could provide the Government with more comprehensive advice on the implications of regulatory changes across the gambling industry.

7.15 In terms of efficiency, a merged body will deliver some small efficiency savings in the costs of running the separate organisations and therefore help to deliver value for money for licence fee payers and National Lottery good causes (the funding sources for the GC and the NLC). These savings will build upon the greater savings (and transitional costs) already achieved through the co-location in January 2012 of the two bodies in Birmingham, and associated sharing of back office functions and common services. Details of both merger and co-location savings and costs are set out in greater detail in the Impact Assessment at Annex A.

7.16 The additional merger savings would include:

- a. A reduction in the number of board members, from 15 to 10 generating savings in remuneration, travel and subsistence and recruitment costs,
- b. A reduction in senior management numbers, and
- c. Some further savings in administrative and management functions for the merged body and the Department e.g. the production of a single Annual Report.

7.17 The merged body will be required to demonstrate through its accounting that there is no cross-subsidy between its National Lottery and gambling functions. The existing accounting requirements to which both the NLC and the GC are subject will be amended so as to show the merged organisation's income from the various sources and its expenditure on discrete areas of activity. There will also be an allocation of the costs of shared services such as legal, back office, HR, finance, press and any common research. This approach will build upon the successful Service Level Agreements on shared services the GC and the NLC have had since co-location. These arrangements will simply use those Service Level Agreements as a basis for internal recharges to the two separate accounting entities.

7.18 Gambling Commission fees will be kept under annual review in the usual way. The Government believes that the full cost of gambling regulation should continue to be met by the regulated industry rather than the taxpayer, and the National Lottery regulation will continue to be funded principally by the National Lottery Distribution Fund with some licence fee income.

7.19 The Government made clear during the passage of the Public Bodies Bill that it will be important for the merged body to be able to demonstrate its continuing impartiality, and that the governance arrangements of the merged organisation should ensure the effective management of any risk (or perceived risk) of conflicts of interest in dealing with individual cases. It was decided that it was neither necessary nor desirable to set those governance arrangements out in statute. Experience of other regulators suggests that such structures need flexibility in order to respond to changing regulatory good practice and respond to issues that arise post-merger in a relatively quick and responsive manner. There are also mechanisms in

place to ensure appropriate oversight, such as the Management Agreements between the Department and arm's-length bodies.

7.20 However, while it is primarily for the merged body to ensure appropriate governance arrangements, it will continue to operate within the distinct legal frameworks provided by the 1993 Act and the 2005 Act, which set out the facilities and services on which the different gambling sectors operate and compete.

Compliance with section 8 of the Public Bodies Act 2011

7.21 Section 8(1) of the 2011 Act provides that a Minister may make a merger order under section 2 only if the Minister considers that the order serves the purpose of improving the exercise of public functions, having regard to—

- (a) efficiency,
- (b) effectiveness,
- (c) economy, and
- (d) securing appropriate accountability to Ministers.

7.22 The Minister considers that the order serves the purpose in section 8(1) of the 2011 Act for the following reasons:

- i. **Efficiency:** The decision to merge the Gambling Commission and the National Lottery Commission is consistent with reducing unnecessary bureaucracy, overheads and management layers. The merger will create a single Board and Executive structure which will be more streamlined: for example, the total number of Commissioners will reduce from 15 to 10 and executive functions (such as Finance, Legal and Communications) will become fully integrated, building upon the shared service arrangement that has existed from January 2012 when the bodies co-located.
- ii. **Effectiveness:** The Government believes the merged body will be well placed to advise on gambling and National Lottery matters, make evidence-based regulation easier to achieve and create synergies in understanding game and technological developments. For example, there are regulatory issues which are common to gambling and the National Lottery, such as underage play, excessive play and associated research. With increased use of internet-based instant play lottery games, the distinction between some aspects of lotteries and other types of gambling is becoming less clear cut. A single entity would be better placed to delineate the boundary between the two, commission appropriate research across the sectors, and look at demarcation issues 'in the round' when advising Ministers. There will also be organisational benefits through improved opportunities to develop wider and deeper skills across the staff of the organisations, allow better career development and encourage the cross-fertilization of ideas and best practices.

iii. **Economy:** The Government believes that over time, the co-location and merger of the two existing bodies will generate cost savings which should help reduce pressures on existing sources of funding, including fees, although this will be offset initially by transitional costs. The estimated net saving of the merger is £330k over a ten year period, which is additional to the estimated £1m per annum saving from the co-location from 2014/15 (£300k in 2012/13 and £800k in 2013/14). A full breakdown of costs and savings is set out in the Impact Assessment at Annex A.

iv. **Securing appropriate accountability to Ministers:** The merger does not weaken the existing accountability arrangements, namely: the need for the merged body to produce a report and accounts annually which will be laid before Parliament, with an annual report on National Lottery matters also laid before the Scottish Parliament; publication of its management agreement with the Department; appointing the Chief Executive as Accounting Officer; having its accounts externally audited by the Comptroller and Auditor General; consulting widely on its approach to regulation, programme and fees proposals (most fee levels are set by the Secretary of State), to which it responds publicly; ensuring compliance with the National Lottery Directions set by the Secretary of State and having a clear complaints process.

Satisfying the requirements of section 8(2) of the 2011 Act

7.23 Section 8(2) of the 2011 Act provides that a Minister may make a merger order under section 2 only if the Minister considers that—

- (a) the order does not remove any necessary protection, and
- (b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

7.24 The Minister considers that the conditions in section 8(2) of the 2011 Act are satisfied, both in respect of the GC and the NLC themselves and those that are licensed by or work with them. The draft order will transfer the NLC's functions, property, rights and liabilities to the GC, providing for continuity of the NLC's work and the preservation of any associated rights and responsibilities notwithstanding that transfer. In particular, the duties of both GC and the NLC to ensure that those engaging in gambling and the National Lottery are protected will continue to apply to the merged body. Amendments made to legislation as a result of the merger will not reduce the present levels of protection.

Consolidation

7.25 Not applicable.

Activity during legislative passage

8.1 An amendment (no. 66A) the Public Bodies Bill to probe the Government's intentions with regard to the proposed merger was moved by Lord Faulkner of Worcester on 7 March 2011.

8.2 The debate from the opposition centred on whether the existing NLC duty to maximise returns to good causes (subject to its other duties) would be transferred in the event of a merger. There were also some specific questions about the impact of a merger in the area of research, education and treatment, including on the British Gambling Prevalence Study. The letters that Baroness Rawlings sent in response to both Lord Faulkner and Baroness Thornton are attached at Annex B and C.

8.3 Amendment 66A was withdrawn.

8.4 Hansard reference: HoL debates 7 March 2011 Column 1451 onwards can be found via the following link: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110307-0003.htm>

9. Consultation outcome

9.1 A public consultation seeking views on the proposed merger was launched on 31 July 2012 and closed on 23 October 2012. A total of 11 responses were received; of these, 8 were content for the bodies to merge, and 3 were against. The Government believes that the relatively low level of response indicates that stakeholders understand that the merger itself is to ensure efficient, effective and economic regulation of the sectors and will not impact on the way they are regulated, and few have concerns about the proposed changes.

9.2 Two respondents representing businesses in these areas commented that they thought the merger should be an opportunity to revisit how they are currently regulated. The 2011 Act does not provide Government with the power to make such overarching changes to regulation in this sector, which would require separate legislation. Both the GC and the NLC are already keep under review how they work and to ensure proportionate regulation, and this will continue following merger.

9.3 Whether the NLC's duty to maximise returns to good causes should be transferred to the merged body was also raised. The Government was clear during the passage of the Public Bodies Bill that the requirement to maximise returns to good causes would only relate to the National Lottery functions of the merged body and, in any case, this was in place as a means of ensuring the activities of the lottery operator are focused on the interests of good causes, rather than to give it a competitive advantage (as set out in the letter to Lord Faulkner at Annex B).

9.4 The Government's decision following consideration of the consultation responses was to proceed with the merger with a view to increasing the efficiency and effectiveness of regulation in this area. The Minister believes that merging the GC and the NLC will help to achieve these aims. Detail about the consultation responses can be found in the Impact Assessment at Annex A.

10. Guidance

10.1 The purpose of this instrument is to merge the Gambling Commission and the National Lottery Commission. This will be achieved by the abolition of the NLC and the transfer of its functions, property, rights and liabilities to the GC. The nature of this Order, and its limited practical impact, makes it unnecessary to publish guidance in relation to it.

11. Impact

11.1 A draft Impact Assessment was produced to accompany the consultation document, and the final version produced following the consultation is attached at Annex A.

11.2 The draft Order proposes the abolition of the NLC and the transfer of its functions, property, rights and liabilities to the GC. The regulation of the gambling and National Lottery sectors will not be altered by this change, which targets the way that that regulation is managed. It will have a negligible impact on businesses, although it will generate savings that will reduce pressure on existing sources of funding, including fees and the public sector, where there will be some nominal administrative savings from having one rather than two bodies.

11.3 The merger can be achieved at a one-off cost of less than £850k. These costs include things such as redundancy costs, stakeholder engagement on the merger, and transition to a unified IT system. In the medium term, there are efficiencies to be achieved by having a single Board and Executive structure, in addition to the more significant co-location saving of shared accommodation and services.

12. Regulating small businesses

12.1 The merger would have a largely neutral impact for all regulated businesses. However, over time, efficiency savings should result in a reduced pressure on existing sources of funding including fees that the industry pay for their regulation.

13. Monitoring and review

13.1 The Department will have a management agreement with the merged body, which will be used to monitor and review the performance of the merger body. The Secretary of State will continue to set the fee levels for most GC fees and oversee the GC's annual review of its fees. After the merger, the Secretary of State and the NLC will continue to be subject to the duties described in paragraph 7.1, and the Secretary of State will continue to have power to issue Directions in relation to National Lottery regulation. The merged body, in common with all Non-Departmental Public Bodies, will be subject to a Cabinet Office mandated Triennial Review process for reviewing the form and function of NDPBs, the appropriateness of the body's delivery mechanism and its governance arrangements.

13.2 The Cabinet Office has identified two principal aims for Triennial Reviews:

- To provide a robust challenge of the continuing need for individual NDPBs – both their functions and their form; and
- Where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the body is complying with recognised principles of good corporate governance.

14. Contact

14.1 Andy Birleson (Gambling Team, Department for Culture, Media and Sport) can answer any queries regarding the instrument (Andy.Birleson@culture.gsi.gov.uk; Tel. 020 7211 6528).