EXPLANATORY MEMORANDUM TO

THE GAMING MACHINE (MISCELLANEOUS AMENDMENTS AND REVOCATION) REGULATIONS 2018

2018 No. 1402

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Categories of Gaming Machine Regulations 2007 (S.I. 2007/2158) ("the Gaming Machine Regulations") so as to reduce the maximum stake permitted in respect of sub-category B2 gaming machines (also known as fixed-odds betting terminals) from £100 to £2.

2.2 These Regulations also make consequential changes to other secondary legislation, amending the Gaming Machine (Circumstances of Use) Regulations 2007 (S.I. 2007/2319) and revoking the Gaming Machine (Circumstances of Use) (Amendment) Regulations 2015 (S.I. 2015/121).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland.

4. Extent and territorial application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

4.3 Paragraph 74 of the Smith Commission Report (https://www.parliament.uk/smith-commission-inquiry) of November 2014 recommended that the Scottish Parliament should have "power to prevent the proliferation of Fixed-Odds Betting Terminals". The Scotland Act 2016 (c. 11), which implemented recommendations made in the Smith Commission Report, provided that the Scottish Ministers would have executive competence and the Scottish Parliament legislative competence to vary the number of high-staking gaming machines authorised by new betting premises licences (other than such a licence issued in respect of a track).

4.4 The St. David's Day process of 2014-15 included examination of whether devolution of powers pursuant to the Smith Commission Report should be extended to Wales. As a result, powers consistent with and equivalent to those in the Scotland Act 2016 were subsequently devolved to the Welsh Ministers and the National Assembly for Wales under the Wales Act 2017 (c. 4).

4.5 For the purposes of those Acts, a high-staking gaming machine is one for which the maximum charge for use can exceed £10. As a result of the amendments made to the Gaming Machine Regulations by these Regulations, there will be no gaming machine on which it is possible to stake more than £10 in respect of a single game. This is not inconsistent with the policy objective expressed in the Smith Commission Report: the powers to take action will continue to be available in Scotland and Wales, in the event high-staking gaming machines are permitted in future under the Gambling Act 2005.

5. European Convention on Human Rights

5.1 The Minister for Sport and Civil Society, Mims Davies MP, has made the following statement regarding Human Rights:

"In my view, the provisions of the Gaming Machine (Miscellaneous Amendments and Revocation) Regulations 2018 are compatible with the Convention rights."

6. Legislative context

6.1 The Gambling Act 2005 ("the 2005 Act") established a new system for the regulation of all gambling in Great Britain, other than the National Lottery and spread betting.

6.2 Section 235(1) of the 2005 Act defines a 'gaming machine' as a "machine which is designed or adapted for use by individuals to gamble (whether or not it can also be used for other purposes)". Subsection (2) sets out a list of exceptions to this general definition for certain forms of equipment that might be used for gambling in some circumstances.

6.3 The Gaming Machine Regulations define four categories of gaming machines (known as Categories A, B, C, and D) for the purposes of the 2005 Act, and divide Category B into sub-categories. The definitions in the Gaming Machine Regulations largely operate by reference to a maximum amount a person can pay to use a gaming machine once ("stake"), and a maximum prize value which can be won as a result of playing a gaming machine once ("prize").

6.4 These Regulations amend the definition of a sub-category B2 gaming machine in the Gaming Machine Regulations so as to reduce the maximum stake permitted in respect of such a machine from £100 to £2. In consequences of this amendment, these Regulations also amend the definition of a sub-category B3 gaming machine, so that B2 and B3 gaming machines can continue to be distinguished from one another.

6.5 This approach draws on the power in section 236(4)(e) of the 2005 Act, which permits the categorisation of gaming machines by reference to the premises in which they are used. Regulation 6 of the Gaming Machine Regulations provides that sub-category B3 gaming machines may be made available for use in casinos, betting premises, bingo premises and adult gaming centres, while sub-category B2 gaming machines may be made available for use only in casinos and betting premises.

6.6 These Regulations also make a small number of consequential changes to the Gaming Machine (Circumstances of Use) Regulations 2007 and revoke the Gaming Machine (Circumstances of Use) (Amendment) Regulations 2015. The amended and revoked provisions are concerned with higher staking gaming machines, and so are no longer relevant to sub-category B2 gaming machines.

7. Policy background

What is being done and why?

7.1 Under the Gambling Act 2005 and the Gaming Machine Regulations, sub-category B2 gaming machines may lawfully be made available for use only in licensed premises of the following types: casinos, betting shops and tracks with pool betting. For one use of such a machine, the maximum stake is £100 – the highest of any gaming machine in Great Britain – and the maximum prize that can be won as a result of a single use is £500.

7.2 Since these gaming machines were introduced, there has been growing concern about their link with problem gambling. In October 2011, the Government announced the reintroduction of a periodic review to consider the level of monetary limits on stakes and prizes applied to gaming machines in Great Britain under the Gambling Act 2005. The first review concluded in October 2013 following a consultation:

https://www.gov.uk/government/consultations/consultation-on-proposals-for-changes-to-maximum-stake-and-prize-limits-for-category-b-c-and-d-gaming-machines.

7.3 In the 2013 consultation, the Government sought evidence of the extent of the impact that a reduction in stakes or prizes for sub-category B2 gaming machines might have both socially and economically. During that consultation, the Gambling Commission and the Responsible Gambling Strategy Board advised that a precautionary reduction in stake was unsupported by the available evidence. However, both were equally clear that government could reasonably act on a precautionary basis, should the 'knowledge gaps' that might inform policy decisions on sub-category B2 gaming machines (such as staking behaviour, how losses are distributed, the extent to which these losses are a result of problematic gambling behaviour, along with other factors which may influence a player's choice of stake) remain substantively unaddressed.

7.4 Following the 2013 consultation and review, the government decided not to amend the stake or prize limits for sub-category B2 gaming machines, but made clear that the industry ought to lead in closing 'knowledge gaps' identified by the RGSB by making data available on player behaviour, patterns of play and spend and stake distribution in order to support robust, independent research which was representative in scale and informed by current data. The government also pointed to growth in revenue for B2 machines between 2010 and 2012, highlighting that the available data did not explain the relative drivers behind this income growth nor to what extent it might be sustained by problematic consumer behaviour. In light of these limitations on evidence, and the need for further work to be undertaken by the industry in this area, the government concluded in its response to the 2013 consultation that "the industry must consider the future of the B2 machine in its current form as unresolved".

7.5 In 2015, the government brought forward the Gaming Machine (Circumstances of Use) (Amendment) Regulations 2015 (S.I. 2015/121), which imposed a new requirement so that players who wanted to access higher stakes (in excess of £50) on sub-category B2 gaming machines had to load cash via staff interaction or use account-based play. The evaluation of this requirement, published in January 2016, found that there was a drop in stakes above £50, but a corresponding increase in stakes between £40-50.

7.6 Since the review in 2013, some progress has been made on harm mitigation measures, including industry codes on social responsibility, and the publication of research by

the Responsible Gambling Trust (RGT) utilising industry data on sub-category B2 gaming machines in December 2014 and secondary analysis of this research in May 2016. Whilst the research made clear that problem gambling can occur at all stake levels, there was evidence to suggest that higher stake sizes can increase the risk of gambling-related harm through spending more money or time than intended.

7.7 The government announced a review of gaming machines and social responsibility measures in October 2016. The stated objective of this review was to ensure the right balance between a sector that can grow and contribute to the economy, and one that is socially responsible and doing all it should to protect consumers and communities. Among other things, this review sought views on maximum stakes and prizes for all Category B, C and D gaming machines permitted under the Gambling Act 2005.

7.8 The government received 275 responses to the review's initial call for evidence which helped to inform its view that the current regulation of sub-category B2 gaming machines did not achieve its policy objective of appropriate balance between, on the one hand, sector growth, and social responsibility and consumer protection on the other. Moreover, submissions to the call for evidence informed the government's subsequent proposals on sub-category B2 gaming machine stake levels, outlined in October 2017 in the Consultation on proposals for Changes to Gaming Machines and Social Responsibility Measures. Views were then invited on four options, all of which were concerned with a reduction in the maximum stake for sub-category B2 gaming machines: £50 on all B2 content, £30 on all B2 content, £20 on B2 non-slots (with £2 on B2 slots) or £2 on all B2 content. The 2017 consultation may be found here:

https://www.gov.uk/government/consultations/consultation-on-proposals-for-changes-to-gaming-machines-and-social-responsibility-measures.

7.9 The consultation closed in January 2018. The government published its response on 17 May 2018 and announced that, following analysis of all of the evidence received at consultation (including advice from the Responsible Gambling Strategy Board and the Gambling Commission), a reduction in maximum stake on sub-category B2 gaming machines was justified in order to reduce gambling-related harm and therefore protect the consumer. With a reduced maximum stake of £2, the government considered that the volume of high-level session losses for sub-category B2 gaming machines would be significantly reduced. (A more detailed explanation, based in part on industry data, may be found below.) In addition, the government considered that the reduction to £2 was more likely to target the greatest proportion of problem gamblers and protect the most vulnerable players, such as the unemployed and those who live in more deprived areas.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The government has no plans at present to consolidate either of the instruments which are amended by these Regulations.

10. Consultation outcome

10.1 The government launched a 12 week consultation on proposals for changes to gaming machines and social responsibility measures on 31 October 2017, which closed on 23 January 2018. In total, 7,361 online survey responses were received, with a further 243 additional submissions of supplementary information. Responses were received from the gambling industry, trade associations, faith and community groups, academics and think tanks, local authorities and the public sector, charities, interest groups and members of the public. A reduction in the stake limit for sub-category B2 gaming machines accounted for one of a number of questions ranging right across the gaming machine spectrum, including other categories and sub-categories of gaming machines, online and on social responsibility measures.

10.2 In comparison to other gaming machines, sub-category B2 gaming machines generate a greater proportion and volume of large-scale losses (for example, more than £500 in a session); and losses are larger and sessions longer for those who bet at the maximum stake than those who play at a lower level. In particular, the government noted that over 170,000 sessions on B2 roulette ended with losses between £1,000.01 and £5,000. These sessions persist at average stakes of £5 and £10, but by contrast, none involved average stakes of £2 or below. 69% of the online survey responses that answered the question on the sub-category B2 gaming machine stake limit indicated it should be reduced. In turn, of the consultees who thought the B2 stake limit should be reduced, 69% opted for a reduction to £2, 10% to £20, 3% to £30, and 7% to £50. 3% opted for a different stake option between £2-£50, and a further 6% thought either that the stake should be lower than £2 or that sub-category B2 gaming machines should be abolished altogether. After giving due consideration to all information and evidence received, the government decided that it would be appropriate to reduce the maximum stake for sub-category B2 gaming machines to £2.

10.3 The government has announced its intention to work with both the industry and the Gambling Commission to ensure that there is an appropriate period allowing for the technological changes to be completed and robust plans developed to mitigate the potential impact on employment.

10.4 The Minister for Sport and Civil Society consulted with Ministers in the Scottish and Welsh Governments before the government published its consultation response. Since then, the government has held discussions with the Scottish and Welsh governments, and will continue to engage with them as implementation of the proposed new maximum stake on sub-category B2 gaming machines progresses.

11. Guidance

11.1 Existing Gambling Commission guidance in relation to sub-category B2 gaming machines will be revised and published on its website.

12. Impact

12.1 A full Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

12.2 The impact on business is estimated to be £540m per year, primarily affecting the betting sector, with possible impacts on gaming machine manufacturers and supply chain.

12.3 There is no significant impact on charities or voluntary bodies.

12.4 Although the impact on the public sector will include any impact on Exchequer revenues as a result of changes to industry revenue from sub-category B2 gaming machines, estimates of Exchequer revenues are a matter for HM Treasury and HM Revenue and Customs and are not estimated as part of the Impact Assessment as in accordance with the Green Book rules.

13. Regulating small business

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

13.2 The Impact Assessment accompanying the government's consultation response set out a commitment to mitigate the impact of the policy on small and micro businesses by ensuring information is shared and an appropriate transition period is fully considered. It also explained that alternative mitigation options were not suitable when weighed against the policy objectives and the intention to protect the most vulnerable in society from gambling-related harm posed by sub-category B2 gaming machines.

14. Monitoring and review

14.1 The Minister has determined that it would not be appropriate to make provision in these Regulations for a review under sections 28-32 of the Small Business, Enterprise and Employment Act 2015. Such a provision would be undesirable (in accordance with section 31(2)(b) of that Act) because any consideration of the matters addressed in these Regulations should extend to other matters as well; for example, as part of a broader review of the categorisation of gaming machines.

14.2 The government will monitor the impact of these Regulations, taking account of any advice received from the Gambling Commission following implementation.

15. Contact

15.1 Karis Fiorrucci at the Department for Digital, Culture, Media and Sport (telephone: 020 7211 2283 and email: karis.fiorrucci@culture.gov.uk) can answer any queries regarding the instrument.

15.2 Julie Carney at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mims Davies MP, Minister for Sport and Civil Society at the Department for Digital, Culture, Media and Sport, can confirm that this Explanatory Memorandum meets the required standard.