EXPLANATORY MEMORANDUM TO

THE CATEGORIES OF GAMING MACHINE (AMENDMENT) REGULATIONS 2011
2011 No. [XXXX]

THE GAMBLING ACT 2005 (GAMING MACHINES IN ADULT GAMING CENTRES AND BINGO PREMISES) ORDER 2011
2011 No. [XXXX]

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

2. Purpose of the instrument(s)

The Categories of Gaming Machine (Amendment) Regulations 2011

2.1 These Regulations amend the definition of a Category B3 gaming machine as set out in the Categories of Gaming Machine Regulations 2007 (S.I. 2007/2158) ("the 2007 Regulations"). The effect of this amendment is to increase the stake limit for a Category B3 gaming machine.

The Gambling Act 2005 (Gaming Machines in Adult Gaming Centres and Bingo Premises) Order 2011

2.2 This Order amends sections 172(1) and (7) of the Gambling Act 2005 for the purpose of altering the number of Category B gaming machines that may be authorised to be made available for use by premises licences relating to adult gaming centres ("AGCs") and bingo premises.

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

3.1 None

4. Legislative Context

4.1 The Gambling Act 2005 (c.19) ("the 2005 Act") established a new system for the regulation of all gambling in Great Britain, other than the National Lottery and spread betting. The 2005 Act introduced a new regulator for gambling, the Gambling Commission, and a new licensing regime for commercial gambling. As part of the new licensing regime, the 2005 Act provides for three main types of licence: operating and personal licences which are issued by the Gambling Commission, and premises licences which are issued by licensing authorities. It also established a new regime for the regulation of gaming machines in Great Britain, replacing the previous system based on Part III of the Gaming Act 1968 (c. 65) (repealed as of 1st September 2007). The regime under the 2005 Act includes provisions governing where gaming machines may be used, their manufacture and supply, and the circumstances in which they may be used (including age limits for users).

The Categories of Gaming Machine (Amendment) Regulations 2011

4.2 Section 235(1) of the 2005 Act defines a "gaming machine" as a "machine which is designed or adapted for use by individuals to gamble". Subsection (2) sets out a list of exceptions to this general definition for certain forms of equipment that might be used for gambling in some circumstances.

4.3 Section 236 of the 2005 Act requires the Secretary of State to define four categories of gaming machine (A, B, C and D), and to divide Category B into further sub-categories. Subsection (4) sets out criteria for the definitions of the categories and sub-categories (covering the amounts paid in respect of the use of the machine (the "stake"), the value and nature of prizes, the nature of the gambling for which the machine can be used and the premises where a machine is used). The 2007 Regulations were made under that section.

4.4 These Regulations amend the definition of a Category B3 gaming machine in regulation 5 of the 2007 Regulations. The effect of the amendment is that the maximum charge for use for a Category B3 machine will be increased from £1 to £2.

The Gambling Act 2005 (Gaming Machines in Adult Gaming Centres and Bingo Premises) Order 2011

4.5 Premises licences granted by licensing authorities may authorise the provision of gambling facilities in, among others, AGC premises and bingo premises. By virtue of sections 172(1) and (7) of the 2005 Act, possession of an AGC or bingo premises licence authorises the holder to make specified categories of gaming machines available for use on the premises to which it relates, subject to certain restrictions on numbers.

4.6 Section 172(1)(a) of the 2005 Act authorises the holder of an AGC premises licence to make available for use up to four Category B gaming machines. Section 172(7)(a), as amended by the Gambling Act 2005 (Gaming Machines in Bingo Premises) Order 2009 (S.I.2009/324), authorises the holder of a bingo premises licence to make available for use up to eight Category B gaming machines. Both AGCs and bingo premises can make available for use any number of Categories C and D gaming machines.

4.7 The 2007 Regulations stipulate that the Category B gaming machines which AGCs and bingo premises may offer are those in sub-categories B3 or B4.

4.8 This Order amends sections 172(1) and (7) to alter the maximum number of Category B machines, so that AGCs and bingo premises will be able to make available a number of such machines not exceeding 20% of the total number of gaming machines which are available for use on the premises. Provisions are included to protect the entitlements of existing AGC or bingo premises licensees, so that they are not disadvantaged in the event that the 20% formula would have resulted in a reduced entitlement. A similar protection (but applicable only prior to 1 April 2014) is included for new AGC and bingo premises licences granted after the Order comes into force but before 1 April 2014. The latter protection is included primarily as a result of the three-

year moratorium on new domestic regulation for micro and start up businesses announced in the 2011 Budget.

5. Territorial Extent and Application

5.1 These instruments apply to Great Britain.

6. European Convention on Human Rights

6.1 The Minister for Gambling and Tourism, John Penrose MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Categories of Gaming Machine (Amendment) Regulations 2011 and the Gambling Act 2005 (Gaming Machines in Adult Gaming Centres and Bingo Premises) Order 2011 are compatible with the Convention rights."

7. Policy background

7.1 This package of measures is intended to give operators of AGCs and bingo premises greater operational flexibility and freedom to take commercial decisions. This is to allow them to stabilise and develop certain revenue streams in order to prevent further closures of premises and job losses. The Government is satisfied this change will not undermine the public protection objectives central to the 2005 Act.

7.2 These businesses make an important contribution to many local economies, for example often forming an integral part of the tourism offer in many seaside towns and providing significant numbers of local jobs, not just in terms of individual premises but also with supporting businesses covering the manufacture, supply and maintenance of gaming machines. Bingo premises also provide a valuable social amenity for many local communities.

7.3 Data provided by the amusement and bingo industries show that, since 2007, at least 240 AGC and bingo premises have closed with the loss of an estimated 1,300 jobs. Difficult trading conditions arising from the economic downturn over this period have been exacerbated by a combination of factors ranging from the introduction of the ban on smoking in enclosed public spaces in July 2007 to the development of wider leisure and media offerings in this time, increased competition from other sectors of the gambling industry and changing consumer preferences. The Government considers certain aspects of the 2005 Act place unnecessary restrictions on the operational flexibility and freedom of AGC and bingo premises to respond to these factors. It is persuaded that the situation facing the amusement and bingo industries is sufficiently grave to justify a reconsideration of stake limits and entitlements for Category B3 gaming machines, which provide a major source of revenue for operators. It is also hoped these measures will provide a stimulus to the gaming machine manufacturing and supply sectors through increases in their order book.

7.4 The economic pressures of recent years have seen many AGC and bingo operators artificially splitting their premises and paying for two separate premises licenses in order to offer a higher number of Category B3 gaming machines. This is a perverse consequence of the current limits on machine numbers and is not conducive to the effective regulation of gambling. These measures are therefore also intended to reduce the incentive for operators artificially to split premises.

Consolidation

7.5 The Department does not consider it necessary or beneficial to produce consolidated versions of these instruments.

8. Consultation outcome

8.1 A public consultation ran from 2 November 2010 to 25 January 2011. Ninety two responses were received, with the majority of responses coming from the gambling industry. Nine responses were received from local government organisations and three from faith groups. A summary of the responses is in included at Annex 2 to the attached Impact Assessment.

8.2 The majority of respondents supported both an increase in the maximum stake limit and an alteration of premises entitlements for Category B3 gaming machines. An entitlement based on 20% of the total number of gaming machines made available for use received the widest support.

8.3 Most local authority respondents did not oppose the proposals but did express concerns about potential new administrative burdens. The proposals were opposed by the faith groups and one local authority respondent, who argued that further research was required before any consideration could be given to relaxing the regulatory framework.

9. Guidance

9.1 No additional guidance will need to be issued to the amusement or bingo industries

10. Impact

10.1 The instruments form an overall package intended to benefit AGCs and bingo premises through potentially increasing revenue across these businesses by around £8.6m per annum. Under the 2005 Act, licensed betting offices and casinos are also permitted to offer Category B3 gaming machines and so could potentially benefit from the increase in the stake limit. There will be no impact on charities or voluntary bodies.

10.2 The Government is satisfied that these instruments will not impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the www.legislation.gov.uk website.

11. Regulating small business

11.1 The alterations made by these instruments will benefit all businesses entitled to offer Category B3 gaming machines under the 2005 Act. They have the support of the British Amusement Catering Trades Association (BACTA) and the Bingo Association.

11.2 The Government is satisfied that these instruments do not impose any compulsory costs or new burdens on businesses.

12. Monitoring & review

12.1 The monitoring and review arrangements for this legislation, plus criteria against which success will be measured are set out at Annex 1 on page 25 of the attached Impact Assessment. The implementation of this measure will be monitored regularly by officials from the Department for Culture, Media and Sport and the Gambling Commission as part of their regulatory responsibilities.

13. Contact

Alistair Boon at the Department for Culture, Media and Sport (Tel: 020 7211 6486 E-mail: Alistair.Boon@culture.gsi.gov.uk) can answer any queries regarding the instruments.