

EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (REPEAL) (REMOTE OPERATING LICENCE AND
CREDIT) REGULATIONS 2007

2007 No. 2321

1. Introduction

This explanatory memorandum has been prepared by the Department for Culture, Media and Sport (the Department) and is laid before Parliament by Command of Her Majesty.

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

2. Description

2.1 These Regulations repeal certain provisions of the Gambling Act 2005 (the 2005 Act) concerning:

(a) a condition on all remote operating licences that an operator's remote gambling equipment be located in Great Britain, with a power for the Gambling Commission to exclude that condition (sections 89(2) and (3) and 117(1)(d)); and

(b) the use of credit cards in gaming machines (section 245).

2.2 These repeals are a technical necessity to ensure that the UK complies with the Technical Standards Directive (Directive 98/34/EC, as amended by Directive 98/48/EC). Equivalent measures to those contained in the repealed provisions are being achieved by alternative means, and notified to the European Commission as appropriate. These are described in Section 7 below.

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

3.1. The Department is using the powers under section 2(2) of the European Communities Act 1972 to effect these repeals, since bringing the specified provisions into force could lead to the UK being in breach of its notification obligations under the Technical Standards Directive.

3.2. The following orders designate the Secretary of State for the purposes of section 2(2), in relation to these matters: *The European Communities (Designation) (No.3) Order 1992* (SI 1992/2661) and *The European Communities (Designation) (No.2) Order 2001* (SI 2001/2555).

3.3. The Department has adopted the negative resolution procedure for these Regulations. While the substantive provisions of the Regulations repeal provisions

of primary legislation, the Department does not consider that any of the repeals substantially affect the Gambling Act 2005.

- 3.4. In relation to section 245, the repeal only marginally affects the substance of the regulation of gaming machines under Part 10 of the 2005 Act. It will remove one aspect of machine regulation involving using credit cards to pay for machine use. This measure is being replicated in other regulations being laid before Parliament, as described in Section 7.
- 3.5. In relation to section 89(2) and (3), the provisions being repealed are a presumption about the location of equipment in Great Britain, accompanied by a discretion for the Gambling Commission to waive or alter the effect of that presumption. The Department is proposing to retain this discretion, which will continue to be exercised by the Gambling Commission. The Gambling Commission will be regulating the matter of location of remote gambling equipment through individual licence conditions. The Department does not consider that this repeal has a significant effect on the regulation of remote gambling under the 2005 Act.
- 3.6. The draft regulations have been approved by Parliamentary Counsel. Information on the reasons for laying these Regulations during Parliamentary Recess is set out in Section 7.

4. Legislative Background

- 4.1. The Gambling Act 2005 received royal assent in April 2005. It introduces a new system for the regulation of gambling in Great Britain. The majority of the provisions of the 2005 Act will be in force on 1st September 2007.
- 4.2. In particular, the 2005 Act regulates remote gambling (as defined in section 4 of the Act) and gaming machines (as defined in section 235 of the Act, and the *Gambling Act 2005 (Gaming Machine) (Definitions) Regulations 2007* (SI 2007/2082)).
- 4.3. These Regulations effect limited repeals relating to the regulation of remote gambling and gaming machines.
- 4.4. Subsections 89(2) and (3) (and consequentially subsection 117(1)(d)) relate to conditions imposed on remote operating licences. Sub-section 89(2) requires that all remote gambling equipment used by licensed operators must be located in Great Britain. Subsection 3 provides that the Gambling Commission can waive (wholly or partially) this requirement, if it thinks that to do so is reasonably consistent with pursuit of the licensing objectives. Remote operating licences are defined in section 67 and remote gambling equipment is defined in section 36(4).
- 4.5. Section 36 requires that at least one piece of remote gambling equipment be located in Great Britain, in order to be subject to the jurisdiction of the 2005 Act in the first place

- 4.6. Section 117(1)(d) provides the Commission with a regulatory power to use its discretion under section 89(3), following a licence review.
- 4.7. Section 245 makes it an offence to supply, install or make available for use a gaming machine which is designed or adapted to permit money to be paid by means of a credit card.
- 4.8. Part 2 of the 2005 Act establishes the Gambling Commission as a new regulator responsible for the licensing of remote gambling operators based in Great Britain, and manufacturers and suppliers of gaming machines.

5. Territorial Extent and Application

This instrument applies to England & Wales and Scotland.

6. European Convention on Human Rights

The Minister for Sport has made the following statement regarding Human Rights:

In my view the provisions of The Gambling Act 2005 (Repeal) (Remote Operating Licence and Credit) Regulations 2007 are compatible with the Convention rights.

7. Policy background

- 7.1. During the course of discussions with officials at the European Commission concerning the notification of the Gambling Act 2005, and related commencement orders, under the Technical Standards Directive, technical questions emerged over whether the notification of certain aspects of the 2005 Act had complied fully with the Commission's procedural requirements, under this Directive. These were sections 89(2) and (3) and 245.
- 7.2. The Technical Standards Directive is a directive which "seeks to prevent the creation of technical barriers to trade and lays down a procedure for the provision of information in the field of technical standards and regulations" including information society services e.g. the internet.
- 7.3. In order to prevent delay to the implementation of the important safeguards contained in these provisions, the government decided to repeal the relevant sections of the 2005 Act, and reintroduce them using other powers contained in the Act, as explained below. This would allow notification to the European Commission to take place, to the extent necessary, and ensure the required measures were in force for 1st September 2007.

Replacement Provisions

- 7.4. The provisions of section 89(2) and (3) are being replaced by individual licence conditions attached to operator's remote licences by the Gambling Commission.

These conditions (under section 77 of 2005 Act) will regulate the location of the operator's key equipment. Operators will be required to give the Gambling Commission information about the location of key remote equipment when they apply for a licence. Such equipment includes electronic or other equipment used by a remote gambling operator to:

- determine all or part of the results of the gambling;
- store information relating to a customer's participation in gambling; or
- present virtual games, races, events or process to a customer.

- 7.5. This will enable the Gambling Commission to exercise its discretion about the location of such equipment and the suitability of the applicant to hold a licence. Remote operators will also be required to inform the Gambling Commission if they subsequently move equipment from one jurisdiction to another.
- 7.6. The Department considers that this regulatory action by the Gambling Commission is an appropriate replacement for the provisions being repealed in section 89(2) and (3). It will allow a tailored approach to be taken to each remote operator and its individual circumstances, while ensuring that the location of equipment, in Great Britain or elsewhere, does not undermine the licensing objectives. In addition, the Gambling Commission will remain empowered to require specified types of remote gambling equipment to be located in Great Britain, should it wish to develop this in the future. The Department considers that these arrangements replace effectively the repealed measures.
- 7.7. Regulations being laid under section 240 and 241 of the 2005 Act, on the regulatory regime for gaming machines, will replicate entirely the provisions under the repealed section 245. These are: regulation 4 of *the Gaming Machine (Circumstances of Use) Regulations 2007* (section 240) and regulation 2 of *the Gaming Machine (Supply &c.) Regulations 2007* (section 241).
- 7.8. Together these two sets of regulations will ensure that credit cards cannot be used to pay for use of gaming machines, whether by directly inserting them into machines, or by purchasing items such as smartcards with them. Supply and installation of a gaming machine which is designed or adapted to be used with credit card payments (directly or indirectly) will also be unlawful. Both sets of regulations have both been notified to the European Commission, with the required notification period ending on 1st August 2007.
- 7.9. The need to notify the Gaming Machine (Circumstances of Use) Regulations 2007 and the Gaming Machine (Supply &c.) Regulations 2007 to the European Commission has necessitated a delay to the laying of these Regulations. In order to ensure that the repeals were viewed in the context of the important replacement provisions, the Department concluded that it would be of most benefit and transparency if these Regulations were laid at the same time as the related gaming machine regulations. It has not been possible to lay those before 1st August, because of the notification process. It is for this reason that these Regulations are being laid during Parliamentary Recess.

Consultation

- 7.10. Full consultation on the replacement provisions relating to gaming machines has been undertaken. Public consultations in February and again in May 2007 described the changes being made. Draft regulations with the equivalent provisions to those repealed in these Regulations were circulated to the industry and bodies interested in problem gambling on 1 May 2007. No responses were received raising any concerns with the proposed course of action.
- 7.11. The Department has corresponded with the Remote Gambling Association and GamCare as representative bodies of those interested in these Regulations to explain the reason for the repeal of section 89(2) and (3), and the approach the Gambling Commission is taking to licensing consequent upon the repeals. The Department is not aware of any concerns with the approach being taken as a result of these repeals.

8. Impact

No Regulatory Impact Assessment (RIA) has been prepared as these Regulations are technical in nature. The impact of the whole gaming machine regulatory regime is covered by the RIA prepared for regulations being made under sections 240 and 241 of the 2005 Act. The regulation of remote gambling was subject to an RIA published at the time of royal assent for the 2005 Act.

9. Contact

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