EXPLANATORY MEMORANDUM TO

THE GAMBLING (OPERATING LICENCE AND SINGLE-MACHINE PERMIT FEES) (AMENDMENT) REGULATIONS 2012

2012 No. 829

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. Purpose of the instrument

2.1 These Regulations amend the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006, as amended ("the 2006 Regulations"), which, amongst other things, prescribe fees payable in relation to operating licences under the Gambling Act 2005 ("the Act"). These Regulations amend the 2006 Regulations in order to:

- create new fee categories, and set new fee levels, for fees payable under the existing fees regime;
- make various deregulatory amendments to the existing fee regime; and
- correct anomalies in the 2006 Regulations.

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

Fee increases

3.1 Whilst overall these Regulations reduce the fee burden, they do impose some fee increases and, in certain cases, those fee increases are set at above the rate of inflation. The Regulations implement a number of changes to the operating licence fee levels in order to achieve full cost recovery in respect of the activities of the Gambling Commission ("the Commission") under the Act.

3.2 Annual fees for certain fee categories (e.g. for the largest operators in respect of: general betting (standard) licences, Adult Gaming Centre and Family Entertainment

Centre licences, pool betting licences, bingo licences and external lottery manager licences) are being increased above the rate of inflation to reflect the level of regulatory costs associated with those licence fee categories and the shift in cost recovery from smaller operators to higher impact issues and operators. As a result of this shift in cost recovery, the smaller general betting (standard), bingo, adult gaming centre and family entertainment centre licensees (those who operate 15 premises or less) will be subject to 7% reductions in annual fees. The fee increases for the largest of operators (in particular general betting (standard) licensees who operate more than 50 premises) also result from the breaking-up of some of the existing fee categories to ensure that the smaller operators in any such category do not cross-subsidise the larger by bearing a disproportionate share of regulatory costs.

3.3 The amendments to fee levels reflect the continuing shift in focus of compliance and enforcement activity, and the more equitable recovery of necessary costs of regulation across operators in each sector, and between sectors. Most non-remote operators will see reductions in Annual Fees after April 2012. Fees will remain unchanged for around half of all operators, although a few operators, particularly larger organisations in the betting sector, will see significant increases (up to 29%), largely reflecting the sub-division of fee categories to ensure a more equitable share of regulatory costs, as well as the shift in cost recovery to higher impact issues. The overall package results in a reduction in the fee burden on the industry of over £700k in 2012/13. The Commission will continue to monitor and gather evidence about their regulatory costs and the industry they regulate on an annual basis.

Consolidation

3.4 The Department recognises that these Regulations are the fifth occasion on which the 2006 Regulations have been subject to amendment. The Department has considered the need for consolidation, but has decided against doing so in this instance. We consider that while a number of businesses will have an active interest in what these Regulations provide, those businesses will in practice be guided by information published by the

Gambling Commission pursuant to the Regulations, rather than by the substance of the Regulations themselves. A further factor against the need for consolidation is that we are substituting all of Schedules 1 to 6 in their entirety, which means that fees payable under the Schedules are very clear.

4. Legislative Context

4.1 This is the third occasion on which the fees regime, as first established by the 2006 Regulations, has been subject to substantive change following its inception on 1st September 2007. The 2006 Regulations were amended substantively in 2007 (by S.I. 2007/1791), in 2008 (by S.I. 2008/1803) and in 2009 (by S.I. 2009/1837). In addition, the 2006 Regulations were subject to minor amendments in 2007 (by S.I. 2007/269) and in 2008 (by S.I. 2008/3105).

5. Territorial Extent and Application

5.1 This instrument applies to England & Wales and Scotland.

6. European Convention on Human Rights

6.1 The Secretary of State for Culture, Olympics, Media and Sport has made the following statement regarding Human Rights:

"In my view the provisions of the Gambling (Operating Licence and Single-Machine Permit Fees) (Amendment) Regulations 2012 are compatible with Convention rights."

7 Policy background

What is being done and why

7.1 The Department's aim in in making these Regulations is to set fees in accordance with the Act and HM Treasury's rules and guidance on fees, levies and charges set out in Managing Public Money and at a level that enables the Commission to recover the full costs of delivering its responsibilities, with no cross subsidies and ensuring fairness and value for money for the gambling industry.

7.2 In September 2011 the Department and the Commission launched a joint consultation exercise (see paragraph 8 below), on proposals put forward by the Commission as a result of a regular assessment and review of its workload, costs and fees, but also to further the Government's drive to reduce regulatory burdens. These Regulations are being made to implement proposals arising as a result of that consultation.

What these Regulations achieve - summary

7.3 These Regulations:

7.3.1 implement a **rebalancing of the fees structure,** as summarised below:

- Subdivide a number of fee bands to spread sector costs more fairly across differently-sized operators (with consequent additional application fees) to avoid cross-subsidy within fee bands
- Reflect the reduced regulatory focus on smaller Adult Gaming Centre, Family Entertainment Centre bingo and betting operators with fee reductions averaging 7%
- Recover the costs of increased regulatory efforts focused on higher impact issues and operators from the larger non-remote arcade, bingo, and betting operators
- Apply fee increases averaging just under 10% but with some individual large increases (up to 29% where banding changes account for two-thirds of the total change)
- Reduce first annual fees for operators bidding for the new 2005 Act casinos
- Recover a greater proportion of the costs of regulation from non-remote external lottery managers (businesses running society lotteries on a commercial basis) and pool betting operators

- Reduce the administrative burdens that currently make it difficult for businesses to continue to operate (e.g. following the death of a sole trader)
- Reduce fees for varying licences to increase a fee category from 25% to 20%
- Introduce a new remote ancillary licence fee for non-remote lotteries accepting remote payment entries to their lotteries
- Raise the threshold for telephone only betting from £275k up to £550k gross gambling yield (GGY).

7.3.2 **Make provision for a different operating licence fee sub-category** (general betting (standard) (remote trading platform) licence) which will fall under the existing Remote General Betting Standard Licence**.** This licence fee sub-category will be free to existing operators who hold a non-remote general betting (standard) or general betting (limited) licence. Non-licensed traders who need a licence falling into this sub-category would pay an application fee of £198 and an annual fee of £280. This fee would reflect actual Commission regulatory costs. Savings would be neutral to non-remote betting operators.

7.3.3 **Expand the existing definition of a general betting standard ancillary licence** so that it covers betting by terminals as well as the existing provision of telephone betting. To ensure consistency with the remote general betting (limited) operating licence (see paragraph 7.3.4 below), both the general betting (standard) and general betting (limited) ancillary licences will also be extended to permit the acceptance of bets by email (in circumstances in which the transaction is processed by an individual, rather than by wholly automated means) and both will allow a GGY of up to £550k to be generated in reliance on such licences as long as the GGY remains ancillary to that generated in reliance on the holder's corresponding non-remote operating licence. There will also be the creation of a Pool Betting Ancillary licence for the provision of terminals on track premises when a pool betting operating licence is also held.

7.3.4 **Change the threshold in relation** to the remote general betting (limited) operating licence. Currently operators are only permitted annual gross gambling yields of up to £275,000 before a

full remote general betting (standard) licence would be required. The GGY threshold would be raised from £275,000 to £550,000. Additionally, there will be **a change to the definition of a remote general betting (limited) operating licence** to permit the licensee to provide facilities for betting by email (in circumstances in which the transaction is processed by an individual, rather than by wholly automated means) as well as by telephone.

7.3.5 **Confirm** that for those existing general betting (standard) and pool betting operators who already provide terminals on premises and do not hold a remote licence, the ancillary licence will be **granted for free** as part of this review of fees. Current annual fees for ancillary licences are £25. In addition there will be a **reduction in the annual fees and first annual fees** for the ancillary remote general betting and pool betting operating licences to zero, as the compliance work can be covered by the main operating licence fee.

7.3.6 **Expand the definition of the Betting Intermediary (Trading Room) operating licence** to permit the provision of facilities by third-party fixed-odds betting operators. This effectively expands the scope of the Trading Room licence (which currently only permits the third party to be a betting intermediary) and means operators providing facilities via a fixed-odds bookmaker would pay £1,594 in annual fees rather than the current £13,529.

7.3.7 **Reduce the annual fees and first annual fees** for the casino, general betting, pool betting, bingo, gambling software and gaming machine technical ancillary remote operating licences to zero, as the compliance work can be covered by the main operating licence fee.

7.3.8 **Reduce the application and annual fees that apply in certain circumstances** – where

- a sole trader dies and a new application is made by the spouse, civil partner or child of the deceased sole trader to continue the business previously operated by the deceased;
- the remaining partner in a previous two-person partnership wishes to continue the business previously undertaken by that partnership;

- the assets of a business are transferred from one entity to another and a new application for an operating licence is therefore necessitated.

7.3.9 **Reduce the application fees in certain circumstances where an application is made for a change of corporate control (under section 102 of the Gambling Act 2005)** – where

- a new controller is authorised by the Financial Services Authority or is regulated by an EEA member state or
- two or more licensed companies are subject to changes of corporate control by virtue of those companies being within the same group structure.

This is to reflect the Commission's best estimates of regulatory costs in these circumstances, as many licensing checks will already have been carried out by either the Commission or the FSA.

7.3.10 **Extend the time period for the payment of the first annual fee**, from 30 days to six months where an operating licence for a non-remote new casino is granted. Further, the first annual fee will be reduced by 50% to best reflect regulatory costs.

7.3.11 **Reduce annual fees for holders of the non-remote new casino operating licence where their casino premises are not yet operational.** Annual fees will be reduced by 50% for such licensees, to ensure that the licence fees payable better reflect regulatory effort. The Commission will consider a licence holder to become operational (and therefore liable to pay full fees) twelve months prior to the planned opening date of the casino premises, to account for the regulatory effort involved in the lead-up to opening.

7.3.12 **Remove the requirement for operators that hold both remote and non-remote society lottery operating licences**, and where the remote aspect of their business is limited to £250,000 proceeds per annum or less, to require a full remote licence. A new society lottery ancillary licence will be introduced with an application fee of £100 and an annual fee of £50. The

licence will be granted for free to existing licensees that hold a non-remote and remote society lottery operating licence.

7.3.13 **Change the existing fee bands for pool betting and external lottery managers**, as can be seen in Schedule 1. The existing fee bands for these operators are too broad to properly reflect the costs of regulating operators with expanding businesses. Further, fees for some of these operators (in particular the largest operators in the new categories D and E) were initially set at too low a level in relation to the overall regulatory effort required (i.e. levels set in 2006). The lowering of the GGY 'ceiling' of the largest pool betting operator band is to ensure that the Commission fully recovers its costs from the largest operators that demand the greatest levels of regulatory effort.

7.3.14 **Clarify the definition of 'gross gaming yield' for casinos**. Licensees and applicants should take the aggregate of the gaming receipts from casino and equal chance gaming as well as revenue from gaming machines that are sited on the casino premises. This is a point of clarification as the Commission has always considered that 'gross gaming yield' as a definition should be inclusive of gaming machine yield and has always proceeded on that basis.

7.3.15 **Ensure that the proposals regarding variation fees applicable for applications for remote casino, bingo and general betting (standard) (virtual event) operating licences (as published in the 2009 fees consultation) are accurately reflected in the instrument, and that there is consistency between the arrangements for application fees and variation fees**. The 2009 Fees Consultation introduced arrangements for the allocation of a fee category for remote operating licences that combined two or three of the casino, bingo or virtual event betting licences. The Department and the Commission introduced a composite licence fee for these random number generator-based remote activities to help avoid some of the fee-related concerns as to what category a particular game should properly belong, or whether a particular game is a betting, bingo or a casino game, by reducing the financial impact of holding the right licence types. Following the introduction of the proposals, application and annual fees were then calculated based on the aggregated gross gambling yield derived by an operator from the relevant activities (remote casino, bingo and betting on virtual events), rather than on the individual GGY

for each activity. The additional complexity involved in regulating a combined licence was addressed through the addition of a fixed rate licence fee for each additional activity. The composite fee for the licence activities became treated as a single fee within the overall fee structure and subject to discounts, where applicable, if held with other licences. Clarity will be provided on the fees payable when *variation* applications are made to add the second and/or third of those activities (i.e. an application to add one or two of the casino, bingo or general betting (standard) (virtual event) operating licences in circumstances where one of those licences is already held). To ensure that there is consistency between the fees payable for application/annual fees and variation fees, the variation fee to add one of the above licences will be a fixed amount of £1,050, to add two will be fixed at £2,100. If the combined GGY resulting from the variation leads to an increase in fee category, the additional variation fee will be 20% (consistent with the proposal to reduce variation fees when increasing fee categories) of the category into which the combined licence falls. The Commission already uses this method for calculating variation fees in these circumstances, in accordance with the 2009 fees proposals, and the provision will simply seek to clarify these arrangements.

8. Consultation outcome

8.1 The proposals were subject to public consultation from 22 September to 15 December 2011. 26 responses were received from trade bodies, individual operators and other bodies including the Local Government Association, and the FA. The Gambling Commission also hosted a fees review workshop for the industry.

8.2 Overall the responses welcomed the reduction in fees for smaller operators. The larger betting operators believed the fee increases proposed for them were excessive. In contrast, other responses asserted that the fee increases for these larger operators were too low.

8.3 The Commission have continued to maximise efficiency savings and constrain costs to the minimum required to regulate gambling effectively. The package reduces the fee burden on the industry by £700k per annum.

8.4 The Commission regulates an industry with a gross gambling yield (GGY) of around £5.6 billion. The Commission's costs of £14.27m in 2008/9 and £12.86m in 2009/10, the latest years for which we have GGY figures, represent 0.25% and 0.23% respectively of the industry's GGY in those years. The Commission's projected costs of £12.33m for the year 2012/13 when the proposed fees come into effect would represent 0.22% of the current industry GGY. Although industry yield may of course fluctuate year-on-year, costs have been reduced both in cash terms and real terms.

8.5 Following the consultation some changes have been made to address points made during the consultation:

8.5.1 Pool betting fees: the annual fees for the larger non-remote pool betting operators (those in fee categories D and E) will be reduced from the amounts originally published in the consultation. The category D annual fee will be £6,477 rather than £7,109 and the category E fee will be £12,137 rather than £17,477, after the Commission, in consideration of consultation responses in this area, undertook a further review of its regulatory costs and efforts.

8.5.2 2005 Act Casino Annual Fees: to ensure that fees better reflect regulatory costs in this area, annual fees for such licenses will be reduced by 50% when holders of the licence are not yet operational. Paragraph 7.3.10 above gives further detail.

9. Guidance

9.1 Guidance to gambling operators on fee categories and payment will be provided by the Gambling Commission.

10. Impact

10.1 The package reduces the fee burden on industry by £700k (which equals the reduction in Commission costs).

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

11. Regulating small business

11.1 The legislation applies to small business as all businesses have to pay for the full cost of their regulation. The proposals reduce the Annual Fees payable by the small operators by 7%. The deregulatory proposals in regard to arrangements upon the death of a sole trader or the cessation of a partnership when the remaining party wishes to continue are aimed particular at helping smaller businesses.

12. Monitoring & review

12.1 The Commission will continue to monitor and gather evidence about their regulatory costs and the industry they regulate on an annual basis.

13. Contact

Andy Birleson at the Department for Culture, Media and Sport Tel: 0207 211 6528 or email: andy.birleson@culture.gsi.gov.uk can answer any queries regarding the instrument.