

EXPLANATORY MEMORANDUM TO
THE GAMBLING (OPERATING LICENCE AND SINGLE-MACHINE PERMIT FEES) (AMENDMENT) REGULATIONS 2021

2021 No. 701

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

2. Purpose of the instrument

- 2.1 The Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2017 (S.I. 2017/303) (“the 2017 Regulations”) prescribe fees relating to operating licences (application, annual and other fees) and single-machine supply and maintenance permits (application fees only) issued under Parts 5 and 10 of the Gambling Act 2005 (c. 19) (“the Act”) respectively.
- 2.2 These Regulations amend the 2017 Regulations so as to increase many existing fees (as more particularly described below) and remove annual fee discounts for combined and multiple licences.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Regulations increase the fees payable by gambling operators to the Gambling Commission (“the Commission”), enabling it to recover the cost of its regulation of the industry. Fees were last revised in 2017 and the increases take account of the need for the Commission to respond to new risks and technological developments, as well as the increasing cost of its existing regulation. They will also enable the Commission to address specific areas for improvement identified by the National Audit Office and the Public Accounts Committee.
- 3.2 The changes include a 55% increase in the fee bands for annual operating licences for remote (online) operators, which will take effect on 1st October 2021. Fee bands for land-based operators will increase by 15%, with the increase being delayed until 6th April 2022, in recognition of the impact that COVID-19 closures have had on these businesses. In addition to the rises to fee bands for annual operating licences, all application fees will increase by 60% and discounts for being licensed for multiple activities will be removed.
- 3.3 Licences which rely on Random Number Generator (RNG) software – i.e. remote casino, bingo and virtual betting licences – pay an additional annual fee for any combination of these three licences, which since 2009 has been £2,500 or £5,000 depending on the number of activities licensed. These additional fees will be doubled, as will the additional annual fees for ‘host’ licences (casino games host, bingo games host and virtual betting host licences). This will better reflect the costs of regulating these types of licensee.

- 3.4 Additional fee categories will be introduced for society lottery licences, with new higher fee bands for larger societies whose annual proceeds are £10m or more, following the increase in the per calendar year proceeds limit from £10m to £50m. There will also be additional fee categories and higher fees for the largest external lottery managers, to ensure the full and proportionate recovery of regulatory costs from this sector.
- 3.5 Overall, these changes will lead to increases in operating licence annual fees between 15% and 21% for most non-remote licensees who remain in the same fee band, and for most licensees that hold both a non-remote and remote gaming machine technical, society lottery or external lottery manager licence. There will be increases in operating licence annual fees between 55% and 72% for all other remote licensees and all gambling software licensees.
- 3.6 Remote licensees, particularly small and medium-sized licensees for whom the flat RNG fee represents a higher proportion of their total fee, will see the largest increases in percentage terms. This is because the Commission's regulatory costs for the remote sector are significantly higher than the level of fees currently paid by many types of remote business. Remote licensees will also benefit most from increased work to tackle black market encroachment.
- 3.7 While the headline percentage uplifts in fees are large, licence fees will continue to form a small part of each operator's cost base even after the changes are introduced. The increased fees will represent 0.22% of the gambling industry's gross gambling yield (GGY – the difference between money staked and winnings paid out), up from 0.16% previously.
- 3.8 Depending on their projected income in the coming year, individual operators may still pay less than they did the previous year. If an operator's projected income reduces before their next annual fee is due they may apply to the Commission to vary their licence to enter a lower fee band.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.9 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and territorial application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

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

6. Legislative context

- 6.1 The Gambling Act 2005 regulates all gambling in Great Britain, with the exception of the National Lottery and spread betting. Under the Act, subject to certain exceptions, a person who provides facilities for commercial gambling needs to hold an operating

licence authorising that activity, or that person commits a criminal offence. Operating licences are issued by the Commission.

- 6.2 The 2017 Regulations prescribe the various fees payable under the Act for the different kinds of operating licence, and also for a single machine supply and maintenance permit. These Regulations amend the 2017 Regulations made under the Act to ensure that the fees paid in respect of an operating licence more closely reflect the cost to the Commission of functions performed in connection with licences of that type and category.

7. Policy background

What is being done and why?

- 7.1 The Commission is experiencing new challenges in regulation which are expected to grow in significance in coming years. These include: increased technological developments, including product and payment innovation; changes in the size and shape of the market partially caused by consolidation, meaning the operators it regulates are increasingly global operators; and increasing risks associated with unlicensed operators and the need to protect consumers and the industry from ‘black market’ encroachment.
- 7.2 In particular, these Regulations will:
- (a) Increase annual fees for remote (online) operating licences by 55% on 1st October 2021;
 - (b) Increase all application fees by 60% from 1st October 2021;
 - (c) Make other changes to simplify the fees system, including removing annual fee discounts for combined and multiple licences, on 1st October 2021; and
 - (d) Increase annual fees for non-remote (land-based) operating licences by 15%, with implementation of these increases delayed until 6th April 2022.
- 7.3 Licences which rely on Random Number Generator (RNG) software – i.e. remote casino, bingo and virtual betting licences – pay an additional annual fee for any combination of these three licences, which since 2009 has been £2,500 or £5,000 depending on the number of activities licensed. These additional fees will be doubled, as will the additional annual fees for ‘host’ licences (casino games host, bingo games host and virtual betting host licences). This will better reflect the costs of regulating these types of licensee.
- 7.4 These Regulations will create additional fee categories for society lottery licences, with new higher fee bands for larger societies whose annual proceeds are £10m or more, following the increase in the per calendar year proceeds limit from £10m to £50m. There will also be additional fee categories and higher fees for the largest external lottery managers, to ensure the full and proportionate recovery of regulatory costs from this sector.
- 7.5 An individual who supplies or maintains one gaming machine may apply to the Commission for a single-machine supply and maintenance permit rather than an annual operators’ licence. The application fee for such a permit will increase by 60% in line with other application fees to allow the Commission to recover the cost of recording and processing these applications, which have not been increased since 2007.

- 7.6 These Regulations will also ensure that no variation fee is charged when an individual applies to change the head office address on an operating licence and that address is also the residential address of the operator. This would apply when an operator is a sole trader or is a general partnership of named individuals, and where the new head office address is also the residential address of the sole trader or one or more of the partners.
- 7.7 Without the increases set out in these Regulations, the Commission's income will not support the cost of existing regulation let alone the increased investment necessary to address both the new challenges it has identified and the improvements recommended by the National Audit Office and the Public Accounts Committee.
- 7.8 The Department for Digital, Culture, Media and Sport's aim in making these Regulations is to ensure that the Commission continues to recover its costs and is able to address these key new regulatory challenges. Changes to fees will allow the Commission to respond flexibly and quickly to new emerging challenges.
- 7.9 The most recent amendment to operators' fees took place in 2017. This saw a 10% reduction in the overall annual fee burden for the gambling industry, as the Commission's income from fees was in excess of operational costs at the time. However, an increase in fees is now required.
- 7.10 The Commission has explored efficiency savings and has already restructured but needs to give more resources to the highest risk areas and hire more specialist technical staff. Fee increases will provide resources to enable this, reducing the risk of consumers being exposed to gambling harm or unfair terms and conditions from a reduced capacity to regulate.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 The Department for Digital, Culture, Media and Sport held a consultation from 29th January 2021 to 26th March 2021 on proposals for changes to Commission fees relating to operating licences (application, annual and other fees) and single-machine supply and maintenance permits (application fees only). A total of 24 consultation responses were received from trade associations, licensed gambling operators, members of the public, academics and representatives of the House of Lords (Peers for Gambling Reform).
- 10.2 All 24 respondents to the consultation provided a view on the main question of whether annual fees should be increased in line with the proposals set out, in order to enable the Commission to meet the challenges it has identified. Operators and trade bodies tended to be opposed to increases whereas academics, Peers for Gambling Reform and members of the public were in support.
- 10.3 Some industry respondents said that fee increases should be delayed until the government's Review of the Act is completed. However, the Commission needs to continue regulating the industry while the Review is carried out, and a fees uplift is

needed for it to continue to regulate effectively and recover the costs it incurs in doing so. Others asked for more reassurance that there will not be cross-subsidy between the non-remote and remote sectors or within each sector, which we have provided in a full consultation response. The consultation response is published on <https://www.gov.uk/government/consultations/proposals-for-changes-to-gambling-commission-fees-from-1-october-2021>.

11. Guidance

- 11.1 Guidance to gambling operators on the new fees and changes to the fees structure will be made available on the Commission’s website.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is set out in the full Impact Assessment. This is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.
- 12.2 There is no, or no significant, impact on the public sector.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The Gambling Commission is the principal regulatory body overseeing gambling activities in Great Britain, and its policy is to recover the full cost of its regulatory functions. It would be inappropriate to treat small businesses differently in these circumstances, and the level at which these licence fees are set reflects the cost to the Commission of discharging those regulatory functions.
- 13.3 In 2017 the previous disproportionality in the Commission’s cost recovery from smaller operators was acknowledged by splitting up many of the fee categories into smaller bands, with lower fees payable by the smallest operators. The Commission incurs fixed costs associated with regulating the smallest operators and it is seeing pressures on its costs from all sizes of remote operator, not just the largest ones. There is therefore no scope to re-band the smallest fee categories even further.

14. Monitoring and review

- 14.1 These Regulations do not include a statutory review clause. The duty to review regulatory provisions in secondary legislation, set out in sections 28-32 of the Small Business, Enterprise and Employment Act 2015, does not apply to these Regulations. This is because by section 28(3)(a)(i) of that Act, the duty to review does not apply where a power to make secondary legislation is used to “make or amend...provision imposing, abolishing or varying any tax, duty, levy or other charge”, as is the case with these Regulations.
- 14.2 The Commission will continue to monitor and review its fee income and expenditure on an annual basis, to ensure that the levels of fees payable by operators as set out in these Regulations remain appropriate and proportionate to its regulatory costs.

15. Contact

- 15.1 Beth Hiles at the Department for Digital, Culture, Media and Sport (telephone: 020 7211 6636 or email: beth.hiles@dcms.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Julie Carney, Deputy Director for Gambling and Lotteries, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon John Whittingdale OBE MP at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.