

EXPLANATORY MEMORANDUM TO

THE GAMBLING ACT 2005 (INCIDENTAL NON-COMMERCIAL LOTTERIES) REGULATIONS 2007 - 2007 No. 2040

THE GAMBLING ACT 2005 (NON-COMMERCIAL EQUAL-CHANCE GAMING) REGULATIONS 2007 - 2007 No. 2041

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

These two sets of Regulations prescribe, respectively:

(1) the maximum sums that may be deducted from the proceeds of an incidental non-commercial lottery in respect of-

- the cost of prizes;
- the costs incurred in organising the lottery.

(2) the limits on stakes, prizes, participation fees and any other amounts paid in connection with equal chance non-commercial gaming.

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

None

4. Legislative Background

4.1 These regulations are necessary as part of the implementation of the Gambling Act 2005(the Act). They are the first use of these powers.

4.2 The Act establishes a new system for the regulation of all gambling in Great Britain, other than the National Lottery and spread betting. It repeals the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. The Act introduces a new regulator for gambling, the Gambling Commission, and a new licensing and permit regime for commercial gambling. In addition the Act makes provision for gambling which is undertaken on a non-commercial basis.

4.3 The Act's provisions are underpinned by the three licensing objectives:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- ensuring that gambling is conducted in a fair and open way; and
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

4.4 Part 14 of the Act provides authorisations for gambling to take place on non-commercial terms without the need to obtain a premises or operating licence. These authorisations are contained on the face of the Act subject to specified conditions. The Secretary of State has powers to make regulations prescribing a range of monetary limits on stakes, participation fees, prizes and costs in respect of non-commercial gaming (i.e. gaming which takes place at a non-commercial event). An event is non-commercial where none of the proceeds from the event (whether by way of fees for entrance or for participation, by way of sponsorship, by way of commission from traders or otherwise) are appropriated for the purposes of private gain.

4.5 Part 1 of Schedule 11 to the Act permits the promotion of an incidental non-commercial lottery without the need to obtain an operating licence. The Secretary of State has powers under this Part to prescribe limits in respect of the sums that may be deducted from the proceeds of the lottery in respect of, the cost of prizes, and costs in organising the lottery.

The Gambling Act 2005 (Non-Commercial Equal-Chance Gaming) Regulations 2007 limit the payments that may be made to participate in non-commercial equal chance gaming at a non-commercial event. The Regulations also limit the amount that may be offered or distributed by way of prizes at such an event.

The Gambling Act 2005 (Incidental Non-Commercial Lotteries) Regulations 2007 limit the sums that can be deducted from the proceeds of an incidental non-commercial lottery in respect of the cost of prizes and the costs incurred in organising the lottery.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

Incidental non-commercial lotteries

7.1 An incidental non-commercial lottery is one that is incidental to a non-commercial event, and in respect of which all of the conditions set out in Part 1 of Schedule 11 to the Act are complied with. These provisions replace those in sections 3 and 15 of the Lotteries and Amusements Act 1976, which set out the requirements for small lotteries at “exempt entertainments”. Exempt entertainment means a bazaar, sale of work, fete, dinner, dance, sporting or athletic event or other entertainment of a similar character. As with the provisions for non-commercial equal chance gaming described below, these provisions are most commonly used by charities, clubs and other societies to raise funds.

7.2 Under paragraphs 3 and 4 respectively of Schedule 11, the amounts deducted from the proceeds of a non-commercial lottery in respect of (a) the cost of prizes, and (b) the costs incurred in organising the lottery must not exceed the sums prescribed by the Secretary of State.

- (a) Cost of prizes: under the 1976 Act, the maximum sum that may currently be deducted from the proceeds of a lottery at an exempt entertainment for the purchase of prizes is £250. This limit was last revised in 1993¹, and the Government has decided that the equivalent limit in these Regulations should be **£500**. This takes account of price inflation, and sets the limit at a level that means that there should be no need for any further increases in the foreseeable future.
- (b) Costs incurred in organising the lottery: the equivalent provision in the 1976 Act allows promoters to deduct an amount (unspecified) equivalent to the cost of printing tickets in the lottery. The corresponding provision in the 2005 Act broadens this so as to enable the cost of any other expenses to be deducted also. The Government has decided that this limit should be **£100**.

Non-commercial equal chance gaming

7.3 Section 298 of the Act authorises the provision of facilities for equal chance gaming (i.e. gaming which does not involve playing or staking against a bank or “the house”, and in which the chances are equally favourable to all participants) to be provided at non-commercial events. Under section 300 this gaming is subject to certain conditions, and under sub-section (4) the gaming must comply with regulations made by the Secretary of State:

- (a) Limiting amounts staked;
- (b) Limiting participation fees;
- (c) Limiting other amounts paid by a person in connection with the gaming;
- (d) Limiting a combination of matters specified in (a) to (c) above;
- (e) Limiting the amount or value of a prize;
- (f) Limiting the aggregate amount or value of prizes

7.4 In its supplementary memorandum to the House of Lords’ Regulatory Reform and Delegated Powers Committee during the passage of the Act (11th Report – Part 2), the Government stated that the conditions for non-commercial equal chance gaming were intended to ensure that the gambling involved remains at a low level, both in terms of overall amount, and also value (not least because the public, including children and young people, may participate in such events). Those policy objectives underpin the approach taken in these Regulations.

7.5 The equivalent provision in the current legislation, section 41 of the Gaming Act 1968, provides for gaming at “entertainments not held for private gain”. Provisions under section 41 specify that:

¹ Exempt Entertainments (Variation of Monetary Limits) Order 1993 – SI 1993/3222

- in respect of all games played at an entertainment, not more than one payment (whether by way of entrance fee or stake or otherwise) shall be made by each player, and no such payment shall exceed £4;
- the total value of all prizes and awards distributed in respect of those games must not exceed £400 (or £700 where the event is the final one of a series);

7.5 The above monetary limits were last revised in 2000², and the Government has decided once again that they should now be increased, not only to reflect general price inflation since that time, but also to avoid the need for a further revision within the next few years. The existing provisions are structured in a way that provides promoters with considerable flexibility in the way they apportion payments between stakes, entrance fees and other charges. This approach appears to have stood the test of time, and the Government has therefore retained it in these Regulations by prescribing a single limit, under section 300(4)(d) of the Act, of **£8** for any combination of amounts paid by a person in connection with gaming of this kind.

7.6 There are currently no limits on the value of individual prizes that can be awarded for each game played at an entertainment. Instead, section 41(4) of the 1968 Act limits the aggregate amount or value of prizes that may be awarded. Once again, this appears to have worked satisfactorily for many years, and enables promoters to structure the gaming in the way that best meets the needs of the event in question. The Government has therefore retained this approach in framing this Regulation, and under section 300(4)(f) of the Act has prescribed a limit of **£600** on the aggregate amount or value of prizes for a non-commercial event. Under section 41(7) of the 1968 Act, where two or more entertainments are promoted by the same person, on the same premises and on the same day, the limits on charges and prizes apply as if they were a single entertainment. This provision is designed to prevent promoters circumventing the daily monetary limits by manipulating the way in which events are organised. The Government has therefore retained the effect of this provision in this Regulation.

7.7 Under section 41(8)(a) of the 1968 Act, where an event is part of a series, and takes place on a different day to other events in the same series, then the limits on charges and prizes may be applied separately for each event. This Regulation maintains that position. In addition, under section 41(8)(b), where an event is the last of a series, and participation is restricted to those who have taken part in an earlier round, a higher prize fund is permitted. The corresponding enabling provisions can be found at section 300(5) of the Gambling Act. The Government intends to retain the flexibility that enables organisers to offer higher prizes in these circumstances, and the limit on the aggregate amount or value of prizes in a final event is now **£900**. The current requirement that each of the qualifying events should have taken place on a previous day, has also been retained.

Public Consultation

7.8 A twelve-week public consultation exercise on these Regulations closed on 22 June 2007. Prior to launching this consultation the Government sought the views of a range of representative bodies to inform its proposals. DCMS officials also provided a briefing on the Government's proposals at a meeting of the Rural Community Buildings Network

² Gaming Act (Variation of Monetary Limits) Order 2000 – SI 2000/2803

during the consultation period. Eight responses were received to the consultation – see **Annex A** for a list of the respondents – and their comments are summarised below.

Incidental non-commercial lotteries

7.9 Respondents were almost universally supportive of the Government’s proposals. There were two dissenters in respect of the proposed limit of £100 on deductions for the costs incurred (other than in respect of prizes) in running the lottery. The first, Action for Communities in Rural England (ACRE), thought that it was too low, while the second (a licensing authority) felt that it was too high. The Government considered that it was difficult to envisage a situation in which the costs of operating an incidental lottery would exceed £100, and in view of the otherwise broad support for its proposal the Government has decided to leave this amount unaltered in these Regulations.

Non-commercial equal chance gaming

7.10 The majority of respondents considered that the Government’s proposals struck an appropriate balance between the legitimate fund-raising ambitions of non-commercial organisations and the objective of ensuring that gaming of this kind remains a low scale, low value activity. However, ACRE (who represent the views of some 8,900 community-owned halls) felt that the proposed limit of £6 per person for the total amount that may be paid in connection with the gambling was too low. They suggested that the corresponding provisions were currently used by a wide variety of charities and attract a broad cross-section of participants, many of whom would be happy to contribute up to £10 to a “good cause”. They went on to suggest that charities are continually struggling to raise funds and that the running costs for gambling events such as race-nights (e.g. hall and equipment hire, catering and publicity) can be considerable. They felt that an increase to £10 would not lead to gambling of this kind being carried out on a large scale, or to excessive profits being made by promoters. ACRE were not, however, seeking a corresponding increase in the size of the prize fund for such gambling, as they felt that this was not a major motivating factor for the majority of those attending these kinds of events.

7.11 The Government has reviewed its original proposals in light of all of the responses to its consultation. While most supported a limit of £6, it was felt that ACRE’s arguments had some merit, and that a further small increase could probably be made without disturbing unduly the balance between the two sets of policy objectives for these particular provisions. However, mindful of the fact that under-18s may attend and participate in such events, and that the other respondents had expressed themselves content with a £6 limit, the Government has decided that it should be increased to **£8**, rather than the £10 sought by ACRE. This should provide promoters of non-commercial gaming with some additional flexibility, and enable them to offer reasonable (but not excessive) prizes, cover their operating expenses, and ensure that the events achieve their principal purpose of raising funds for the promoting organisation or specified “good cause”.

Guidance

7.12. DCMS will use the communication channels established during the development of the policy for these Regulations to ensure that practical guidance on the new limits is made available to the organisations that are most likely to utilise the Act’s non-

commercial gambling provisions. DCMS and the Gambling Commission will also be updating and revising the relevant guidance material on their respective websites

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex A

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9. Contact

Dave Bawden at the Department for Culture, Media and Sport Tel: 020 7211 6022, e-mail: dave.bawden@culture.gsi.gov.uk who can answer any queries regarding the instrument.

Annex A: List of respondents to the Consultation Paper on Non-commercial Gaming and Incidental Non-commercial Lotteries

1. Action on Communities in Rural England (ACRE)
2. Central Council for Physical Recreation (CCPR)
3. Committee of Registered Clubs Associations (CORCA)
4. Ernest Long
5. The Methodist Church
6. National Confederation of Parent Teacher Associations (NCPTA)
7. North Lanarkshire
8. Quaker Action on Alcohol and Drugs (QAAD)

Annex A: Regulatory Impact Assessment

1. Title of proposal:

- (a) Gambling (Incidental lotteries at Non-commercial events) Regulations 2007
- (b) Gambling (Non-commercial Equal Chance Gaming) Regulations 2007

2. Purpose and intended effect

Objective

To prescribe monetary limits in respect of incidental lotteries and equal chance gaming conducted at non-commercial events.

Background

Non-commercial events

Under the Gambling Act 2005, non-commercial events involving lotteries or gaming may be organised by any body or person provided that the proceeds of the event are not used for the purposes of private gain. These provisions, which mirror those in the existing legislation³, are used primarily by clubs, charities and other non profit-making societies to raise funds.

Incidental lotteries

Paragraph 1(a) to Schedule 11 to the Gambling Act 2005 states that a lottery is exempt from the restrictions and conditions in Part 11 of the Act if it is incidental to a non-commercial event. Paragraph 2 states that an event is non-commercial if no sum raised by the organisers (whether by way of fees for entrance or for participation, by way of sponsorship, by way of commission from traders or otherwise) is appropriated for the purpose of private gain. For an incidental lottery to be exempt it must comply with a number of conditions. This Regulation relates to the following conditions:

³ Lotteries and Amusements Act 1976 and the Gaming Act 1968

- (1) The promoters of an incidental non-commercial lottery may not deduct from the proceeds of the lottery more than the prescribed⁴ sum in respect of the cost of prizes (irrespective of their actual cost).
- (2) The promoters of an incidental non-commercial lottery may not deduct from the proceeds of the lottery more than the prescribed sum in respect of the costs of organising the lottery (irrespective of the amount of the costs incurred).

Non-commercial gaming

Sections 298 to 301 of the Act authorise certain types of gaming to be provided at non-commercial events. One of the types of gaming permitted by these sections is equal chance gaming. Equal chance non-commercial gaming must comply with a number of conditions in section 300 of the Act. The third condition, which is the subject of this Regulation, is that the arrangements for the gaming ensure compliance with regulations of the Secretary of State:

- (g) Limiting amounts staked;
- (h) Limiting participation fees;
- (i) Limiting other amounts paid by a person in connection with the gaming;
- (j) Limiting a combination of matters specified in (a) to (c) above;
- (k) Limiting the amount or value of a prize;
- (l) Limiting the aggregate amount or value of prizes

Rationale for government intervention

In legislating in this area, the Government's objective is to ensure that gambling at non-commercial events remains a low scale, low value activity. Low stakes gambling, of one description or another, is a long-standing feature of fund-raising by charities, clubs and other societies operating, in the main, at the local level. It usually takes the form of raffles, bingo stalls and similar low risk gambling activities that are part of larger events such as fetes or bazaars. It can, however, also take place at dedicated events such as bingo sessions or race-nights, but usually on premises (e.g. clubs, village and community halls) that are not specifically licensed for gambling. One key aspect of this form of gambling is that the public, including children and young persons, may take part. This, together with the fact that it is likely to be promoted by organisations and individuals that do not hold licences under the Gambling Act, reinforces the need for regulatory intervention to ensure that it does not become a focus for high value, and therefore high risk gambling.

3. Consultation

⁴ "Prescribed" means prescribed by the Secretary of State by regulations

A twelve-week public consultation exercise on these Regulations closed on 22 June 2007. Prior to launching this consultation we sought the views of a range of organisations (e.g. representatives of the clubs, institutes and village/community halls sectors) to inform our proposals, and within Government had informal discussions with the Treasury and the Gambling Commission. During the consultation period DCMS officials also provided a briefing on the Government's proposals at a meeting of the Rural Community Buildings Network. Eight responses were received to the consultation, with most respondents expressing themselves content with all of the proposals. In light of representations received during the consultation, the Government decided to increase one of the limits – the maximum amount that an individual may be charged to participate in equal chance gaming at a non-commercial event – from £6 to £8.

4. Options

Option 1: Do nothing

The relevant provisions of the Gambling Act require the Secretary of State to make regulations in this area, so doing nothing is not an option. **The Government therefore rejected this option.**

Option 2: Retain the existing limits

These Regulations are based on the corresponding provisions in two existing statutes: the Gaming Act 1968, and the Lotteries and Amusements Act 1976. It would, therefore be possible to rollover the current monetary limits when the Gambling Act 2005 comes into force on 1 September. However, those limits have remained the same since 1993 (in the case of lotteries) and 2000 (for equal chance gaming), and given the requirement to make new regulations it seems appropriate to review and update the monetary limits (so long as they remain consistent with the underlying policy objectives) to take account of price inflation and current circumstances. **The Government has therefore rejected this option.**

Option 3: Increase the limits

This is the Government's preferred option. In considering what the new monetary limits for non-commercial equal chance gaming should be, the Government remains mindful of its policy objective that gambling of this kind should remain a low scale, low value activity. We have therefore set limits that take account of price inflation in the intervening period since they were last up-rated. In addition, and to avoid the need for a further, early review after the regulations have come into force, we have added an element to each limit. The regulations therefore prescribe the following limits:

Non-commercial lotteries

The maximum sum that may be deducted from the proceeds for the cost of prizes will be **£500** (increased from £250 under the current regulations); and the maximum amount that may be deducted from the proceeds for “other expenses” will be **£100** (there is no corresponding monetary limit in the existing legislation, although promoters may currently deduct the cost of printing tickets in a lottery)

Non-commercial equal chance gaming

The maximum combined amount that an individual may pay for this type of gaming, whether in the form of stakes, participation fees or “other charges”, will be **£8** (increased from £4 in the current regulations); and the limits for the aggregate amount or value of prizes at a single event will be **£600** (up from £400), and **£900** (increased from £700) where an event is the final one of a series.

5. Costs and benefits

Sectors and groups affected

These proposals are likely to affect the activities of a wide range of non-commercial societies, including charities, clubs, cultural and sporting organisations, village and community groups, etc.

Benefits

These increases should enable the promoters of non-commercial gambling activities and events to enhance their potential for raising funds. Given the informal nature of gambling activity of this kind, and the disparate nature of the organisations involved in promoting it, it is not possible to assess the extent of the benefits likely to accrue from these proposals. However, the new monetary limits are between 50% and 100% higher than those set out in the current legislation, so there would appear to be potential for corresponding increases in proceeds and, therefore, “profits” for the organisations and “good causes” concerned.

Costs

There should be no additional costs, in terms of either administration or compliance, arising from these regulations.

6. Small Firms Impact Test

The majority of those affected by (and therefore benefiting from) these regulations are likely to be small, non-profit making organisations operating at a local level.

7. Competition assessment

All types of non-commercial organisation may utilise these provisions, provided that they satisfy the conditions set out in the Act. The limits are also set at a level that should ensure that this type of gambling remains a low scale activity. It is not anticipated, therefore, that these regulations will have a material impact on competition either within the affected sectors, or between the non-commercial sector and commercial gambling operators.

8. Enforcement, sanctions and monitoring

Gambling in the non-commercial sector is an almost entirely self-regulated activity, and we would expect this situation to continue when the Gambling Act comes fully into force. Breaching any of the monetary limits (or other statutory conditions for non-commercial gambling) would, however, potentially constitute a criminal offence. Both the Gambling Commission and the police have powers, under the Gambling Act, to take appropriate action in the event of any abuse of these provisions.

9. Implementation and delivery plan

DCMS is planning to use the communication channels established during the development of the policy for these Regulations to ensure that practical guidance on the new limits is made available to those organisations that are most likely to utilise the Act's non-commercial gambling provisions. DCMS and the Gambling Commission will also be updating and revising the relevant guidance material on their respective websites.

10. Post-implementation review

The new monetary limits covered by these Regulations are designed to enable non-commercial gambling, of one kind or another, to continue to function under the new regulatory regime in the same way that it does under the current legislation. DCMS will utilise its normal communications channels (e.g. with licensing authorities and

representatives of the interested sectors) to keep abreast of any relevant issues or concerns. Whilst it is not intended that there should be any formal review process, we would also expect the Gambling Commission to bring any subsequent concerns to the Department's attention for consideration of any further regulatory intervention.

11. Summary and recommendation

The Government has decided to implement Option 3 (as amended in light of the public consultation exercise).

12. Declaration and publication

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

Signed

Date

Gerry Sutcliffe

Minister for Sport

Department for Culture Media and Sport

Contact point for enquiries and comments: Dave Bawden, Department for Culture Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH; telephone - 020 7211 6022; e-mail – dave.bawden@culture.gsi.gov.uk