EXPLANATORY MEMORANDUM TO

THE GAMBLING ACT 2005 (COMMENCEMENT AND TRANSITIONAL PROVISIONS) (AMENDMENT) ORDER 2007

2007 No. 1157

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 amends the Gambling Act 2005 (Transitional Provisions) (No.2) Order 2006 (S.I. 2006/1758) and the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 (S.I. 2006/3272). The amendments include:

- changes to the commencement dates for various provisions of the Gambling Act 2005;
- provision for the Horserace Totalisator Board to be an existing operator in relation to an application for a general betting operating licence, and provisions which allow the company which is to succeed the Board to be able to apply for a bookmaker's permit under the existing legislation at any time before 1 September 2007;
- provision for applications to convert permissions under the existing legislation into equivalent premises licences under the Gambling Act 2005 to be made not only by the existing operator but also by a person who is acting with the written consent of the existing operator;
- provision which allows converted premises licence to be subject to a condition which restricts the periods during a year when facilities for gambling may be provided in reliance on the licence;
- provision to ensure which allows permits to which section 34(1) of the Gaming Act 1968 applies exceptionally to be granted or renewed where it relates to certain alcohol licensed premises in Scotland;
- other amendments which are consequential on the amendments referred to above or which make minor corrections to the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 ("the Principal Commencement Order").

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. It 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 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.

4.3 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.

4.4 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.

4.5 The Principal Commencement Order provides for all of the provisions of the 2005 Act (except for a few limited purposes) to be in force by 1st September 2007, the date on which gambling will begin to be regulated under the 2005 Act rather than the existing legislation. To ensure a smooth transition from regulation under the existing legislation to regulation under the 2005 Act, the Principal Commencement Order also provides for certain provisions of the 2005 Act to come into force on dates before 1 September 2007. This is to enable advance applications to be made for permissions under the 2005 Act which operators will need to authorise gambling on and after 1 September 2007.

4.6 The Principal Commencement Order contains transitional provisions which give 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 (these are commonly referred to as "grandfather rights"). The Principal Commencement Order also contains provisions which ensure that existing operators who have made an advance application for a permission under the 2005 Act by a specified date are able to continue operating if that application has not been determined by 1 September 2007 ("continuation rights").

4.7 The Gambling Act 2005 (Transitional Provisions)(No.2) Order 2006 ("the Transitional Provisions Order") also contains transitional provisions in connection with the commencement of the 2005 Act. Amongst other things, the Transitional Provisions

Order restricts the circumstances in which applications for the grant or renewal gaming machine permit under section 34 of the 1968 Act may be granted. Section 34 allows gaming machines to be made available in amusement arcades, certain alcohol licensed premises and other non-gambling premises. The 2005 Act, when it comes into force, will continue to allow gaming machines to be made available in the first two types of premises, but not in the third. The Transitional Provisions Order makes transitional provision in connection with this change. Where the application for the grant or renewal of a permit is made on or after 1 August 2006, it may only be granted if it relates to amusement arcades, or if it relates to alcohol licensed premises and it is granted under provisions which expressly provide for the permit to be granted by the authority which is responsible for alcohol licensing.

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 Since the Principal Commencement Order and the Transitional Provisions Order were made, a number of practical and policy considerations have arisen which make it necessary to make some small adjustments to some of the provisions of those Orders. These are largely consequential on provisions of other statutory instruments which have been made after those two Orders. Thus, the main reason for the changes to the 2005 Act commencement dates is to align them with the coming into force dates of statutory instruments, where the statutory instrument needs to be in place for the relevant provisions fully to have effect. The most significant of these, in terms of policy, is the decision by Ministers to put back the first day for licensing authorities to start taking advance applications for premises licences from 30 April 2007 to 21 May 2007. This was to ensure that licensing authorities have a full three months to prepare to take on their new responsibilities under the 2005 Act from the time when all the relevant statutory instruments were published.

7.2 Two other consequential amendments relate to provisions in the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007. Ministers decided in those Regulations to give licensing authorities the discretion to offer a discounted fee for premises which only open on a seasonal basis; and to link payment of the first annual fee to the date a premises licence takes affect rather than the date the licence is issued. Amendments to the transitional provisions in the Principal Commencement Order have been included to reflect these changes. In particular, the transitional provisions relating to grandfathered premises licences have been amended to ensure that such licences can be made subject to a seasonal operation condition. This then allows licensing authorities to offer the same fee discount to existing operators who open on a seasonal basis as they can to new operators.

7.3 At the request of the Scottish Executive, the Order includes an amendment to the Transitional Provisions Order which prevents the grant or renewal of certain permits

under section 34 of the 1968 Act where applied for on of after 1 August 2006. For the most part, the relevant permits only apply to non-gambling premises (such as chip shops and taxi cab offices) which will not be capable of having an equivalent permit under the 2005 Act. However, the Scottish Executive have pointed out to the Department that in Scotland this type of section 34 permit can also be held in respect of certain alcohol licensed premises which will be eligible to hold a licensed premises gaming machine permit under the 2005 Act. The Order therefore amends the Transitional Provisions Order to ensure that this restriction on the grant or renewal of section 34 permits does not apply where the application is for a permit for premises with the relevant type of Scottish alcohol licence.

7.4 The Department has decided that in order to regularise its position, once the 2005 Act comes into force, the Tote should be regarded as an existing operator in relation to any application made by it for a general betting operators licence (i.e. a fixed odds betting licence). The Tote is excluded from the definition of bookmaker in the 1963 Act and therefore does not need to hold a bookmaker's permit. It is therefore outside the scope of the current existing operator provision. The amendment deals with this by specifically providing for the Tote to be an existing operator in relation to any application it makes for a general betting operating licence. This will allow for continuation rights to be conferred on the Tote. Any such rights will transfer to its successor company under section 2 of the Horserace Betting and Olympic Lottery Act 2004.

7.5 The Principal Commencement Order contains transitional provisions which prevent an application under the 1963 Act for a bookmaker's permit from being made on or after 28 April 2007. It is anticipated that the Tote's successor company will not have been established in time to meet this deadline, but it may still need to have such a permit in order to operate as a bookmaker before 1 September 2007. For this reason the restriction in the Principal Commencement Order is being amended so that it does not apply to the successor company.

7.6 A number of gambling operators have drawn the Department's attention to the fact that they operate premises where the relevant gambling permission under the existing legislation is held in the name of a subsidiary company. Companies in this position would prefer on the switchover to regulation under the 2005 themselves to hold the premises licence. This is because whoever holds the premises licence must also hold an operating licence. If the parent company holds the premises licence it avoids the costs and expenses involved in the subsidiary also obtaining an operating licence. However, as things stand under the transitional provisions in the Principal Commencement Order, grandfather rights and continuation rights only apply where the application for the premises licence is made by the person or body holding the permission under the existing legislation. To ensure that companies with wholly owned subsidiaries are able to benefit from grandfather rights and continuation rights, the Department has included amendments which allow an application for the grandfathered premises licence to be made by the existing premises operator or by a person who is acting with the written consent of the existing premises operator.

7.7 The amendments have been drafted so that they are not restricted to those cases where the applicant is a company in the same group as the existing premises operator. This is because the Department is concerned that there may be other cases which justify the same treatment, but which do not involve companies in the same group. One example might be where the existing permission is held in the name of an individual, but where

the business is run by a company owned by that individual. The Department can see no basis for treating such cases differently. Protections still remain because anyone who obtains a grandfathered premises licence, whether or not they are the existing premises operator, will still be subject to the requirement to obtain an operating licence from the Gambling Commission before they can lawfully operate.

7.8 The Order includes some amendments which make minor corrections to the Principal Commencement Order. Since the main function of the Order is to make the changes, referred to above, which reflect changes in policy and circumstances since the Principal Commencement Order was made, this Order is not being made available free of charge to persons who purchased the Principal Commencement Order.

8. Impact

8.1 These amendments will have no impact on industry or the voluntary sector and there is therefore no Regulatory Impact Assessment attached to this memorandum. Indeed, the provisions relating to wholly owned subsidiary companies are designed to remove a burden on industry which we had not anticipated when making the previous Order.

9. Contact

Frances MacLeod at the Department for Culture, Media and Sport (Tel: 020 7211 6353) or e-mail: frances.macleod@culture.gsi.gov.uk) can answer any queries regarding the instrument.