

EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (CLUB GAMING AND CLUB MACHINE PERMITS)
REGULATIONS 2007

2007 No.1834

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.

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

2. **Description**

- 2.1 These Regulations set the fees in relation to club gaming and club machine permits (“permits”), and specify the application form and the form of each permit.

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

- 3.1 These regulations are the first made under the Gambling Act 2005 (the Act) concerning these provisions.

4. **Legislative Background**

- 4.1 The Act introduces a new system of regulation for gambling in Great Britain, which will replace the system of regulation set out in the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.

- 4.2 The formal implementation date for the Gambling Act 2005 will be 1 September 2007. On this date, the majority of permissions issued under existing legislation will expire and be replaced by the new licences and permits prescribed by the new Act.

- 4.3 It is an offence under the Act to provide facilities for gambling (section 33), to use premises, or cause or permit premises to be used to make gaming machines available for use (section 37), and to make gaming machines available for use by another (section 242), unless this is done in accordance with a relevant operating licence or permit, or it falls under one of the exceptions provided in the Act.

- 4.4 Two exceptions from the above offences are where facilities for gaming are provided, or gaming machines are made available, in accordance with a club gaming permit (section 271) or a club machine permit (section 273). Club gaming permits may be issued to members’ clubs (defined in section 266 of the Act), and miners’ welfare institutes (defined in section 268 of the Act). Club machine permits may be issued to members’ clubs, miners’ welfare institutes and commercial clubs.

- 4.5 A club gaming permit authorises up to three gaming machines (each of which must be of Category B3A, B4, C or D) to be made available for use, the provision of facilities for equal chance gaming (subject to specified conditions, but without any limits on the amount or value of stakes and prizes), and the provision of facilities for any games of

chance as may be prescribed by the Secretary of State. A club machine permit authorises up to three gaming machines (each of which must be of Category B3A (except that B3A machines may not be made available for use in commercial clubs¹), B4, C or D) to be made available for use.

4.6 Clubs and institutes may apply to their licensing authority for a permit under Schedule 12, which sets out the procedural requirements for the administration of such permits. Schedule 12 makes provision for applying for either permit, paying annual fees, obtaining a copy, varying, cancelling, forfeiting, and renewing either permit. Provision is also made in relation to appealing decisions of licensing authorities in relation to a permit, and for maintenance by the authority of a register of permits.

4.7 Schedule 12 also provides a fast-track procedure for applying for permits, where the application is made by the holder of a club premises certificate under section 72 of the Licensing Act 2003 (c. 17). Under the fast-track procedure, the Gambling Commission and the police do not have powers to object to the application.

4.8 These regulations give full effect to Schedule 12 by prescribing various fees that must be paid for some of the procedures, the application form that must be used by applicants for a permit and sent to licensing authorities, and the form of the permit that is issued by authorities.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Scotland, except regulations 8, 15 and 16, which apply only to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The objectives of the Gambling Act 2005 are: to prevent gambling from being a source of crime and disorder; to ensure that it is conducted in a fair and open way; and to protect children and other vulnerable persons from being harmed or exploited by it.

7.2 These regulations, which are made under the Act, are purely procedural and concern two distinct types of permit: club gaming permits and club machine permits.

Club Gaming Permit

7.3 Under sections 271 and 272 and Schedule 12 of the Act, members' clubs and miners' welfare institutes (but not commercial clubs) may apply for a club gaming permit from a licensing authority to authorise the provision of facilities for gaming and making gaming machines available for use on their club premises. A club gaming permit will authorise provision of:

¹ See the Draft Categories of Gaming Machine Regulations 2007, which were laid in draft on 11 June 2007 for approval by resolution of each House of Parliament.

- up to three gaming machines, each of which must be category B3A, B4, C or D (in any combination).
- equal chance gaming which must be in accordance with the rules set out in section 269 of the Act, but without any limitation on the level of stakes and prizes.
- prescribed games of chance (DCMS is consulting separately, in the paper Gaming in Clubs and on Alcohol-Licensed Premises, on proposals for the list of games to be prescribed).

7.4 A licensing authority has no discretion to add additional conditions to a club gaming permit, but the following conditions will automatically apply:

- that only members or guests of members may participate in the gaming (see s271(6))
- that nobody under the age of 18 has access to a category B or C gaming machine;
- that the club complies with any relevant provision of a code of practice issued by the Gambling Commission about the location and operation of its gaming machines.

7.5 A club gaming permit will allow clubs to offer these gaming facilities in addition to those that they are allowed to offer under their exempt gaming allowance (which is explained in sections 269 and 270 of the Act).

7.6 Club gaming permits will be issued by local licensing authorities and last for ten years. They can then be renewed for a further ten years.

Club Machine Permit

7.7 The club machine permit concerns the provision of gaming machines only, and does not authorise any other type of gambling. Under section 273 and Schedule 12 of the Act, a members' club, a miners' welfare institute or a commercial club may apply for a club machine permit, to authorise:

- the provision, on their club premises, of up to three gaming machines, each of which must be of category B3A, B4, C or D (in any combination), with the exception that commercial clubs will not be authorised to make B3A machines available for use.

7.8 A licensing authority has no discretion to add additional conditions to a club machine permit, but, with the exception of commercial clubs which may allow persons other than members and their guests to make use of the machines, the same conditions apply as apply to a club gaming permit.

7.9 Club machine permits will be issued by local licensing authorities and will last for ten years. They can then be renewed for a further ten years.

Consultation on draft regulations

7.10 These Regulations have been drawn up following eight weeks of formal consultation, which began in March 2006 and involved licensing authorities, the club

sector and other interested parties. As the Regulations are procedural, and in line with previous proposals on which we have consulted in relation to premises licensing and other permits to be issued under the Act, we agreed with stakeholders at the outset that it was appropriate in this case to shorten the formal consultation period. A list of those who responded is attached as an annex to this memorandum.

7.11 These regulations deal with the process for acquiring a club gaming or a club machine permit. They prescribe: the application form; the form of the permit; the time limits within which an applicant must copy his application to the Gambling Commission and the Police (and within which they may object to it being granted); and the administration fees payable by applicants. Our aim, consistently, has been to develop practical, user-friendly proposals which strike a balance between the need to be prescriptive, to provide consistency and clarity to licensing authorities, enforcement agencies, the gambling industry and the public, and the need of those same groups for flexibility and proportionate regulation. The fees prescribed here have been set on the basis of our separate consultation on Premises Licences and Permits Fees, which we carried out between July-September 2006. This consultation exercise simply sought the input of stakeholders about the practical aspects of establishing the administration process, and drew heavily on similar proposals made in relation to premises licences and other permits issued under the Act. We asked basic questions concerning the establishment of this administration process. These concerned:

- the content of the application form;
- the appropriate time period during which applicants must copy their applications and supporting documents to the Police and the Gambling Commission;
- the appropriate time limit during which objections may be lodged to permits being granted;
- the information to be included on the permit;
- whether stakeholders agreed with our proposal that, in relation to hearings in the event of a permit being refused, licensing authorities should follow the procedures prescribed for premises licensing, rather than have procedures prescribed specifically for these permits

7.12 Under the Act, licensing authorities must hold a hearing before refusing to grant a permit, and the Secretary of State has a discretionary power to make regulations about the proceedings which must be followed in any such hearings (see paragraph 28 of Schedule 12 to the Act, and section 9 of the Licensing Act 2003). However, the Department considers that local authorities may rely on their power under section 9(3) of the Licensing Act 2003, which allows them to regulate their own procedures, and has not prescribed the procedure in these regulations. We anticipate that local authorities will wish to adopt existing procedures, including those set out in the regulations relating to premises licences. The Gambling Commission will be issuing guidance to local authorities in this respect.

7.13 The Regulations do not prescribe the form of register that the licensing authorities and the Gambling Commission should maintain (or the information passing between them) to monitor and oversee the permit process. Responses to earlier consultation exercises indicated that if we were to be prescriptive about the details that these registers must hold there was a danger that this aspect of the process could become onerous for both sides, and result in unnecessary duplication of records. The licensing authorities and the Commission will both maintain such registers, but we concluded that it would be

appropriate to allow them discretion about the details that they contain. The Gambling Commission has published guidance on the appropriate information exchange with the licensing authorities, and we expect that this should be followed. We will, however, keep the procedure under review.

7.14 As anticipated, the consultation exercise did not provoke a large response (there were six replies in all) but those who did respond included representative bodies able to speak for a cross-section of stakeholders. Respondents endorsed all our proposals in principle, and comments were confined to practical suggestions about information to be included on the permit, and questions to be included on the application form (both of which are prescribed in the Regulations). We incorporated these comments where practical, but several of the points raised had either already been addressed in the body of the Regulations, or concerned user guidance that will more properly be provided in the explanatory leaflets that DCMS is producing, or in the fact sheets produced by LACORS (the Local Authorities Coordinators of Regulatory Services) and the individual licensing authorities.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

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Draft Regulatory Impact Assessment

1. Title of proposal

The Gambling Act 2005 (Club Gaming And Club Machine Permits) Regulations 2007

2. Purpose and intended effect

Objectives

These Regulations make provisions relating to the administration of the process for issuing club gaming and club machine permits, which will allow holders to provide for certain gaming and gaming machines on their club premises. In particular, it concerns the following powers contained in Schedule 12 of the Gambling Act 2005 for the Secretary of State to prescribe:

- the form and manner of application - paragraph 2(c)
- the information and documents that must accompany the application - paragraph 2(d)
- the fee to accompany the application - paragraph 2(e)
- the time within which a club must send a copy of the application and documents to the Gambling Commission and the Police - paragraph 3(1)
- the time within which the Gambling Commission and the Police may object to the application, and the manner in which their objection must be made – paragraph 4
- the form of permit and other information to be specified on the permit - paragraph 11(1) and 11(1)(e)
- the period within which the first annual fee is to be paid - paragraph 14(1)(a)
- the first annual fee - paragraph 14(1)(a)
- the annual fee - paragraph 14 (1)(b)
- the fee for variation of a permit - paragraph 15(2)
- the fee to obtain a copy of a permit - paragraph 16(2)
- the procedure for considering cancellation of a permit - paragraph 21(2)(d)
- the fee for renewing a permit – (paragraph 24)

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 previously announced 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

Under the Gaming Act 1968 various associations – including members clubs, commercial clubs and miners' welfare institutes – are afforded particular gaming entitlements, either as of right, or with express permission. The Gambling Act 2005, once it is fully in force, repeals those provisions and provides a replacement regime, which is the subject of the regulations assessed by this paper.

Rationale for government intervention

The intention behind these regulations is to ensure that we have in place consistent, light-touch and user-friendly procedures to enable clubs to obtain gaming and gaming machine permits, which do not place unnecessary burdens on clubs, licensing authorities or the Gambling Commission.

3. Consultation

Within government

DCMS has consulted the Gambling Commission on our proposals.

Public consultation

The proposals in relation to these permits drew heavily on similar proposals that we have consulted on in relation to premises licences and other permits issued under the Act. These in turn were based on informal consultation with the Department's Premises Licence Working Group, comprising representatives of licensing authorities and the industry. The proposals also drew on a number of presentations given by the Department to LACORS policy fora and working groups, and ongoing liaison with these groups.

Our aim consistently has been to develop practical, user-friendly regulations which strike a balance between the need to be prescriptive, to provide consistency and clarity to licensing authorities, enforcement agencies, the gambling industry and the public, and the need of those same groups for flexibility and proportionate regulation.

The Department carried out a major fees costing exercise with all licensing authorities in England and Wales during July-September 2006. The fees prescribed in these regulations have been set on the basis of that exercise.

As anticipated, the consultation exercise did not provoke a large response (there were six replies in all) but those who did respond included representative bodies able to speak for a cross-section of stakeholders. Respondents endorsed all our proposals in principle, and comments were confined to practical suggestions about information to be included on the permit, and questions to be included on the application form (both of which are prescribed in the Regulations). We incorporated these comments where practical, but several of the points raised had either already been addressed in the body of the Regulations, or concerned user guidance that will more properly be provided in the explanatory leaflets that DCMS is producing, or in the fact sheets produced by LACORS (the Local Authorities Coordinators of Regulatory Services) and the individual licensing authorities.

4. Options

Option 1. Do nothing

While many of the powers relating to the administration of the application process are reserve powers and, as such, optional, not to use them is likely to result in inconsistency of approach between licensing authorities on matters like the design of permits. This would increase costs for licensing authorities and so increase costs for the clubs involved.

Doing nothing would also mean that regulation of this sector would not be modernised, as envisaged under the Gambling Act.

Option 2. Implement regulations

By adopting light touch regulations we will ensure that the application process for club gaming and club gaming machine permits will be administered in a consistent way nationally. Costs for licensing authorities, which are then passed on to clubs, will be kept to a minimum.

5. Costs and benefits

Sectors and groups affected

The organisations that will be affected by these regulations are:

Members Clubs (as defined in s266 of the Act).

Commercial clubs (as defined in s267 of the Act).

Miners' welfare institutes. (These are defined in s268 of the Act; their definition has been amended from that contained in the Gaming Act 1968).

Benefits

The regulations will ensure a straightforward, light-touch application and administration process for club gaming and club gaming machine permits, which will keep the costs to the club sector to a minimum.

Costs

It is not anticipated that costs to the club sector will be higher than under current gambling legislation. The processes for obtaining permits under the Gambling Act are broadly comparable to those which exist under current law.

6. Small firms impact test

Applicants for club gaming and club machine permits will be the clubs listed at paragraph 5 above.

The new permits regime set out under the Gambling Act to a large degree replicates the provisions of the existing law.

7. Competition assessment

The proposed regulations will not limit or influence the number or range of operators. This is because if the operator satisfies the criteria for issue of a permit, then the permit will be issued.

8. Enforcement, sanctions and monitoring

A licensing authority officer will be able to request the holder of a club gaming or club gaming machine permit to produce a copy of the permit for inspection (as will a constable or a Gambling Commission enforcement officer). Failure to produce the permit could result in summary conviction or a fine not exceeding level 2 on the standard scale.

The Act requires licensing authorities to keep a register of permits, make the register and information available for the public to inspect and to allow the public to have copies of entries in the register, for which they may charge a fee. Although the Secretary of State has the discretionary power to prescribe the form of the licensing authority's register and the manner in which it is maintained, we have not exercised this power in these regulations. On the basis of our discussions with licensing authorities in relation to registers of other forms of permit and premises licence issued under the Act, we have concluded that these details should be left to the discretion of the licensing authorities.

The Secretary of State also has the discretionary power to require licensing authorities to give the Gambling Commission specified information about the permits they have issued, and to require the Commission to maintain this information in their own register, and make copies of it available for public examination. We have not exercised this power in the regulations either. The Gambling Commission has published guidance on the information exchange between themselves and the licensing authorities, and we consider this to be sufficient at this stage, although this will be kept under review,.

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 continue to 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 is compiling guides for industry and licensing authorities about the transfer to the new system of regulation.

DCMS has worked closely with LACORS, licensing authorities and key industry bodies in designing the content and layout of application forms and permits. Although administrative in nature, all interested parties attach much importance to ensuring consistency and clarity in these forms.

The Department will continue to keep the industry informed about these changes through its established industry, community and licensing authority networks. They will continue to be kept informed at all key stages, e.g. results of consultations and when regulations are being laid and brought into effect.

10. Post-implementation review

The introduction of the permits regime will be monitored through the information on permits that will be maintained in registers held by the licensing authorities and the Gambling Commission. We will also get 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

Ministers have decided to proceed with option 2 above, to proceed with bringing in regulations on club gaming and club gaming machine permits with effect from 1 August 2007.

12. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Richard Caborn
Minister of State

Date

13. Contact point

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ANNEX

List of those who responded to the DCMS Consultation on: The Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007

- 1 Alliance of British Clubs
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- 2 British Amusement Catering Trades Association
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- 3 Committee of Registered Clubs Associations (CORCA)
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- 4 Local Authority Co-ordinators of Regulatory Services (LACORS)
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- 5 Salvation Army & Methodist Church (joint response)
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- 6 Wolverhampton City Council
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