

**EXPLANATORY MEMORANDUM TO**  
**THE GAMBLING (LICENSING AND ADVERTISING) ACT 2014**  
**(TRANSITIONAL PROVISIONS) ORDER 2014**

**2014 No. 1641**

**1. Introduction**

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. Purpose of the instrument**

1. This instrument provides for the transitional arrangements in respect of advance applications made to the Gambling Commission (“the Commission”) for a remote operating licence, or to vary an existing remote operating licence prior to the commencement of the new licensing requirement enacted in the Gambling (Licensing and Advertising) Act 2014 (“the 2014 Act”).

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

1. This is the first use of the powers in section 1(4), (6) and (7) of the 2014 Act.

**4. Legislative Context**

1. This instrument is being made by the Department in exercise of the powers conferred by section 1(4), (6) and (7) of the 2014 Act, which received Royal Assent on 14 May 2014. This Order will support the transition to the new licensing requirement enacted by section 1(2) of the 2014 Act.
2. The Commencement Order bringing the Act into force will be laid separately.

**5. Territorial Extent and Application**

1. This instrument applies to Great Britain.

**6. European Convention on Human Rights**

1. The Parliamentary Under-Secretary of State, Helen Grant MP, has made the following statement regarding Human Rights:

*“In my view the provisions of the Gambling (Licensing and Advertising) Act 2014 (Transitional) Order are compatible with the Convention rights.”*

## 7. Policy background

- *What is being done and why*

1. The Gambling Act 2005 sets out that remote gambling operators based in Great Britain are required to hold a Gambling Commission licence. The 2005 Act also allows operators based in the European Economic Area (EEA)<sup>1</sup> or ‘white list’<sup>2</sup> states to operate in Britain: there are estimated to be some 150 such operators.
2. The 2014 Act changes the regulation of remote gambling. All operators, regardless of where they are based, will require a licence from the Commission in order to transact with British consumers. Where these EEA/white list operators have an existing entitlement to supply the British market, transitional arrangements are necessary to facilitate and support the move to the new regime. The arrangements provided in this instrument deliver the following three overarching objectives:
  - i) To provide consumers with the protections offered by the Gambling Act 2005 at the earliest opportunity
3. The 2014 Act increases protection for consumers in Great Britain, as all remote gambling operators, regardless of where they are based, will be subject to robust and consistent regulation from the Gambling Commission, as set out in the Gambling Act 2005. This brings with it a requirement for operators to comply with Commission’s licence conditions and code of practice, including conditions for the protection of children and vulnerable adults. The Commission estimates that 85% of remote gambling activity by consumers in Britain takes place with an EEA/ white list operator that it does not regulate. Therefore it is desirable to bring these operators into the new regime swiftly after the commencement of the Act. This instrument achieves this by bringing those operators within the Commission’s licencing regime at the earliest opportunity.
  - ii) To provide a smooth transition to the new regime
4. Specific arrangements are necessary to enable remote gambling operators who currently provide facilities for remote gambling in Britain to continue to do so without interruption pending determination of their application to the Commission for (or to vary) a remote operating licence. With no continuity arrangements in place, an offshore operator, while waiting for the Commission to determine its licence application would, from 1<sup>st</sup> October, be in breach of the Act if it was selling to the British market.
5. The Act allows existing remote gambling operators to make an application for a Commission licence before the commencement of the new licensing requirement: these are ‘advance applications’. Where an advance application has been made, this

---

<sup>1</sup> EEA includes Gibraltar

<sup>2</sup> Presently there are four places on the white list: the Isle of Man, the States of Alderney and Tasmania, and Antigua and Barbuda.

instrument provides that a continuation licence will be issued where all three of the following criterion are met: the operator provides remote gambling in Great Britain, the arrangements for which are subject to the law about gambling of an EEA or white list state; the application was made by 16<sup>th</sup> September 2014; and the application has not been determined by 1<sup>st</sup> October 2014 by the Commission. A continuation licence is a mechanism limited to ensuring continuity of business for EEA/white list operators currently permitted to operate in Britain. This is intended to be temporary mechanism, and as such a continuation licence cannot be varied or renewed, and it will cease to have effect on the date on which the Commission finally determines the application.

iii) To ensure that there is no unfairness or undue administrative burden to operators or financial distortion for the Gambling Commission

6. The costs incurred by the Commission in administering the 2014 Act will be met out of fees paid to the Commission. To ensure effective enforcement of the Act there is a need to ensure that the Commission has resources to adequately regulate from the point at which operators become regulated by the Commission, and does not create financial distortion for the Commission which would in turn create unfairness between operators. Alongside this, there is a need to avoid creating unnecessary administrative burdens for operators.
7. This instrument achieves this by ensuring that licence holders pay the prescribed fees for the activities they are authorised to provide, from the point at which they are authorised to do so by the Commission. This ensures there is no financial distortion for the Commission which would in turn create unfairness between operators.
8. Three categories of case require transitional arrangements to be made in respect of the payment of prescribed fees. The first category is where an applicant who does not have an existing remote operating licence from the Gambling Commission makes an advance application and is issued with a continuation licence on 1st October 2014. The second is where an applicant who has an existing remote operating licence makes an advance application to vary that licence and is issued with a continuation licence on 1st October 2014. The final category is where an applicant who has an existing remote operating licence makes an advance application to vary that licence which is granted by the Commission (in whole or in part), but is not issued with a continuation licence.
9. This instrument modifies the application of section 100 of the 2005 Act (which makes provision in respect of the payment of first annual fees and annual fees thereafter) as appropriate to each category. This instrument does not alter the prescribed fees applicable in each category of case; the modifications made to section 100 of the 2005 Act only go to timing and apportionment of the payment of the prescribed fees.. The amount payable in respect of the first annual fee and annual fees thereafter remain those currently prescribed in the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006 (SI 2006/3284) (“Fees Regulations”). The annual fee anniversary date for all applicants who are issued with a continuation licence will be the 1<sup>st</sup> October in each year. Other applicants will have an anniversary date corresponding to the date the application was granted. This minimises the number of further invoices or

refunds needed at the point of determination of applications and ensures as level a playing field as possible between operators.

- *Consolidation*

10. This is not applicable to this instrument.

## **8. Consultation outcome**

1. No separate consultation exercise was conducted as this instrument is a technical instrument that provides for the transition to the new licensing arrangements and does not represent a change to licensing policy. Government consulted the Commission in drafting the instrument.

## **9. Guidance**

1. The changes to the law made by this instrument and its consequences are being communicated to operators in the lead up to, and beyond, the instrument coming into effect.
2. The Commission is responsible for the implementation and enforcement of the 2014 Act. Detailed guidance and a [‘Frequently asked questions’](#) document explaining how the transitional arrangements will operate will be available on the Commission’s website.

## **10. Impact**

1. The primary purpose of this instrument is to assist operators to transition to the new licensing arrangements without disruption to their existing British business. This instrument does not change existing prescribed fees. A full impact assessment of the effect that the reform of the remote gambling regulatory framework will have on the costs of business was conducted in relation to the 2014 Act. This instrument does not affect the costs as set out in that impact assessment.
2. The impact on charities or voluntary bodies is nil.
3. The cost impact to the public sector is nil; the administration of the transitional arrangements by the Commission will be funded in full by the operators’ licence fees. There is no effect on public service manpower as a result of this instrument.

## **11. Regulating small business**

1. This instrument applies to small business as all businesses have to pay for the full cost of their regulation.

## **12. Monitoring & review**

1. This instrument will be reviewed as part of the Post Implementation Review of the 2014 Act. In line with best practice, we expect the Department to conduct a Post Implementation Review within 3-5 years of the Act coming fully into force.

### **13. Contact**

1. David Hughes at the Department for Culture, Media and Sport, Tel: 0207 211 6335 or email: [david.hughes@culture.gsi.gov.uk](mailto:david.hughes@culture.gsi.gov.uk) should be contacted in respect of any queries regarding the instrument.