

**EXPLANATORY MEMORANDUM TO**  
**THE GAMBLING ACT 2005 (COMMENCEMENT No. 6 AND TRANSITIONAL**  
**PROVISIONS) ORDER 2006**

**2006 No. 3272 (C.119)**

**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 The Order provides for the commencement of the remaining provisions of the Gambling Act 2005 which have not been commenced. Its effect is to provide for gambling to be regulated under the Gambling Act 2005 from 1st September 2007. It also contains detailed transitional provisions which ensure that those with authorisations under the existing gambling legislation are able to continue operating without interruption from 1 September 2007. The transitional provisions also give effect to commitments made by the Government for converting certain permissions under the existing legislation into equivalent permissions under the 2005 Act.

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

3.1 None.

**4. Legislative Background**

4.1 The Gambling Act 2005 ("the 2005 Act") gives effect to the Government's proposals for reform of the law on gambling. The 2005 Act contains a new regulatory system to govern the provision of all gambling in Great Britain, other than the National Lottery and spread betting. It effectively replaces and updates regulation of gambling under the Betting, Gaming and Lotteries Act 1963 ("the 1963 Act"), the Gaming Act 1968 ("the 1968 Act") and the Lotteries and Amusements Act 1976 ("the 1976 Act").

4.2 Two comprehensive offences are established: providing facilities for gambling or using premises for gambling, in either case without the appropriate permission. Such permission may come from a licence, permit, or registration granted pursuant to the 2005 Act or from an exemption given by the 2005 Act.

4.3 The 2005 Act introduces a unified regulator for gambling in Great Britain, the Gambling Commission ("the Commission"), and a new licensing regime for most forms of commercial gambling. A person providing facilities for gambling will require an operating licence from the Commission. Except in the case of small-scale operators (as defined in the 2005 Act), it will be a condition of each operating licence that at least one person occupying a specified management office holds a personal licence issued by the Commission. Where premises are used to provide commercial gambling, a premises licence must be obtained from the licensing authority (which is the local authority) for the area in which the premises are situated. Special arrangements exist for the licensing

of casinos. Under the 2005 Act limits are placed on the numbers of each category of casino premises licence which can be issued.

4.4 Other forms of authorisation are provided for under the 2005 Act in those cases where the provision of facilities for gambling does not require an operating licence or a premises licence. The 2005 Act requires a club gaming permit to be held where a members' club or miners' welfare institute provides facilities for gaming, or a club machine permit where gaming machines are made available. There is also provision in the 2005 Act for gaming machines to be made available in alcohol licensed premises. Where more than 2 gaming machines are made available a licensed premises gaming machine permit is required. In some cases, persons promoting a lottery require a lottery operating licence from the Commission. However, there is provision for the registration of non-commercial societies which promote lotteries whose proceeds do not exceed £20,000.

4.5 In general, the permissions under the 2005 Act replace permissions previously required under the 1963, 1968 and 1976 Acts, although in many cases the nature of the permission is quite different.

4.6 The Government has previously announced that it intended to bring into force the 2005 Act so that the regulation of gambling under that Act would begin on 1st September 2007. This Order gives effect to that commitment in providing for the 2005 Act to come into force for all purposes (except a few limited purposes) on 1st September 2005.

4.7 During the passage of the 2005 Act as a Bill through Parliament, the Government made it clear that transitional provisions would be made in connection with the Act's commencement which ensured that existing operators were able to continue operating despite the move to regulation under the 2005 Act. The Government also made the commitment that operators with a premises based permission under the existing legislation would be able to get that permission converted into the equivalent permission under the 2005 Act. The Government made it clear however that this commitment did not extend to operating licences under the 2005 Act. Existing operators, in the same way as everyone else, must establish their suitability to be granted an operating licence. The Order however contains transitional provisions which ensure that existing operators are able to continue operating on and after 1st September 2007 if their application for an operating licence has not been determined by that date.

4.8 The commitments that the Government made during the passage of the Bill were summarised by Lord McIntosh in House of Lords on 10 March 2005 (Col 922-923).

4.8 In order to facilitate the smooth transition from regulation under the existing legislation to regulation under the 2005 Act on 1 September 2007, the order makes the following provision:

- The Order brings into force on 1st January 2007 the provisions of the 2005 Act required to enable advance applications to be made to the Gambling Commission for operating and personal licences. The Order specifies periods within which such applications are to be determined where made by existing operators, and provides for an interim licence to be treated as having been issued where the application is not determined within the relevant period.

- The Order brings into force on 30th April 2007 the provisions of the 2005 Act required to enable advance applications to be made to licensing authorities for premises licences and certain permits (family entertainment gaming machine permits and prize gaming permits). Again the Order contains provisions which ensure that, where an application is made by an existing premises operator, the operator is able to continue operating on and after 1 September 2007 if the relevant licence or permit has not been issued by that date.
- In certain cases, the Order provides for the permission under the existing legislation to continue in force on and after 1st September 2007 until a specified date (generally the date on which the permission would have expired under the existing legislation). For example, this approach is adopted for gaming machine permits under section 34 of the 1968 Act in respect of alcohol licensed premises. In other cases (for example members' club registrations under the 1968 Act), the permission does not continue in force on and after 1 September 2007 but the operator is treated as having the equivalent permission under the 2005 Act until a specified date (again generally the date of expiry of the old permission). Provisions of the 2005 Act are brought into force on 1st June 2007 to ensure that advance applications can be made for club machine and gaming permits and licensed premises gaming machine permits. This is necessary to ensure that, where the date of expiry of the permission under the 1968 Act is shortly after 1 September 2007, it is possible for the equivalent permission under the 2005 Act to be granted to have effect from that date.

4.9 The Order also gives effect to the commitment made by the Government to convert premises based permissions under the existing legislation into the equivalent permission under the 2005 Act. An operator is required to make an application for the equivalent permission under the 2005 Act, but provided he holds the relevant permission under the existing legislation, the licensing authority is required to grant the application and issue him with the relevant permission.

4.10 Special provision applies in the case of converted casino premises licences. The Act provides for new types of casino (regional, large and small). The nature of the gambling facilities which may be provided at such casinos is different and a far greater number of high prize gaming machines may be made available at them. For this reason, the Government decided to restrict the number of such casinos which initially could be established. In accordance with its general commitment to convert permissions under the existing legislation, the Government made it clear that this restriction would not affect casinos established under the 1968 Act; but that such casinos would be restricted in the facilities for gambling they would be able to provide. In particular, the Government made it clear that the transitional arrangements would restrict the number of gaming machines casinos operating under a converted casino premises licence could provide to a number which was broadly equivalent to the entitlement under the 1968 Act. The transitional provisions in the Order give effect to these commitments made by the Government.

4.11 These commitments were made in the Government's national policy statement on casinos published on 16 December 2004, and summarised in a statement made by Richard Caborn to Standing Committee B the same day (Hansard Standing Committee B Hansard 16 December 2004 col 618 – 622).

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 The 2005 Act introduces a new system of regulation for gambling in this country, which will replace the current system of regulation set out in the 1963 Act, the 1968 Act and the 1976 Act.

7.2 The main policy intentions behind this reform of gambling regulations were:

- to place social responsibility, and in particular the protection of children and other vulnerable people, at the heart of the regulation of gambling in this country for the first time;
- to modernise the existing system of regulation to take account of new technological developments, not least the development of remote gambling;
- to establish a strong new unified regulator for gambling in the Gambling Commission; and,
- to involve people and their local elected representatives more closely in the regulation of gambling premises in their communities.

7.3 The Government announced previously that it intended to bring into force the 2005 Act so that the regulation of gambling under the Act would begin on 1st September 2007. This Order gives effect to that commitment, and puts in place the remaining transitional provisions required to implement the Act.

7.4 The underlying objective has been to implement swiftly and effectively this new system of regulation, and through that deliver the licensing objectives of the new Act. In crafting the transitional arrangements, the Government has sought to ensure that, as far as possible:

- the transitional arrangements will be user-friendly for operators and regulators alike;
- operators will have clear understanding of what they have to do and when to obtain their new permissions under the 2005 Act;
- the burden on business is kept to a minimum, consistent with the need to ensure effective regulation from 1st September 2007;
- new operators will continue to be able to set up in business during the transition period;
- the workload falling on the Gambling Commission and licensing authorities is managed, and peaks and troughs avoided, particularly at the outset (and so minimise delays for licence applicants);
- it makes good on commitments made during the passage of the Gambling Bill that operators with premises-based permissions will qualify for grandfather

rights, and that existing operators will be able to operate without interruption during the transitional period.

7.5 To that end, the key building blocks of the transitional arrangements are:

- holders of existing premises based permissions will qualify for a “grandfathered” premises licence under the new Act, but all operators will have to apply for an operating licence. The government did not consider that anyone, whether an existing operator or not, should be exempt from the requirement to demonstrate their suitability to hold an operating licence under the new Act;
- holders of premises based permissions will be required to make advance applications to convert their existing authorisations into the equivalent permissions under the 2005 Act. Existing operators have been subject to different levels of scrutiny under the old legislation, and this measure was felt necessary to ensure a level playing field and, in return for the new rights granted to operators by the legislation, to ensure buy-in to the new responsibilities placed on them by the 2005 Act;
- different transitional arrangements will apply for gambling in contexts where the risks are perceived to be lower – for example, lotteries.

7.6 The reform of the gambling industry as a whole has attracted considerable Parliamentary and media scrutiny. The measures contained in this order are more technical, and have not therefore attracted the same degree of attention outside the industry. Nevertheless they are central to the smooth implementation of the 2005 Act, and the 44 responses we received to the consultation exercise reflected this.

7.7 The Department published a formal consultation paper on the proposals in February 2006, and a first draft of the Order in March 2006. The formal consultation period ended on 3 June 2006. No respondents opposed the broad approach proposed in the consultation document. Many commented that the proposals were sensible, well presented, and appeared to have taken on board lessons from the implementation of the Licensing Act 2003. Many respondents restricted themselves to seeking clarification on points of detail, which we have taken on board in finalising the Order and accompanying guidance.

7.8 An analysis of the main recurring issues to emerge from the consultation exercise is included in the RIA, and this highlights a number of areas where adjustments were made to the final policy to reflect comments made by the industry and by licensing authorities. Perhaps the key change made since the consultation paper was to put back the advance application period for premises licences.

7.9 We have produced extensive guidance for the industry on the transitional arrangements, which will be published alongside the Order. This includes step-by-step guidance on what operators will need to do and when to obtain their new permissions under the 2005 Act. The guidance also signposts operators and licensing authorities to where they can find more detailed guidance on application procedures and application forms. We are working with LACORS and a number of its members to prepare further guidance and a training package for licensing authorities as we move towards April 2007 when they will begin to accept applications under the 2005 Act for the first time.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 Licensing authorities will assume a number of new responsibilities as a result of the commencement of the Gambling Act 2005. These include responsibility for issuing premises licenses to casinos, bingo halls and betting shops, and the issuing of certain permits for gaming for the first time. We are consulting separately on the fees associated with these permissions. The fees are being calculated on a cost-recovery basis, which will mean that over time the introduction of these new responsibilities will be cost neutral for licensing authorities.

## **9. Contact**

David Fitzgerald at the Department for Culture, Media and Sport (Tel: 020 7211 6479 or e-mail: david.fitzgerald@culture.gsi.gov.uk) can answer any queries regarding the instrument.

## **Department for Culture, Media and Sport**

### **Regulatory Impact Assessment**

#### **1. Title of proposal**

The Gambling Act 2005 (Commencement No.6 and Transitional Provisions) Order 2006

#### **2. Purpose and intended effect**

##### **Objectives**

The Order:

- provides for the commencement of the remaining provisions of the Gambling Act 2005 which have not been commenced. Its effect will mean that gambling will be regulated by the 2005 Act from 1 September 2007;
- contains detailed transitional arrangements which will ensure that operators who currently have authorisations under the existing legislation will continue to be able to operate without interruption after 1 September 2007;
- gives effect to commitments made by the Government during the passage of the Gambling Bill to convert certain existing permissions under the existing legislation into equivalent permissions under the new 2005 Act.

##### **Background**

The Gambling Act 2005 introduces a new system of regulation for gambling in this country, which will replace the current system or regulation set out in the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.

The key building blocks of the new system of regulation are:

- anyone providing facilities for gambling, including remote gambling, will require an operating licence from the Gambling Commission;
- key individuals in gambling businesses will also require a personal licence issued by the Gambling Commission;
- anyone using a premises to provide commercial gambling, will require a premises licence from their licensing authority (which is the local authority in England and Wales and licensing boards in Scotland);
- special arrangements exist for the licensing of casinos, with strict limits placed on the numbers of each category of casino premises licence (one regional, eight large and eight small) which can be issued.

The 2005 Act also provides for the provision of gambling facilities in a number of other cases, where the full requirements for an operating or a premises licence will not

apply. Instead, in these cases licensing authorities will operate a system of permits and registrations. These include:

- members' clubs or miners' welfare institutes, which will be able to obtain a club gaming permit to provide facilities for gaming, or a club machine permit, to make gaming machines available;
- pubs and other alcohol licensed premises, which will have an automatic entitlement to offer two Category C or D gaming machines, and which may apply for a permit to offer more;
- small society lotteries with proceeds of less than £20,000, which will have to register with their licensing authority.

The Government announced previously that it intended to bring into force the 2005 Act so that the regulation of gambling under that Act would begin on 1 September 2007. This Order gives effect to that commitment, and puts in place the remaining transitional provisions required to implement the Act.

Broadly speaking the following transitional arrangements would apply:

- **Casinos/Betting (including tracks)/Bingo/Arcades** - Existing operators will need to make advance applications for new operating, personal and premises licences under the 2005 Act between January and July 2007.
- **Pubs/Clubs/Gaming machine suppliers/Society lotteries** - Existing permissions will either continue to have effect or be automatically converted into permissions which will enable them to continue to operate on and after 1 September 2007. Operators will have to comply with any new licence conditions or codes of practice from that date, but will only need to apply for a licence or permit under the new Act when their existing permission expires.
- **Remote gambling operators** - All remote operators (with the exception of society lotteries) will have to make advance applications for operating licences between January and April 2007.
- **Continuation rights** - Existing operators will continue to be able to operate without interruption after 1 September 2007, even if their advance applications under the new Act have not been determined by that date.

A number of special arrangements will apply to help reduce the burden on existing operators seeking to convert their existing permissions into new permissions under the 2005 Act:

- all existing holders of premises-based permissions who qualify for a premises licence under the new Act will be able to opt for a fast track application procedure with their licensing authority, which will attract a much lower application fee and will involve lower administration costs;



- casino and bingo club managers and employees who already hold personal certificates under the 1968 Act will continue to be able to rely on these certificates, and will not need to apply for personal licences under the new Act until 2009.

This order builds on two earlier orders:

- (i) The Gambling Act 2005 (Transitional Provisions) (No.2) Order 2006 [2006 No. 1758] laid on 5 July 2006, which dealt with two earlier aspects of the transitional arrangements:
  - the automatic grant or renewal of certain existing permissions (for tracks, casinos, bingo halls, arcades, Section 16 permits) which expire on or after 1 September 2006;
  - the prevention of any further applications under the existing law for the grant or renewal of a permit authorising gaming machines in chips shops, taxi offices and similar premises from 1 August 2006.
- (ii) The Gambling Act 2005 (Transitional Provisions) Order 2006 [2006 No.1038] laid on 4 April 2006, which prevented any further applications under the Gaming Act 1968 for certificates of consent in respect of new casinos after 28 April 2006.

#### **Rationale for government intervention**

The underlying rationale has been to implement swiftly and effectively the new system of regulation, and through that deliver the licensing objectives of the new Act:

- preventing gambling from being a source of crime or disorder;
- ensuring that gambling is conducted in a fair and open way;
- protecting children and other vulnerable people from being harmed or exploited by gambling.

In crafting the Order, the Government has sought to ensure that as far as possible:

- the transitional arrangements will be user-friendly for operators and regulators alike;
- operators will have clear understanding of what they have to do and when to obtain their new permissions under the 2005 Act;
- the burden on business is kept to a minimum, consistent with the need to ensure effective regulation from 1 September 2007;
- new operators will continue to be able to set up in business during the transition period;
- the workload falling on the Gambling Commission and licensing authorities is managed, and peaks and troughs avoided, particularly at the outset (and so minimise delays for licence applicants);
- it makes good on commitments made during the passage of the Gambling Bill that operators with premises-based

permissions will qualify for grandfather rights, and that the arrangements would enable existing operators to operate without interruption during the transitional period.

### **3. Consultation**

#### **Within government**

The Department cleared its proposals with the Treasury, DCA, Scottish Executive and Gambling Commission prior to publishing the formal consultation paper in February 2006.

#### **Public consultation**

The Department published a formal consultation paper on the transitional arrangements for the implementation of the Gambling Act in February 2006, and a first draft of the Order in March 2006. The formal consultation period ended on 3 June 2006.

We received some 44 response to the consultation exercise, which we have analysed carefully. None objected to the broad approach proposed in the consultation document. Many respondents commented that the proposals were sensible, well presented and appeared to have taken on board lessons from the implementation of the Licensing Act 2003. Many respondents restricted themselves to seeking clarification on points of detail, which we have taken on board in finalising the draft Order and accompanying guidance.

There were, however, a number of areas where we adapted the approach that we had proposed in the consultation document in response to the comments received from industry and licensing authorities. The RIA that accompanied the earlier transitional order (The Gambling Act 2005 (Transitional Provisions) (No.2) Order 2006 (No. 1758)) listed a number of these points, and there are a number of other points worth noting in the context of the current Order:

#### (i) Timing of advance application period for premises licences

LACORS and a number of individual local authorities felt strongly that one of the key lessons from the implementation of the Licensing Act 2003 was that licensing authorities would need sufficient time to prepare between the finalisation of regulations relating to the application procedures for premises licences, and the date on which they would be expected to receive applications for the first time.

Following discussion with LACORS, Ministers decided to put back the beginning of the advance application period for premises licences by three months to 30 April 2007. While some local authorities remained concerned that this would put pressure on them to turn round premises licence applications by 1 September 2007, the Government has emphasised that:

- the fast track procedure for grandfathered premises licence applications will mean that most applications can be dealt with quickly;
- the scale of the task is very much smaller than that involved in the implementation of the Licensing Act - around 12,000 gambling premises nationally will be making

advance applications compared to over 200,000 premises under the Licensing Act;

- there is a safety valve built into the system which means that, if for whatever reason a licensing authority is unable to determine an application by 1 September 2007, existing operators will continue to be able to operate until their application is determined.

(ii) Slip rule

Again building on the experience of the Licensing Act 2003, LACORS and industry stakeholders emphasised the importance of including what was termed a "slip rule" in the transitional arrangements.

In response to this, we have included a mechanism which will mean that licensing authorities will not automatically refuse an application for a premises licence if an error is made in the application, or if an application is incomplete.

In such circumstances, the licensing authority will notify applicants of any error or omission. If the application qualifies for continuation rights, the licensing authority will specify a period of not less than 14 days for rectifying the error or omission. If the operator fails to do so within this period, the licensing authority may refuse the application and the continuation rights will lapse.

(iii) Grandfather rights and continuation rights

A number of respondents sought clarification on what grandfather rights would mean in practice, and suggested that the difference between grandfather rights and continuation rights might need explaining more clearly.

In response to these concerns, the Department wrote to members of its industry liaison group, premises licence working group and community liaison group, as well as other stakeholders, on 19 May to explain the arrangements in more detail. The responses to this further letter were included in the analysis of responses to the wider consultation.

The key points are:

- Continuation rights - this is a mechanism to ensure that, where existing operators have made advance applications by the dates stipulated to convert their existing permissions into the equivalent permission under the new Act, they will continue to be able to operate without interruption after 1 September 2007, even if their application under the new Act has not yet been determined.
- Grandfather rights - the government pledged during the passage of the Gambling Bill that existing holders of premises based permissions would be entitled to obtain the equivalent premises licence under the new Act.

A number of respondents asked why grandfather rights did not extend to the operating licences under the new Act. The government had made it clear during the passage of the Bill that existing operators, in the same way as everyone else, must establish their suitability to be granted an operating licence under the new Act.

(iv) Lotteries which began before 1 September 2007

While for the most part the requirements are going to be largely the same under old and new legislation, the Lotteries Council and Hospice Lotteries Association pointed out that some societies may be running lotteries prior to 1 September 2007, in line with the requirements of the 1976 Act, but which will not be completed until after the new Act comes into force. Examples of this include a person who has paid in advance for 52 weeks' entry in a weekly lottery, or a society selling scratch cards which may have been printed some time ago. They suggested allowing for a two year period after 1 September 2007 during which such lotteries could be completed.

In response to this, we adjusted the transitional arrangements to provide that where a ticket or chance in a lottery was sold before 1 September 2007, similar tickets or chances for the same lottery could continue to be sold after that date, provided the lottery is completed by 1 March 2009.

This will give all lotteries 18 months after the formal implementation date to comply with the new arrangements. As lotteries are aware of this issue now, and what the requirements under the new Act will be, we consider that this will be sufficient time to ensure compliance.

#### **4. Options**

We considered three high level options in developing our approach to the transitional arrangements:

Option 1 - Roll over all existing permissions so that no operators would be required to make advance applications. Operators would be required to obtain their permissions under the new Act at the point at which their existing permissions expire. This is the do minimum option.

This option was attractive in that it would potentially help spread out the workload that the Gambling Commission and licensing authorities would have to deal with, particularly during the transitional period. Businesses would naturally look to apply for their permission under the new Act when their existing permission expired, and there would be less chance of them missing an advance application period.

On the other hand, we also considered that having two systems of regulation running alongside each other could lead to confusion for operators and regulators alike.

Furthermore, the new Act contains some important new safeguards for consumers, and for young people and other vulnerable people in particular. Many gambling businesses already take the

question of social responsibility very seriously. However, there was a risk that simply rolling over all permissions would perpetuate a mistaken sense among some businesses that they could simply carry on as they always had done under the old legislation. Without going through an application process there was risk that businesses might not develop a clear understanding of, and buy into, the important responsibilities placed on them by Parliament through the Act.

Option 2 - Require all operators to make advance applications for their new permissions under the new Act.

The main advantage of this option would be that it would provide a clean break from the old system of regulation to the new. Going through the application process should encourage all operators to develop a thorough understanding of their new responsibilities from day one. It would also mean that, from the outset, the Gambling Commission would have a very clear picture of the extent and nature of the sector, and licensing authorities would have a clearer picture of all the gambling facilities being offered in their area.

On the other hand, such an approach would place a significant additional burden on licensing authorities in particular at a time when they will still be getting to grips with their new responsibilities under the Act. For example, it would involve dealing with up to 91,000 additional advance applications from pubs and clubs (or 64,200 additional applications in the first year of operation of the Act), over and above what is envisaged under Option 3 below. All these premises have very recently gone through a separate licensing process as a result of the transition to the Licensing Act 2003, and they have had to demonstrate their fitness to operate in that context.

There is a risk that this additional burden could in turn lead to increased uncertainty for business and a reduction in confidence in the new system of regulation in the run up to its formal implementation on 1 September 2007, if the Gambling Commission and licensing authorities are unable to process all applications in time.

Option 3 - Require most businesses requiring operating and/or premises licences to make advance applications. Allow others to roll over their existing permissions.

The main advantage of this option is that it allows a more pragmatic, risk-based approach to the transitional arrangements that minimises the burden on operators and regulators, without compromising the licensing objectives.

In those areas which are generally considered to pose a greater regulatory risk, where the full requirements for operating, personal and premises licences will apply, an advance application period will mean that all operators will be brought fully under the new system of regulation from day one. It will mean that the Gambling Commission will get a clear picture of the industry, including those sectors of it (arcades and betting, plus remote gambling) which it has not previously been responsible for regulating. Licensing authorities will also get

a clear picture of all the gambling premises in their area, some of which (betting shops, bingo halls, casinos) they will be responsible for regulating for the first time.

It also enables the Gambling Commission to spread out its work in certain areas (like society lotteries), which are already well known to the Commission and present a lower regulatory risk. And it significantly reduces the workload falling to licensing authorities during the transitional period. Many small businesses, which are already known to licensing authorities either through their responsibilities under the existing gambling legislation, or under the Licensing Act 2003 (pubs, clubs, small society lotteries) would not need to apply for their 2005 Act permissions immediately.

This option would mean that in some areas we would still have two system of regulation running alongside each other, and there is some risk that, where permissions were being rolled over, there would not be the same 'buy in' to, or understanding of, the requirements of the new Act. However, we considered that these risks could be mitigated by:

- providing for any permissions under the old legislation which had effect from 1 September 2007 to be treated in the same way as equivalent permissions under the 2005 Act; and
- giving clear guidance to industry on what the changes would mean and ensuing regular stakeholder contact and an effective communications strategy in the run up to 1 September 2007 and beyond.

Accordingly, Option 3 is the one that we propose to pursue.

## **5. Costs and benefits**

### Sectors and groups affected

The main existing businesses to be affected will be:

- around 170 casinos;
- 700 bingo halls;
- 2,000 arcades;
- 9,000 betting shops, race tracks and other operators with betting permissions;
- 660 society lotteries registered with the Gambling Commission, along with an unknown number of small society lotteries registered with their local authority;
- 15 external lottery managers;
- 580 gaming machine supply and repair businesses;
- up to 26,000 members' clubs and 65,000 pubs which have various entitlements to offer gaming and gaming machines;
- an unknown (but generally considered to be small) number of premises with prize gaming permits.

### Summary of costs and benefits

The costs and benefits of the three options are summarised in the table. Increased benefits are indicated by a plus sign, and reduced costs are indicated by a minus sign.

|   | Option 1 | Option 2 | Option 3 |
|---|----------|----------|----------|
| <b>Benefits</b>   |          |          |          |
| Reduced risk of gambling harms  | +        | ++       | ++       |
| Cost savings for industry through fast track application                            | +        | +        | +        |
| Cost savings for casino and bingo industries through rolling over personal licences | +        | +        | +        |
| Cost savings for industry due to one-off application fees                           | +        | +        | +        |

| <b>Costs</b>   |   |   |   |
|--|---|---|---|
| Costs to industry of making applications                                       | + | + | + |
| Costs to licensing authorities of providing information to Gambling Commission | + | + | + |
| Uncertainty caused by two systems of regulation running alongside each other   | + | - | - |
| Administrative burden falling to regulators in transitional period             | - | + | - |

Many of the costs and benefits of this measure are difficult to quantify in cash terms at this stage. These costs are likely to depend to a large degree on the secondary legislation relating to application procedures and fees, which still needs to be approved by Parliament. The measures which will establish the application procedures and fees will, of course, be subjected to their own regulatory impact assessments.

However, whatever final costs are identified, this will not materially affect the options under consideration here - the administrative costs associated with making applications under the new Act, and the fees that such applications attract, are going to be the same whichever of the three options considered here are adopted.

#### Benefits

The main benefits are the social and personal costs which are averted by ensuring that the gambling industry is comprehensively regulated according to the risks it poses. These cannot accurately be measured in terms of money. Nevertheless, they are real and form the main justification for the legislation. All three options will deliver these benefits, however Options 2 and 3 are likely to deliver them to a greater degree than the first option.

It is difficult to choose between the three options in terms of the other benefits.

Industry will benefit from the prompt implementation of the many deregulatory measures included in the Gambling Act 2005. The fast track application procedure will reduce the administrative and legal costs to the industry. Casino and bingo operators will benefit from existing personal certificates remaining valid until 31 December 2009.

Spreading out the administrative burden for the Gambling Commission and licensing authorities in the way proposed will significantly reduce the level of work they are faced with during the transition period.



We estimate that on average each licensing authority will have to deal with around 30 advance applications from premises-based operators in the period between 30 April and 31 July 2007. This compares to an average of 475 advance applications per licensing authority under the Licensing Act 2003 i.e. just over 7% by average volume. Authorities will also have to deal with on average of 67 permit applications from pubs and clubs over the first year of the operation of the new Act. If all pubs and clubs were required to make advance applications, each licensing authority would be faced with an average of up to 227 such applications in four months during 2007.

This in turn should increase the certainty and confidence of businesses in the run up to implementation. However, again the benefits of this increased confidence are difficult to quantify precisely, but may for example result in a greater preparedness among operators to invest in new equipment or in improvements to their premises.

### Costs

The uncertainty which would attend the mixed system of regulation inherent in option 1 and which would be reduced by options 2 and 3 cannot be quantified with any accuracy. This is because its presence is likely to be indicated by business opportunities which are not taken up or technical innovations which are not made. Hence, its impact will only be felt after some time.

Option 2 is likely to involve higher administration costs than the other two because it will impose a major (albeit relatively short-lived) burden on the regulatory system that will have to be met by extra, and therefore expensive, temporary resources. We are currently consulting separately on the fees that will apply during the transitional period and beyond. These fees will be set on a cost recovery basis, and the provision of regulatory services by the Gambling Commission and licensing authorities should therefore be cost neutral. However, any higher costs associated with the transitional period would have to be passed on to the industry.

The other costs are common to all three options.

Businesses will incur some administrative costs as a result of having to apply for their new permissions under the 2005 Act. These costs will be mitigated by the fast track premises licence application procedure, and by the reduced application fee we are currently consulting on. It is also important to note that, as a result of The Gambling Act 2005 (Transitional Provisions) (No. 2) Order 2006 (No.1758) which was laid in July 2006, many existing operators will already have benefited from an automatic extension of their existing permission in the run up to 1 September 2007. We estimate that this measure will have saved businesses in the region of £3m in fees and associated administrative costs under the existing legislation.

Finally, operating, premises and personal licences and certain permits under the new Act will all be of unlimited duration; hence the application will represent a one-off cost. This was not the case before for most permissions under the old

legislation, including bingo and casinos licences (which required annual renewal) and betting and arcade permissions (which required renewal every three years).

#### **6. Small firms impact test**

There are a significant number of small businesses that are likely to be affected by these changes right across the industry, but especially in the arcade and betting, betting and pub/club sectors. The measure will also affect small local lotteries with proceeds of up to £20,000 registered with their licensing authority.

Small businesses will benefit from all the measures we have taken to streamline application procedures mentioned elsewhere in this paper.

Many small businesses will also benefit from the small-scale operator exemption included in the Act, which will mean that small businesses will be fully exempt from the requirements for personal licences. We are currently finalising regulations which will govern the operation of this exemption.

We have consulted the lead industry bodies which represent small (as well as large) businesses on the transitional arrangements, and they had no adverse comments on the likely impact of the transitional arrangements on small businesses in particular.

#### **7. Competition assessment**

The Order performs two broad functions:

- to commence the remaining provisions of the Gambling Act 2005; and,
- to put in place appropriate transitional arrangements to move from the existing system of regulation to the new system of regulation included in the new Act.

The possible impacts on competition of the two are assessed separately.

#### **Commencement**

The impact on competition of commencing the Gambling Act 2005 is the same as the impact of the Act itself. That was assessed as part of the RIA which accompanied the Royal Assent. The Competition Assessment that was part of that RIA concluded that:

*"The Act will remove restrictions and statutory requirements for businesses that may currently act as impediments to entry. Whilst the Act will create some additional compliance costs, these are not expected to have a significant impact on competition. The Act allows access to some business opportunities for the first time (e.g. operating unlimited prize gambling machines). However, access to these opportunities is highly restricted to the extent that it may lead to monopoly profits being earned from them."*

The commencement elements of the Order are unlikely to alter this general conclusion.

### **Transitional arrangements**

The transitional arrangements have been developed to ensure that competition in the gambling industry is not eroded as the Gambling Act 2005 is commenced on 1 September 2007.

The draft Order includes a number of special provisions to ensure that existing businesses can continue to operate without interruption during the transitional period. This will ensure that industry will remain subject to competition throughout the transitional period, and this competition will not be eroded as a result of the particular transitional arrangements we have proposed.

The proposal also makes special provisions so that new operators will not be disadvantaged, for example by ensuring that new operators will be subject to the same operating conditions as existing operators after 1 September 2007. The Order also includes special provisions to ensure that new operators will continue to be able to apply to establish themselves in business throughout the transitional period.

It is important to note, however, that for most premises based permission, no further applications under the existing legislation will be permitted after 27 April 2007. Operators wishing a first permission will need to apply under the new legislation and will not be able to operate in reliance on any permission granted under the new Act until 1 September 2007. This short gap was considered necessary to reduce the potential for overlap between the two systems of regulation, and is unlikely to have a major impact on competition across the industry as a whole.

The transitional arrangements we have proposed will not:

- raise significantly the costs of some suppliers (like new entrants) compared to others;
- limit the ability of suppliers to compete; or
- reduce incentives for vigorous competition.

While compliance with some aspects of the Gambling Act may increase costs to industry, and the Act also includes a number of deregulatory measures designed to increase competition in the industry, the draft Order itself imposes no specific costs.

Where permissions under the old legislation are being rolled over, the Order applies the relevant rules relating to the equivalent permission under the new Act. This will ensure that all operators, both new and existing, will be treated in the same way, so as to ensure fair competition. The Order will not impose any specific restrictions on operators during the transitional period.

### **8. Enforcement, sanctions and monitoring**

The relevant authorities (Gambling Commission or licensing authorities depending on the permission) will continue to undertake their monitoring and enforcement functions as now until 1 September 2007.

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 with a view to avoiding any duplication of effort or burden on businesses.

**9. Implementation and delivery plan**

DCMS has produced extensive guidance on the transitional arrangements which it will circulate to all licensing magistrates and licensing authorities. The Department will also use its normal industry and licensing authority networks to promulgate the guidance as widely as possible.

The guidance will be supplemented by further guidance issued by the Gambling Commission on operating and personal licence application procedures.

Information on premises licence applications and procedures will be available from licensing authorities, the Gambling Commission and DCMS in due course. DCMS is working closely with licensing authorities on a training package and other guidance measures to prepare councillors and licensing officers for their new responsibilities.

**10. Post-implementation review**

We will monitor how the transitional arrangements are working in practice through three main formal mechanisms: the DCMS Industry Liaison Group; the DCMS Premises Licence Working Group; and, the LACORS Gambling Reform Policy Forum. These fora, which include key representatives from industry and licensing authorities, will also be involved in debating and disseminating any further guidance or remedial measures that may prove necessary as we move forward.

**11. Summary and recommendation**

| Option   | Benefits  | Costs  |
|--|---|--|
| <p><b>1 Roll over all existing permissions</b></p> | <ul style="list-style-type: none"> <li>• Spreads workload for Gambling Commission and licensing authorities over longer period</li> </ul> | <ul style="list-style-type: none"> <li>• Potential for confusion with two sets of regulation running alongside each other</li> <li>• Potential for reduced understanding of, an buy in to, new responsibilities placed on business by the Act</li> </ul> |
| <p><b>2 Require all existing operators</b></p>     | <ul style="list-style-type: none"> <li>• Clean break from old system</li> </ul>   | <ul style="list-style-type: none"> <li>• Would significantly</li> </ul>  |

|  |  |  |
|--|--|--|
| <p><b>to make advance applications</b></p>                                     | <p>of regulation</p> <ul style="list-style-type: none"> <li>• All operators would have to buy in to new system of regulation from day one</li> </ul>   | <p>increase administrative burdens on Gambling Commission and licensing authorities during the transition period, with consequent potential for increased uncertainty for business in the run up to 1 September 2007</p> |
| <p><b>3 Mixed approach for different sections of the gambling industry</b></p> | <ul style="list-style-type: none"> <li>• Allows a more pragmatic, risk-based approach to transition</li> <li>• Reduces initial burdens on Gambling Commission and licensing authorities to manageable levels</li> <li>• Provides greater certainty for industry</li> </ul> | <ul style="list-style-type: none"> <li>• Still brings with it potential for disadvantages of both the other options, but these risks can be mitigated through an effective communications strategy</li> </ul>            |

For the reasons explained above, we have recommended that we proceed on the basis of Option 3.

**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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