**EXPLANATORY MEMORANDUM TO**

**THE GAMBLING ACT 2005 (RELEVANT OFFENCES) (AMENDMENT) ORDER 2006**

**2006 No. 3391**

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

## 2. Description

2.1 This Order amends the list of offences that are treated as "relevant offences" for the purpose of the grant and maintenance of operating and personal licences under Parts 5 and 6 of the Gambling Act 2005 ("the 2005 Act").

2.2 In particular, the Order makes amendments in relation to sexual and violent crimes, under the criminal laws of England & Wales and Scotland.

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

3.1 None.

## 4. Legislative Background

4.1. This Order has been made as part of the implementation of the 2005 Act.

4.2. The Act establishes a new system for the regulation of all gambling in Great Britain, other than the National Lottery and spread betting.

4.3. From September 2007 the Gambling Commission, established by the 2005 Act, will license and regulate virtually all commercial gambling in Great Britain, including casinos, bingo, betting, gaming machines, internet gambling, and larger lotteries. It will do so by issuing operating licences under Part 5 of the Act, and personal licences under Part 6 of the Act. Advance applications for such licences will be permitted from January 2007 (see The Gambling Act 2005 (Commencement No.6 and Transitional Provisions) Order 2006 (SI 2006/3272 (C.119)).

4.4. Relevant offences are defined in section 126 of, and Schedule 7 to, the 2005 Act. Section 69(1)(d) (together with section 128) of the 2005 Act require applicants for operating and personal licences to inform the Gambling Commission of any conviction for a relevant offence.

4.5. Section 71 (and section 128) of the Act entitles the Gambling Commission to refuse an application for an operating or personal licence where the applicant, or a person relevant to the application, has a conviction for a relevant offence.

4.6. Section 125 of the 2005 Act disapplies section 4 of the Rehabilitation of Offenders Act 1974 (c.53) for the purposes of section 69(2)(d) and section 71(1) of the 2005 Act. As a result, for the purpose of applying for and being granted a licence under the Gambling Act, convictions for relevant offences are never "spent".

4.7. Once granted, the holder of an operating or personal licence can have his licence reviewed by the Gambling Commission or forfeited by a court in Great Britain, where he is convicted subsequently of a relevant offence (sections 115, 116, and 128 of the 2005 Act). A personal licence holder can also be disqualified from holding future licences upon conviction for a relevant offence (section 136).

4.8. Relevant offences are listed in Schedule 7 to the 2005 Act and include a "sexual offence" within the meaning of section 161(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6) ("the 2000 Act") and a "violent offence" within the meaning of section 161(3) of the 2000 Act. Those provisions of the 2000 Act were repealed by the Criminal Justice Act 2003 (c.44) on 4th April 2005.

## 5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

## 6. European Convention on Human Rights

6.1 This order amends primary legislation.

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

In my view the provisions of The Gambling Act 2005 (Relevant Offences) (Amendment) Order 2006 are compatible with the Convention rights.

## 7. Policy background

7.1 The repeal of sections 161(2) and (3) of the Powers of Criminal Courts (Sentencing) Act 2000 by the Criminal Justice Act 2003 impacts directly on the 2005 Act. As a result paragraphs 8 and 9 of Schedule 7 contain defunct definitions of a "sexual" and a "violent" offence in relation to England & Wales.

7.2 If Parliament's intention under the Gambling Act 2005 is not restored, the Gambling Commission would be constrained in taking these types of offences into account when considering licence applications and the courts could not exercise their powers of forfeiture and/or disqualification properly when sentencing a gambling licence holder for a relevant sexual or violent offence. Given the important role "relevant offences" play in the licensing system, DCMS considers it vital to identify replacement definitions for offences of a sexual or violent nature.

7.3 As relevant offences include both current convictions and those which would otherwise be spent under the Rehabilitation of Offenders Act 1974, DCMS believes it is important to list all such offences for which a conviction can be held, not just those which would be the subject of a prosecution under current criminal justice legislation. For example, DCMS considers it necessary to incorporate references to specified offences under the Sexual Offences Act 1956 (c.69) (now repealed), as well as the Sexual Offences Act 2003. The list in the Order therefore includes offences that have been repealed (or repealed partially in relation to some but not all jurisdictions) and for which a conviction may still be held by an applicant for a licence or a person relevant to the application.

7.4 Articles 2 and 3 of the Order contain an up-to-date list of offences of a sexual or violent nature which DCMS considers appropriate to be considered "relevant offences" for the purposes of the gambling licensing system. Article 2 contains offences under the laws of England & Wales, or England & Wales and Scotland. Article 3 contains offences under the law of Scotland. DCMS considered it important to ensure a consistent approach across Great Britain to the definition of a "relevant offence". Therefore, in making amendments to the offences covered by the law of England & Wales, a comparison exercise was undertaken with the criminal law in Scotland and this led to the addition of certain offences under the law of Scotland.

7.5 The Order has not been the subject of public consultation. This is because the amendments are of a technical nature caused by the repeal of legal provisions and therefore contain nothing that merits consultation.

## 8. Impact

8.1 It is not considered that this Order requires any Regulatory Impact Assessment, as it contains technical amendments to the 2005 Act that have no impact on the costs of regulation.

## 9. Contact

Donald Sproson at the Department for Culture, Media and Sport can answer any queries regarding the instrument (e-mail: donald.sproson@culture.gsi.gov.uk or telephone: 020 7211 6535).