

EXPLANATORY MEMORANDUM TO
THE GAMBLING (OPERATING LICENCES AND SINGLE-MACHINE PERMIT
FEES) (AMENDMENT) (NO. 2) REGULATIONS 2007

2007 No. 1791

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.

2. Description

The Gambling (Operating Licences and Single-Machine Permit Fees) Regulations 2006 (SI 2006/3284) (“the 2006 Regulations”) prescribe fees payable to the Gambling Commission under the Gambling Act 2005 (“the 2005 Act”) in respect of the grant and maintenance of operating licences and single-machine supply and maintenance permits. These Regulations amend the first annual fees payable under the 2006 Regulations by non-remote gaming machine technical (full) operating licensees and lottery operating (society) licensees, clarify the fees payable under the 2006 Regulations by holders of a transitional lottery operating licence, and amend the annual fees in the 2006 Regulations for remote lottery, gaming machine technical and gambling software operating licences and for the smallest category of pool betting operating licence and for the smallest category of non-remote gaming machine (supply) operating licence.

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

None.

4. Legislative Background

4.1 The full explanation of the legislative background set out in the explanatory memorandum to the 2006 Regulations is unchanged and should be referred to for a full account of the background to these Regulations.

4.2 In essence, the 2005 Act establishes a new system for the regulation of all gambling in Great Britain, other than the National Lottery and spread betting, and contains powers for the Secretary of State to prescribe various fees to be paid to the Gambling Commission for licensing and regulatory functions. In relation to operating licences, which are a principal form of permission authorising commercial gambling under the 2005 Act, the main fees are:

4.2.1 application fees, payable by anyone applying for an operating licence; and

4.2.2 annual fees, payable annually by every operating licence holder to meet the costs of the Commission’s compliance and enforcement activities in maintaining the licence.

4.3 The 2005 Act distinguishes between remote and non-remote operating licences. A remote operating licence is one where facilities for gambling are provided by means of remote communication e.g. the internet, telephone or television. Non-remote operating licences involve no such remote provision, and therefore

concern the provision of gambling facilities from premises, often known as “bricks and mortar” gambling.

- 4.4 These Regulations amend the first annual fee payable under the 2006 Regulations by holders of *non-remote gaming machine technical (full) operating licences* to take account of any fees they have paid for certificates issued under section 27 (“section 27 certificates”) of the Gaming Act 1968 (“1968 Act”).
- 4.5 Section 27 certificates authorise the holder to sell, supply or maintain gaming machines. They are issued upon payment of a fee for an initial five year period and, upon expiry, may be renewed for further five year periods upon payment of a further fee. The manufacture of gaming machines is not regulated under the 1968 Act.
- 4.6 The 1968 Act will be repealed by the 2005 Act on 1st September 2007. Subject to transitional provisions (described in the following paragraph), those who wish to sell, supply or maintain gaming machines in the future will be required to hold a gaming machine technical operating licence issued under the 2005 Act. Further, unlike the situation under the 1968 Act, those who manufacture gaming machines will also be required to hold such a licence.
- 4.7 Under transitional provisions made under the 2005 Act,¹ section 27 certificates issued or renewed before 1st September 2007 will continue in effect until their usual expiry date.² However, where the holder of a section 27 certificate is granted a gaming machine technical (full) operating licence under the 2005 Act, the certificate will expire immediately upon issue of the licence.
- 4.8 These Regulations provide for a portion of the fee paid for a section 27 certificate to be offset against the first annual fee payable for the non-remote gaming machine technical (full) operating licence. The portion of the section 27 certificate fee that is offset is that part which represents the period between the date that the operating licence is issued (causing the certificate to expire) and the date that the certificate would have otherwise expired.
- 4.9 These Regulations also amend the first annual fee payable under the 2006 Regulations by holders of *non-remote lottery operating (society) licences* to take account of annual fees they have paid for converted lottery operating licences issued pursuant to transitional provisions made under the 2005 Act.
- 4.10 Societies and local authorities may register under the Lotteries and Amusements Act 1976 (“1976 Act”) to promote lotteries. Under the 1976 Act they are required to pay a triennial registration fee. The 1976 Act will be repealed by the 2005 Act on 1st September 2007. Under the transitional provisions made under the 2005 Act, on that date lottery registrations will convert into converted lottery operating licences which continue in effect until the next triennial registration fee under the 1976 Act would have been due.³ When a converted lottery operating licence expires, a society or local authority which wishes to promote a lottery must obtain an ordinary lottery operating (society) licence under the 2005 Act.

¹ See paragraphs 17, 18 and 20 of Schedule 4 to SI 3272/2006.

² This also applies where a certificate or renewal has been applied for before 1st September 2007, but where the actual issue or renewal has not been effected by that date.

³ See paragraphs 67 to 71 of Schedule 4 to SI 3272/2006

- 4.11 A society or local authority which holds a converted lottery operating licence is required to pay an annual fee for that licence under the 2005 Act. The first such fee is due within 30 days of the issue of the licence; thereafter the fee is payable on each anniversary of the issue of the licence.
- 4.12 The Regulations provide for a portion of the last annual fee paid for a converted lottery operating licence to be offset against the first annual fee payable for the non-remote lottery operating (society) licence. The portion of the fee that is offset is that part which represents the period between the date that the converted lottery operating licence expires and the next anniversary of the date that the converted licence was issued.
- 4.13 These Regulations also provide for *converted lottery licences* to be treated for the purpose of the 2006 Regulations, as non-remote lottery operating (society) licences. Because registration under the 1976 Act authorises both remote and non-remote activities, paragraphs 67(5) and 69(5) of Schedule 4 to SI 3272/2006 provide for converted lottery operating licences to have effect as both remote and non-remote operating licences. This provision creates doubt as to whether converted lottery operating licence holders must pay fees for non-remote or remote licences, or both. That doubt is removed by the Regulations by requiring that holders of converted lottery licences will only have to pay the fees applicable to ordinary non-remote society operating licences.
- 4.14 Finally, the Regulations amend (by reducing) the annual fees in the 2006 Regulations for the following *operating licences*:
- 4.14.1 remote lottery operating licences (of which there are two classes under the 2006 Regulations: one relating to society lotteries and the other relating to external lottery managers);
 - 4.14.2 remote gaming machine technical operating licences (of which there are three classes under the 2006 Regulations: full, supplier and software licences);
 - 4.14.3 the smallest category of non-remote gaming machine technical (supplier) operating licences
 - 4.14.4 remote gambling software operating licences; and
 - 4.14.5 the smallest category of remote pool betting operating licence.
- 4.15 These classes of operating licence are established by regulations 4 and 9 of the 2006 Regulations. Regulations 6 and 10 of and Schedules 1 and 4 to those Regulations divide the classes into different fee categories. Regulations 8 and 12 and Schedules 3 and 6 prescribe the relevant annual fees that these Regulations amend.

5. Territorial Extent and Application

These Regulations extend to Great Britain.

6. European Convention on Human Rights

As these Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The explanation of the policy background set out in the explanatory memorandum to the 2006 Regulations is unchanged so far as the Department's approach to fee-setting is concerned.

First annual fee for non-remote gaming machine technical (full) licence

7.2 As noted in the "legislative background" section above, a section 27 certificate will continue in effect for its usual five year life, unless a gaming machine technical operating licence is issued to the holder (in which case the certificate will expire immediately).

7.3 It is anticipated that those who sell, supply or maintain gaming machines (but who do not manufacture such machines) will wait for the expiry of their section 27 certificate before seeking a gaming machine technical operating licence. Such people will therefore obtain the full benefit of the five year life of their certificate. However, holders of section 27 certificates who *manufacture* gaming machines (in addition to selling etc such machines) will be required to hold a non-remote gaming machine technical (full) operating licence from 1st September 2007, whether their section 27 certificate was due to expire on that day or not. Such people will not, therefore, obtain the full benefit of the five year life of their section 27 certificate, for which they paid a fee.

7.4 For this reason, the Department has decided that the "outstanding" value of any fee paid for a section 27 certificate (that is, the amount of the fee that represents that part of the five year life of the certificate that cannot, because of the premature expiry of the certificate, be utilised) should be offset against the first annual fee payable for a non-remote gaming machine technical (full) operating licence. The Department considers that this ensures that people who hold section 27 certificates and manufacture gaming machines are not required to pay two fees for authorisations covering the same activity during the same period of time.

First annual fee for non-remote lottery operating (society) licence

7.5 As noted in the "legislative background" section above, holders of converted lottery operating licences must pay annual fees under the 2005 Act. These fees are payable by dates determined by reference to the date on which the licence was issued. By contrast, the expiry date of a converted lottery operating licence is determined by reference to the date on which fees relating to registration under the 1976 Act (which preceded the converted licence) was paid. The effect of this is that a converted lottery operating licence will not necessarily expire on an anniversary of its issue and the licensee may not, therefore, get the full benefit of an annual fee paid before the expiry of the licence.

- 7.6 For this reason, the Department has decided that the “outstanding” value of the last annual fee paid for a converted lottery licence (that is, the amount of the fee that represents that part of the year that cannot, because of the expiry of the licence, be utilised) should be offset against the first annual fee payable for the replacement non-remote lottery operating (society) licence. The Department considers that this ensures that people who hold converted lottery operating licences are not required to pay two fees covering the same period of time.

Clarification of fees payable by holders of converted lottery operating licences

- 7.7 As noted in the “legislative background” section above converted lottery operating licences entitle the holder to undertake both remote and non-remote activities. Because of this, there is doubt as to whether such licences attracted the annual fees payable in respect of non-remote or remote licences, or both. The Regulations remove this doubt by prescribing that the annual fees for converted operating licences will be the same as the fees applicable to non-remote society operating licences. The Department considers that this clarification is in the interests of the licensees and the Gambling Commission.

Amendment of other annual fees

- 7.8 In consulting on Gambling Commission fees in 2006, the licence fee structure for remote operators was based on the best information available at that time in this new area of regulatory work and reflected international comparisons of risk and workload. Because of the lack of firm data, evidence and experience, a conservative approach to risk and workload volumes was adopted. The consultation document therefore recognised that there were, at that stage, significant uncertainties in establishing actual workload volumes and resource requirements in setting licence fees for remote operators and that the resource requirements would need to be reviewed in the light of actual activity.
- 7.9 During the consultation period, the Department and the Gambling Commission received little comment on the remote element of the licence fee proposals but made significant changes in respect of a number of substantive points raised by respondents. It has become clear that the licence application process has raised awareness among operators and representative organisations of the potential impact of remote fees. The Department and the Commission were not aware of some of these issues in finalising the current licence fee structure and believe that, had they been aware, different arrangements would have been put in place. Notwithstanding that the fee arrangements are subject to annual review, an interim review was undertaken by the Department and the Commission in light of the new information received. The Department concluded that the representations received should be addressed by amendment of the remote licence fees for the following sectors at the earliest opportunity.

Society Lotteries

- 7.9.1 During the consultation exercise, the Department raised the possibility that society lotteries should be entitled to obtain “ancillary” remote operating

licences⁴ costing £100, with £25 annual fees. However, after considering the outcome of the consultation exercise, the Department concluded that it would not be appropriate or legally feasible to provide a remote ancillary lottery licence. This was because it was not possible to identify discrete aspects of remote provision that could genuinely be seen as ancillary to non-remote activity. The intended use which the society lottery sector wished to make of its remote licences is a full use, rather than some pared down use.

- 7.9.2 Nevertheless, following representations from the Lotteries Council and the Hospice Lottery Association, the Department has concluded that there is a case for taking a different approach to assessing the Commission's regulatory workloads in respect of remote society lotteries – resulting in reduced fee levels. Originally, the Commission intended to treat remote society lotteries broadly on a par with other remote licensed operators, having identified similar risks arising from web-based payment systems and an ability to scale-up rapidly - and the need for compliance work to combat these risks. Following a review, it is now considered that such parity of treatment would be inconsistent with the approach adopted for non-remote society lotteries – for which the Commission believes it is acceptable to check the payment systems only when the sums are so large as to increase risk. Furthermore, unlike other forms of remote gambling, remote society lotteries do not typically involve rapid and repetitive play and there are statutory limits on the scale of lotteries which do not apply to other gambling operators.
- 7.9.3 Accordingly, the Department has concluded that the best and fairest approach is to set annual fees for remote society lotteries at the same levels as those for equivalent non-remote operations, meaning reductions from the current fees of 80-92%. The fees are now £348, £692 and £1,392, depending on the size of the operation covered by the licence. This is the most straightforward approach and the revised risk assessment described above justifies reduction of the annual fees for remote society lotteries but does not contradict the rationale for the levels of fees for other remote sectors, where the risks of continuous and repetitive play are greater, partly due to commercial business drivers.

External Lottery Managers

- 7.9.4 Following representations from the Lotteries Council, the Department has concluded that the approach taken by external lottery managers in undertaking remote gambling activity is analogous to the approach taken by remote society lotteries. Accordingly, the same arguments as to relative risk apply. However, the Department is also conscious that, unlike society lottery operators, external lottery managers are commercial undertakings and that the nature of the risks in practice is therefore not entirely comparable with those relating to society lotteries. In particular, external lottery managers profit from their activities and the scale of their operations is not restricted in the same way as for society lotteries. Taking

⁴ Ancillary remote operating licences authorise a limited range of remote activity which is ancillary to non-remote activity. They may only be held by operators who also hold non-remote operating licence.

these two factors into account, the Department has decided to reduce the current fee levels for external lottery managers by 50% to £6,367, £17,088 and £33,171, depending on the size of the operation covered by the licence. This reduction reflects a balance between the reduced inherent risks of the nature of the activity and the different nature of external lottery managers from other operators.

Gaming Machines Technical and Gambling Software

- 7.9.5 These operating licences are held by operators who manufacture, supply, install etc gaming machines or gambling software. Since the operating licence fees were set in the 2006 Regulations, industry representatives have submitted to the Department that the remote activities in these sectors are distinct from those in other sectors. They point out that, in this sector, operators' activities are conducted on a business to business basis and gambling is not directly provided to the public. Nevertheless, under the 2005 Act, gambling-related activity carried on in these sectors by means of remote communication requires a remote operating licence. Where the remote activity is restricted to the use of e-mail, then an ancillary remote licence is already available.
- 7.9.6 Following a review of the risks and extent of work required in these sectors, the Department and Commission have concluded that:-
- The nature of the activity means that there *is* a risk which needs to be regulated effectively across all of an operator's activities;
 - However, the business to business nature of the activity reduces the risk - in terms of risk to the public and social responsibility, the prime responsibility lies with an operator who actually provides gambling to the public, rather than with machine and software manufacturers and suppliers;
 - Operators in this sector are already paying test houses to check software, which further lessens the risk; and
 - An assessment that business to business activity is of lower risk is in line with Better Regulation Executive recommendations on Small and Medium Enterprises regulation.
- 7.9.7 It has therefore been concluded that remote annual licence fees in these areas should be reduced by 50% to reflect the lower risk to £6,367, £17,088 and £33,171, depending on the size of the operation covered by the licence.
- 7.9.8 In addition, the review identified that the fee for the smallest category of non-remote machine technical (supplier) operators are anomalous in the context of fees for similar areas. A review of risk and workload required concluded that this fee should be reduced by 50% to £1,201.

Pool Betting

7.9.9 The football pool betting sector currently comprises one small operator and three large operators. The small operator's remote activity consists of running a website which generates very little revenue (approximately £6-7,000 per annum much of which relates to e-mail activity), but requires a remote licence which currently costs £12,733 annually. The Department considers this to be disproportionate and out of line with a Better Regulation approach for the size of the operator.

7.9.10 The licence fee arrangements anticipated such small-scale remote activity in other sectors and created a class of licence with lower fees to accommodate it, including the general betting (limited) operating licence. This licence does not currently extend to pool betting operations. However, it is proposed that a similar arrangement be provided for pool betting. This is achieved by reducing the annual fee for the smallest category of pool betting licence (category F) by 85% to £1,500.

7.10 Annual fees are payable from 1st September 2007. In addition to the annual review of licence fees, all the changes made by these Regulations will be kept under review with regard to risk and the developing pattern of Gambling Commission workload in regulating these remote gambling sectors. These Regulations do not affect application fees for remote operating licences, which became payable from 1st January 2007. The Table below sets out the new annual fees for the operating licences affected by these Regulations and shows the percentage decreases from current fees.

Operating licence type	New Fee	New Fee	New Fee	Decrease %
Operator category – Non-remote	A	B	C	
Gaming machine technical: supplier	1,201	n/a	n/a	-50
Operator category - Remote	F	G	H	
Pool betting	1,500	n/a	n/a	-88
Gaming machine technical (full): manufacturer	6,367	17,088	33,171	-50
Gaming machine technical: supplier	6,367	17,088	33,171	-50
Gaming machine technical: software	6,367	17,088	33,171	-50
Gambling software	6,367	17,088	33,171	-50
Lottery manager	6,367	17,088	33,171	-50
Society lottery	348	692	1,392	-80 to 92

7.11 The Department will provide information on its website (www.culture.gov.uk) about the changes that these amending Regulations make to the 2006 Regulations.

8. Impact

The Regulatory Impact Assessment which accompanied the 2006 Regulations is not affected by these amendments and should be referred to in respect of these Regulations. Nevertheless, a supplementary Regulatory Impact Assessment is attached to this memorandum to demonstrate the impact of the amendments to paying remote annual fees

for society lotteries, external lottery managers, gaming machine technical and gambling software operating licences and for the smallest category of pool betting operating licence.

9. Contact

Donald Sproson at the Department for Culture, Media and Sport, Tel: 020 7211 6535 or e-mail: Donald.Sproson@culture.gsi.gov.uk can answer any queries regarding the instrument.

Department for Culture, Media and Sport

Regulatory Impact Assessment

1. Title of proposal

The Gambling (Operating Licences and Single-Machine Permit Fees) (Amendment) (No. 2) Regulations 2007.

2. Purpose and intended effect

Background and Objective

- 2.1 The Gambling Act 2005 (“the 2005 Act”) gives the Secretary of State the power to make Regulations setting licence fees to be paid to the Gambling Commission (“the Commission”). The approach is to set licence fees for each sector of the gambling industry at levels which enable full cost recovery of the Commission’s licensing and regulatory costs, whilst ensuring fairness and value for money for the gambling industry.
- 2.2 In consulting on Gambling Commission fees in 2006, the establishment of the licence fee regime for remote operators was based on limited information available at that time in this new area of regulatory work and reflected international comparisons of risk and workload. Because of the lack of firm data, evidence and experience, a conservative approach to risk and workload volumes was adopted.
- 2.3 During the consultation period, little comment was received on the remote element of the licence fee proposals but significant changes were made in respect of a number of substantive points raised by respondents. However, it has become clear that the actual application process has raised awareness among operators and representative organisations of the potential impact of remote fees. Notwithstanding that the fee arrangements are subject to annual review, an interim review was undertaken by the Department and the Commission in light of the new information received. The Department and Commission concluded that the representations received should be addressed by amendment of the current remote licence fees at the earliest opportunity.
- 2.4 The Gambling (Operating Licences and Single-Machine Permit Fees) Regulations 2006 (SI 2006/3284) (“the 2006 Regulations”) prescribe fees payable to the Commission under the 2005 Act in respect of the grant and maintenance of operating licences and single-machine supply and maintenance permits. The objective of the Regulations is fourfold:
 - 2.4.1 to amend the annual fees for remote operating licences for society lotteries, External Lottery Managers, gaming machine (technical), gambling software and the smallest category of pool betting operators, and for the smallest category of non-remote gaming machine technical (supplier);
 - 2.4.2 to amend the first annual fee for a non-remote gaming machine technical (full) operating licence to take into account fees paid by the holder of such licences for certificates issued under the Gaming Act 1968 (“1968 Act”);

- 2.4.3 to amend the first annual fee payable by holders of non-remote lottery operating (society) licences to take account of annual fees already paid by the holder for converted lottery operating licences issued pursuant to transitional provisions made under the 2005 Act; and
 - 2.4.4 to provide for converted lottery licences to be treated for the purpose of the 2006 Regulations, as non-remote lottery operating (society) licences.
- 2.5 These annual fees are payable from 1st September 2007.

Rationale for Government intervention

- 2.6 Following representations from industry representatives and trade associations about the licence fee arrangements for remote and non-remote operators, a review was carried out by the Gambling Commission. Based on its advice, the Department is satisfied there is a case for:
- 2.6.1 making provision for certain fees paid under the previous gambling regime and under the transitional arrangements to be taken into account in the calculation of first annual fees for gaming machine technical (full) operating licences and non-remote lottery operating (society) licences;
 - 2.6.2 making provision for converted lottery operating licences to be treated as non-remote lottery operating (society) licences for the purpose of the licence fee arrangements; and
 - 2.6.2 taking a different approach to assessing regulatory workloads in respect of annual fees for remote society lotteries, External Lottery Managers, gaming machine (technical) and gambling software operators, the smallest category of pool betting and for the smallest category of non-remote gaming machine technical (supplier) and that this is consistent with the overall approach of recovering full regulatory costs (and no more) from each gambling sector.

3. Consultation

Within Government

- 3.1 The Department has consulted the Commission on the proposals.

Public consultation

- 3.2 In developing these proposals contained in the Regulations, the Department has taken account of formal and informal representations made by industry representatives and trade associations. The impact the changes have on annual licence fee levels from 1st September 2007 is reflected in the revised table at Appendix 1.

4. Options

- 4.1 **Option 1 – Do nothing. Do not make amending annual fee regulations.** The Department rejects this option. The consequence would be to undermine the Department's principal objective that fees for each sector of the gambling industry should

be set at a level that enables full-cost recovery of the licensing activity provided by the Commission and should be fair and provide value for money. If provision were not made for certain fees paid under the 1968 Act and the 1976 Act to be offset against the first annual fee for the non-remote gaming machine technical (full) operating and non-remote lottery operating (society) licences, some operators would, unfairly, pay two fees covering the same regulated activities during the same period. If annual fee levels for remote operators were left unchanged, they would be at a level above that of full-cost recovery and so not ensure fairness and value for money. In addition, that would fail to meet another principle of setting fees by leading to cross-subsidisation with other fees.

- 4.2 **Option 2 – Amend the annual fee regulations after the annual review of licence fees.** The Department rejects this option. For the reasons set out in paragraphs 2.2 and 2.3 above, it does not believe it would be fair (and it would be to the financial disadvantage of operators) to delay making changes in the light of additional regulatory information received from the remote sector during the initial application process.
- 4.3 **Option 3 – Offset certain 1968 Act and 1976 Act fees against the first annual fee payable for the non-remote gaming machine technical (full) operating and non-remote lottery operating (society) licences; provide for converted lottery operating licences to be treated as non-remote lottery operating (society) licences; and reduce annual fee levels at the earliest opportunity for remote society lotteries, External Lottery Managers, gaming machines (technical), gambling software and pool betting, and for the smallest category of non-remote gaming machine technical (supplier) to a full-cost recovery level.** This is the Department’s preferred option. It will reflect the most up to date assessment of risk and regulatory workload and hence meet the Government’s principal objective of recovering the full costs (and no more) of the Commission’s statutory licensing and regulatory activities for the remote sector. It will ensure that non-remote operators get the full benefit of fees paid under the 1968 Act and transitional arrangements.

First annual fee for gaming machine technical (full) operating licence

- 4.4 Certificates issued under section 27 (“section 27 certificates”) of the 1968 Act authorise the holder to sell, supply or maintain gaming machines. They are issued upon payment of a fee for an initial five year period and, upon expiry, may be renewed for further five year periods upon payment of a further fee. The manufacture of gaming machines is not regulated under the 1968 Act.
- 4.5 The 1968 Act will be repealed by the 2005 Act on 1st September 2007. Subject to transitional provisions (described in the following paragraph), those who wish to sell, supply or maintain gaming machines in the future will be required to hold a gaming machine technical operating licence issued under the 2005 Act. Further, unlike the situation under the 1968 Act, those who manufacture gaming machines will also be required to hold such a licence.
- 4.6 Under transitional provisions made under the 2005 Act,⁵ section 27 certificates issued or renewed before 1st September 2007 will continue in effect until their usual expiry date.⁶ However, where the holder of a section 27 certificate is granted a gaming machine

⁵ See paragraphs 17, 18 and 20 of Schedule 4 to SI 3272/2006.

⁶ This also applies where a certificate or renewal has been applied for before 1st September 2007, but where the actual issue or renewal has not been effected by that date.

technical operating licence under the 2005 Act, the certificate will expire immediately upon issue of the licence.

- 4.7 It is anticipated that those who sell, supply or maintain gaming machines (but who do not manufacture such machines) will wait for the expiry of their section 27 certificate before seeking a gaming machine technical operating licence. Such people will therefore get the full benefit of the five year life of their certificate. However, holders of section 27 certificates who *manufacture* gaming machines (in addition to selling etc such machines) will be required to hold a non-remote gaming machine technical (full) operating licence from 1st September 2007, whether their section 27 certificate was due to expire on that day or not. Such people will not, therefore, get the full benefit of the five year life of their section 27 certificate, for which they paid a fee.
- 4.8 The Regulations provide for a portion of the fee paid for a section 27 certificate to be offset against the first annual fee payable for the non-remote gaming machine technical (full) operating licence. The portion of the section 27 certificate fee that is offset is that part which represents the period between the date that the operating licence is issued (causing the certificate to expire) and the date that the certificate would have otherwise expired. The Department considers that this ensures that people who hold section 27 certificates and manufacture gaming machines are not required to pay two fees for authorisations covering the same activity during the same period of time.

First annual fee for non-remote lottery (society) operating licence

- 4.9 Societies and local authorities may register under the Lotteries and Amusements Act 1976 (“1976 Act”) to promote lotteries. Under the 1976 Act they are required to pay a triennial registration fee. The 1976 Act will be repealed by the 2005 Act on 1st September 2007. Under the transitional provisions made under the 2005 Act, on that date lottery registrations will convert into converted lottery operating licences which continue in effect until the next triennial registration fee under the 1976 Act would have been due. When a converted lottery operating licence expires, a society or local authority which wishes to promote a lottery must obtain an ordinary lottery operating (society) licence under the 2005 Act.
- 4.10 A society or local authority which holds a converted lottery operating licence is required to pay an annual fee for that licence under the 2005 Act. The first such fee is due within 30 days of the issue of the licence; thereafter the fee is payable on each anniversary of the issue of the licence. The Regulations provide for a portion of the last annual fee paid for a converted lottery operating licence to be offset against the first annual fee payable for the non-remote lottery operating (society) licence. The portion of the fee that is offset is that part which represents the period between the date that the converted lottery operating licence expires and the next anniversary of the date that the converted licence was issued.

Fees for converted lottery operating licences

- 4.11 Lottery registrations of societies and local authorities under the 1976 Act will convert into special converted lottery operating licences under the 2005 Act. Under the transitional provisions, these licences are treated as if they are both non-remote and remote licences (because registration under the 1976 Act authorises both remote and non-remote activities). Because of this, it is not clear whether converted lottery operating licence holders must pay non-remote or remote fees, or both. To clarify this the Regulations provide that, for the purposes of the fees regulations, converted lottery operating

licences are to be treated as if they are ordinary non-remote society lottery operating licences. This means that holders of converted lottery licences will only be required to pay the fees applicable to ordinary non-remote society operating licences.

Annual fees

Society lotteries

- 4.12 Originally, the Commission intended to treat remote society lotteries broadly on a par with other remote licensed operators, taking a similar approach to the risks arising from web-based payment systems and the ability to scale-up rapidly and the need for compliance work to combat these risks. Following a review, it is now considered that such parity of treatment would be inconsistent with the approach adopted for non-remote society lotteries – for which the Commission believes it is acceptable to check the payment systems only when the sums are so large as to increase risk. Furthermore, unlike other forms of remote gambling, remote society lotteries do not typically involve rapid and repetitive play.
- 4.13 Accordingly, the Department has concluded that the best and fairest approach is to set annual fees for remote society lotteries at the same levels as those for equivalent non-remote operations. The fees are being reduced by 80-92% to £348, £692 and £1,392, depending on the size of the operation covered by the licence. This is the most straightforward approach and the revised risk assessment described above justifies reduction of the annual fees for remote society lotteries, but does not contradict the rationale for the levels of fees for other remote sectors, where the risks of continuous and repetitive play are greater, partly due to the commercial business drivers.

External Lottery Managers

- 4.14 Following representations from the Lotteries Council, the Department has concluded that the approach taken by external lottery managers in undertaking remote gambling activity is analogous to the approach taken by remote society lotteries. Accordingly, the same arguments as to relative risk apply. However, the Department is also conscious that, unlike society lottery operators, external lottery managers are commercial undertakings and that the nature of the risks in practice is therefore not entirely comparable with society lotteries. In particular, external lottery managers profit from their activities and the scale of their operations is not restricted in the same way as for society lotteries. Taking these two factors into account, the Department has decided to reduce the current fee levels for external lottery managers by 50% (which recognises the relatively lower risks in this sector but does not put the fees on a par with those for society lotteries) to £6,367, £17,088 and £33,171, depending on the size of the operation covered by the licence. This reduction thus reflects a balance between the reduced inherent risks of the nature of the activity and the different nature of external lottery managers from other operators.

Gaming machines (technical) and Gambling software

- 4.15 These operating licences are held by operators who manufacture, supply, install etc gaming machines or gambling software. Since the operating licence fees were set in the 2006 Regulations, industry representatives have submitted to the Department that the

remote activities in these sectors are distinct from those in other sectors. They point out that, in this sector, operators' activities are conducted on a business to business basis and gambling is not directly provided to the public. Nevertheless, under the 2005 Act, gambling-related activity carried on in these sectors by means of remote communication requires a remote operating licence. Where the remote activity is restricted to the use of e-mail, then an ancillary remote licence is already available.

- 4.16 In addition, it has also been identified that the fee for the smallest category of non-remote machine technical (supplier) operators are anomalous (i.e. of risk and workload) in the context of fees for similar activities in other areas.
- 4.17 Following a review of the risks and extent of work required in these sectors, the Department and Commission have concluded that:-
- The nature of the activity means that there *is* a risk which needs to be regulated effectively across all of an operator's activities;
 - However, the business to business nature of the activity reduces the risk - in terms of risk to the public and social responsibility, the prime responsibility lies with an operator who actually provides gambling to the public, rather than with machine and software manufacturers and suppliers;
 - Operators in this sector are already paying test houses to check software, which further lessens the risk; and
 - An assessment that business to business activity is of lower risk is in line with Better Regulation Executive recommendations on Small and Medium Enterprises regulation.
- 4.18 It has therefore been concluded that remote annual licence fees in these areas should be reduced by 50% to reflect the lower risks to £6,367, £17,088 and £33,171, depending on the size of the operation covered by the licence. For the same reason, it was also concluded that the fee for the smallest category of non-remote gaming machine technical (supplier) annual licence fee should be reduced by 50% to 31,201.

Pool Betting

- 4.19 The football pool betting sector currently comprises one small operator and three large operators. The small operator's remote activity consists of running a website which generates very little revenue (approximately £6-7,000 per annum much of which relates to e-mail activity), but requires a remote licence which currently costs £12,733 annually. The Department considers this to be disproportionate and out of line with Better Regulation Executive recommendations, given the size of the operator.
- 4.20 The licence fee arrangements anticipated such small-scale remote activity for on-course bookmakers and created a class of licence with lower fees to accommodate it - the general betting (limited) operating licence. This licence does not currently extend to pool betting operations. However, it is proposed that a similar arrangement be provided for pool betting. This is effected by reducing the annual fee for the smallest category of pool betting licence (category F) to £1,500.

5. Costs and benefits

Sectors and groups affected

- 5.1 There are around 661 society lotteries, 15 external lottery managers and 680 gaming machine suppliers, manufacturers and repairers currently operating who could benefit from the different approach in assessing regulatory workloads for remote operators - but we do not know how many of them currently offer remote gambling products or services or have plans to do so. There are four pool betting operators, one of which will benefit from the amending order. In addition, non-remote gaming machine technical (full) operating and non-remote lottery operating (society) licensees will benefit from the proposal to take account of fees paid under the gambling regime which preceded the 2005 Act.

Costs and Benefits

- 5.2 These Regulations will result in reductions to the current remote annual fees, from which many operators that currently run or intend to offer remote gambling products or services will benefit, without bearing any costs. It will also produce a more straightforward approach for non-remote and remote society lotteries that reflects consistent risk assessment by the Gambling Commission across the whole remote gambling sector to determine fair fees that relate to acceptable levels of regulation, which are appropriate for each type of operator. The extent of licence fee savings to benefit individual operators is set out in the table at Appendix 1. The Regulations will also see a benefit for holders of non-remote gaming machine technical (full) operating and non-remote lottery operating (society) licences in that a portion of the licence fee paid for a section 27 certificate under the Gaming Act 1968 and fees paid under transitional provisions will be offset against the first annual fee payable under the 2005 Act. Holders of converted lottery operating licences will have clarification about the licence fees they have to pay, in that they will only be required to pay fees applicable to ordinary non-remote society operating licences.

6. Small firms impact test

- 6.1 Many of the operators offering non-remote and/or remote gambling are small businesses. They will not suffer any adverse consequences from the regulations proposed here. On the contrary, they will benefit throughout their existence from the proposals to reduce annual fee levels and/or to offset a portion of the section 27 certificate fee against the first annual fee payable for a non-remote gaming technical (full) operating licence.

7. Competition assessment

- 7.1 A simple competition assessment has been undertaken in line with BRE/OFT guidance and has concluded that a full competition assessment is unnecessary. The revised annual fees proposed for remote operators reflect the regulatory costs as they relate to the licensing and compliance and monitoring activities of the Commission, which in turn reflect the risks and complexity posed to the statutory licensing objectives of the Commission. The portion of the fee paid for non-remote section 27 certificate holders against the first annual fee payable under the 2005 Act, will ensure that holders of section 27 certificates are not required to pay two fees for authorisations covering the same activity during the same period of time. The fee proposals are therefore designed to be fair and treat all sectors of the gambling industry with equality, taking account of the size

of a business within a particular sector. It has been concluded that the conditions of competition in the British gambling industry are unlikely to be materially affected for the worse by the proposed changes.

8. Enforcement, sanctions and monitoring

8.1 The Commission will have overall responsibility for monitoring compliance with the requirements of the Act from 1st September 2007. The Commission has legal powers to monitor licence holders, take enforcement action against those who do not comply with their licence conditions and it will be able to levy fines or revoke licences, as well as impose new and revised licence conditions. It will also investigate and prosecute illegal gambling under the Act.

8.2 The Commission will keep all licence fees under regular and annual review in the light of its assessment of risks and its associated regulatory workload. It will advise the Department on the need for regulatory changes after liaising and consulting with stakeholder interests, as appropriate. It will also monitor gambling regulation more generally and advise on the need for any changes, which may in turn impact upon licence fees. An annual report of its activities will be published.

9. Implementation and delivery plan

9.1 The Department and the Commission have kept the industry informed about these changes through established industry and community networks.

10. Post-implementation review

10.1 The introduction of amended annual licence fees will be monitored by the Commission through its ongoing monitoring and enforcement functions. The Commission will keep the operation of all licence fees under annual review and will advise the Department on the need for changes.

11. Declaration

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

Signed.....

Date.....

12. Contact point

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APPENDIX 1 - Revised Annual Fees

Changes introduced by these Regulations

Operating licence type	Old Fee	Old Fee	Old Fee	New Fee	New Fee	New Fee	Decrease (%)
Non-remote fees							
<i>Operator Category</i>	A	B	C	A	B	C	
Gaming machine technical: supplier	2,401	n/a	n/a	1,201	n/a	n/a	-50%
Remote fees							
<i>Operator Category</i>	F	G	H	F	G	H	
Pool betting	12,733	n/a	n/a	1,500	n/a	n/a	-88
Gaming machine technical: manufacturer	12,733	34,176	66,341	6,367	17,088	33,171	-50
Gaming machine technical: supplier	12,733	34,176	66,341	6,367	17,088	33,171	-50
Gaming machine technical: software	12,733	34,176	66,341	6,367	17,088	33,171	-50
Gambling software	12,733	34,176	66,341	6,367	17,088	33,171	-50
Lottery managers	12,733	34,176	66,341	6,367	17,088	33,171	-50
Society lotteries	2,372	4,370	6,361	348	692	1,392	-80 to 92

Revised annual operating licence fees for all licence types

Operating licence type	Annual fees							
	Non-Remote					Remote		
	A	B	C	D	E	F	G	H
Casino: 2005 Act	48825	96925	193851			12733	34176	66341
Casino: 1968 Act	16356	20716	295539			12733	34176	66341
Bingo	1769	7077	16860	35790	78098	12733	34176	66341
General betting - limited	200	467	1267					
General betting - standard	1769	7077	16860	36862	212372	12733	34176	66341
Pool betting	2121	4083	4083			1500	34176	66341
Betting intermediary	267	4083	4083			12733	34176	66341
Gaming machine general: AGC	1616	6464	12928	26488	36862			
Gaming machine general: FEC	1171	4683	9365	21288	35790			
Gaming machine technical: manufacturer	2961	6325	14175			6367	17088	33171
Gaming machine technical: supplier	1201	3243	4083			6367	17088	33171
Gaming machine technical: software	1535	3861	6188			6367	17088	33171
Gambling software	1535	3861	6188			6367	17088	33171
Lottery managers	1981	2261	2541			6367	17088	33171
Society lotteries	348	692	1392			348	692	1392