

EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (LIMITS ON PRIZE GAMING) REGULATIONS 2007

2007 No. 1777

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 These Regulations prescribe certain monetary limits which apply to prize gaming that is provided under Part 13 of the Gambling Act 2005 (other than prize gaming provided in licensed bingo halls).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 These draft regulations are being proposed as part of the implementation of the Act. They are the first use of these powers.
 - 4.2 The Act establishes a new system for the regulation of all gambling in Great Britain, other than the National Lottery and spread betting. It repeals the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. The Act introduces a new regulator for gambling, the Gambling Commission, and a new licensing and permit regime for commercial gambling.
 - 4.3 Part 13 of the Gambling Act 2005 concerns prize gaming. This Part of the Act replaces and updates Section 21 of the Gaming Act 1968 and Section 16 of the Lotteries and Amusements Act 1976.
 - 4.4 Prize gaming is defined in section 288 of the Gambling Act, and is gaming in which neither the nature nor the size of a prize are determined by the number of persons playing or the amount paid for or raised by the gaming. It is intended to permit low level gaming for small participation fees and modest prizes. Bingo played at seaside amusement arcades is typical of this type of gaming. The Act permits children to participate in certain prize gaming, and prize gaming can be offered in family entertainment centres, at travelling fairs and in other non-gambling premises (like theme parks) all of which are frequented by children. Part 13 does not authorise the use of any gaming machines.
 - 4.5 As under existing legislation, the holders of certain permissions under the new Act (bingo halls, adult gaming centres, licensed family entertainment centres and holders of family entertainment centre gaming machine permits) will be automatically entitled to offer prize gaming, and will not require a separate prize gaming permit to

offer this type of gaming. The Act also authorises prize gaming to be offered at travelling fairs without the need for a permit. Other premises will also be able offer prize gaming, if they obtain a prize gaming permit from their licensing authority.

4.6 Section 293 of the Act specifies the conditions which must be complied with for the provision of prize gaming in adult gaming centres, family entertainment centres, at travelling fairs and at any other venue offering prize gaming by virtue of a prize gaming permit. These conditions include requirements that all the chances to participate in a particular game must be allocated or acquired on one day and in the place where the game is played, and that participation in the game does not entitle the player to participate in any other gambling.

4.7 The conditions also require compliance with any limits which the Secretary of State may prescribe in relation to:

- (i) participation fees (subsection 293(2)); and,
- (ii) the level or value of the money and non-money prize, or the aggregate level or value of money and non-money prizes, for which the game is played (subsection 293(4)).

4.8 It is these limits which are the subject of the current regulations, which are subject to the negative resolution procedure.

4.9 Section 291 permits holders of a bingo premises licence to offer prize gaming, provided the gaming complies with any conditions attached to the relevant bingo operating licence. Such conditions may be imposed by the Gambling Commission or by the Secretary of State. Conditions imposed by the Secretary of State may relate to any of the matters listed in section 91(1) of the Act, such as imposing limits on the amounts that may be staked and the amount or value of prizes that may be offered. The government has proposed limits on prize gaming in bingo halls through the draft Gambling Act 2005 (Operating Licence Conditions) Regulations 2007 laid in Parliament on 11 June 2007.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

Richard Caborn has made the following statement regarding Human Rights:

In my view the provisions of the Gambling Act 2005 (Limits on Prize Gaming) Regulations 2007 are compatible with the Convention rights.

7. Policy background

7.1 The Act establishes a new system for the regulation of gambling in Great Britain. It enshrines three licensing objectives, which have informed the government's approach to the development of these proposed regulations:

- (i) to prevent gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- (ii) to ensure that gambling is conducted in a fair and open way and
- (iii) to protect children and other vulnerable persons from being harmed or exploited by gambling.

Policy

7.2 Prize gaming is one of the lesser known and lesser used gambling entitlements. The provisions included in the 2005 Act preserve and update entitlements included in earlier legislation – specifically Section 21 of the Gaming Act 1968 and Section 16 of the Lotteries and Amusements Act 1976.

7.3 The Home Office Guide to the 1968 Act explained the background to the introduction of prize gaming in bingo clubs: “Section 21 permits licensed clubs, as of right, to provide gaming for small prizes on conditions resembling those under which such gaming may be provided by travelling showmen or at pleasure grounds and amusement arcades on permit from the local authority. This provision is likely to be of service to bingo clubs, where it can be used to provide diversions of the fairground type, in place of the roulette, blackjack and similar games now often played between bingo games and which the Act seeks to discourage.”

7.4 The explanatory notes to the 2005 Act made it clear that the intention behind these provisions remained broadly similar. Paragraph 725 of the explanatory notes to the Act stated: “Prize gaming is intended to permit low level gaming, for small participation fees, and modest prizes. Bingo played at seaside amusement arcades is a typical venue for such gaming.” This is why children are permitted to participate in certain forms of prize gaming at family entertainment centres, travelling fairs and other venues with a prize gaming permit.

7.5 The government’s policy is that prize gaming should retain this essential character as a low level, low risk form of gambling, and this has been fundamental to the approach it has taken to developing these regulations.

Consultation

7.6 The Department published a formal consultation paper on limits for prize gaming on 12 March 2007 which took account of informal representations made by trade bodies including the British Amusement Catering Trade Association (BACTA) and the Bingo Association.

7.7 The consultation paper was sent to a wide range of stakeholders including members of the Department’s industry liaison group, community liaison group and LACORS. The closing date for responses to the consultation paper was on 31 May.

7.8 The Department received eight substantive responses to the consultation:

- the Bingo Association and two bingo companies were critical of the proposals which they argued did nothing to assist the bingo industry. The Bingo Association questioned the historical basis for the proposed policy, and suggested that higher levels of participation fee/prize would with appropriate safeguards be appropriate in

adult-only environments. The Association proposed the introduction of a £1 maximum participation fee and £500 maximum cash prize;

- BACTA questioned the evidence base for the proposals and proposed a £2 maximum participation fee and £100 maximum cash prize. BACTA also opposed the proposed blanket maximum value of £500 for a non-monetary prize;
- the Salvation Army and Methodist Church (in a joint response) and Prof Jim Orford (Professor of Clinical and Community Psychology at Birmingham University) broadly supported the Department's generally cautious approach to prize gaming, but opposed the proposed increase in the maximum cash prize from £25 to £35 on the grounds that this could prove attractive to children;
- two Scottish Licensing Boards (Glasgow and North Lanarkshire) were broadly supportive of the proposals, and specifically that strict limits on participation fees and prizes were important for maintaining the essential character of prize gaming as a softer form of gambling.

7.9 The government considered carefully representations from church groups and others who argued forcefully for retaining existing limits for all operators of prize gaming. However, ministers were also mindful that the existing limits had been in place for between five and eight years and that some modest increases may be appropriate.

7.10 Ministers considered carefully the Bingo Association's suggestion that the current consultation and regulations presented an opportunity to modernise the rules governing prize gaming by increasing the participation fee and maximum cash prize. However, they took the view that a £1 participation fee and £500 cash prize (equivalent to a Category B3 gaming machine) proposed by the Association would take prize gaming into the realm of harder gambling. This was not the intention behind the prize gaming provisions either originally or in their 2005 Act form.

7.11 Ministers also considered carefully BACTA's suggestion that the maximum participation fee should be increased to £2 and the maximum cash prize to £100. However, they noted that this would have brought the maximum participation fee into line with the maximum stake on Category B1 gaming machines, which are only permitted in casinos. Furthermore, they noted that a £100 cash prize would have been nearly three times the maximum cash prize currently permitted on category C machines (which only over 18s can play). This again would have taken prize gaming into the realm of harder gambling, which was not the intention behind these provisions.

7.12 Ministers were, however, swayed by the suggestion that some differential treatment for adult-only licensed premises may be possible, without prejudicing the intention that prize gaming should remain at a low level. They have, therefore, decided to allow adult gaming centres and licensed bingo halls, but strictly only those which do not permit under 18s to enter the premises, to offer a maximum cash prize of £50 – which will be double that currently permitted. The higher limit for bingo halls has already been proposed through the draft Gambling Act 2005 (Operating Licence Conditions) Regulations 2007 laid in Parliament on 11 June 2007.

7.13 There is an anomaly under the current law in relation to prize gaming in that, unlike under the 1968 Act which covers prize gaming in bingo halls, there is currently no maximum in the 1976 Act on the value of a non-money prize that may be offered in any one game. The government is aware that some operators have sought to exploit this by offering high value items like cars as prizes in prize gaming. While ministers noted BACTA's suggestion that there is no evidence that this practice has caused any concern regarding the licensing objectives, they do not consider that this is consistent with Parliament's intentions for prize gaming under earlier legislation, or with the regulatory regime established for prize gaming under the new Act. There is a risk that higher value prizes of this sort could encourage people to gamble more than they can afford, and the government considers that it is consistent with the precautionary approach which it has taken to the reform of gambling legislation as a whole to bring arcades, and other premises currently providing prize gaming under section 16, into line with bingo halls and set a maximum of £500 for the aggregate amount or value of the prizes in any game.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The regulations will have no cost implications for the public sector.

9. Contact

David Fitzgerald at the Department for Culture, Media and Sport Tel: 0207-211-6479 r e-mail: David.Fitzgerald@culture.gsi.gov.uk will answer any queries regarding the instrument.

Department for Culture, Media and Sport

Regulatory Impact Assessment

1. Title of proposal

The Gambling Act 2005 (Limits on Prize Gaming) Regulations 2007

2. Purpose and intended effect

Objectives

The draft Order prescribes limits on prize gaming that may take place in adult gaming centres, family entertainment centres, at travelling fairs or at premises with a prize gaming permit. In particular, the draft Order proposes the following limits:

- the participation fee charged for any one chance to win one or more prizes in a particular game must not exceed 50p;
- the aggregate total of participation fees paid to participate in any one game must not exceed £500;
- the maximum cash prize shall be £35, except in adult gaming centres where it will be £50;
- the aggregate amount or value of the prizes (both cash and non-cash) in any game shall not exceed £500.

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 announced previously 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.

Part 13 of the Gambling Act 2005 (the Act) concerns prize gaming. This Part of the Act replaces and updates Section 21 of the Gaming Act 1968 and Section 16 of the Lotteries and Amusements Act 1976.

Prize gaming is defined in section 288 of the Gambling Act, and is gaming in which neither the nature nor the size of a prize are determined by the number of persons playing or the amount paid for or raised by the gaming. It is intended to permit low level gaming for small participation fees and modest prizes. Bingo played at seaside amusement arcades is typical of this type of gaming. Part 13 does not authorise the use of any gaming machines.

The Act permits children to participate in certain prize gaming, and prize gaming can be offered in family entertainment centres, at travelling fairs and in other non-gambling premises (like theme parks) all of which are frequented by children.

As under existing legislation, the holders of the certain permissions under the new Act (bingo halls, adult gaming centres, licensed family entertainment centres and holders of family entertainment centre gaming machine permits) will be automatically entitled to offer prize

gaming, and will not require a separate prize gaming permit to offer this type of gaming. The Act also authorises prize gaming to be offered at travelling fairs without the need for a permit. Other premises will also be able offer prize gaming, if they obtain a prize gaming permit from their licensing authority. However, we anticipate that very few premises will obtain such permits, and the bulk of those that do are likely to be holiday parks and theme parks.

Rationale for government intervention

The intention behind these proposals is to ensure that prize gaming retains its essential character as intended by Parliament as a low level gambling activity, and to ensure that this form of gaming is controlled and the public in general, and children in particular, are protected.

3. Consultation

Within government

DCMS has consulted the Gambling Commission on our proposals.

Public consultation

The Department published a formal consultation paper on limits for prize gaming on 12 March 2007 which took account of informal representations made by groups including the British Amusement Catering Trade Association (BACTA) and the Bingo Association.

The consultation paper was sent to a wide range of stakeholders including members of the Department's industry liaison group, community liaison group and LACORS. The closing date for responses to the consultation paper was on 31 May.

The Department received eight substantive responses to the consultation:

- the Bingo Association and two bingo companies were critical of the proposals which they argued did nothing to assist the bingo industry. The Bingo Association questioned the historical basis for the proposed policy, and suggested that higher levels of participation fee/prize would, with appropriate safeguards, be appropriate in adult-only environments. The Association proposed the introduction of a £1 maximum participation fee and £500 maximum cash prize;
- BACTA questioned the evidence base for the proposals and proposed a £2 maximum participation fee and £100 maximum cash prize. BACTA also opposed the proposed blanket maximum of £500 for a non-monetary prize;
- the Salvation Army and Methodist Church (in a joint response) and Prof Jim Orford (Professor of Clinical and Community Psychology at Birmingham University) broadly supported the Department's generally cautious approach to prize gaming, but opposed the proposed increase in the maximum cash prize from £25 to £35 on the grounds that this could prove attractive to children;
- two Scottish Licensing Boards (Glasgow and North Lanarkshire) were broadly supportive of the proposals, and specifically that strict limits on participation fees and prizes were important for maintaining the essential character of prize gaming as a softer form of gambling.

4. Options

Prize gaming

Option 1 - Set no limits

There is no formal requirement for the Secretary of State to set limits for prize gaming, and she may decide not to do so. However, if she did not set a limit on prize gaming, this would effectively allow casino-style gaming for unlimited stakes and prizes to take place in any venue permitted to offer non-equal chance prize gaming, including bingo halls, adult gaming centres and licensed family entertainment centres. The government does not consider that this would be consistent with the cautious approach it has taken to the reform of gambling laws as a whole.

Option 2 – Substantial increase in current limits for maximum participation fee and maximum cash prize

Ministers considered carefully the Bingo Association's suggestion that the current consultation and regulations presented an opportunity to modernise the rules governing prize gaming by increasing the participation fee and maximum cash prize. However, they took the view that a £1 participation fee and £500 cash prize (equivalent to a Category B3 gaming machine) proposed by the Association would take prize gaming into the realm of harder gambling. This was not the intention behind the prize gaming provisions either originally or in their 2005 form.

Ministers also considered carefully BACTA's suggestion that the maximum participation fee should be increased to £2 and the maximum cash prize to £100. However, they noted that this would have brought the maximum participation fee into line with the maximum stake for Category B1 gaming machines, which are only permitted in casinos. Furthermore, they noted that a £100 cash prize would have been nearly three times the maximum cash prize currently permitted on Category C machines (which only over 18s can play). This again would have taken prize gaming into the realm of harder gambling, which was not the intention behind these provisions.

The Home Office Guide to the 1968 Act explained that: "Section 21 permits licensed clubs, as of right, to provide gaming for small prizes on conditions resembling those under which such gaming may be provided by travelling showmen or at pleasure grounds and amusement arcades on permit from the local authority. This provision is likely to be of service to bingo clubs, where it can be used to provide diversions of the fairground type, in place of the roulette, blackjack and similar games now often played between bingo games and which the Act seeks to discourage."

While the new Act sought to preserve and update the earlier prize gaming entitlements, the intention behind these provisions remained broadly similar. Paragraph 725 of the explanatory notes to the Act made it clear that: "Prize gaming is intended to permit low level gaming, for small participation fees, and modest prizes."

Ministers were, however, swayed by the suggestion that some differential treatment for adult-only licensed premises may be possible, without prejudicing the intention that prize gaming should remain at a low level. They have, therefore, decided to allow adult gaming centres and licensed bingo halls which do not permit under 18s to enter the premises, to offer a maximum cash prize of £50 – which will be double that currently permitted. The higher limit for bingo halls has already been proposed through the draft Gambling Act 2005 (Operating Licence Conditions) Regulations 2007 laid in Parliament on 11 June 2007.

This will still not prevent operators offering non-cash prizes up to the value of £500 in any one game.

The government also considered carefully whether there might be any justification for a general increase in the maximum aggregate sale of chances to participate in a game from the £500 currently permitted in bingo halls. However, it was hard to see how any increase could be consistent with the generally cautious approach taken to developing these regulations outlined above.

Option 3 – Retain existing limits

This option was very attractive, as it would certainly have enabled the government to fulfil its objective to ensure that prize gaming remained a low level gambling activity. The government found that some of the limits in the existing law remain at broadly the right level and useful from a regulatory perspective. It was also an option that received support during the consultation process from church groups.

However, ministers were also mindful that the existing limits had been in place for between five and eight years. They also considered that some modest increases may be appropriate to help iron out inconsistencies in the current legislation between different premises permitted to offer prize gaming, and to bring the cash prize limit into line with that for Category C gaming machines.

Option 4 – Retain existing limits but with a modest increase to certain limits

Broadly speaking the government considered that the existing limits were consistent with Parliament's intentions when passing the prize gaming provisions of the new Act, and the existing limits would help ensure that prize gaming remains a low level gambling activity, typical of the sort of amusements that people enjoy at the seaside and at other family attractions.

In the past, the participation fee and cash prize limit for prize gaming has been kept broadly in line with the stake and prize limit for what will become Category C gaming machines under the new Act. While the existing 50p participation fee limit is the same as the maximum stake now in force for what will become Category C gaming machines, the maximum cash prize for such a machine has recently been increased to £35. Ministers have, therefore, proposed an increase in the maximum cash prize for prize gaming from £25 to £35 in any unlicensed venues or venues where children are permitted to enter to bring it into line. As noted under Option 2 above, Ministers also decided to increase the maximum cash prize to £50 in bingo halls which only permit over 18s to enter and adult gaming centres.

The current legislation poses a difficulty: the reference to "any one chance" to win means that a person can purchase more than one chance in a single game. There is a risk that this could encourage some players to increase their chances of winning by purchasing a large number of chances in a single game.

The existing limits under Section 21 of the 1976 Act of £500 on the aggregate participation fees in any one game, and the same limit on the amount or value of the prizes (both cash and non-cash) in any game, provide useful safeguards to mitigate against this sort of potential problem.

There is currently a mismatch between the 1968 Act and the 1976 Act in terms of the maximum aggregate sale of chances in any one game. The draft regulations would remove this anomaly under the new Act and set a blanket maximum of £500 for the aggregate total of participation

fees that may be charged in any one game. This constitutes a significant liberalisation of the current position for arcades and other premises offering prize gaming under section 16, which are currently subject to a maximum aggregate of £90.

There is a further anomaly under the current law in relation to prize gaming in that, unlike under the 1968 Act which covers prize gaming in bingo halls, there is currently no maximum in the 1976 Act on the value of a non-money prize that may be offered in any one game.

The government is aware that some operators have sought to exploit this by offering high value items like cars as prizes in prize gaming. While ministers noted BACTA's suggestion that there is no evidence that this practice has caused any concern regarding the licensing objectives, they do not consider that this is consistent with Parliament's intentions for prize gaming under earlier legislation, or with the regulatory regime established for prize gaming under the new Act. There is a risk that higher value prizes of this sort could encourage people to gamble more than they can afford, and the government considers that it is consistent with the precautionary approach which it has taken to the reform of gambling legislation as a whole to bring arcades, and other premises currently providing prize gaming under section 16, into line with bingo halls and set a maximum of £500 for the aggregate amount or value of the prizes in any game.

5. Costs and benefits

Sectors and groups affected

There are estimated to be around 2,000 arcades currently operating in Great Britain which will be permitted to offer prize gaming, and which will be potentially affected by this Order. It is not known what proportion of these currently offer prize gaming. There is no centrally held information about how many travelling fairs currently offer prize gaming, or how many other premises are offering prize gaming by virtue of a permit issued under Section 16 of the 1976 Act.

Benefits

These regulations will ensure that prize gaming retains its essential character, as intended by Parliament, as a low level gambling activity. Arcades and other premises currently operating prize gaming by virtue of the provisions in Section 16 of the 1976 Act will benefit from increases to the maximum cash prize they are able to offer, and to the maximum aggregate of participation fees permitted in any one game. This may enable operators to attract more players to participate in individual games. It is not possible to assess the likely benefits in cash terms, and no estimates of this were presented to us during the consultation.

Costs

The proposal to restrict the aggregate amount or value of the prizes in any game to £500 may reduce the attractiveness of prize gaming where operators have previously offered cars and other high value items as prizes. However, no evidence was presented by the industry during the consultation as to the potential impact in costs terms of this measure. Furthermore, as noted above, the government considers that this restriction, which will bring arcades and other premises currently offering prize gaming into line with bingo halls, is justified in terms of the licensing objectives of the Act and the intention behind the prize gaming provisions.

6. Small firms impact test

A significant number of arcades and other venues offering prize gaming are likely to be small businesses, but no firm data is available. They are unlikely to suffer any adverse consequences

from the regulations proposed here, which to a large degree replicate the provisions of the existing law.

They will benefit from the proposed increases to the maximum cash prize they are able to offer and to the maximum aggregate of participation fees permitted in any one game, and will face no additional costs as a result of the regulations. It is not possible to assess the likely net benefit in cash terms.

7. Competition assessment

A simple competition assessment has been undertaken in line with BRE/OFT guidance.

The true extent of the prize gaming market is not known. The strict limits on prize gaming which are considered necessary from a social policy perspective have tended to mitigate against significant commercial exploitation of these provisions.

It is likely that the market, such as it is, is dominated by smaller operators, though a few larger theme parks and holiday parks may also obtain prize gaming permits. The proposals will benefit all operators equally and are unlikely to have any structural effects on the gambling industry, as what is proposed is essentially the status quo. The relatively minor changes proposed will help to bring about a level playing field in respect of prize gaming limits across different types of operator for the first time. This may encourage greater competition between arcades and other prize gaming operators and bingo halls, who will be able to make the same prize gaming offer to potential customers.

8. Enforcement, sanctions and monitoring

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 also 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 will continue to keep the industry closely informed about these changes through its established industry, community and licensing authority networks, at all the key stages of implementation (eg when the regulations are laid and brought into effect).

10. Post-implementation review

The introduction of these measures will be monitored by licensing authorities and the Gambling Commission through the operating and premises licence and prize gaming permit application processes, and through their ongoing monitoring and enforcement functions. The Department will also seek 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

Option	Total benefit	Total cost
1 No limits	Would create potentially	Likely to have significant though

	significant increase in unlimited commercial gaming.	unquantifiable social consequences.
2 Large increase	Could enable arcades and others to develop new games and so diversify their offer – though no firm figures presented.	Runs counter to Parliamentary intentions behind the prize gaming provisions. May have unquantifiable social consequences.
3 Retain existing limits	Would retain status quo and mitigate against any adverse social consequences.	Would mean a reduction in level of limits compared to Category C gaming machines.
4 Retain existing limits with modest increases in certain areas	Would retain strict limits which have worked well under existing legislation in mitigating against adverse social consequences. Allows modest increases to increase competition between prize gaming providers, and potentially increase the attractiveness of prize gaming to players.	No cash costs.

For the reasons set out above, Option 4 has been recommended.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed.....

Date.....

Rt Hon Richard Caborn MP, Minister for Sport

13. Contact point

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