

EXPLANATORY MEMORANDUM TO
THE GAMBLING (LOTTERY MACHINE INTERVAL) ORDER 2007

2007 No. 2495

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**

- 2.1 The Gambling Act 2005 ('the 2005 Act') makes provision for exempting machines that dispense a lottery ticket, or otherwise allow a person to enter a lottery, from being classified as a gaming machine. This Order specifies the minimum amount of time that must lapse between the purchase of a lottery ticket from a machine and the announcement of the result by the machine if it is to be exempted.

- 2.2 The Department is proposing that a one hour interval be set between entry to the lottery and the announcement of the result.

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

EC Technical Standards

- 3.1 The Gambling (Lottery Machine Interval) Order has been notified to the European Commission, under the European Technical Standards Directive, since the interval to be specified by the Secretary of State under section 235(2)(d) constitutes a technical regulation, affecting the operation and configuration of the equipment.

- 3.2 The European Technical Standards Directive seeks to prevent the creation of new technical barriers to trade, and sets out a notification procedure to ensure transparency of technical regulations. The Directive impacts on products (defined as any industrially manufactured products and any agricultural products, including fish products) and information society services (defined as any service supplied at a distance, by electronic means and at the individual request of a recipient of services).

- 3.3 The Directive requires any measure containing a technical regulation to be notified in draft to the European Commission (EC). Technical regulations are notified by the Department for Trade and Industry, the government department with the policy lead for technical standards.

- 3.4 Once a technical regulation has been notified to the European Commission there is a "standstill" period of three months. This is to provide an opportunity for the Commission and other Member States to comment if they consider that the proposed regulation has the potential to create a technical barrier to trade (the Commission circulates the notified

drafts to all Member States). If a comment, from either the Commission or a Member State, perceives the potential barrier to trade to be a serious one, they can give a ‘detailed opinion’, which has the effect of extending the standstill period for a further three months.

- 3.5 The Gambling (Lottery Machine Interval) Order was notified on 24 May, with the standstill period scheduled to end on 27 August.

4. Legislative Background

4.1 Under section 235 (“Gaming Machine”) of the 2005 Gambling Act a machine which is designed or adapted for use by individuals to gamble is a gaming machine unless one of a number of exceptions applies. The exceptions are set out at section 235(2) of the 2005 Act. These are designed to ensure that certain types of equipment are not caught by the gaming machine definition, even though they may be used for gambling, because regulation of such equipment or the gambling provided upon it is achieved by other means.

4.2 One such piece of equipment is a machine that dispenses a lottery ticket or otherwise allows a person to enter a lottery. Under section 235(2)(d) this type of equipment will not fall within the definition of a gaming machine provided that:

(a) it does not determine the result of the lottery, and

(b) it does not announce or communicate the result of the lottery without there being an interval, of specified duration, between each entry to the lottery and the announcement.

4.3 Section 235(2)(d)(ii) of the Act requires the Secretary of State to make an order specifying the duration of the interval between entry to the lottery and the announcement of the result. The reason for specifying an interval is to prevent lotteries from being operated on equipment, in a rapid repeat play manner, potentially indistinguishable from the generality of gaming machines, but operating outside the new regulatory framework for gaming machines.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Richard Caborn has made the following statement regarding Human Rights:

In my view the provisions of the Gambling Act 2005 (Lottery Machine Interval) Order 2007 are compatible with the Convention rights.

7. Policy background

- 7.1 Under the current legislation no ticket or chance in a society's lottery or local lottery may be sold by machine¹. The government's policy under the 2005 Act is to remove this blanket prohibition, although in doing so it will be important to ensure that where machines are used to dispense lottery tickets there are effective measures in place to prevent excessive or underage use.
- 7.2 This is particularly important as lottery machines may be made available in a wide range of premises, including those that are not specifically licensed for gambling, and where they will not be subject to the same controls and restrictions that apply to gaming machines. Both the Gambling Commission and the Secretary of State are furnished with powers under the 2005 Act to regulate the manner in which lottery tickets are sold, including the ability to control whether and in what circumstances tickets are sold by machine.
- 7.3 The 2005 Act also requires equipment selling lottery tickets to be properly distinguished from gaming machines. This is the approach taken under section 235(2)(d) of the 2005 Act which excludes equipment used to sell lottery tickets from the general gaming machine definition. The government recognises that there is a valid and necessary distinction to be made between a fruit or slot machine (on which any type of virtual gambling, including lotteries, can be offered) and a lottery ticket vending machine which enables people simply to enter lotteries.
- 7.4 However, it is also important to ensure that machines selling lottery tickets are not used as gaming machines "by the back door". In particular, there is concern that the offer of fast draw lotteries on equipment, or allowing the machine itself to determine the result, could lead to machines which replicate many of the features offered by machines, without being regulated as gaming machines.

Public Consultation

- 7.5 The Department issued a public consultation on the Gambling (Lottery Machine Interval) Order 2007 on 28 March, which closed on 18 May. There were a total of 18 formal responses from machine manufacturers and suppliers, trade bodies, faith groups, Camelot, the National Lottery Commission and an academic. A full list of those who responded is attached at Annex A to this Memorandum. In addition, over 200 clubs, which provide lottery machines, and several MPs, wrote in to the Department.
- 7.6 Within government, the Department consulted the Gambling Commission. Informal discussions also took place with the Lotteries Council, which represents society lottery promoters, and external lottery managers, who promote lotteries on behalf of societies as a business activity. The Department and Gambling Commission also held discussions with CORCA and other club representatives.
- 7.7 All the clubs and MPs who wrote in response to the consultation objected to the proposed one hour interval, as did the trade bodies and all but one of the machine

¹ Regulation 5 of the Lotteries Regulations 1993: SI 1993/3223

manufacturers and suppliers. The lottery machines provide important revenue for clubs; they argue that loss of the machines could force them to close.

- 7.8 The consultation process has revealed that there are approximately 3,000 lottery ticket vending machines which will be affected by the setting of a one hour interval. The machines currently operate under section 4 “Private Lotteries” of the Lotteries and Amusements Act 1976, and are provided in working men’s clubs and miners’ welfare institutes.
- 7.9 Section 4 of the Lotteries and Amusements Act requires that the proceeds from a private lottery must, after deduction of expenses and prizes, support the purposes of the society or club. Under the 2005 Act, there are three types of private lottery: private society lotteries, work lotteries and residents’ lotteries (under Part 2 of Schedule 11 “Exempt Lotteries”), Work and residents’ lotteries may not make any profits. Private society lotteries may be promoted for any of the purposes for which the society is conducted, and all profits must be applied for the stated purpose (section 260 of the 2005 Act).
- 7.10 These “section 4” machines offer prizes up to £2,000, and have many of the operational features of a gaming machine, with each play only taking a few seconds. The Government does not believe that, in regulatory terms, it is acceptable for clubs to be offering high prize machines. Casinos are the only licensed gambling premises that are able to provide gaming machines offering this level of prize. The Government also considers that if such high prize machines enable players to chase their losses by allowing rapid repetitive play, they should properly be regulated as gaming machines. Ministers have met representatives of the clubs sector, and made it clear that machines in clubs should not be able to offer high prizes. Registered clubs are currently only permitted three gaming machines with a maximum prize of £250.
- 7.11 The Government recognises that the ‘section 4’ machines provide an important source of revenue for clubs, which in turn play an important role in supporting their local communities. The Government is proposing, therefore, that working men’s clubs and miners’ welfare institutes (but not commercial clubs, which are defined in s267 of the 2005 Act) will be able to offer gaming machines with a maximum prize of £500, providing they only enable individuals to participate in a lottery. This will be effected through “The Categories of Gaming Machine Regulations 2007”, which are to be laid in Parliament on 12 June 2007.
- 7.12 Ministers have met and discussed this situation with the principal club representatives, the Committee of Registered Clubs Committee (CORCA), who have agreed in principle to enter into a voluntary agreement that clubs will offer no more than one £500 gaming machine offering lottery-based games, as part of their entitlement of gaming machines.
- 7.13 Clubs, and other locations and premises such as pubs, retail outlets, charities and sports clubs, will also be able to offer lottery ticket vending machines that comply with section 235(2)(d) of the Gambling Act and the Gambling (Lottery Machine Interval) Order.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex A.

9. Contact

Peter Doogan at the Department for Culture, Media and Sport Tel: 020 7211 6486,
e-mail: peter.doogan@culture.gsi.gov.uk who can answer any queries regarding the instrument.

Annex A

Gambling Act 2005 (Lottery Machine Interval) Order Consultation: List of Respondees

Manufacturers/Suppliers

Barcrest Group

Dransfields

EME Ltd

Gamestec

GamingKing

In Touch Games

Kossway Automatics

Oasis Technologies (UK) Ltd – Jeffrey Green Russell, Solicitors, acting on their behalf

Reflex Gaming Ltd – Harris Hagan, Solicitors, acting on their behalf

Scientific Games

Trade Bodies

British Amusement Caterers Trade Association (BACTA)

Committee of Registered Clubs Association (CORCA)

Lotteries Council

Faith Groups

Quaker Action on Alcohol and Drugs

The Methodist Church and The Salvation Army

Others

Camelot

National Lottery Commission

Jim Orford, Professor of Clinical & Community Psychology, Birmingham

Full Regulatory Impact Assessment

Sections 1-8

Sections 1-8 should be completed for the initial, partial and full RIA.

1. Title of proposal

The Gambling (Lottery Machine Interval) Order 2007

2. Purpose and intended effect

2.1 The objective of this proposal is to specify a minimum time interval between the purchase of a ticket from a lottery vending machine, and the announcement or display by that equipment of the result of the lottery.

2.2 Background. Under section 235 of the Gambling Act 2005 a machine that is designed or adapted for use by individuals to gamble is a gaming machine. This is a wider definition of a gaming machine than that currently contained in the 1968 Gaming Act, and takes account of developments in technology that now allow a wide range of apparatus to be used for providing facilities for gambling. There are a number of exceptions to this broad definition, which are designed to ensure that certain types of equipment are not caught by the gaming machine definition, even though they may be used for gambling of one kind or another. One such piece of equipment is a machine that dispenses a lottery ticket or that otherwise allows a person to enter a lottery. Under section 235(2)(d) of the Act this type of equipment will not fall within the definition of a gaming machine provided that:

(a) it does not determine the result of the lottery, and

(b) it does not announce or communicate the result of the lottery without there being an interval, of specified duration, between each entry to the lottery and the announcement.

Section 235(2)(d)(ii) of the Act requires the Secretary of State to make an order specifying what the minimum interval between entry to the lottery and the announcement of the result should be, for the purpose of the exemption. This consultation document concerns the Department's proposals for making that Order.

It should be noted that these provisions relate solely to the use of machines for dispensing tickets for lotteries promoted under Part 5 or Schedule 11 of the Gambling Act 2005. They do not relate to the sale of tickets for lotteries promoted under the provisions of the National Lottery etc Act 1993, which are subject to separate rules and regulations.

2.3 Rationale for government intervention

Under regulation 5 of the Lotteries Regulations 1993, tickets for societies and local authority lotteries may not be sold by machine. Permitting lottery tickets to be sold by machine, without any requirement for human intervention, has the potential to increase the risks associated with rapid, repetitive play. Both the Gambling Commission and the Secretary of State are furnished with powers under the 2005 Act to regulate the manner in which lottery tickets are sold. This would include the ability to control whether and in what circumstances tickets are sold by machine, should the need to do so arise in the future. The Government is currently considering the extent to which these powers (under Part 5 of the Act for lotteries regulated by operating licence, and under Schedule 11 to

the Act for exempt lotteries) to regulate the way in which lottery machines are managed and made available should be used. While the Government wants promoters to be able to make their lotteries available through new distribution channels, this process needs to be regulated carefully.

One measure that is already provided for within the primary legislation is the requirement for a minimum period, following the purchase of a ticket from a machine, before the result can be displayed or communicated by the machine itself. The imposition of such an interval between entering the lottery and discovering the result means that there should be less opportunity for players to gamble frequently and to chase their losses. This is particularly important as lottery machines may be made available in a wide range of premises, including those that are not specifically licensed for gambling, and where they will not be subject to the same controls and restrictions that apply to gaming machines. For example, on alcohol licensed premises (e.g. pubs), the maximum stake and prize for a gaming machine will be 50p and £35 respectively after 1st September 2007. A lottery vending machine operating on the same premises could, in theory, dispense tickets with much higher charges and prizes. The potential risks from this kind of machine-based gambling therefore need to be managed carefully.

3. Consultation

Within government the department consulted the Gambling Commission. Informal discussions also took place with the Lotteries Council, which represents society lottery promoters, and external lottery managers, who promote lotteries on behalf of societies as a business activity. The Department and Gambling Commission also held discussions with CORCA, CIU and other club representatives.

A full public consultation on the proposal was completed on 18 May 2007. There were a total of 18 formal responses from machine manufacturers and suppliers, trade bodies, faith groups, Camelot, NLC and an academic. In addition, over 200 clubs and several MPs participated in a letter writing campaign, objecting to the proposed one hour interval to be set between each entry to the lottery and the announcement of the result.

4. Options

(i) Do nothing

Under section 235 of the act the Secretary of State is required to prescribe the minimum time interval for such machines, so doing nothing is not an option if the relevant provisions of the Act are to function as intended by Parliament. The Government therefore rejects this option.

(ii) Specify a time interval in line with that proposed for gaming machines

The approach under section 235(2)(d) of the 2005 Act is intended to exclude equipment used to sell lottery tickets from the general gaming machine definition. The Department recognises that there is a valid and necessary distinction to be made between a fruit or slot machine (on which any type of virtual gambling, including lotteries, can be offered) and a lottery ticket vending machine that enables people simply to enter lotteries. However, we also consider it important to ensure that machines selling lottery tickets are not used as gaming machines "by the back door". In particular, there is concern that the offer of fast draw lotteries on equipment, or allowing the machine itself to determine the result, could lead to machines which replicate many

of the features offered by machines, without being regulated as gaming machines. This is particularly important as lottery machines may be made available in a wide range of premises, including those that are not specifically licensed for gambling, and where they will not be subject to the same controls and restrictions that apply to gaming machines. The Government therefore rejects this option.

(iii) Specify an interval of 24 hours, in line with that originally proposed for all lotteries

This would, we consider, be unreasonable and disproportionate, and render the flexibility provided through these provisions of little or no benefit to lottery promoters. There is no evidence to suggest that such a measure is required, for regulatory purposes, and the Government therefore rejects this option.

(iv) Specify an interval of less than 24 hours, but greater than that applying to gaming machines

There is of course, a considerable range of options available between the two extremes outlined immediately above. The interval between “games” played on a gaming machine is, as a general rule, measured in seconds, while at the other end of the spectrum we have a situation where, in practice, a lottery machine might have to stop dispensing tickets for a full day before the result of the lottery is announced. The Government is clear, for the reasons outlined above, that lottery machines need to be distinguished clearly from gaming machines. On the other hand, we also want promoters to be able to take advantage of the opportunity that the Act provides to identify new ways of selling lottery tickets. The Government has therefore concluded that the minimum interval between the purchase of a lottery ticket from a machine, and the announcement or display of the result by the machine should be one hour. This is therefore the preferred option.

5. Costs and benefits

Sectors and groups affected

Those affected include promoters of society, local, incidental non-commercial, private and customer lotteries under the provisions of Part 5 or Schedule 11 to the Gambling Act 2005. The majority of these organisations are likely to be charities, clubs and other non-commercial societies. The measure is also of interest to external lottery managers, machine manufacturers and suppliers, trade bodies, licensing authorities, faith groups and problem gambling organisations.

Cost –Benefit comparison

The statutory criteria for distinguishing lottery machines from gaming machines are contained in the Gambling Act, which was subject to its own regulatory impact assessment. Specifying the minimum time interval will enable promoters of all types of lotteries to take advantage of the policy intention behind this and related provisions of the Act that lottery tickets should, in future, be capable of being sold via a machine. It is not possible, at this stage, to assess the extent to which individual promoters are likely to take advantage of this measure. This represents a new market opportunity, and it will be for promoters and their commercial partners to determine the extent to which the benefits (in terms of additional ticket sales) outweigh the costs (of obtaining and locating machines). It is unlikely, however, that the specific interval proposed here (one hour) will

give rise to any additional costs over and above those arising from the broader requirements for lottery machines set out in the Act.

The consultation process has revealed that there could be 3,000 machines, currently operating under section 4 “Private Lotteries” of the Lotteries and Amusements Act 1976, being operated predominantly in members’ clubs and miners’ welfare institutes. These machines offer prizes up to £2,000, and have many of the operational features of a gaming machine, with each play only taking a few seconds.

It is likely that the one hour interval will make these machines unattractive to players, and therefore unviable. This point has been made by machine manufacturers, suppliers and more than 200 clubs that offer the machines. The Department does not believe that, in regulatory terms, it is acceptable that clubs are effectively offering high prize machines. Casinos are the only licensed gambling premises that are able to provide gaming machines with this level of prize.

The Department accepts that the one hour interval may cause these machines to be withdrawn, with a possible knock-on effect on club revenues. However, by comparison to the total size of the gaming machine population in Great Britain, the number of machines which may be affected is limited. It is estimated that there are approximately 259,000 gaming machines in Great Britain, of which 50,000 are in the four category B subgroups.

Under the Gambling Act 2005, clubs will continue to be able to offer three category B, C or D gaming machines. Furthermore, as a result of discussions with clubs representatives the government has decided to create a new category of B3A gaming machine which will only be permitted in members’ clubs and miners’ welfare institutes and only applies to machines offering lotteries, and which should go some way to compensating for the loss of existing lottery terminals. Category B3A machines will be restricted to a maximum charge for use of £1 and a maximum prize value of £500.

6. Small Firms Impact Test

The organisations that may promote lotteries range from individual clubs, societies and local retail outlets to national charities and major sports clubs. Lottery machines may, potentially, be located in a wide variety of types of premises, but the most popular locations are likely to be clubs, pubs and retail outlets. As indicated above, the specific provision covered by this proposal is a key element of the regulatory framework that distinguishes lottery machines from gaming machines, and is essentially permissive in nature. These proposals are unlikely to have a disproportionate impact on small firms.

7. Competition assessment

The proposal is for a single, specified interval that will apply to all types of lottery machines, located in any type of premises, and in respect of lotteries promoted by any of those authorised to do so under the Gambling Act 2005. Within the lotteries sector, therefore, it is not anticipated that there will be any material impact on competition. Although the proposed one hour interval means that lottery machines will be at a competitive disadvantage compared with gaming machines, it needs to be borne in mind that the former will be operating without the strict limits on manufacture, supply, stakes, prizes and numbers that apply to gaming machines. Lottery promoters will, if

they choose to do so, be able to provide access to their lotteries via gaming machines, but these will be subject to the controls applying to such machines.

8. Enforcement, sanctions and monitoring

If a lottery machine does not meet the requirements specified in section 235(d) of the Act it will be a gaming machine, and will be subject to the full range of requirements and regulations applying to such machines. Part 10 of the Act contains a range of offences and penalties in respect of gaming machines. Depending on what kind of premises they are located on, the Gambling Commission, licensing authorities and the police all have powers in relation to the enforcement of the Act's provisions in respect of gaming machines, but this measure does not create any new offences or sanctions.

9. Implementation and delivery plan

The Gambling (Lottery Machine Interval) Order has to be approved by the affirmative resolution procedure, i.e. the Order will have to be debated in, and approved by both Houses of Parliament. The Order will take effect from 1 September 2007. To be exempt from the definition of a gaming machine, lottery ticket vending machines will have to comply with the Order from 1 September.

10. Post-implementation review

The Gambling Commission will monitor compliance in clubs, and other premises, to ensure that lottery ticket vending machines meet the 1 hour interval set by the Order. The effect of the Order will be kept under review, and we will seek feedback from trade bodies, club representatives and other interested parties. Due to the future-proofing built into the Gambling Act, we can vary the interval at a later date should this prove necessary or desirable.

11. Summary and recommendation

Ministers have decided to proceed with option 4(iv) above, to proceed with bringing the Gambling (Lottery Machine Interval) Order 2007 effect on 1 September 2007.

12. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date:

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

Contact point:

Peter Doogan,
Gambling and National Lottery Licensing Division,
Department for Culture, Media and Sport
2-4 Cockspur Street
LONDON SE1Y 5DH
Tel: 0207-211 6486
Email: peter.doogan@culture.gsi.gov.uk