EXPLANATORY MEMORANDUM TO

THE GAMBLING ACT 2005 (VARIATION OF MONETARY LIMITS) ORDER 2020

2020 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This Order increases the limit on the proceeds of any single lottery (i.e. the aggregate amounts paid to purchase lottery tickets) run by one or more non-commercial societies or local authorities in reliance on a lottery operating licence. The current £4,000,000 limit on proceeds for such a lottery is increased to £5,000,000. As a result, the maximum prize limit will increase from £400,000 to £500,000, due to the existing rule that a prize cannot exceed 10% of per draw sales.

2.2 This Order also increases the limit on the aggregate proceeds of any such lottery promoted wholly or partly in a calendar year in reliance on a lottery operating licence. The limit on annual proceeds for such a lottery is currently £10,000,000. This is being increased to £50,000,000, with the Order also putting transitional arrangements in place for the calendar year in which it takes effect.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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

3.2 The territorial application of this instrument includes Scotland.

4. Extent and territorial application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

5.1 Helen Whately, the Minister for Arts, Heritage and Tourism, has made the following statement regarding Human Rights:

"In my view the provisions of the Gambling Act 2005 (Variation of Monetary Limits) Order 2020 are compatible with the Convention rights."

6. Legislative context

6.1 Lotteries in Great Britain are not permitted by law unless they fall within one of these exceptions:

- Large society lotteries or lotteries run for the benefit of a local authority, and authorised by a lottery operating licence issued by the Gambling Commission under the Gambling Act 2005 ("the Act");
- Exempt lotteries under Schedule 11 of the 2005 Act; and
- The National Lottery, which is governed by a distinct statutory regime.

This Order is concerned with the lotteries set out in the first bullet-point.

6.2 A lottery operating licence may only be issued to non-commercial societies (paragraph 6.3), local authorities and external lottery managers. Lotteries run by non-commercial societies or local authorities, or on their behalf by external lottery managers, are referred to in this Explanatory Memorandum as "licensed lotteries".

6.3 For the purposes of the Act, a society is non-commercial if it is established and conducted:

- for charitable purposes;
- for the purpose of enabling participation in, or of supporting, sport, athletics, or a cultural activity;
- for any other non-commercial purpose other than that of private gain.

6.4 As set out in Part 4 of Schedule 11 to the Act, a lottery which exceeds thresholds of £20,000 proceeds for an individual draw or £250,000 aggregate proceeds in a calendar year requires a licence from the Gambling Commission.

6.5 Section 99 of the Act requires the Gambling Commission to attach certain conditions to lottery operating licences issued to non-commercial societies and local authorities. These conditions are concerned with (among other things) monetary or percentage limits on proceeds and prizes in lotteries run by such societies or authorities.

6.6 Section 99(3) of the Act imposes a requirement that (a) the proceeds of any lottery promoted in reliance on the licence may not exceed £4,000,000, and (b) the aggregate of the proceeds of lotteries promoted wholly or partly in a calendar year in reliance on the licence may not exceed £10,000,000.

6.7 Section 99(4) of the Act imposes a restriction on the amount of a prize that may be awarded by virtue of any ticket purchased in a lottery. It is not possible for the purchaser of a lottery ticket promoted in reliance on the licence to win more than (a) £25,000 or, (b) if more, 10% of the proceeds of the lottery. Accordingly, where the proceeds of any lottery exceed £250,000, the limit on the prize will be dependent on the amount of the proceeds for that lottery. The current effect of the legislation is that the cap on the maximum proceeds of £4,000,000 means there is a cap of £400,000 on the maximum prize a lottery can offer.

7. Policy background

What is being done and why?

7.1 This Order amends section 99 of the Act so as to increase the monetary limit on:

- the proceeds of a single licensed lottery promoted in reliance on a lottery operating licence from £4,000,000 to £5,000,000; and

- the aggregate proceeds of licensed lotteries promoted wholly or partly in a calendar year in reliance on a lottery operating licence from £10,000,000 to £50,000,000.

7.2 The purpose of society lotteries is to enable fundraising by groups set up for charitable or other non-commercial purposes. The Act sets maximum limits on sales and prizes. These serve to maintain the distinction between society lotteries and the National Lottery and ensure that the two are not in direct competition. This is an important principle to maintain, as direct competition between the two sectors risks reducing the overall amount available for good causes; each lottery's prize pool may end up being smaller and therefore less attractive to those seeking the highest prizes, meaning overall sales could drop.

7.3 The current annual sales limit has been in place since 2005, and the per draw sales and prize limits have been in place since 2009. Before consulting on proposed changes to the limits, we sought expert advice from the Gambling Commission. This stated that there was scope to raise the limits to enhance the ability of charities to fundraise and to reduce administration costs, while still keeping licensed lotteries distinct from the National Lottery.

Per draw sales limit

7.4 Only a very small proportion (less than 1%) of licensed lotteries are operating within 20% of the current £4,000,000 per draw sales limit, but those just under that increased sharply in 2017, suggesting that continued growth may result in promoters considering taking mitigating action before they get closer to the limit, to avoid being in breach of their licence.

7.5 Some larger operators have developed workarounds to the limits in order to facilitate growth. This includes setting up additional lotteries and/or promoting multiple lotteries under a single umbrella brand. The current framework is therefore constraining lotteries' ability to maximise the funds they raise for good causes as it obliges operators to spend money on administrative costs to ensure they remain within the statutory limits while trying to maximise proceeds. The Order increases the per draw limit allowing some more headroom for lotteries to continue to grow without the need to incur additional administration costs.

7.6 Where the proceeds of an individual licensed lottery exceed £250,000, it must not be possible for anyone to win a prize in excess of 10% of the proceeds of that lottery. The consequential effect of increasing the per draw sales limit to £5,000,000 will also increase the limit for a maximum prize from £400,000 to £500,000. This will allow for some additional flexibility for those operators that wish to offer a larger prize, whilst remaining distinct from the largest prizes offered by the National Lottery. It is noted that this will bring the top prize potentially offered by licensed lotteries directly in line with the National Lottery's Thunderball top prize, but in practice, the proceeds of a licensed lottery would have to be £5,000,000 exactly to enable the award of a maximum prize of £500,000. In addition, few lotteries run draws big enough to be able to offer individual prizes close to existing limits.

Annual sales limit

7.7 The aggregate of the proceeds of lotteries promoted wholly or partly in a calendar year by a non-commercial society or local authority in reliance on a lottery operating licence is being increased from £10,000,000 to £50,000,000.

7.8 The current annual aggregate proceeds limit is particularly restrictive for larger society lotteries. It can limit the number of draws in a calendar year, or mean that the size of draws later in a year are kept artificially small. For example, a society selling the current maximum of £4,000,000 tickets per draw can only hold two such draws in a year given the current annual limit of £10,000,000 and to raise the maximum amount for good causes over the year would have to restrict sales for a third draw to £2,000,000. It would be administratively more straightforward to ensure the limits are aligned and the annual limit is a whole number multiple of the individual draw limit.

7.9 Some promoters of larger society lotteries, in order to sell more than £10,000,000 tickets annually, have chosen to set up additional lotteries or adopt an umbrella lottery scheme under which lotteries that rely on separate lottery operating licences are promoted under a single brand. Tickets are typically sold for each lottery in turn, and the proceeds from one society's lottery may not be used to fund any of the prizes or expenses in a different society's lottery promoted under the same brand. Umbrella lotteries often incur high administrative costs and can be bureaucratic to operate. One charity has estimated that moving to a multiple society model would cost around £345,000 to set up, with additional annual running costs of around £130,000, therefore reducing the proportion of income for charitable causes.

7.10 For most societies, a £50,000,000 limit would mean that they no longer need to hold more than one lottery operating licence and hence would be able to generate economies of scale, make administrative cost savings and return more to good causes. It also means that society lotteries that are approaching the current annual sales limit can continue to grow and raise valuable funds from their lotteries for their beneficiaries.

7.11 As the annual aggregate limit is calculated on a 'calendar year' basis (that is, from 1st January to 31st December in the same year), this Order also makes transitional provision as regards the aggregate sales limit in the calendar year in which the Order comes into force. The intended purpose of this is to ensure that the holders of the operating licences can benefit from the increased limits straight away on a pro rata basis, rather than having to wait until the beginning of the next calendar year. The effect of this provision would be to enable guaranteed sales of £10,000,000 from 1st January, plus a pro-rated portion of the new £50,000,000 limit, subject to an overall cap of £50,000,000 for the 'calendar year'.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018 (c. 6).

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 The Department consulted on wide ranging proposals to reform licensed lotteries sales and prize limits. The consultation ran from 28 June to 7 September 2018. We received 1,629 responses from a wide range of organisations. The Government

published its response to the consultation on 16 July 2019. This can be found on our website:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817544/Response_to_Consultation_on_Society_Lotteries_PDF.pdf

10.2 In general, opinion has been polarised, with licensed lotteries and their beneficiaries strongly supporting the reform proposals, and the National Lottery sector and its beneficiaries strongly opposing any change to the limits. Many respondents noted the importance of funding from both for charities and voluntary organisations. In arriving at a final balanced package, it was important to ensure that growth in one lottery sector was not at the detriment of another, and to consider the evidence-based advice provided by the Gambling Commission that:

- licensed lotteries have had no statistically significant detrimental impact on National Lottery sales to date;
- increasing sales and prize limits to their recommended levels is likely to have minimal impact on the National Lottery; and
- while there are distinct differences between licensed lotteries (smaller prizes and less frequent draws, tending to be cause-led or locally focused), and the National Lottery (characterised by its larger prizes) substitution between the two is likely to remain minimal.

Per draw sales limit

10.3 We consulted on a range of options for the per draw sales limit - retaining the current limit of £4,000,000; raising the limit to £5,000,000; raising the limit to £10,000,000; and reducing the limit to £2,500,000.

10.4 We consider that for the vast majority of the sector, increasing the per draw limit to £5,000,000, combined with the new annual limit of £50,000,000 will provide both the headroom for future growth and the flexibility to increase the size and frequency of draws as operators wish. Whilst this increase is more incremental than the £10,000,000 preferred by the largest proportion of consultation responses, we believe it will enable the majority of societies to raise more funds for good causes from individual draws, while maintaining a clear distinction with the scale of the draws made for the main National Lottery games.

Per draw prize limit

10.5 We consulted on a range of options for the per draw prize limit - retaining the current limit of £400,000; raising the limit to £500,000; raising the limit to £1,000,000; and reducing the limit to £250,000. We also sought views on an alternative option of increasing the per draw sales limit to £10,000,000, retaining the 10% rule as between the per draw sales and prize limits but capping the prize at £500,000.

10.6 Due to the fact that the primary purpose of society lotteries is as a fundraising tool for charitable or non-commercial purposes rather than to offer the largest prizes, we did not consult on the option to change or remove the rule that the maximum prize is 10% of a draw's proceeds. Therefore, following on from the new per draw sales limit being £5,000,000, the new maximum prize limit is £500,000.

10.7 Raising the per draw prize limit to £500,000 will allow for some additional flexibility for those operators that wish to offer a larger prize, whilst remaining distinct from the larger prizes offered by the National Lottery.

Annual sales limit

10.8 We consulted on a range of options for the annual sales limit: retaining the current limit of £10,000,000; raising the limit to £50,000,000; and raising the limit to £100,000,000.

10.9 We decided to raise the annual sales limit to £50,000,000. This is a more modest increase than the preferred option in the consultation, £100,000,000. However, it delivers significant headroom for growth and flexibility for larger lotteries to increase the proportion of proceeds raised for good causes through administrative cost savings. The consultation response explained that we have the ambition to consult again in the future about what regulatory requirements could accompany an operating licence with a £100,000,000 annual sales limit, but it is important to allow time to monitor the impact on the whole of the lotteries sector of these increases and build a robust evidence base.

11. Guidance

11.1 The revised limits will require a corresponding change to the Gambling Commission's Licence Conditions and Code of Practice. This requires a consultation with the sector before the licence conditions can be amended.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that all charities, sports and social clubs and external lottery managers wishing to run lottery draws will be able to benefit from the new increased limits on proceeds. The measure will in no way threaten the ability of any single lottery licence holder to compete with other licence holders.

12.2 The impact on the public sector is that local authorities wishing to run such lotteries will benefit from the new increase in limits on proceeds and prizes.

12.3 A De Minimis Assessment was published alongside the Government's response to the consultation on 16 July 2019. This can be found on our website:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817542/Final_Society_lottery_reform_DMA_JUNE_2019.pdf

13. Regulating small business

13.1 The legislation applies to external lottery managers promoting lotteries on behalf of non-commercial societies and local authorities. Therefore, the legislation will enable small businesses, established to promote such lotteries, to compete for new business created by the increased limits.

14. Monitoring and review

14.1 The Minister has determined that it would not be appropriate to make provision in the Order for a review under sections 28-32 of the Small Business, Enterprise and Employment Act 2015. Such a provision would be undesirable (in accordance with section 31(2)(b) of that Act) because any consideration of these matters should extend more broadly, so as to include (at the very least) every aspect of the regulation of licensed lotteries to other matters as well; for example, the National Lottery and even entitlements in the wider gambling sector.

14.2 The policy will be reviewed by the Department internally, taking into account any advice from the Gambling Commission following implementation and thereafter.

15. Contact

15.1 Madeleine Cullum, Head of National Lottery (3rd Licence) (tel: 020 7211 2324; email: madeleine.cullum@culture.gov.uk) at the Department for Digital, Culture, Media and Sport, can be contacted with any queries regarding the instrument.

15.2 Julie Carney, Deputy Director for Gambling and Lotteries (tel: 020 7211 2315; email: julie.carney@culture.gov.uk) at the Department for Digital, Culture, Media and Sport, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Helen Whately MP, the Minister for Arts, Heritage and Tourism at the Department for Digital, Culture, Media and Sport, can confirm that this Explanatory Memorandum meets the required standard.