EXPLANATORY MEMORANDUM TO

THE GAMING ACT 1968 (VARIATION OF FEES) (ENGLAND AND WALES) ORDER 2006
2006 No 543.

THE GAMING ACT 1968 (VARIATION OF FEES) ORDER 2006
2006 No 541.

THE LOTTERIES (GAMBLING COMMISSION FEES) ORDER 2006
2006 No 542.

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

The Gaming Act 1968 (Variation of Fees) (England and Wales) Order 2006 No. 543

2.1 This Order increases the fees payable for the renewal or transfer of casino and bingo club licences under the Gaming Act 1968 ("the 1968 Act"). The amounts payable are set out in section 48 of the 1968 Act.

The Gaming Act 1968 (Variation of Fees) Order 2006 No. 541

2.2 Various fees are payable under the 1968 Act to the Gambling Commission[1] ("the Commission"). These include:

a. The fee payable for a certificate of consent issued under Schedule 2;

b. The fee payable with respect to the grant or renewal of certificates under section 27; and

c. The fee payable under Part 1 of Schedule 5 for a certificate of approval under section 19.

[1] The Gambling Commission is established by section 20 of the Gambling Act 2005 (c.19). Section 21 of that Act provides for the transfer of functions, rights and liabilities of the Gaming Board of Great Britain to the Gambling Commission. Sections 20 and 21 were brought into force by S.I. 2005/2455 on 1st October 2005. Schedule 5, paragraph 4, to the Gambling Act 2005 provides for a reference to the Gaming Board in any enactment to be treated after the commencement of section 21 as a reference to the Gambling Commission.

The amounts of these fees are also specified in section 48 of the Act. The Order increases the fee specified in each case.

The Lotteries (Gambling Commission Fees) Order 2006 No. 542

2.3 The Lotteries and Amusements Act 1976 ("the 1976 Act") makes provision for societies and local authority schemes to be registered by the Commission in connection with the promotion of lotteries by them. Fees are payable to the Commission in connection with the registration of a society or a local authority scheme. The 1976 Act also provides for fees to be payable to the Commission by members of the public for inspecting returns made by societies and local authorities in respect of lotteries promoted by them; and for the payment of fees in respect of an application to be certified as a lottery manager. This Order increases in each case the amount of the fee payable.

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

3.2 The Gambling Commission has reviewed gaming and lottery fees together with the Department for Culture, Media and Sport ("the Department"). The purpose of the fees is to meet the costs of licensing and administration work required for regulating the gaming industry and lotteries. This work is undertaken mostly by the Gambling Commission and magistrates' courts (in England and Wales), but also to some extent by the police.

3.3 This will be the last full year for which fees will be set under the existing Gaming and Lotteries Acts. The provisions under existing legislation to set fees will be repealed by the Gambling Act 2005, on a date to be appointed by order made under section 358(1) of the Act.

3.4 The Orders will enable the costs of administration and regulation of the relevant sectors of the gaming industry and lotteries to be met by income from fees. The Commission estimates this cost to be in the order of £6,054 million during the financial year 2006/07.

3.5 The National Audit Office ("NAO") published a study of the Gaming Board for Great Britain ("the Gaming Board") in June 2000. Its conclusions were endorsed by the Public Accounts Committee of the House of Commons ("PAC"), which published a report on the Gaming Board on 16 November 2000. The PAC called for the elimination of cross-subsidies among various sectors of the gaming industry and lotteries. It said that the different statutory services must be treated separately and fees for each must be set to recover its estimated full cost. The fees for 2006/07 have been calculated in line with these NAO and PAC recommendations.

3.6 Increase in fees are needed to ensure that the anticipated fees for each sector of the relevant sectors of the industry meet the expected cost of administration and regulation of those sectors during the financial year 2006/07. This requires fee increases that mostly exceed current and projected

rates of inflation and are slightly higher than those in recent years. In respect of lotteries an increase of 4% is needed; an increase of 5.5% and 6% is needed to meet the cost of administering and regulating section 19 and section 27 certificates respectively; an increase of between 4% and 10% is needed for the casino sector; and an increase of between 6% and 10% is needed for the bingo sector.

3.7 The Department is satisfied that these fee increases are consistent and justifiable. The reasons for the increases include:-

a. Recovery of deferred regulatory improvement costs such as improvements to the Commission's communications and technology infrastructure and the necessary expansion of human resources provision (some of which was previously done by the Department). These improvements would have been implemented earlier by the Commission, but were delayed during the period of uncertainty leading up to the new Gambling Act;
b. Upwards adjustments to reflect expected staff pay increases;
c. Non-pay expenditure uplift of 2%; and
d. 2% increase of third party costs (of police authorities and licensing justices);

3.8 In practice it is not possible to calculate the precise level of licensing activity that will take place. Therefore, fees have been set on projected costs for 2006/7, with income (based on 2006/7 estimated volume and 2005/6 fee levels) increased by appropriate percentages to recover costs.

4. Legislative Background

The Gaming Act 1968 (Variation of Fees) (England and Wales) Order 2006 No. 543

4.1 This Order increases the fees payable in respect of the renewal or transfer of a licence issued under the Gaming Act 1968. The amounts of the relevant fees are specified in section 48(3)(b) and (c) and (4) of the 1968 Act. The fees specified in subsection (3) relate to casinos and those in subsection (4) relate to bingo clubs. Section 48(5) confers power on the Secretary of State to amend the sums referred to in subsection (3) and (4) of that section. The fees amended by this Order were last amended by the Gaming Act 1968 (Variation of Fees) (England and Wales) Order 2005 (S.I. 2005/566), which is revoked in so far as it provides for fees which are replaced by this Order.

4.2 This Order does not apply to Scotland. Power to make an order as regards Scotland under section 48(5) of the 1968 Act in relation to subsections (3)(b) and (c) and (4) of section 48 is exercisable by the Scottish Ministers instead of by the Secretary of State by virtue of article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

The Gaming Act 1968 (Variation of Fees) Order 2006 No. 541

4.3 This Order increases fees payable to the Commission under the 1968 Act. In particular it increases the fees payable in respect of:

- certificates of consent issued by the Gambling Commission under Schedule 2 authorising a person to apply for the grant or transfer of a casino or bingo club licence;
- certificates of approval under section 19 (the Commission's certificate of approval for casino employees and bingo club managers); and
- certificates under section 27 (which relate to the sale, supply and maintenance of gaming machines).

The amounts of the relevant fees are specified in paragraphs (ca), (cb), (f) and (g) of section 48(3) of the 1968 Act. Section 48(5) confers power on the Secretary of State to amend the sums referred to in subsection (3). The fees amended by this Order were last amended by The Gaming Act 1968 (Variation of Fees) Order 2005 (S.I. 2005/567) and, in the case of the fee for a section 19 certificate, by the Gaming Act (Variation of Fees) Order 2004 (S.I. 2004/531). The 2005 Order and, in so far as it relates to section 19 certificates, the 2004 Order are revoked by this Order.

The Lotteries (Gaming Board Fees) Order 2006 No. 542

4.4 Section 5 of the Lotteries and Amusements Act 1976 specifies the circumstances in which a lottery promoted by a society will be lawful. Where the total value of tickets in a lottery is more than £20,000 the society must be registered with the Commission under Schedule 1A to the 1976 Act. Paragraph 2 of Schedule 1A requires a fee to be paid by the society on making an application to the Commission for registration. Paragraph 6 of Schedule 1A provides for the payment of further fees by a registered society at prescribed intervals and in connection with each lottery it promotes. Where a registered society promotes a lottery it is required under paragraph 9 of Schedule 1A to send a return to the Commission. A member of the public may apply to inspect such a return on payment of a fee. In each case the fee is prescribed in an order made by the Secretary of State under section 18(1)(e) of the 1976 Act.

4.5 Section 6 of the Lotteries and Amusements Act 1976 specifies the circumstances in which a lottery promoted by a local authority will be lawful. One of the circumstances is that the lottery is promoted in accordance with a scheme registered with the Commission. A similar system of fee payments exists in relation to the registration of local authority schemes under Schedule 2 as exists in relation to the registration of societies under Schedule 1A. The power of the Secretary of State under section 18(1)(e) to prescribe fees also applies to fees payable in connection with the registration of a local authority scheme and lotteries promoted by a local authority.

4.6 Section 9A of the 1976 Act prohibits any person from managing a society's lottery or a local authority lottery unless certain circumstances apply.

One of the circumstances is that the person is certified as a lottery manager by the Commission under Schedule 2A to the 1976 Act. Paragraph 1 of Schedule 2A provides for a fee to be payable in respect of an application for a person to be certified as a lottery manager. Section 18(1)(eee) of the 1976 Act enables the Secretary of State to vary that fee by order.

4.7 This Order makes provision with respect to the fees referred to in paragraphs 4.4 to 4.6 above. These fees were previously prescribed by virtue of The Lotteries (Gaming Board Fees) Order 2005 (S.I. 2005/568), which is revoked by this Order.

5. Extent

The Gaming Act 1968 (Variation of Fees) (England and Wales) Order 2006 No. 543

5.1 This instrument applies to England and Wales.

The Gaming Act 1968 (Variation of Fees) Order 2006 No. 541
The Lotteries (Gaming Board Fees) Order 2006 No. 542

5.2 These instruments apply to Great Britain.

6. European Convention on Human Rights

The Minister of State for the Department for Culture, Media and Sport, Mr Richard Caborn, has made the following statement regarding Human Rights:

In my view the provisions of, the Gaming Act 1968 (Variation of Fees) (England and Wales) Order 2006; the Gaming Act 1968 (Variation of Fees) Order 2006; and the Lotteries (Gaming Board Fees) Order 2006 are compatible with the Convention Rights.

7. Policy background

7.1 The policy objective of the relevant sections of the 1968 and 1976 Acts, from which the powers are derived to make these Orders, is to fund the cost of administering and regulating various sectors of the gaming industry. These funds are raised through the charging of fees to those persons who wish to provide gaming activities or who wish to run a lottery.

7.2 The Commission (like the Gaming Board before it) has reviewed gaming and lottery fees together with the Department. The fees have been calculated to ensure that the anticipated issue and renewal fees will meet the expected cost of administration and regulation by the Commission for each sector during the financial year 2006/07.

7.3 In practice it is not possible to calculate the precise level of licensing activity that will take place. Therefore, fees have been set on projected costs

for 2006/7, with income (based on 2006/7 estimated volume and 2005/6 fee levels) increased by appropriate percentages to recover costs.

8. Impact

8.1 A revised Regulatory Impact Assessment is attached to this revised memorandum.

8.2 We do not expect these fee increases to place an unreasonable burden on small businesses. The fees are a very small proportion of business costs, whether setting up or ongoing. The fees are set at a fixed rate and are exactly the same for all businesses applying for the same type of licences or registrations, irrespective of business size. They are set only to meet the costs of administering and regulating the relevant sectors. All the new fees will be effective from 1 April 2006. A competition assessment in line with OFT guidance has been carried out, which shows that a full competition assessment is unnecessary.

9. Contact

Donald Sproson at the Department for Culture, Media and Sport (telephone: 020 7211 6535) can answer any queries regarding these Orders.

REGULATORY IMPACT ASSESSMENT

1. AMENDMENTS TO GAMING AND LOTTERIES FEES 2006

The Gaming Act (Variation of Fees) Orders 2006 No. 541

The Gaming Act (Variation of Fees) (England and Wales) Order 2006 No. 543

The Lotteries (Gambling Commission Fees) Order 2006 No. 542

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1. Purpose and intended effect

The objective

1.1 Gaming and lotteries fees are reviewed annually to ensure the costs in administering the controls on gaming and lotteries are met.

The background

1.2 The Orders are made under the Gaming Act 1968, the Lotteries and Amusements Act 1976 and the Gaming (Bingo) Act 1985 and amend the fees for certain gaming licences and lotteries fees issued under the two Acts. This will be the last full year that fees will be set under existing Gaming and Lotteries Acts before they are repealed by the Gambling Act 2005 ("2005 Act") on a date to be appointed by order made under section 358(1) of that Act. These Orders amend the fees for:

1.3

- Casino certificate and licence fees (Renewal and transfer of casino certificates of consent and licences);
- Bingo certificate and licence fees (Renewal and transfer of bingo certificates of consent and licences);
- Section 19 certificates (Employees certificates of approval);
- Section 27 certificates (Grant and renewal of certificates for the sale, supply and maintenance of gaming machines);
- Society and local authority lottery registration fees and registrations of lottery managers;

1.4 The Orders cover England and Wales and two of them cover Scotland.

Risk assessment

1.5 The Government's aim in setting these fees, in line with the Treasury's Fees and Charges Guide, is to meet the cost of administering the licensing process in regulating the gambling industry. The licensing process enables the Gambling Commission ("Commission") (which took over the functions of the Gaming Board for Great Britain ("Gaming Board") from 1st October 2005 following its abolition under the 2005 Act), the Courts and others to ensure that those involved in organising gaming are fit and proper to do so, and that gambling is kept free from crime and is run fairly and in accordance with the law. If the fees were too high, the Government would needlessly be reducing the profitability of the gaming and lottery sectors. If the fees are too low, the costs of administering the licensing regime would not be covered by fees received and the costs of industry regulation would need to be subsidised out of taxpayers' money. Either would be contrary to Treasury guidance and to the recommendations of the National Audit Office, which produced a report on the Gaming Board in 2000. The report also highlighted that cross-subsidisation of fees between the gaming and lottery sectors should not be permitted. The report may be viewed on the NAO web-site at www.nao.org.uk.

1.6 Table 1 below shows the estimated outturn for fee income and related expenditure for 2005/6 with respect to the sectors covered by the fees Orders.

Table 1	Estimated fee income (£)	Projected costs of regulation (£)
Section 19	724,500	917,416
Section 27	606,297	661,281
Casino sector	2,591,381	2,514,757
Bingo sector	1,233,518	1,239,206
Lotteries	452,589	527,545
Total	5,608,285	5,860,205

1.7 As can be seen, fee income and costs of regulation is expected to result in an overall shortfall in the recovery of costs of £251,920. This is mainly a consequence of increased investment in the Gambling Commission's regulatory capacity (i.e. that was delayed due to the period of uncertainty leading up to the Gambling Act, and the necessary expansion of HR functions which in the past were carried out on the Commission's behalf by the DCMS.

1.8 Table 2 below shows the expected income from fees (based on current fee levels) and the anticipated cost of regulation in 2006/7.

Table 2	Income with no change in fees (£)	Costs of regulation 2006/7 (£)
Section 19	882,000	927,702

Section 27	644,528	677,907
Casino sector	2,429,171	2,598,956
Bingo sector	1,228,487	1,345,503
Lotteries fees	480,913	504,345
Total	**5,665,099**	**6,054,414**

As can be seen, maintaining fees for 2006/7 at the same level as 2005/6 would produce an overall deficit of nearly £389,315 of income against regulatory costs.

Options

1.9 Two options have been identified.

Option 1 **-** No increase in Gaming and Lottery Fees

1.10 This would result in an overall estimated shortfall in cost recovery of £389k, spread across all key gaming and lotteries sectors covered by the fees Orders. As explained above, the objective is to set fees to meet the costs of administering the licensing process by the Commission. This option would not meet this objective and would result in a substantial shortfall which would have to be met by the central taxpayer rather than those businesses which benefit from the Commission's regulation. For this reason, this option has been rejected.

Option 2 -Increase fees by sufficient percentages to achieve overall recovery of costs as shown in Table 3 below

1.11 This would involve projected costs for 2006/7, with income (based upon 2006/7 estimated volumes and 2005/6 fee levels) increased by appropriate percentages to recover costs by sector (i.e. without cross-subsidisation). As shown in Table 3, this would see fee increases that mostly exceed current and projected rates of inflation and are slightly higher than those in recent years (although some fees remain unchanged).

1.12 This is the Commission's preferred option and the Government is satisfied that the supporting reasoning is consistent and justifiable. It includes:-

i) The recovery of deferred regulatory improvement costs (e.g. communications and technology support and human resources that was previously done by DCMS), that would have been carried out

by the Gambling Commission at an earlier stage, but were delayed during the period of uncertainty leading up to the new Gambling Act;

ii) Upwards adjustment of 3% to reflect expected staff pay increases;

iii) Non-pay expenditure cost increase of 2%; and

iv) 2% increases in third party costs (of police authorities and licensing justices);

1.13 In addition, the proposed level of fees will be a better basis from which to prepare fees for the new licensing regime under the Gambling Act. They will provide a more accurate assessment of the Commission's regulatory costs and give confidence to all stakeholders that fees charged are fair, the basis of calculation is consistent and the process is transparent.

New fees and forecast 2006/7 income

1.14 Ministers have therefore approved Option 2. Table 3 sets out the current 2005/6 and the new 2006/7 fees (including a fee that remains unchanged), plus showing the percentage increases.

Table 3	**Old Fee (£)**	**New fee (£)**	**Increase (%)**
Casino			
Renewal	8,541	9,395	10
Transfer	8,232	8,561	4
Consent Application	8,594	8,938	4
Consent Transfer	5,371	5,586	4
Bingo			
Renewal	1,616	1,778	10
Transfer	1,724	1,827	6
Consent Application	8,351	8,852	6
Consent Transfer	5,567	5,901	6
Section 19 (Certificates of approval)	210	222	5.5
Section 27 (Machine suppliers)			
New	6,605	7,000	6
Renewals	4,518	4,789	6
Lotteries			
>£200k	468	487	4
>£50k	312	324	4
>£20k	107	111	4
>£10k	107	111	4
<£10k	107	111	4
Registration Fee (Society Normal)	4,954	5,152	4

Registration Fee (LA normal)	4,954	5,152	4
Renewal Fee (LA and Society)	194	202	4
Lottery Manager	15,295	15,907	4
Inspection Lottery	10	10	0

1.15 Table 4 shows the income that will be generated during 2006/7 from the new fees covered by the fees Orders. This will cover the full estimated, related costs and match these as closely as possible on the estimated demand for licences.

Table 4	**Income from fees £**	**Costs of regulation**
Section 19	932,400	927,702
Section 27	683,153	677,907
Casino sector	2,598,840	2,598,956
Bingo sector	1,341,993	1,345,503
Lotteries fees	499,658	504,345
Total	**6,056,044**	**6,054,413**

Benefits

Option 1 - no increase in fees

1.16 No benefits have been identified with this option. It would result in a cost recovery shortfall of £389k, spread across all key gaming and lotteries sectors covered by the fees Orders.

Option2 **-** increase fees by sufficient amounts to achieve overall recovery of costs as shown in Table 3 above

1.17 The Commission estimates that fees paid by the industry in 2006/7 would total £6,056,044. This would cover the full estimated, related costs (see paragraph 1.12) as shown in Table 4. The aim is that receipts match costs as closely as possible based on the estimated demand for licences. In addition, it will provide a better basis from which to prepare fees for the new licensing regime under the 2005 Act.

Business sectors affected

1.18 Casino and bingo clubs operators, gaming machines suppliers and vendors, lotteries and lotteries managers.

Costs

Compliance costs

1.19 The compliance costs to business are the fee itself and administrative costs in applying for the certificate or registration. The fees are calculated on the basis that each of these sectors will meet its own compliance costs and reflect the anticipated cost of regulation during the financial year 2006/7.

1.20 The increases required to meet the regulatory costs are shown in Table 3.

Option 1 - no increase in fees

1.21 The Commission estimates that fees paid by the industry would total £5,665,099. This would not be sufficient to cover the full costs of regulation and would create an overall shortfall of £389k This option would not meet the Government's aim of setting fees to meet the Commission's costs of administering and regulating the licensing process.

Option 2 - amend the fees by sufficient to achieve overall recovery costs as shown in table 3 above

1.22 The Commission estimates that fees paid by the industry would total £6, 056,044. This would cover the full estimated costs of regulation). This option would meet the Government's aim of setting fees to meet the Commission's cost of administering and regulating the licensing process.

Other costs

1.23 There are small costs associated in preparing the Orders and laying them before Parliament and informing the industry about the changes.

Impact on small businesses

1.24 We do not expect these fee rises to place an unreasonable burden on small businesses and meet the costs of regulating these sectors. We have conducted a competition assessment in line with OFT guidance. The assessment indicated a positive response to 1 out of 9 questions, which means that a full competition assessment is unnecessary.

Industry and lotteries

1.25 These Orders are unlikely to have a negative competitive impact on those who supply or maintain gaming machines or lotteries. The fees are a very small proportion of business costs, whether setting up or ongoing.

1.26 The fees are set at a fixed rate and are exactly the same for all businesses applying for the same type of licences or registrations. All the new fees will be effective from 1 April 2006.

Enforcement, Monitoring and Review

1.27 Operators and employees must pay these fees before they are granted an appropriate licence or certificate by the Commission. The Department writes to the main industry representatives to inform them about the changes in the fees.

1.28 The Commission reviews the fees annually to ensure that the fees cover the costs of regulating the gambling industry.

Consultation

1.29 The Gambling Commission has been consulted.

Summary

1.30 It is recommended that Option 2 is pursued. This will deliver the objective set out in paragraph 1.1; it will cover the costs of regulation in 2006/7 and ensure that regulatory costs are met in full by the industry. This is therefore the option that the Government prefers.

Ministerial Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

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Rt Hon Richard Caborn
Minister for Sport
Department for Culture, Media and Sport

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