EXPLANATORY MEMORANDUM TO

THE NATIONAL LOTTERY (AMENDMENT) REGULATIONS 2020

2020 No. 1475

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 increase the minimum age of sale for National Lottery games from 16 to 18 from 1st October 2021. They also increase the minimum age at which a person is permitted to sell tickets for National Lottery games. Existing restrictions on sales of National Lottery tickets by vending machines are also amended to reflect this.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and territorial application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative context

6.1 Under Part 1 of the National Lottery etc. Act 1993 ("the 1993 Act"), the Secretary of State and the Gambling Commission owe statutory duties to exercise their respective functions under that Part in the manner most likely to secure that the interests of all players are protected, and the National Lottery is run with all due propriety. Subject to these duties, the Secretary of State and the Gambling Commission must, in exercising those functions, do their best to secure that returns to good causes are maximised.

6.2 The minimum age to purchase and sell National Lottery tickets has remained unchanged at 16 since the power in section 12 of the 1993 Act was first invoked to make the National Lottery Regulations 1994 (S.I. 1994/189).

6.3 Under section 11 of the 1993 Act, the Secretary of State for Digital, Culture, Media and Sport is able to issue directions to the Gambling Commission on matters relating to the conditions in the National Lottery licence, which the Gambling Commission is required to comply with. The current directions require (among other things) the Commission to ensure that no licence is granted for a lottery which does not allow for sufficient controls to prevent under 16s participating.

7. Policy background

What is being done and why?

7.1 As noted in paragraph 6.1, the Government shares a statutory duty with the Gambling Commission to ensure that the interests of all National Lottery players are protected. The Government considers the age at which people are allowed to play the National Lottery as part of this duty.

7.2 The age of 18 is widely recognised as the age at which one becomes an adult. At 18, people gain full citizenship rights and responsibilities, and are trusted to participate in activities which carry risks of harm, such as drinking alcohol, smoking tobacco and commercial gambling.

7.3 However, the default minimum age to play all types of lottery games is currently 16, and has been since the launch of the National Lottery in 1994. This exception recognises the different characteristics of lottery products and associated low risk of harm.

7.4 The minimum age of 16 applies to all games in the National Lottery portfolio. That portfolio has changed over the years. After starting out as a single weekly draw, the National Lottery now has multiple draw-based games (Lotto, EuroMillions, Thunderball and the new Set for Life), scratchcards (added soon after its launch in 1995) and interactive instant win games (added in 2003).

7.5 Given those changes to the games portfolio, and the changes in technology which we have seen over the years, the Government decided to consider whether the minimum age to play National Lottery games remained appropriate. In its response to the Gambling Review 2018, the Government committed to review the minimum age that applies to the National Lottery as part of its work on the fourth National Lottery licence.

7.6 The Government and the Gambling Commission regularly act on this statutory duty. For example, the Gambling Commission recently asked Camelot to withdraw the sale of £10 scratchcards and online instant win games pending a review, following evidence of significantly higher problem gambling rates associated with these products at that price point.

7.7 Based on survey data between April 2016 and March 2019 and population estimates, there were c. 204,000 regular 16 and 17 year old players of National Lottery draw-based games (0.8% of all players), c. 231,000 for National Lottery scratchcards (1.6% of all players), and 484 for National Lottery online instant-win game. In 2019/20, 16 and 17 year olds made up 0.4% of draw-based game ‘regular players’ and 1.1% of scratchcard ‘regular players’. Fewer than 500 16 and 17 year olds played online instant win games in the final quarter of 2019/20.

7.8 National Lottery products have generally been considered low-risk. According to the latest combined Health Survey, National Lottery draw-based games have a problem

gambling prevalence rate (combining all age groups) of 1.0% (lower than all products surveyed), with scratchcards at 1.8% (lower than all the commercial gambling products surveyed). Both types of game are designed to be played "little and often", with little opportunity to play excessively. They also provide billions of pounds in returns to good causes.

7.9 However, qualitative research undertaken by the Gambling Commission found some evidence specific to 16 and 17 year olds of problematic scratchcard play. In addition, a recent study by University of East London, Warwick University and CQUniversity in Australia, suggested an association between recall of legally playing National Lottery games (particularly instant win games) at 16 and 17 and the likelihood of problem gambling as an adult.

7.10 In June 2020, the All-Party Parliamentary Group on Gambling-Related Harm published a report highlighting evidence that 2% of 11-16 year olds had spent money gambling online in the last week. The report recommended that to safeguard children and young people, all online gambling, including the National Lottery, should be restricted to those over 18.

7.11 Also in June 2020, the Public Accounts Committee published a report recommending that the Gambling Commission "should urgently investigate the impact of fixed odds betting that falls under 'lottery' legislation and is accessible by 16 and 17 year olds".

7.12 In July 2020, the House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry published a report on their inquiry. The report noted that the written evidence they received was "unequivocal" in recommending an increase in the minimum age to play National Lottery games; the Committee made the same recommendation.

7.13 Given the emerging evidence, and public and parliamentary opinion, ministers decided to increase the minimum age to purchase for all National Lottery products to 18. As is the case for other age-limited products, they have also decided to increase the minimum age to sell National Lottery products accordingly.

7.14 In comparable jurisdictions, allowing 16 and 17 year olds to play the lottery is very unusual. This change brings us in line with comparable countries.

7.15 The proposed change is expected to significantly decrease National Lottery play by 16 and 17 year olds. This will, in turn, reduce the levels of problem National Lottery play that we see from 16 and 17 year olds.

7.16 While we may see some over 18s purchasing National Lottery products for 16 and 17 year olds after the change, we expect that there will still be a significant impact overall. According to the Gambling Commission's Young People and Gambling Survey in 2019, just 3% of 11-15 year olds had played National Lottery games in the last week (13% had ever played). Of those who had ever played, 73% had their parents hand the money over at the till.

7.17 We are laying this statutory instrument in December 2020. The change will come into force on the common commencement date in October 2021. The longer lead-in time between laying the instrument and it coming into force reflects a strong preference from consultation respondents for certainty and advance notice, allowing Camelot and the Gambling Commission to better manage the impact on business and ensure there is enough time to take the necessary steps (e.g. changing systems, training retailers and updating signage). The implementation date of 1st October 2021 also reflects the

desire to act quickly; sooner than 2023, as was originally proposed in the consultation, in order to protect young persons. The Government and the Gambling Commission are working with Camelot to ensure a smooth implementation.

7.18 The Secretary of State will update the existing directions to the Gambling Commission to ensure that no licence is granted for a lottery which does not allow for sufficient controls to prevent under 18s participating.

7.19 The minimum age to play society lotteries is set at 16 in the Gambling Act 2005. The Government has committed to reviewing this as part of the upcoming Gambling Act review.

8. European Union (Withdrawal) Act/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 There are no plans to consolidate this legislation.

10. Consultation outcome

10.1 A public consultation on the minimum age to play National Lottery games was held between July and October 2019. The consultation was published on the gov.uk website. Survey and written responses were accepted. The devolved administrations were invited to contribute as part of this process.

10.2 We received 64 responses. The majority of respondents favoured an increase to the minimum age. Written responses from retailers made clear that having the same minimum age for all types of National Lottery product was preferable - for example, we should not have a different minimum age for draw-based games and scratchcards.

10.3 For more information and a summary of all the responses, please see the Government's response to the consultation, published on 8th December 2020 and available at https://www.gov.uk/government/consultations/consultation-on-the-minimum-age-for-playing-national-lottery-games or in the libraries of both Houses.

11. Guidance

11.1 Camelot, the National Lottery operator, is responsible for ensuring that retailers are aware of and understand this change. They will support retailers ahead of the implementation date.

12. Impact

12.1 The impact on business, charities or voluntary bodies is small. We estimate a total equivalent annual net direct cost to business of £4.0-£4.9 million.

12.2 The National Lottery operator, Camelot, forecasts one-off transition costs (including IT costs, training for retailers and signage) to be at £6.6 million and £14.7 million. We have modelled a reduction in profit of approximately £910,000 per year.

12.3 The Department for Digital, Culture, Media and Sport has modelled one-off familiarisation costs for retailers of £3.1 million, spread across over 45,000 businesses. We have modelled a reduction in annual retailer commission of approximately £2.1 million per year - an average of £48 per retailer per year. Retailers

may also see a very small fall in cross-purchasing from 16 and 17 year olds (i.e. sales of other products to 16 and 17 year olds who primarily entered the shop to play the National Lottery).

12.4 The impact on the public sector is small. A portion of all National Lottery sales (22% in 19/20) enters the National Lottery Distribution Fund, to be distributed by 12 distributors to organisations running time-limited projects above and beyond what the Government normally funds. We forecast a fall in good cause income of £6.1 million. In 2019/20, total good cause income was approximately £1.8 billion (£1,800 million). There will also be a small reduction in lottery duty receipts (Camelot pays 12% on each sale in lottery duty).

12.5 A full Impact Assessment has not been prepared for this instrument because it has an equivalent annual net direct cost to business under £5 million. However, a de minimis assessment has been published alongside the consultation response at https://www.gov.uk/government/consultations/consultation-on-the-minimum-age-for-playing-national-lottery-games.

13. Regulating small business

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

13.2 Our de minimis impact assessment shows that we expect the impact on business to be very small. Of the 45,263 retailers selling National Lottery products in 2019, 54.6% of them were independent, "micro" retailers. We have modelled annual costs of £48 for each of those retailers. To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken has been to provide significant notice and certainty of the change (hence laying this statutory instrument 10 months in advance), bring it into force on the common commencement date, and have a single minimum age for all National Lottery products.

13.3 The basis for the final decision on what action to take to assist small businesses comes from the responses to our public consultation, which included representatives of small retailers. The consultation originally suggested that having a different minimum age for draw-based games and instant-win games would be the "best fit" for the Government's objectives. However, following responses from small businesses, we have adapted our approach to ensure that one minimum age applies to all National Lottery products.

14. Monitoring and review

14.1 The approach to monitoring of this legislation is twofold.

14.2 First, under the terms of the current National Lottery licence, the operator is required to conduct strict age-verification checks to ensure compliance with the legal age limit when selling National Lottery products.

14.3 In retail outlets, the operator runs an extensive mystery shopper programme - Operation Child - to identify retailers who are not conducting suitable age verification checks. This programme involves over 11,600 visits to retailers every year. The results of these checks are recorded and reported to the Gambling Commission on a quarterly basis, and will be used to monitor compliance with this policy. The operator reserves the right to remove the retailer's terminal and terminate their retail agreement at any time for a failure to implement sufficient safeguards.

14.4 Online play is account-based, which enables the operator to conduct age verification checks prior to a player purchasing a National Lottery product. The operator uses an independent organisation to verify a player's age. Should the operator not comply with terms set out in the licence, the Gambling Commission has a variety of enforcement powers, including the ability to introduce new or amended licence conditions, impose financial penalties and if required, revoke the licence.

14.5 Second, the Gambling Commission closely monitors the level of gambling-related harm across the National Lottery portfolio. In retail, where it is more difficult for the operator to monitor in 'real time', the Gambling Commission utilises recalled survey data to monitor problem gambling rates for National Lottery products. The Gambling Commission also conducts an annual participation survey concerning underage play and assesses the risks of underage play on a quarterly basis.

14.6 For online play, the operator utilises an industry leading behavioural analytics tool (Mercury v2), which allows them to use customer data to identify patterns of behaviour which suggest a player is exhibiting signs of problem play. As all online play is account based, this tool enables the operator to see trends in the rate of problem play across different age-ranges.

14.7 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Nigel Huddleston MP (Parliamentary Under-Secretary of State for Sport, Tourism and Heritage) has made the following statement: "As the equivalent annual net direct cost to business for this change is under £5 million, and there are no other factors which would make a statutory review particularly desirable, I believe that a statutory review clause is neither necessary nor appropriate for this measure."

15. Contact

15.1 Jamie Cotton, Head of National Lottery Strategy at the Department for Digital, Culture, Media and Sport (email: jamie.cotton@dcms.gov.uk and telephone: 07702823347), can be contacted with any queries regarding the instrument.

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

15.3 Nigel Huddleston MP, Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport, can confirm that this Explanatory Memorandum meets the required standard.