EXPLANATORY MEMORANDUM TO

THE GAMBLING (OPERATING LICENCE AND SINGLE-MACHINE PERMIT FEES) REGULATIONS 2017

2017 No. 303

AND

THE GAMBLING (PERSONAL LICENCE FEES) (AMENDMENT) REGULATIONS 2017

2017 No. 302

1. Introduction

1.1 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.

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

2. Purpose of the instruments

2.1 These Regulations amend instruments concerned with various fees payable to the Gambling Commission (the Commission) under the Gambling Act 2005 (c. 19) for operating and personal licences, and single-machine supply and maintenance permits.

The Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2017

2.2 The Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006 (S.I. 2006/3284) (as amended, the 2006 Regulations) prescribed various fees for different types of activity associated with licences and permits required by or issued under the Gambling Act 2005, and also set separate fees for different types of licence, sometimes prescribing different fees for different sub-categories within a particular type of licence.

2.3 These Regulations (the Operating Licence Fees Regulations) consolidate the 2006 Regulations, together with the various instruments and part of an instrument that amended the 2006 Regulations, but also make a number of changes to the existing fee regime.

The Gambling (Personal Licence Fees) (Amendment) Regulations 2017

2.4 These Regulations (the Personal Licence Fees Regulations) make a single amendment to the Gambling (Personal Licence Fees) Regulations 2006 (S.I. 2006/3285) so that a charge is no longer payable for the variation of a personal licence, when the extent of that variation is simply to reflect the change of name of an individual (for example, when a surname changes due to marriage or divorce).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Around 3,000 operators pay fees to the Commission under the 2006 Regulations. The changes that are made by the Operating Licence Fees Regulations to the current fee regime better reflect the various costs incurred by the Commission's regulation of licensed operators. As a result of the changes, the fees paid by around 1,900 operators will reduce, while around 1,000 operators will see no change. The fees which are paid by 74 operators will be increased.

3.2 Adjustments are made to the fees structure for remote betting operators, reflecting the Commission's better understanding of its regulatory activities in the wake of changes made to the operating licensing regime by the Gambling (Licensing and Advertising) Act 2014. The annual fees paid by the twelve largest remote betting operators – eleven of which hold remote general betting (real events) operating licences, the other a remote betting intermediary operating licence – will increase by between 22% (an increase of £9,000) and 140% for the very largest operators (an increase of £163,000). Alongside this, there will be a reduction in fees for smaller remote betting operators, typically of around 75% (generally equivalent to £10,000).

3.3 The increases imposed on the other 62 non-remote operators are the consequence of moving the basis on which certain fees are calculated from the number of licensed premises to annual gross gambling yield. Gross gambling yield is the best indicator of the volume of gambling, which is in turn both the most significant risk to the licensing objectives listed in section 1 of the Gambling Act 2005 and the principal driver of the Commission's regulatory costs.

3.4 Refining the fee regime in this way will shift the burden away from the operators that generate the lowest annual gross gambling yield (including working men's clubs, other social clubs and holiday and caravan parks) and towards retail bingo operators that generate significantly higher gambling volumes.

3.5 The fees paid by 36 holders of non-remote bingo operating licences will increase. For 16 smaller bingo operators, fees will rise by 34% (£519). Of 16 medium-sized bingo operators, the fees for 12 will rise by between 100% and 115% (£1,524 - £1,766), and for 3 others the fees will increase by 52% (£3,570); the fees for a single medium-sized bingo operator will increase by 583% (£8,933). The fee increases for four larger bingo operators will be 39% (£17,331) for one operator, 239% (£16,501) for two operators and 129% (£23,166) for another operator.

3.6 Taking the operator that will experience a 583% increase as an illustration, the annual fee paid would rise as a result of the Operating Licence Fees Regulations from £1,531 to £10,464. With "4 or fewer licensed premises", that operator is in the lowest fee category under the 2006 Regulations. That operator's annual gross gambling yield is, however, almost 150 times larger than the average generated by social clubs with a bingo operating licence. In contrast, the change in fee categories also means that 150 bingo operators will pay lower fees overall.

3.7 Other operating licences will also be subject to fee increases far in excess of inflation, again a consequence of the change in basis for many non-remote operating licences. The fees paid by twenty operators for a gaming machine general operating licence for an adult gaming centre or a family entertainment centre will increase by between 31% (£477) and 186% (£1,902), while over 400 such operators will see their fees reduced.

Similarly, while four independent betting operators will experience a 63% increase in fees (£967) and two large bookmakers an increase of 22% (£67,185), the fees paid by almost 200 other betting operators will reduce.

Other matters of interest to the House of Commons

3.8 As these instruments are subject to negative resolution procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative context

4.1 The Gambling Act 2005 regulates all gambling in Great Britain, with the exception of the National Lottery and spread betting. Under that Act, subject to certain exceptions, a person who provides facilities for commercial gambling needs to hold an operating licence authorising that activity, or that person commits a criminal offence. Operating licences are issued by the Gambling Commission.

4.2 The Operating Licence Fees Regulations prescribe the various fees payable under the Gambling Act 2005 for the different kinds of operating licence, and also for a single-machine supply and maintenance permit. However, while the Operating Licence Fees Regulations largely consolidate the 2006 Regulations as amended, they also change the basis on which some fees are categorised, create new fee categories and set new fee levels for operating licences. The Operating Licence Fees Regulations also make some deregulatory amendments to the existing fee regime, and minor changes for the purposes of clarity and consistency.

4.3 The purpose of the Operating Licence Fees Regulations is to ensure that the fees paid in respect of an operating licence more closely reflect the cost to the Commission of functions performed in connection with licences of that type and category.

4.4 The Personal Licence Fees Regulations provide that a fee is no longer payable for varying a personal licence, if the extent of that variation is simply to reflect the change of name of an individual (for example, when a surname changes due to marriage or divorce).

5. Extent and territorial application

5.1 The extent of these instruments is Great Britain.

5.2 The territorial application of these instruments is Great Britain.

6. European Convention on Human Rights

6.1 As both instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 DCMS's aim in making the Operating Licence Fees Regulations is to ensure that fees are set at levels which allow the Commission's regulatory costs continue to be recovered on a proportionate and equitable basis from the different types and sizes of operator. There are almost 3,000 licensed gambling operators, of which 2,000 will see a change in fee as a result of these Regulations (around 1,900 with a reduction in fees,

74 with an increase). The changes to fees brought about by these Regulations would reduce the overall fee burden across the gambling industry by 10%, remove potential barriers to entering the gambling market, and reduce the fees payable to vary the fee category of an operating licence where operators' businesses grow.

7.2 The changes to fees in the Operating Licence Fees Regulations follow a significant change to the Commission's regulatory remit as a result of the implementation of the Gambling (Licensing and Advertising) Act 2014. That Act changed the basis on which remote gambling was regulated from point-of-supply to point-of-consumption basis, so that any operator – based anywhere in the world – that wanted to transact with British consumers had to obtain an operating licence from the Commission. This increased both the volume of gambling and the number of operators regulated by the Commission.

7.3 The Commission's review of its operating licence fees confirmed that while its overall costs have increased with the extension of its functions, its income from licence fees at their current rates would continue to be in excess of its operational costs. It is in this context that these Regulations would effect a 10% reduction in the overall annual fee burden for the gambling industry, enabling the Commission to reduce its accumulated reserves by temporarily setting fees below cost recovery until its reserves profile has reached a prudent minimum level. At that time, the Commission will assess whether full cost recovery requires an increase in fees, or whether further planned efficiencies make that unnecessary.

7.4 The Operating Licence Fees Regulations also refine the existing fee structure to reflect the Commission's improved understanding of the regulatory costs which it incurs in connection with the different types of operating licence. Amendments are also made to introduce a number of deregulatory measures. These refinements and amendments are summarized below:

a) Application fees for an operating licence will be reduced by 10% to reflect efficiencies in the Commission's application procedures.
b) A non-remote operating licence which is currently divided into fee categories which are determined by the number of licensed premises or size of premises to which that licence relates, will instead become defined by the annual gross gambling yield (GGY) generated in connection with that licence. The volume of gambling, for which GGY is the best indicator, is the principal driver of risk to the licensing objectives of the Gambling Act, and the key driver of the Commission's costs. As such, GGY is considered to be a much better basis on which the Commission should recover its costs through fees than premises numbers or premises size. Both application fees and annual fees would be set according to GGY. Around 900 existing operators would be affected by this change, with the vast majority of those being subject to reductions in annual fees.
c) Most licence fee categories will be sub-divided into narrower categories, particularly for smaller businesses. This will ensure a closer alignment of fees to the GGY of these small operators. In particular, reflecting the relative costs to the Commission, the revised fee structure means that there will be smaller fee increases when an operator's GGY increases so that its operating licence falls within a higher fee category.
d) Fee formulae will be introduced to future-proof the fee structure; for example, a fee of £A, plus £B for each additional £C million of GGY above £D million. This will ensure that the Commission can continue to recover its costs from

any larger entity that may emerge as a result of industry acquisitions or consolidations. These formulae would have the same effect in practice as an extension of the fee scale at the top end to provide for a series of higher and higher GGY-based bands. No business is currently large enough to be affected by this change.

e) There will be reduced fees in circumstances when an operator applies to the Commission to vary its operating licence so as to increase its fee category. Variation fees to increase fee categories would move to a flat rate of £25 rather than the current 20% of the normal application fee, and with anticipated volumes of nearly 500 such applications per annum, this change would save businesses a total of around £125,000 in fees every year.

f) New sub-types of operating licence will be introduced which will enable lower fees for certain remote gambling businesses. These include the casino (game host), bingo (game host), general betting (host) (real events) and general betting (host) (virtual events) operating licences, which are available to businesses that provide remote gambling games or betting markets to consumers via another remote gambling operator's website, but do not contract directly with any of the consumers using their games. The fees for these new sub-types of licence will be lower than for the current equivalent licences, as the regulatory burden is lower; for example, such licensees do not need to carry out age verification. Around 40 remote operators will save £700 or more per annum as a result of this change.

g) The scope of the gaming machine technical and gambling software ancillary remote operating licences will be expanded, to allow software to be supplied by File Transfer Protocol (FTP) or by email up to a limit of £50,000 in annual sales (where the annual sales in reliance on the corresponding non-remote operating licence exceed the sales in reliance on that ancillary licence). This will remove some barriers to market entry for very small businesses.

h) There will be reduced fees for an application to continue a licence after a change in corporate control (i.e. a change in the shareholding), in circumstances where the applicant is a small family-owned private limited company and the shares have been transferred to an immediate family member. This is expected to assist very small family businesses that wish to transfer or gift shares within their family, with the estimated savings to such business expected to be around £225 on average.

i) Licence application fees being reduced by 10% to reflect efficiencies in the Commission's application process.

j) A 25% first annual fee discount will be introduced for newly-licensed remote gambling operators. This change is expected to provide a total saving of £0.35m per annum across new remote businesses.

k) Annual fee discounts will be simplified, providing further discounts for most operators that hold both a non-remote and remote operating licence. This change is expected to save licensed operators a total of £0.22m per annum across the population of operators.

l) No charge will be made for varying an operating licence when the extent of that variation is simply to reflect the change of name of an individual (for example, when a surname changes due to marriage or divorce). An identical provision will be made for personal licence variations through the Personal Licence Fees Regulations.

7.5 The revised fees structure takes account of the fixed costs of regulating operators, as well as economies of scale in regulating larger operators and compliance costs. As a result, as an operator's GGY increases, the annual fees it pays will tend to decrease as a proportion of its GGY. For example, no regional bingo operator will pay a fee which is more than 0.13% of their GGY, whereas a bingo operator in the lowest fee categories will generally pay between 0.2% and 3% of its GGY. In addition, the realignment in fees resulting from the change in fee categories means that around 150 bingo operators that generate relatively little GGY will get fee reductions.

Consolidation

7.6 The Personal Licence Fees Regulations 2017 are the third occasion on which the Gambling (Personal Licence Fees) Regulations 2006 have been amended. As each amendment has been limited and specific to date (i.e. amendments only to specific fees payable in certain circumstances), DCMS does not yet believe that consolidation is necessary or desirable.

8. Consultation outcome

8.1 DCMS and the Commission held a joint consultation[1] between 8 July 2016 and 9 September 2016 on the proposals for changes to the Commission's fees, including a workshop for this consultation on 20 July 2016. It was considered that a 12-week consultation was not necessary on this occasion because the Commission had previously introduced some of the key tenets of the consultation (such as the move to fee categories based on annual gross gambling yield) in a fees discussion exercise conducted in 2015.

8.2 The Commission had published a fees discussion paper[2] on 1 September 2015 in which it explained the approach to fee setting and sought views from stakeholders in the gambling industry on that approach, and views on fees in general. The Commission held a workshop on 24 September 2015 to supplement the discussion exercise, and the exercise ended on 27 October 2015. The Commission received 27 written responses from licensed gambling operators, trade associations from the gambling industry and individuals, and published a response to that exercise[3].

8.3 A total of 36 consultation responses were received from gambling operators, trade associations and individuals to the joint consultation in 2016. Most respondents supported the broad package of proposals for change, including the move to GGY-based fee categories and reductions in annual fees for most operators. The non-remote bingo sector expressed the greatest concern about the proposals, in particular the size of the annual fee increases in cash and percentage terms for some operators in the traditional and commercial bingo sectors. Representatives of medium-sized and large remote betting operators also raised concern at the fee increases that were proposed for those operators in the context of an overall 10% reduction in annual fees.

[1] The consultation document can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536277/Proposals_for_Gambling_Commission_Fees_from_April_2017_-_condoc.pdf.

[2] The fees discussion paper can be found at: http://www.gamblingcommission.gov.uk/PDF/consultations/Fees-discussion-paper-September-2015.pdf

[3] The response can be found at: http://www.gamblingcommission.gov.uk/PDF/consultations/Fees-discussion-responses-document-December-2015.pdf.

8.4 In view of the responses received to the consultation, the following amendments were made to the original proposals:

a) An additional fee category for non-remote bingo, betting and arcade operators with a GGY of more than £750,000 but less than £1.25m per annum was introduced, with lower fees than had originally been proposed in the consultation, to ensure that regulatory costs were spread proportionately among businesses.
b) The GGY thresholds of the fee categories for the largest non-remote bingo and adult gaming centre operators were also revised, to ensure costs are spread more proportionately among those operators. This will mean that any operator with a GGY of £225 million or more would pay a higher fee than originally proposed in the consultation, but will still receive a fee reduction.
c) There will be lower annual fees than originally proposed for new casino operating licences. Where the annual GGY for such a licence is less than £5.5m, the annual fee will be £21,714 rather than £46,659 as originally proposed, and licences where the annual GGY is between £5.5m and £27.5m will pay an annual fee of £34,440 rather than £60,520. The Commission reviewed its costs again in light of consultation responses and was satisfied that its regulatory effort in respect of these casinos would be lower than originally proposed.
d) The introduction of betting host licences (a real event host licence and a separate virtual event host licence) in addition to the game host licences (casino and bingo) originally proposed in the consultation enables even lower fees for a small number of remote betting operators.

9. Guidance

9.1 Guidance to gambling operators on the new fees and changes to the fees structure will be made available on the Commission's website.

10. Impact

10.1 As a result of the changes in the fees structure brought about by these Regulations, the overall annual fee burden for the licensed gambling industry will reduce by approximately £1.96m.

10.2 An Impact Assessment has not been prepared for this instrument because the gross annual cost to business resulting from these changes will be below £1m. DCMS has estimated that, in addition to £1.96m savings in annual fees, business would save a further £0.76m per annum from other changes brought about by these Regulations (including changes to first annual fee and annual fee discounts (£0.57m) and reduced licence variation fees (£0.13m)). The total annualised monetised benefits to business resulting from these changes was therefore estimated at £2.72m per annum.

10.3 Most of the 3,000 operators licensed by the Commission are commercial businesses, but around 500 are non-commercial or charitable society lotteries. Annual fees for all such lottery operators will either be held at current levels or will marginally reduce.

10.4 There is no impact on the public sector.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 The Commission is the principal regulatory body overseeing gambling activities in Great Britain, and its policy is to recover the full cost of its regulatory functions. It would be inappropriate to treat small businesses differently in these circumstances, and the level at which these licence fees are set reflects the cost to the Commission of discharging those regulatory functions.

11.3 However, several changes made by the Operating Licence Fees Regulations reduce the regulatory burden for the smallest businesses: for example, the creation of more narrowly sub-divided fee categories, with lower annual fees; reduced fees when an operator applies to the Commission to vary an operating licence so as to increase its fee category; new sub-types of operating licence for smaller remote gambling businesses; the expansion of the scope of ancillary licences to assist the smallest enterprises; and reduced fees for an application to continue a licence after a change in corporate control.

11.4 Around 2,700 of the 2,900 operators that will see a fee reduction or an unchanged fee are small businesses. Of the 74 operators subject to a fee increase, around 45 employ 50 or fewer people. The average fee increase for such a business is around £1,200, and these increases are considered proportionate to ensure that fees are recovered in relation to the GGY generated by business, rather than in relation to the number of premises they have.

12. Monitoring and review

12.1 The duty to review regulatory provisions in secondary legislation, set out in sections 28-32 of the Small Business, Enterprise and Employment Act 2015 ("the 2015 Act"), does not apply to the Operating Licence Fees Regulations or the Personal Licence Fees Regulations. This is because by section 23(3)(a)(i) of the 2015 Act, the duty to review does not apply where a power to make secondary legislation is used to "make or amend...provision imposing, abolishing or varying any tax, duty, levy or other charge", as is the case with these Regulations.

12.2 The Commission will continue to monitor and review its fee income and expenditure on an annual basis, to ensure that the levels of fees charged by these Regulations remain appropriate and proportionate to its regulatory costs.

13. Contact

13.1 Beth Hiles at the Department for Culture, Media and Sport (telephone 020 7211 6636; email beth.hiles@culture.gov.uk) can answer any queries regarding the instrument.