

EXPLANATORY MEMORANDUM TO

THE GAMBLING ACT 2005 (OPERATING LICENCE CONDITIONS) (AMENDMENT) REGULATIONS 2018

2018 No. 453

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument imposes a new mandatory condition on all betting operating licences issued under the Gambling Act 2005 (“the 2005 Act”). The condition prevents these operators from accepting bets in relation to a EuroMillions draw, or the outcome of a EuroMillions lottery.
- 2.2 The lottery known as EuroMillions in the United Kingdom is in fact a number of technically separate lotteries (each “a EuroMillions lottery” for the purposes of this memorandum). There are presently nine participating EuroMillions lotteries, in the following countries: the UK, France, Spain, Austria, Belgium, Ireland, Luxembourg, Portugal and Switzerland. Each EuroMillions lottery is licensed in accordance with that country’s regulatory framework.
- 2.3 However, the outcome of each EuroMillions lottery is determined by a single draw, currently held twice a week in Paris and co-ordinated and organised by Services Aux Loteries En Europe SCRL, a société coopérative á responsabilité limitée which is incorporated in Belgium (each “a EuroMillions draw”). EuroMillions is characterised by large jackpots, as the prize fund is pooled across the participating countries.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative context

- 4.1 Section 95 of the Gambling Act 2005 makes all types of operating licences permitting betting subject to a mandatory licence condition that no betting may take place on the outcome of any part of the National Lottery. The lottery that is promoted in the United Kingdom under the brand name EuroMillions forms part of the National Lottery.
- 4.2 However, some betting operators licensed under the 2005 Act offer bets on either a EuroMillions draw or the outcome of a EuroMillions lottery other than the lottery promoted in the United Kingdom under the brand name EuroMillions (together, “non-UK EuroMillions bets”). This is not prevented by the existing mandatory licence

condition in section 95 because each non-UK EuroMillions lottery is technically separate and not part of the National Lottery.

- 4.3 This instrument supplements the existing mandatory licence condition in section 95 by preventing betting operators licensed under the 2005 Act from offering non-UK EuroMillions bets to any person in Great Britain. This additional condition does not apply to the outcome of a lottery which forms part of the National Lottery (see paragraph (4) of the condition), because that is already covered by the existing mandatory condition.
- 4.4 The new condition will apply to existing betting operating licences issued under the 2005 Act and will take effect from the date on which the Regulations come into force (paragraph (5) of the condition).
- 4.5 Paragraph (6) of the condition provides that it will cease to apply if the outcome of a lottery which forms part of the National Lottery is no longer determined by a EuroMillions draw. In that eventuality, the condition would no longer be necessary to preserve the distinction between betting and the National Lottery.

5. Extent and territorial application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 The Gambling Commission regulates and licenses operators in Great Britain only. Northern Ireland has separate gambling legislation. However, under section 5 of the Gambling (Licensing and Advertising) Act 2014, it is an offence for any person to advertise remote gambling in Northern Ireland without a licence issued under the 2005 Act. The practical effect of this new mandatory condition would be to prevent remote betting operators licensed under the 2005 Act from offering bets on non-UK EuroMillions draws to persons in Northern Ireland as well as persons in Great Britain, although land-based bookmakers in Northern Ireland will remain able to offer such bets.

6. European Convention on Human Rights

- 6.1 The Minister for Sport and Civil Society has made the following statement regarding Human Rights:

“In my view, the provisions of the Gambling Act 2005 (Operating Licence Conditions) (Amendment) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 By section 95 of the Gambling Act 2005, all types of operating licences issued by the Gambling Commission which permit betting are subject to a mandatory condition that no betting takes place on the outcome of the National Lottery. In the United Kingdom, the lottery that is promoted under the brand name EuroMillions is part of the National Lottery. However, some betting operators licensed under the 2005 Act offer non-UK EuroMillions bets. This instrument will supplement the existing mandatory licence condition so as to cover all non-UK EuroMillions bets in respect of customers in

Great Britain. This will preserve a distinction between betting and the National Lottery to prevent consumer confusion, and may protect returns to UK good causes.

- 7.2 The number of operators offering non-UK EuroMillions bets has increased in recent years, and the Gambling Commission has advised that this is a potential area for further growth, risking National Lottery good cause funds. Taking into account the responses received as part of our consultation, we are therefore taking action to prevent operators from offering non-UK EuroMillions bets to British consumers through a statutory licence condition. This will ensure that a betting operator licensed under the 2005 Act is subject to the same restrictions as regards non-UK EuroMillions bets as it is for betting on the lottery promoted in the United Kingdom under the brand name EuroMillions.

Returns to good causes

- 7.3 The Gambling Commission considers that there is a latent risk that consumer spend may be diverted from genuine National Lottery products, a concern which was echoed by the great majority of consultation respondents.
- 7.4 Betting operators offering bets on EuroMillions capitalise on the ‘life-changing’ prize levels offered by the National Lottery, without any obligation to return funds to good causes. Some bets are offered at a lower price than the current cost of a EuroMillions ticket. A number of consultation respondents raised concerns that this betting practice could “parasitize off the investments made by the lottery operator to put in place a secure and reliable draw (involving the presence of on-site people, IT support, maintenance, development, purchase of material, use of space, etc.)” and wider marketing activity to promote the draw.
- 7.5 Some operators put considerable resource into marketing their non-UK EuroMillions betting products. As a result, the cost to Camelot of defending key brand terms has risen significantly. Camelot note that these funds could otherwise have been spent on marketing initiatives to increase good cause revenues.
- 7.6 Based on its assessment of licensed remote betting operators who offer bets on lotteries, the Commission has estimated the impact of a ban on non-UK EuroMillions betting on UK gambling operators to be small. From figures provided by operators during the consultation, we estimate the cost to be around £4.5m per annum.

Consumer confusion

- 7.7 In research conducted by Camelot in 2014 in relation to a EuroMillions betting product, only 14% of respondents understood that it was a betting product while 61% thought it was a way of participating in one of the EuroMillions lotteries. New research submitted to the consultation by a betting operator in relation to their product suggests that 28% of their customers did not believe there was a difference between the two products. Differing methodologies and sample populations mean that the surveys are not comparable. However, the figures suggest that there is a level of residual customer confusion, with nearly a third of betting customers unable to distinguish between products, despite steps taken to increase marketing clarity.
- 7.8 The prominence of the EuroMillions brand and its association with the National Lottery as a game which forms part of the National Lottery portfolio arguably heightens this risk. Indeed, the European Union Trademark Authority has recently refused the registration of a betting operator’s EuroMillions logo as a European

trademark. When challenged by the S.L.E. (Services aux Loteries en Europe - the administrative arm of EuroMillions), the Board of Appeal of the EU Intellectual Property Office found that due to near identical verbal elements, there was likelihood of confusion on the part of the average consumer.

- 7.9 The Gambling Commission has already undertaken work to improve the clarity of communications to consumers, including asking operators to make clear to consumers that they are offering a bet on one of the non-UK EuroMillions lotteries, and that they are not entering EuroMillions in the same way as they would by buying a ticket from the National Lottery. However, its current powers do not extend beyond requiring operators to be transparent with consumers about the nature of their products, and the Gambling Commission has advised that in practice it is concerned that the distinctions are subtle or technical and therefore capable of being easily lost on the average consumer (for example, small changes in wording from ‘play’ to ‘bet’), particularly where the EuroMillions name is used. It is concerned that consumers are at risk of being confused, even if operators are compliant with existing law and Gambling Commission guidance.
- 7.10 In this regard, the Advertising Standards Authority (ASA) upheld a complaint on 1st February 2017 regarding a EuroMillions betting radio advert, concluding that it was misleading, as the advert implied participants would be playing in a lottery rather than in a gambling game. The ASA considered that references to “bet” did not make it clear that consumers would be “gambling on the outcome of a lottery rather than actually participating in it, and consequently, did not dispel the impression given by the voice-over’s references at the start of the advert that a lottery was being promoted”.

Consolidation

- 7.11 There are no current plans to consolidate the legislation amended by this instrument.

8. Consultation outcome

- 8.1 The consultation ran from 6th March to 2nd May 2017. The Government’s response to the consultation was published on 30 November 2017 and can be found at <https://www.gov.uk/government/consultations/prohibiting-third-party-betting-on-non-uk-euromillions-draws>. The Government received 52 responses to the consultation via letter, email, and online survey responses. Respondents included lottery operators, beneficiaries of lottery funding, betting operators, and members of the public. We understand that out of these, 5 respondents organisations currently offer non-UK EuroMillions bets to British consumers, either directly or through owned companies.
- 8.2 32 respondents **strongly agreed** that non-UK EuroMillions bets should be prohibited. An additional 6 responses were submitted which supported a prohibition of betting on EuroMillions, but did not respond directly to the consultation question.
- 8.3 5 respondents **strongly disagreed** with the proposed prohibition, considering that a prohibition was disproportionate in the absence of clear evidence that such products were having a negative impact on EuroMillions sales. It was also noted that a ban would reduce consumer choice, and result in a fall in Exchequer revenues from taxation.
- 8.4 Further information is available in the impact assessment submitted alongside this Memorandum.

9. Guidance

- 9.1 The Gambling Commission, as the independent arms-length body responsible for licensing of operators in the UK, will provide guidance as appropriate.

10. Impact

- 10.1 There is no impact on charities or voluntary bodies.
- 10.2 The cost of the regulatory proposal to business is £4.5m to £5.8m pa, with our best estimate at £5.0m. This includes transition costs of £0.2m in the first year.
- 10.3 The impact on the public sector is minimal, and primarily limited to the costs incurred by the Gambling Commission in implementing the legislation.
- 10.4 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The new licence condition is intended to prevent customer confusion and protect returns to National Lottery good causes. It would be inappropriate to treat small business differently in these circumstances.

12. Monitoring and review

- 12.1 The Minister has determined that it would not be appropriate to make provision in the Regulations for a review under sections 28-32 of the Small Business, Enterprise and Employment Act 2015. Such a provision would be undesirable (in accordance with section 31(2)(b) of that Act) because any consideration of these matters should extend to other matters as well; for example, the operation of section 95 of the 2005 Act.
- 12.2 The policy will be reviewed by the Department internally, taking into account any advice from the Gambling Commission following implementation.

13. Contact

- 13.1 Vicky Smith (tel: 020 7211 6504; email: vicky.smith@culture.gov.uk) and Glenn Austin (tel: 020 7211 6169; email: glenn.austin@culture.gov.uk) at the Department for Digital, Culture, Media & Sport can answer any queries regarding the instrument.