EXPLANATORY MEMORANDUM TO

THE GAMBLING ACT 2005 (FAMILY ENTERTAINMENT CENTRE GAMING MACHINE) (PERMITS) REGULATIONS 2007

2007 No. 454

AND

THE GAMBLING ACT 2005 (PRIZE GAMING) (PERMITS) REGULATIONS 2007

2007 No. 455

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.

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

2. Description

2.1 The Gambling Act 2005 (Family Entertainment Centre Gaming Machine) (Permits) Regulations 2007 set the fees relating to family entertainment centre gaming machine permits, and specify the form of those permits.

2.2 The Gambling Act 2005 (Prize Gaming) (Permits) Regulations 2007 set the fees relating to prize gaming machine permits, and specify the form of those permits.

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

3.1 These regulations are the first made under the Gambling Act 2005 (the Act) concerning these provisions.

4. Legislative Background

4.1 The Act introduces a new system of regulation for gambling in Great Britain, which will replace the system of regulation set out in the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.

4.2 The formal implementation date for the Gambling Act 2005 will be 1 September 2007. On this date, the majority of permissions issued under existing legislation will expire and be replaced by the new licences and permits prescribed by the new Act.

Family Entertainment Centre Gaming Machine Permits

4.3 Part 10 of the Gambling Act 2005 concerns gaming machines, and section 247 concerns Family Entertainment Centre (FEC) Gaming Machine permits. These provisions replace those under Schedule 9 of the Gaming Act 1968. An FEC is a premises (other than an adult gaming centre) wholly or mainly used for making gaming machines available for use (see paragraph 7.6 below for examples). FEC gaming machine permits allow certain gaming machines to be made available for use in FECs without an operating or premises licence. These permits are issued by licensing authorities using the procedure set out in Schedule 10 to the Act. The permits allow only

Category D gaming machines - the lowest category of machine – to be made available for use. FEC permits expire after 10 years, but holders may apply to renew them.

4.4 These regulations set the fees that must be paid in applying for an FEC permit and renewing an FEC permit. They also set the fee to be paid for changing the name on an FEC permit (where the permit-holder has changed his name), and for requesting a copy of an FEC permit (if it is lost, stolen or damaged). These regulations also set out the form of an FEC permit issued by licensing authorities.

Prize Gaming Permits

4.5 Part 13 of the Gambling Act 2005 concerns prize gaming, which is defined in section 288 of the Act. This Part of the Act replaces and updates Section 21 of the Gaming Act 1968 and Section 16 of the Lotteries and Amusements Act 1976. The effect of the definition of prize gaming is that in prize gaming the prizes available will be determined by the operator of the gaming before play commences, and the payments he receives from the players will not be put directly to any prize on offer. One way of authorising prize gaming is to obtain a prize gaming permit from a licensing authority. Section 289 and Schedule 14 to the Act make provision for the grant and maintenance of prize gaming permits. Schedule 14 covers the process and procedure for the grant and maintenance of a prize gaming permit. The procedural requirements are similar, but not identical, to those applicable to FEC gaming machine permits. Prize Gaming permits expire after 10 years, but holders may apply to renew them.

4.6 These regulations set the fees that must be paid in applying for and renewing a prize gaming permit. They also set the fee to be paid for changing the name on a prize gaming permit (where the permit-holder has changed his name), and for requesting a copy of a prize gaming permit (if it is lost, stolen or damaged). These regulations also set out the form of a prize gaming permit issued by licensing authorities.

5. Territorial Extent and Application

5.1 These instruments apply to England, Wales and Scotland, except that in each instrument, regulations 3 (which sets the fee for applying for and renewing a permit) and 6 (which sets the fee for requesting a copy of a permit) apply only to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The objectives of the Gambling Act 2005 are: to prevent gambling from being a source of crime and disorder; to ensure that it is conducted in a fair and open way; and to protect children and other vulnerable persons from being harmed or exploited by it.

7.2 The provisions relating to FECs and Prize Gaming will further these objectives by regulating the sort of low level gaming that involves small participation fees and modest prizes, and by ensuring that gaming machines are only available in properly regulated gambling premises, rather than as ‘ambient’ gaming in fast food outlets or taxi cab offices as they are now.

Family Entertainment Centre Gaming Machine Permits

7.3 The new Act creates three categories of arcade: Adult Gaming Centres (AGCs), Licensed Family Entertainment Centres (FECS) and Unlicensed Family Entertainment Centres.

7.4 The Adult Gaming Centre will be able to provide category C and B gaming machines, which are designed for adults only, and will require both an operating licence from the Gambling Commission and a premises licence from the licensing authority.

7.5 The Licensed Family Entertainment Centre will be able to offer category C and D gaming machines, so long as the category C machines, which are for adults only, are in a separated area to which children do not have access.

7.6 The Family Entertainment Centre Gaming Machine Permit will apply only to unlicensed FECs. The unlicensed FEC will only be able to provide category D gaming machines, which are the lowest category of gaming machine and the only type which children and young people are allowed to play. These machines are defined as those with a maximum stake of 50p for a £5 cash prize or a non-monetary prize worth £8, and typical examples are penny falls, crane grabs and fruit machines. Unlicensed Family Entertainment Centres are typically the arcades found in caravan parks.

7.7 Only premises which are wholly or mainly used for making category D gaming machines available may hold an FEC Gaming Machine permit. Holders of premises licences under the Act may not apply for them.

7.8 An unlicensed family entertainment centre will not be allowed to provide any higher category of gaming machine, but will be able to offer forms of gambling such as equal chance prize gaming.

7.9 Family Entertainment Centre Gaming Machine permits will be issued by local licensing authorities and last for ten years.

Prize Gaming Permits

7.10 Prize gaming is defined in section 288 of the Gambling Act, and is gaming in which neither the nature nor the size of a prize is determined by the number of persons playing or the amount paid for or raised by the gaming. It is, therefore, gaming where the organiser puts up the prizes in advance, as distinct from gaming where the stakes of the participants make up the winnings. Prize gaming is intended to permit low level gaming for small participation fees and modest prizes. Bingo played at seaside amusement arcades is typical of this type of gaming.

7.11 It is anticipated that there will be a low volume of applications for prize gaming permits, because the Act provides an automatic entitlement to offer this type of gaming in bingo halls, adult gaming centres, licensed family entertainment centres, travelling fairs and in premises which hold a Family Entertainment Centre Gaming Machine permit.

7.12 Holders of premises licences under the Act and holders of club gaming permits may not apply for prize gaming permits. (Schedule 14 Paragraph 4).

7.13 Prize Gaming permits will be issued by local licensing authorities and last for ten years.

Consultation on draft regulations

7.14 These Regulations have been drawn up following three months of formal consultation which began in October 2006, and involved licensing authorities, the industry and other interested parties. As the regulations are largely administrative, the consultation exercise did not provoke a large response. We had thirteen replies in relation to the FEC regulations and ten on the subject of prize gaming, with several groups simply acknowledging our proposals but noting that they had no specific comments. However, those who did respond represent a good cross-section of stakeholders, and the majority of them endorsed our proposals. A list of those who responded is attached as an annex to this memorandum.

7.15 Our proposals are based on managing the permit administration process with a light touch, but ensuring that licensing authorities adopt a consistent approach nationally, and that a straightforward system is established for the benefit of both operators and regulators.

7.16 The Regulations do not prescribe the form of register that the licensing authorities and the Gambling Commission should maintain (or the information passing between them) to monitor and oversee the permit process. Responses to our consultation exercise indicated that if we were to be prescriptive about the details that the registers must hold there was a danger that this aspect of the process could become onerous for both sides, and result in unnecessary duplication of records. The licensing authorities and the Commission will both maintain such registers, but we concluded that it would be appropriate to allow them discretion about the details that they contain.

7.17 Unlike premises licence fees we are prescribing the precise fee for these permits. We have set the figures on the basis of our separate consultation on Premises Licences and Permits Fees, which was informed by a comprehensive fees costing exercise and sought the views of licensing authorites and the industry. Industry was largely content with our proposals, although licensing authorities expressed some concern about their ability to enforce the Regulations, which make no provision for charging an annual maintenance fee. However, the fees on which we settled are broadly comparable to those payable for the counterparts of these permits under the existing regime.

8. Impact

8.1 Regulatory Impact Assessments are attached to this memorandum.

9. Contact

Julia Frayne
Gaming and Lotteries
Department for Culture Media and Sport
2 – 4 Cockspur Street
London
SW1Y 5DH

Julia.frayne@culture.gsi.gov.uk

Tel: 020 7211 6361

.

List of those who responded to the DCMS Consultation Exercise on:
Gambling Act 2005: Family Entertainment Centre Gaming Machine Permit Regulations

1 **Brigid Simmonds**
Business in Sport & Leisure Ltd (BISL)

2 **David Bradwell**
Joint response on behalf of the Methodist Church and the Salvation Army

3 **Den Bannister**
British Holiday and Home Parks Association Ltd

4 **Gala Coral Group**
New Castle House
Castle Boulevard
Nottingham
NG7 1FT

5 **Hilary Workman**
St Edmundsbury Borough Council
Bury St Edmunds
Suffolk

6 **Iain Lockhart**
Assistant Chief Solicitor
City of Glasgow

7 **Jim Orford**
Professor of Clinical & Community Psychology, School of Psychology,
The University of Birmingham

8 **John O'Hagan**
Director
North Lanarkshire Council

9 **Katherine Smith**
Local Authorities Coordinators of Regulatory Services (LACORS)

10 **Leslie MacLeod-Miller**
British Amusement Catering Trade Association (BACTA)

11 **Oliver Shaw/Dipti Patel**
Camden Council
London
WC1H 8EQ

12 **Poppleston Allen**
Licensing Solicitors
37 Stoney Street
Nottingham
NG1 1LS

13 **WG Andrews**
The Bingo Association
Lexham House, 75 High Street North
Bedordshire, LU6 1JF

Regulatory Impact Assessment

1. Title of proposal

Gambling Act 2005 (Family Entertainment Centre Gaming Machine) (Permits) Regulations 2006

2. Purpose and intended effect

Objectives

The draft Order makes provision to the application process for Family Entertainment Centre (FEC) gaming machine permits. In particular, it concerns the following powers contained in Schedule 10 of the Gambling Act 2005 for the Secretary of State to prescribe:

- the form of the permit (Paragraph 11(1));
- any information to be maintained by licensing authorities with the register of permits (Paragraph 23(1)(a));
- the form of the register of permits that licensing authorities must maintain (Paragraph 23(3)(a));
- the manner in which the register of permits is maintained (Paragraph 23(3)(b));
- fees payable on application for a permit (Paragraph 5(d)), to change one's name on the permit (Paragraph 12(2)(a)(i) and to obtain a copy of the permit (Paragraph 21(2));
- regulations requiring licensing authorities to give to the Gambling Commission information about the permits issued by them, and requiring the Commission to maintain a register of this information, and grant access, and make copies of entries available to members of the public (Paragraph 23(4)(a)-(d).

Background

The Gambling Act 2005 introduces a new system of regulation for gambling, which will replace the current system of regulation set out in the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.

The government has previously announced that the formal implementation date for the Gambling Act 2005 will be 1 September 2007. On this date, the majority of permissions issued under the existing legislation will expire and be replaced by new licences and permits issued under the 2005 Act.

Section 247 of the Gambling Act 2005 (the Act) concerns family entertainment centre gaming machine permits. The FEC gaming machine permit will allow category D gaming machines to be made available for use without an operating or premises licence. Only premises which are wholly or mainly used for making gaming machines available for use may hold an FEC gaming machine permit.

A premises with an FEC gaming machine permit will be called an unlicensed family entertainment centre. An FEC gaming machine permit will allow category D gaming machines to be made available for use. Category D are the lowest category of gaming machines, and the

only type that children and young people are allowed to play. Category D machines are defined as those with a maximum stake of 50p for a £5 cash prize or for a non-monetary prize worth £8. Typical examples of category D machines are penny falls, crane grabs and fruit machines. An unlicensed FEC will not be allowed to provide any higher category of gaming machine but will be able to offer forms of gambling such as equal chance prize gaming.

We anticipate that the majority of applications for FEC gaming permits will be from arcade operators, many in seaside locations.

Rationale for government intervention

The intention behind these proposals is to ensure that we have in place consistent, light-touch and user-friendly procedures to enable businesses to obtain FEC gaming machine permits, which do not place unnecessary burdens on businesses, licensing authorities or the Gambling Commission.

3. Consultation

Within government

DCMS has consulted the Gambling Commission on our proposals.

Public consultation

The proposals in relation to the form and register of FEC gaming permits drew heavily on similar proposals that we consulted on in relation to premises licences under the Act. This in turn was based on informal consultation with the Department's Premises Licence Working Group, comprising representatives of licensing authorities and the industry. The proposals also drew on a number of presentations given by the Department to LACORS policy fora and working groups.

As with the premises licences proposals, the aim has been to develop practical, user- friendly proposals which strike a balance between the need to be prescriptive to provide consistency and clarity to licensing authorities, enforcement agencies, the gambling industry and the public, and the need for flexibility and proportionate regulation required by those same groups.

The consultation exercise did not provoke a large response: we had thirteen replies, with several groups simply acknowledging our proposals but noting that they had made no specific comments. However, those who did respond represent a good cross-section of stakeholders, and include LACORS, industry groups, the Salvation Army, and Jim Orford, the Professor of Clinical and Community Psychology at the University of Birmingham. A list of respondents is attached as an annex to this document.

The majority of respondents largely endorsed our proposals, which were based on managing the permit administration process with a light touch, but ensuring that licensing authorities adopt a consistent approach nationally, and a straightforward system is established for the benefit of both operators and regulators. We also wanted to ensure that the information that we require the licensing authorities to provide to the Gambling Commission, to maintain in their register, is only that which is necessary to enable the Commission to oversee and monitor the permit process. We did not want this aspect of the process to be unnecessarily onerous for the licensing authorities, or to result in the Commission being burdened with a level of detail that duplicates the records held by the individual licensing authorities.

Professor Orford was the only respondent to comment on the underlying assumptions behind the proposals rather than on the administrative process. He is opposed to the continued legality for children to play on gaming machines, and believes that the effects of low stake/low prize gaming should be closely monitored

The Department carried out a major fees costing exercise with all licensing authorities in England and Wales during July-September 2006. Although the regulations we are assessing in this RIA exclude fees, the costing exercise provided us with the opportunity to alert licensing authorities to our broad proposals for permits' regulations and the timetable for issuing the regulations.

4. Options

Option 1. Do nothing

The Secretary of State is required by the Act to introduce regulations relating to fees. While many of the powers relating to the administration of the application process are reserve powers and, as such, optional, not to use them is likely to result in inconsistency of approach between licensing authorities on matters like the design of permits. This would increase costs for licensing authorities and so increase costs for businesses.

Doing nothing would also mean that regulation of this sector would not be modernised, as envisaged under the Gambling Act. There would be a risk that the sector could be forced, inadvertently, to retain outmoded technology in the face of competition from more modern alternatives.

Option 2. Implement regulations

By adopting light touch regulations we will ensure that the application process for FEC gaming machine permits will be administered in a consistent way nationally. Costs for licensing authorities, which are then passed on to businesses, will be kept to a minimum.

5. Costs and benefits

Sectors and groups affected

According to figures produced by the British Amusements and Catering Trades Association - BACTA is the main trade body representing gaming machine manufacturers, suppliers and operators - there are around 1,000 family entertainment centres (FECs), varying from Brighton Pier and large seaside arcades to shop size units. Most of the centres are part of very small groups, and are usually owner-operated.

FECs may have a designated area for category C, adult-only, gaming machines together with a separate family area offering category D machines (fruit machines, penny falls and teddy bear crane grabbers) as well as a variety of non-gambling activities such as video games, rides and skating rinks.

Many of the 1,000 FECs are thought to be offering category C, as well as category D, gaming machines. This allows the arcade to provide a mix of gaming machines that all the family – adults and children – can play. Such arcades cannot apply for an FEC gaming machine permit since the category C machines mean they are subject to a higher level of regulation (an operating licence from the Gambling Commission and a premises licence from the local authority). The number of applications for FEC gaming machine permits is, therefore, likely to be fairly low.

Benefits

The regulations will ensure a straightforward, light-touch application and administration process for FEC gaming machine permits, which will keep the costs to industry to a minimum.

Costs

It is not anticipated that costs to industry will be significantly higher than under current gambling legislation. The processes for obtaining permits under the Gambling Act are broadly similar to those which exist under current law.

6. Small firms impact test

To a very large extent, applicants for FEC gaming machine permits will be small independent businesses. The only exception to this may be where arcades applying for a FEC permit are part of a larger chain.

The regulations are unlikely to have a significant impact on small businesses. Arcades already have to apply to their local authority for permission to operate machines and other forms of gaming. The new permits regime set out under the Gambling Act to a large degree replicates the provisions of the existing law.

7. Competition assessment

These regulations will not limit the number or range of operators. This is because if the operator satisfies the criteria for issue of a permit, then the permit will be issued. No exclusive right of supply is implied and no fixed number of suppliers is determined.

No limitations are imposed on the number or range of operators. Costs of entry and exit to the market, and of existing operators relative to potential entrants, are unaffected by the regulation. The regulation does not affect the ability or the incentives for operators to compete. Indeed, by ensuring that operators are not inadvertently forced to maintain outmoded technology, the regulation may promote renewed competition between suppliers.

8. Enforcement, sanctions and monitoring

A licensing authority officer will be able to request the holder of a prize gaming permit or of a FEC gaming machine permit to produce a copy of the permit for inspection (as will a constable or a Gambling Commission enforcement officer). Failure to produce the permit could result in summary conviction or a fine not exceeding level 2 on the standard scale.

These regulations do not exercise the Secretary of State's right to require licensing authorities to maintain a register of permits or to provide the Gambling Commission with specified information about the permits. Both the licensing authorities and the Commission will maintain such registers, but the form of register, and the information that is passed between the licensing authorities and the Commission, has been left to their discretion.

The Gambling Commission will have overall responsibility for monitoring compliance with the requirements of the Gambling Act 2005 from 1 September 2007. The Commission will also

advise and work closely with licensing authorities in the exercise of their own monitoring and enforcement functions under the Act.

9. Implementation and delivery plan

The Department is in the process of compiling guides for industry and licensing authorities about the transfer to the new system of regulation.

DCMS will also work closely with LACORS, licensing authorities and key industry bodies in designing the content and layout of application forms and permits. Although administrative in nature, all interested parties attach much importance to ensuring consistency and clarity in these forms.

The Department will keep the industry informed about these changes through its established industry, community and licensing authority networks. They will be kept informed at all key stages, e.g. results of consultations and when regulations are being laid and brought into effect.

10. Post-implementation review

The introduction of the permits regime will be monitored through the information on permits that will be maintained in registers held by the licensing authorities and the Gambling Commission. We will also get feedback through three key formal mechanisms: the DCMS Industry Liaison Group; the DCMS Premises Licence Working Group; and, the LACORS Gambling Reform Policy Forum. These fora comprise key representatives from industry and licensing authorities.

11. Summary and recommendation

Ministers have decided to proceed with option 2 above, to proceed with bringing in regulations on prize gaming permits and unlicensed family entertainment centres with effect from 21 May 2007.

12. Declaration and publication

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

Richard Caborn Date
Minister of State

13. Contact point

Julia Frayne
Gaming and Lotteries
Department for Culture Media and Sport
2 – 4 Cockspur Street
London SW1Y 5DH

julia.frayne@culture.gsi.gov.uk

Tel: 020 7211 6361