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Gaming : regulation & taxation of casinos

The gaming industry in this country is of a considerable size. There are 116 casinos in Great Britain - 23 just in London - more than in any other European country with the exception of France. Approximately £2.7 billion was staked in casinos in 1998/99, of which 83 per cent was returned as winnings.

This paper discusses the regulatory regime for casinos, and the recent proposals that have been made for its reform, before looking at the way in which the industry has been taxed.

Although betting, gaming and lotteries are reserved matters under the *Scotland Act 1998*, certain functions related to casinos have been devolved to the Scottish Executive, including the power to designate those areas in Scotland where casinos may be established.

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Summary of main points

The gaming industry in this country is of a considerable size. There are 116 casinos in Great Britain - 23 just in London - more than in any other European country with the exception of France.¹ Approximately £2.7 billion was staked in casinos in 1998/99, of which 83 per cent was returned as winnings.²

The industry is regulated under the *Gaming Act 1968*. At present casinos may operate only in 53 'permitted areas'.³ In March 1997 the Conservative Government proposed that this list should be extended.⁴ Following the General Election, and a review of casino regulation, the Labour Government announced a number of deregulatory changes affecting the industry, but ruled out any change in the list of permitted areas.⁵ Secondary legislation was introduced in July 1999 to relax certain controls imposed by the *Gaming Act 1968* on casino membership, advertising and jackpot machines.⁶ Following a second consultation exercise, the Government has recently proposed an extension in the opening hours for casinos in England & Wales which, subject to Parliamentary approval, will come into force from 31 July 2000.⁷

The Gaming Board is responsible for the day-to-day supervision of the industry. For some years it has been argued that the 1968 Act should be substantially reformed.⁸ On 8 December 1999 the Home Secretary, Jack Straw, announced that he would appoint an independent body to conduct a 12-month review of the laws governing gambling.⁹ Its terms of reference were confirmed on 16 February 2000.¹⁰ It is anticipated that the review group will report back to Ministers in the summer of 2001.¹¹

Under the *Betting and Gaming Duties Act 1981* HM Customs & Excise is responsible for collecting gaming duty.¹² All commercial gambling clubs have to register with Customs, and pay duty determined by the club's gross gaming yield. Receipts from gaming duty were £90.8 million in 1998-99.¹³

¹ As at 31 March 1999 *Report of the Gaming Board of Great Britain 1998/99* HC 525 14 July 1999 p 2

² *op.cit.* p 2

³ These are listed in an appendix to this paper.

⁴ HC Deb 13 March 1997 cc 276-277W

⁵ HC Deb 15 July 1998 cc 187-189W

⁶ *The Deregulation (Casinos) Order* SI 2136/1999.

⁷ HC Deb 3 April 2000 c 383-384W The Scottish Executive intends to implement the same change for Scottish casinos (SPOR PQ S1W-5789, 31 March 2000).

⁸ For example, *Report of the Gaming Board of Great Britain 1998/99* HC 525 pp 5-6

⁹ HC Deb 8 December 1999 c 534W

¹⁰ HC Deb 16 February 2000 cc 537-538W

¹¹ Home Office press notice 053/2000, 10 March 2000

¹² Prior to 1 October 1997, this charge was known as gaming licence (premises) duty.

¹³ *HM Customs & Excise Annual Report 1998/99* Cm 4447 November 1999 p 98

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I Casino regulation

A. General principles

Casino gaming became legal in this country in 1960. Over the following few years, a lack of effective regulation resulted in a sizeable criminal involvement in the fast-expanding industry and the widespread exploitation of participants. The *Gaming Act 1968* had two aims: to reduce the number of casinos, and to bring those that remained under effective control. It established the present regulatory framework and the Gaming Board, which is responsible for the day-to-day supervision of the industry. A Home Office consultation paper on casino regulation published in 1996 noted that the 1968 Act "has been very successful in producing a stable and well run gaming industry."¹⁴

In 1976 a Royal Commission was set up to "inquire into the existing law, and practice thereunder, relating to betting, gaming, lotteries and prize competitions." The Rothschild Report, as it is known, was published in July 1978; the following description of the gaming industry in this country is taken from the Report's opening remarks on casinos:

Casinos are still for most people more readily associated with Monte Carlo and Baden Baden than the more homely surroundings of Reading or Salford. They are for Britain a comparatively recent innovation. Lawful casino gambling was made possible for the first time by the *Betting and Gaming Act 1960*. Within a few years casinos were flourishing like weeds in many parts of the country. The *Gaming Act 1968* brought them under stricter control and provided machinery for reducing their numbers. At the end of 1976, there were 121, of which 24 were in London, 81 in the provinces, four in Wales and 12 in Scotland.

There are two striking differences between British casinos and those in continental resorts or spas. First, British casinos are all clubs which admit only members and their *bona fide* guests. On the continent, the general rule is that anyone who looks respectable and pays an admission charge can enter and take part in the gaming. Secondly, continental casinos are usually in spacious premises which offer dancing and other entertainments in addition to gambling. British casinos sometimes provide food and drink but no other form of entertainment. These differences reflect differences of principle in the control of gaming.¹⁵

The Report went on to set out the general principles of regulation in the UK. Most important among these was the concept of provision for unstimulated demand, the "connecting thread which runs through the whole fabric of gaming control":

We have said that the characteristic features which distinguish British casinos from those on the continent are the result of specific policies embodied in the *Gaming Act 1968*. The underlying principle is that casino facilities in Britain

¹⁴ Home Office, *Casinos and bingo clubs: a consultation paper*, February 1996 p 1

¹⁵ *Royal Commission on Gambling (Rothschild Report)* Cmnd.7200 July 1978 p 286

should be sufficient, but no more than sufficient, to satisfy an unstimulated demand for gaming which might otherwise seek an illegal outlet.

The principle of satisfying unstimulated demand is the connecting thread which runs through the whole fabric of gaming control. Licensing authorities considering applications for casino licences ordinarily require to be satisfied that a substantial demand exists for the kind of facilities proposed and that such demand is not already satisfied by available facilities reasonably accessible to prospective players in the area. The prohibition of advertising prevents the artificial stimulation of demand. The ban on other entertainments is meant to stop proprietors from baiting the hook with free cabaret or dancing. The 48-hour rule¹⁶ ... excludes people who have no strong desire to gamble in casinos but might be tempted to enter one simply because it was there.

The Gaming Act does not say that the demand must come entirely from the permanent residents of the place in which it is proposed to establish a casino. Demand from visitors, whether from other parts of Britain or from abroad, can be taken into account. Casinos in some holiday resorts and in London get most of their business from tourists. But for the most part, British casinos are intended to cater for those of our fellow citizens who might otherwise be tempted to take part in illegal gaming. This is not a fanciful thought. Before casinos were legalised, the amount of illegal gaming was causing concern. Now it has mostly disappeared. What is left seldom involves casino games. It is confined to peripheral activities like gaming by ethnic minorities, illegal card schools and minor street gaming ...

The concept of provision for unstimulated demand is often somewhat elusive. To a greater or lesser extent, the fact that lawful facilities for gambling are provided will itself promote more gambling. And looking at the reverse side of the coin, the fact that illegal gaming has disappeared does not necessarily mean that existing unstimulated demand has been met. Most people are law abiding; they might join a casino if one were available, but its absence would not cause them to patronise illegal gaming houses.

Nevertheless, we think that the notion of unstimulated demand probably makes more sense in relation to casinos than most other forms of gambling. We agree with the broad philosophy which it expresses. The present pattern of casino clubs, catering primarily for members of the resident population throughout the country, has in our opinion proved successful and should be retained. It may not be right in every detail, but we find it broadly acceptable. We also have a strong feeling that it corresponds with what most people want.

¹⁶ The rule, laid down in section 12 of the *Gaming Act 1968*, whereby no-one was allowed to play in a casino until 48 hours had elapsed since they applied for membership. Applications for membership had to be made in person at the casino - the only exception to this rule being for *bona fide* guests of members. In April 1997 the waiting period was cut in half to 24 hours, under the *Deregulation (Casinos) Order SI 1997/950*, following recommendations in the 1996 consultation exercise on gaming reform (the reform is discussed in Section I.C of this paper).

We have received many proposals for change from vested interests who would like to see more or different casinos, but none from frustrated gamblers. We therefore endorse the retention of the principle of unstimulated demand and the system of licensing and ancillary rules which buttress it. We think that it works in practice; licensing authorities who may have difficulties over its practical application in particular cases are able to call upon the accumulated experience and expertise of the Gaming Board.¹⁷

These principles continue to shape the current regulatory system.¹⁸ The Gaming Board's most recent annual report provides the following comments on why gaming is regulated and the objectives of regulation:

As the Board has repeatedly emphasised, gambling is an activity which involves the circulation of large sums of money, and as a consequence, if not properly controlled, is susceptible to fraud, money laundering, other criminal activity and malpractice. The events of the 1960s in this country, when a measure intended to provide a relatively small relaxation in the controls surrounding gaming resulted in an uncontrolled proliferation of casinos and other gaming with attendant malpractices and criminal involvement, illustrate the problems which can occur.

Individuals can, and in some cases do, become addicted to gambling, with adverse effects for themselves, their families and society in general. The small minority of gamblers who have problems in controlling their gambling can cause damage to themselves and those near them. A significant proportion of problem gamblers also commit illegal acts to enable them to pursue their gambling.

All developed countries therefore regulate gambling, on both criminal and social policy grounds, with the three common objectives of ensuring that:

- gambling is crime-free (both in terms of those who operate it and the players it attracts), conducted in accordance with regulation and honest.
- players should know what to expect, can be confident that they will get it and are not be exploited.
- there is protection for children and vulnerable persons.¹⁹

In last year's annual report the Board also noted the following:

Although these general principles underlie all gambling controls, they are usually applied in different degrees to different forms of gambling. For example, casino

¹⁷ *Rothschild Report* pp 289-291

¹⁸ Arguably the creation of the National Lottery has undermined this principle ("Government set to take a chance on gaming review", *Financial Times*, 11 December 1999). As the Rothschild Report noted, "one matter ... raises directly the issue of going beyond unstimulated demand. This is the promotion of lotteries, which has little point if demand for tickets is not stimulated, a consideration which obviously applies to a national lottery for good causes" (*op.cit.* p 5). The issue is discussed in *The National Lottery Bill [HL] 1997/98*, Library Research paper 98/41, 2 April 1998 pp 13-17

¹⁹ *Report of the Gaming Board 1998/99* pp 2-3

gaming is more vulnerable to abuse by criminals and large amounts of money may be lost very quickly. It represents the "hardest" form (in the sense of vulnerability to abuse and of its dangers to the individual) of gambling and so it is the most tightly regulated in Great Britain as in other developed countries where it is permitted.²⁰

B. The current legislative framework in Great Britain

A summary of the legislative framework of casino regulation is provided in the Gaming Board's *Annual Report*:

The 1968 Act enables gaming to be carried on legally by commercial operators for profit within a regulated system which does not unduly stimulate the demand for gaming. Among the key elements in the Act's success - in controlling the abuses which had followed the inadvertent deregulation of gaming in the 1960's - have been: the certification and licensing procedures; the requirements that casinos and commercial bingo operations should be genuine members' clubs and should not allow gaming on credit and that casinos and gaming machine operators should not be able extensively to promote or advertise the gaming they provide; and the creation of the Gaming Board as a dedicated regulatory body to control and monitor the industry.

The Act, as amended, with its related Regulations, therefore sets out the system under which the Board regulates and within which the industry operates. The legislation is complex and detailed and it is for the courts to interpret the law. Nonetheless certain aspects are worthy of emphasis.

The system is by design a restrictive one. It is to be regarded as a privilege to hold a certificate or licence to operate in gaming: for instance, only those operators who are considered fit and proper by the Board may hold a certificate of consent and apply for a licence to operate a casino or bingo club, and many employees in gaming are also required to hold Board certificates that they are fit and proper to carry out their responsibilities. Moreover, if the Board grants a certificate of consent, it may offer advice to licensing justices against granting, or object to the grant of, a licence if it considers that existing facilities in the area are sufficient to meet demand.

The Act gives the Board considerable powers to carry out its statutory duties. The Board's Inspectorate have powers of entry into licensed premises and to inspect documents. The backgrounds of those to be engaged in gaming and lotteries are checked with the police for the existence of any criminal records. The provisions of the *Rehabilitation of Offenders Act 1974* in relation to spent convictions do not apply in respect of applicants for Board certificates.

²⁰ *Report of the Gaming Board 1997/98 HC 807 p 10*

The Act does not require the Board to give reasons for its decisions or to reveal sources of confidential information; and it does not provide an appeal mechanism against Board decisions. However, the Act prescribes in detail the criteria to which the Board should have regard in reaching decisions. Moreover, the Act lays on licensing justices the power of granting and taking away licences and on the police the responsibility for enforcement in respect of criminal offences. The Board is not a prosecuting authority. The Board's decisions are, of course, subject to judicial review.²¹

In respect of gaming the Board:

- determines applications for certificates of consent without which an application cannot be made for the grant or transfer of a casino or commercial bingo licence;
- determines applications for continuance of certificates of consent held by casino operating companies where there has been a change in the control of the licence-holding company to the extent of 15 per cent or more of the voting power;
- determines applications for certificates of approval required by those who wish to be employed to operate, supervise or manage the gaming;
- determines applications for the grant of certificates to sell, supply and/or maintain gaming machines;
- supervises the conduct of holders of certificates and licences and takes action against those no longer considered fit and proper;
- makes representations to licensing authorities concerning the grant, revocation or renewal of gaming licences.

The Board normally takes at least four months to consider and determine an application for a certificate of consent.²² Once obtained a prospective casino operator may make an application to the local Gaming Licensing Committee for a licence to conduct gaming on the relevant premises. Casinos may operate only within the 53 areas defined by the *Gaming Clubs (Permitted Areas) Regulations 1971* and the *Gaming Clubs (Permitted Areas) (Scotland) Regulations 1971*.²³

²¹ *Report of the Gaming Board 1997/98* HC 807 p 11 In addition to its work regulating casinos, the Board regulates bingo clubs, gaming machines and the large society and all local authority lotteries in Great Britain. The Board's statutory responsibilities in this area were established by the *Lotteries and Amusements Act 1976*. The Board's address is: Berkshire House, 168-173 High Hoburn, London WC1V 7AA Tel. 020 7306 6266 Casino section 020 7306 6224

²² The fee for making a certificate of consent application is £6,270, rising to £6,810 from 12 June 2000 under the *Gaming Act (Variation of Fees) Order SI 2000/1212*.

²³ The list of permitted areas is set out in an appendix to this paper.

Within a permitted area, the licensing authorities²⁴ may refuse a licence for a casino if they consider that there is insufficient unmet demand for the gaming facilities.²⁵ They will also take local issues into consideration, such as the suitability of the proposed premises.²⁶ In considering applications they must take account of the advice of the Gaming Board. This has had the effect of preventing the proliferation of casinos. The benefits of this have generally been perceived to be in ensuring that:

- the number of establishments does not in itself stimulate demand;
- the number of premises is kept down to a scale which can be supervised effectively by the Gaming Board; and
- excessive and damaging competition is avoided.

The system of permitted areas was introduced principally to reduce the number of casinos to a manageable amount (there were around 1,000 casinos in the 1960s). Permitted areas were first introduced in 1969. The areas were chosen on a subjective basis and this led to disputes. The 1971 Regulations included a formula under which any county borough outside Greater London with a population of 125,000 became a permitted area. When county boroughs were abolished in 1974, the formula was altered so as to bring in those former county boroughs which had a population of 125,000 or more at any time between 1/12/70 and 1/10/73.²⁷ The list has remained frozen ever since.

It is worth noting that although betting, gaming and lotteries are reserved matters under the *Scotland Act 1998*, the power to designate casino areas in Scotland has been devolved to the Scottish Executive. The Labour Government's White Paper on Scottish devolution published in July 1997, made it clear that the Scottish Executive would be responsible for certain functions in areas in which law-making powers were reserved at Westminster.²⁸ This is referred to as 'executive devolution', for which the Scottish Office publication *The Scotland Bill: a Guide* provided the following explanation:

29. The Government stated in the White Paper that the Scottish Executive will be responsible for certain functions in areas where law-making powers will be reserved or are a matter for the EU. Clauses 59-60 [of the Scotland Bill] provide for these additional statutory functions together with any associated property or liabilities to be transferred by Order from the UK Government to the Scottish Ministers or otherwise adapted, for example to require consultation with the Scottish Executive, and for any necessary consequential changes to existing

²⁴ Licensing justices in England and Wales, licensing boards in Scotland.

²⁵ Under Schedule 2 to the *Gaming Act 1968*

²⁶ The fee for the grant of a gaming licence is £32,830, rising to £35,670 from 12 June 2000 under the *Gaming Act (Variation of Fees) Order SI 2000/1212*.

²⁷ The equivalent Scottish regulations limited casinos to the areas of the former counties of the cities in Scotland.

²⁸ *Scotland's Parliament Cm 3658 July 1997* The issue is discussed in depth in *The Scotland Bill: devolution and Scotland's Parliament*, Library Research paper 98/1 7 January 1998 pp 53-56.

legislation. The Government will publish a draft Order showing which additional executive functions it intends to transfer.

Annex D to the Guide listed these functions, including the following:

Executive devolution

The White Paper made it clear that the Scottish Executive will be responsible for certain functions in areas in which law-making powers will be reserved. The Government will shortly publish a draft Order showing which executive functions it intends to transfer. The following is a list of the functions the Order is expected to cover: [...]

Betting, gaming and lotteries

- designation of casino areas, setting of gaming hours and fees for certain licences, registrations, certificates and permits and the power to make regulations concerning the refusal to grant or renew gaming licences ...

This is now provided for by the *Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order SI 1999/1750* which took effect from 1 July 1999.²⁹ Schedule 1 to the Order lists those functions to be exercisable, in or as regards Scotland, by the Scottish Ministers instead of by a Minister of the Crown. This list includes the provision in the *Gaming Act 1968* for drawing up the list of permitted areas (ie, section 22(3) which allows the Secretary of State to prescribe in regulations those conditions under which a licence may be granted or renewed).

C. The 1996 proposals for reform

In February 1996 the Conservative Government published a consultation paper on the scope within the current regulatory framework for updating the controls and for relaxing some of the restrictions which apply to casino and bingo gaming.³⁰ The paper argued that three principles, much in line with those set out in the Rothschild report, should continue to form the basis for gambling controls:

- (i) Controls are necessary to prevent the incursion of crime, public disorder and nuisance into gambling and to ensure that it is at all times properly and honestly conducted;
- (ii) In the interests of consumer protection, punters should get a fair deal and be made fully aware of what they are letting themselves in for when they gamble;

²⁹ The Order was debated and approved by the Fifth Standing Committee on Delegated Legislation on 15 June; it was approved two days later in the Lords [HL Deb 17 June 1999 cc 532-544].

³⁰ Home Office, *Casinos & bingo clubs: a consultation paper*, February 1996 Responses were requested by 31 May 1996.

- (iii) Restrictions are desirable to discourage socially damaging excesses and to protect the vulnerable.

These principles must, however, be applied flexibly and in a way which reflects the risks posed by a particular form of gambling. The softer forms of gambling can be regulated with a lighter touch; harder forms of gambling require closer regulation.³¹ For example, we consider that while the promotion of some forms of gambling may be acceptable, the concept of 'unstimulated demand' - that gambling facilities should be provided only to meet the unstimulated demand for them - should continue to play an important role in the regulation of casinos.³²

Though the paper did not suggest that casinos should be allowed to use either print or broadcast advertising, it argued "it should be easier than it is at present for people who wish to go to casinos to find out about them" and that the government should allow "the name, address and telephone number of casinos to be printed in telephone directories and in publications such as listing magazines, hotel brochures and holiday guides." In addition to this limited relaxation of the restrictions on advertising, a number of much wider changes were proposed:

- introduce new Regulations listing the 'permitted areas' within which casinos are allowed to operate. The areas will be determined by new criteria which will more faithfully reflect the way the population is distributed. This would produce six new permitted areas outside the London area: Gloucester, Hastings, Ipswich, Oxford, Peterborough, Swindon; four in the London area: Croydon, Dartford, Redbridge, Slough; and would also provide for three new permitted areas in resort locations: Folkestone, Morecambe, Weymouth;
- reduce the waiting period for new members from 48 to 24 hours; to remove the requirement that new members must attend a casino in person before the waiting period commences; and to allow persons to join an affiliated group of casinos. At present, new members must apply in person at each casino in which they wish to game;
- permit casinos to have at least 10 hard gaming machines, with a maximum number of twice as many machines as gaming tables (the largest British casino currently has 32 tables). Higher limits on stakes and prizes would be set;
- allow casinos to serve alcohol during the same hours as nightclubs (until 2 am, or 3 am in London). Presently, they cannot serve alcohol after midnight;

³¹ 'Hard' gambling is a colloquialism for those forms of gambling which are considered to carry greater potential risks than others, usually because of the high or rapid staking associated with them.

³² *op.cit.* p 2

- allow debit cards as a means of payment, but to retain the general prohibition on credit and the use of credit cards and charge cards.³³

The then Government's thinking on the question of permitted areas was set out at some length in the consultation paper:

- 5.2.3 There is a need to develop a new rationale for the definition of permitted areas. The 1971 criteria are no longer meaningful and so there is no satisfactory basis for reviewing future provision. Also, the present permitted areas do not cover the country in a way which satisfactorily reflects the distribution of the population. This is partly due to the way they were defined and partly to some shifts in population since they were introduced.
- 5.2.4 The options for change are essentially the abolition of the system of permitted areas or the development of a new system with a new rationale.
- 5.2.5 Abolition is superficially attractive. The licensing authorities' power to refuse a licence on the ground that there is insufficient demand would ensure that there would not be a proliferation of casinos within any particular locality. However, allowing all areas to have casinos could open the door to a massive increase in their number. It would also mean that casinos could be spread over a wide geographical area (country clubs and golf clubs, for instance, may seek licences).
- 5.2.6 We consider that abolition carries too high a risk of creating unmanageable vetting and regulating difficulties. The Gaming Board strongly oppose the abolition of the permitted areas. It is notable that no other major jurisdiction allows casinos to operate in any location. **Instead, we propose to determine permitted areas according to the new set of criteria discussed below.**

New criteria

- 5.2.7 The 1971 criteria for permitted areas do not take account of the numbers of people living outside but close to a permitted area, or the proximity of other permitted areas. As a consequence some regions – such as the West Midlands and Greater Manchester – have a number of neighbouring permitted areas. But others - for example outer London and its surrounding area – have none at all.
- 5.2.8 We wish to have a system which more faithfully reflects the distribution of the population. **To this end we propose two key criteria for defining new permitted areas: the potential market size of a particular location and the proximity of other casinos.**

³³ *op.cit.* pp 3-4

Potential market size

- 5.2.9 Looking at existing casinos it appears that a population of at least 300,000 within a radius of 20 miles is generally needed to make a facility viable. **We propose generally therefore that permitted areas should be set up in areas which have a population of at least 300,000 within a 20 mile radius of the centre of the area.** (Population data is taken from the 1991 National Census.)

Distance from other casinos

- 5.2.10 The distance criterion ensures that priority is given to areas not currently served by casinos. **We consider that 20 miles, measured from the centre of a permitted area, is a reasonable distance for this purpose.**

Greater London

- 5.2.11 We propose that a different approach to permitted areas should be taken for the Greater London area. There is a well established grouping of casinos (21 in all) in three inner London boroughs - Westminster, Kensington & Chelsea and Camden - but no provision in outer London boroughs or surrounding areas. We do not believe that this provision adequately reflects the fact that travelling in the London area is generally more time consuming than elsewhere or the sheer density of population over this area.
- 5.2.12 The spread of provision in Greater London is markedly different to that in metropolitan areas such as Greater Manchester, Merseyside and the West Midlands, which gained a number of permitted areas under the 1971 criteria. Most of the population in these areas is within 10 miles of casino. The majority of those who live in Greater London and its surrounding areas, however, have to travel more than 10 miles if they wish to game in the central London casinos.
- 5.2.13 **We propose to reflect the particular situation in the London area by reducing both the distance criterion and the radius for the market size criterion from 20 miles to 10 miles.**

Resort areas

- 5.2.14 Fifteen of the 53 present permitted areas (just under 30%) are in resort locations. There was a deliberate bias towards resort areas when the permitted areas were established in 1969 and this was preserved when the present criteria were introduced in 1971. Ten of the then permitted areas (all in resort locations) did not meet the 1971 criteria, but were preserved.
- 5.2.15 We wish to maintain the balance between permitted areas in urban locations and those resort locations. Our proposals on advertising and membership of casinos will increase the accessibility of casinos to tourists and therefore the likely demand for casinos in resort locations.

We propose therefore to relax the new population density criterion for resort areas (maintaining the distance criterion) to allow for a small number to become new permitted areas. We propose that the population density criterion should be reduced to 150,000 within a 20 mile radius for resort locations. This is approximately the figure which applies to Scarborough, an existing permitted area.

- 5.2.16 In selecting resort areas, we believe it is necessary to introduce an additional criterion to rule out certain resort locations which are more resort areas than resorts in themselves (for example parts of Devon and Cornwall, and the Lake District). Such areas may meet the 150,000 persons within 20 miles criterion but they tend to have a wide distribution of resort facilities without a particular focus. All the present resorts which are permitted areas are essentially substantial seaside towns. It is relevant that casinos in resort locations depend to a considerable extent on custom from the resident population. A convenient criterion would be the population density of the particular local authority districts concerned (as recorded in the National Census data). **We propose that resorts in local authority areas with a population density of less than 2 persons per hectare should be excluded.**

New permitted areas

- 5.2.17 Applying the general criteria in paragraphs 5.2.9-10 to England, Wales and Scotland (other than to Greater London and its surrounding area) produces six additional areas. (In calculating the potential market size of a new area, any market size which overlaps with an existing permitted area is assigned to the existing area.) These areas are:

| | | |
|------------|--------------|---------|
| Gloucester | Hastings | Ipswich |
| Oxford | Peterborough | Swindon |

No additional areas would be created in Scotland or Wales.

- 5.2.18 As far as the London area is concerned, most Outer London Boroughs (and some of the areas just outside Greater London) would satisfy the criteria referred to in paragraph 5.2.13 above. However, if predominately residential areas are eliminated, and the remainder are ranked in terms of potential market size, assigning overlapping market size to the larger area, the four most eligible local authority areas are:

| | | | |
|---------|----------|-----------|--------|
| Croydon | Dartford | Redbridge | Slough |
|---------|----------|-----------|--------|

We believe that these areas provide a sensible provision for Outer London and surrounding areas.

- 5.2.19 Applying the criteria outlined in paragraphs 5.2.15-16 to resort areas produces the following areas:

| | | |
|------------|-----------|----------|
| Folkestone | Morecambe | Weymouth |
|------------|-----------|----------|

Existing permitted areas

5.2.20 We propose to retain all existing permitted areas which do not meet the new criteria, including the four areas presently without casinos.

Conclusion

5.2.21 We propose to introduce new permitted area regulations which will designate new permitted areas as Local Authority Districts containing the towns identified in paragraphs 5.2.17-19. Where the Local Authority District concerned extends significantly beyond the town referred to (eg Swindon and Morecambe - but London areas excepted) the permitted area would be identified by reference to the local authority wards covering the town. Comments are invited from interested parties, including the industry, Gaming Board, the police, the licensing authorities and local authorities.³⁴

The Home Office paper ruled out a number of further proposals for regulatory reform, on the grounds that each of these would stimulate demand:

- 1.4.3 We believe that the power of licensing authorities to refuse licences for casinos on grounds of insufficient demand is necessary to prevent the proliferation of casinos and should be retained.³⁵ Our view on live entertainment is that continued prohibition is necessary to prevent the stimulation of demand for casino gaming.
- 1.4.4 We have considered, in addition, the possibility of allowing the development of 'resort casinos' complexes.³⁶ These have been developed in some jurisdictions and generally include hotel accommodation, other forms of entertainment and large numbers of slot machines. Such developments have been used to bring investment into particular areas in other jurisdictions.
- 1.4.5 We have concluded, however, that the development of resort casinos would not be practicable. We already have a comprehensive national

³⁴ *op.cit.* pp 22-25

³⁵ As the paper argued, "abolition of the demand criterion could lead to a rapid increase in the numbers of casinos within permitted areas. This would present substantial difficulties for the supervision of the industry. It has been possible in this country to rely to a great extent on self-regulation because of the existence of an established and stable industry. There is a risk that increasing the pressure of competition may lead to casinos seeking to break the rules. The opportunities for abuse are many and a struggling, non-profitable casino is more likely to be tempted to seek to stimulate demand, to exploit gamblers and engage in fraud. Experience in the 1960s, and to some extent in London in the 1970s, showed the damaging effects of excessive competition between casinos. Rapid expansion also carries the risk that organised crime would gain a foothold." *op.cit.* pp 25-26

³⁶ A resort casino is a large complex with a range of facilities which is substantial enough to be a visitor attraction in itself. Resort casinos operate under a quite different framework from British casinos, as their facilities may be marketed heavily, often with emphasis on the resort complex as the place for family visits.

network of casinos which is, and must remain, subject to a quite restrictive regulatory environment. We do not believe that a system which operated under such different constraints could co-exist fairly and effectively in a geographically small country like ours.

Even one resort casino would, with heavy advertising and free access, draw on custom from a wide part of the country. Existing casinos would claim, with some justification, that they were subject to unfair competition. The present regulatory regime has been very successful and the proposals in this paper are likely to lead to some further expansion of the industry. Against that background, we do not propose to make special provision to allow the development of resort casinos.³⁷

For its part the Gaming Board's response was the following:

- (i) The Board particularly welcomed the fact that the paper made no proposals to change the certification and licensing requirements in the 1968 Act. In the Board's view, these have been, and remain, crucial in ensuring that casino and bingo gaming are crime-free and conducted honestly.
- (ii) The Board considered that generally the proposals in respect of casinos (with the appropriate safeguards) represented a well-balanced package of measures which would remove some restrictions which were no longer essential from a regulatory viewpoint. The proposals, especially in relation to permitted areas, publicity and gaming machines, were however likely to increase very substantially the number and size of British casinos. This would have considerable implications for the resources needed by the Board to ensure that it can regulate casinos effectively. It was also likely to increase the numbers of people with a gambling problem and steps were likely to be needed to help these.
- (iii) The Board did not support the abolition of the requirement that commercial outlets must operate as clubs and of licensing authorities' powers to refuse bingo licences on demand grounds which it considered could cause a large growth of small cash bingo outlets which would be difficult to regulate and control. Bingo is an activity in which an unscrupulous operator can defraud players with relative ease as the monies staked go into a pool over which the players have no control and no specific knowledge of its size.

The Board had not at that time been able to discuss with the Bingo Association of Great Britain (BAGB) the proposals for a possible new charging system based on percentage returns as the Association was unwilling to enter such discussions. The Board said that considerable further work was still needed both on the question of club status and demand and on a revised charging system before any sensible proposals for change could be

³⁷ *op.cit.* p 4

taken forward. It was however able generally to support the other proposals on bingo.³⁸

Following this exercise the Conservative Government brought forward two Orders under the procedures established by the *Deregulation and Contracting Out Act 1994* to:

- (i) reduce the waiting period for new members of casinos before they can game from 48 to 24 hours.
- (ii) allow casinos in England and Wales to apply for special hours certificates to provide alcohol after midnight, until 3am in London and 2am elsewhere. (Casinos in Scotland were already able to serve alcohol throughout permitted opening hours.)
- (iii) permit the use of debit (but not credit) cards for payments for gaming, as well as cash and cheques previously allowed.³⁹

The Orders were approved in March 1997. The first two changes came into effect on 3 April,⁴⁰ the third on 19 April.⁴¹ The Gaming Board supported all three measures, none of which, it felt, had any major resource implications for the Board, nor were likely to have any major impact on the numbers of problem gamblers.

At the time the industry welcomed these changes, along with a number of associated reforms in the regulation of both bingo and the football pools. The general secretary of the British Casino Association was quoted as saying, "The reforms are significant, but ... the environment in which we must compete in the wider world has been transformed largely to Britain's disadvantage, and within Britain the laws are now widely seen as unnecessarily restrictive."⁴² In the same article a specialist in gambling at Plymouth University, Sue Fisher, was critical: "Because of the long term impact I would like to see more support, but there is a lot of pressure from an industry which contributes a lot to the Exchequer, and that seems to have won the argument. It is irresponsible and a neglect of duty for the Government to allow this to happen without anybody monitoring the situation."

In November 1996 the Home Office issued a follow-up paper on certain aspects of deregulation it felt required further consultation; membership, advertising, the placement of gaming machines in casinos, and the list of permitted areas. The paper gave details of Home Office research which had informed the Government's proposals - particularly the

³⁸ *Report of the Gaming Board 1996/97* HC 112 pp 2-3

³⁹ The use of cheques and debit cards is subject to an agreed joint Board and British Casino Association Guideline which limits the amount which, in the absence of any higher pre-agreed figure, can be drawn on a particular account for gaming by means of cheques and debit cards to £750 per gaming day.

⁴⁰ Under the *Deregulation (Casinos) Order* SI 1997/950

⁴¹ Under the *Deregulation (Debit Cards) Order* SI 1997/1075

⁴² "Lucky break for gaming bosses as curbs on casinos and bingo are erased", *Guardian*, 3 April 1997

decision not to allow the development of resort casinos - and its belief that there was a clear need to "maintain the tight control of casino gambling":

- 3.2. To assist in this process, last year the Home Office commissioned a report on the social implications of casinos.⁴³ The purpose of this study was primarily to look at the social implications of resort style casinos which do not exist in Britain. It played a part in influencing the Government in coming down against such developments.
- 3.3 The study also looked at problem gambling in a general way. Some of the information contained in the report has been taken out of context. In particular much has been made of the figure of 1.5 million problem gamblers. The study did not find 1.5 million hooked on gambling. It found that there was no national study in the UK of the prevalence of problem gambling and advised that any estimates should be treated with great caution.

Simply transferring estimates from other countries did not take into account possible differences in culture, attitudes and social conditions. It was noted that the only truly national study had been in New Zealand which yielded a rate of general (as opposed to extreme) problem gamblers of 3.17% of the adult population. Extrapolated to Great Britain this would give an estimate of 1.5 million but that was followed by the warning given above that this estimate should be treated with great caution.

- 3.4 It should also be made clear that this estimate does not relate to problem casino gamblers. In this country casino gaming is a minority pastime. The industry estimate that only about 2-3% of the adult population visit casinos.
- 3.5 Because resort casinos do not exist in Britain, that report necessarily concentrated on the position overseas. However, Dr Sue Fisher of Plymouth University has also carried out independent primary research in British casinos,⁴⁴ commissioned by a consortium from the casino industry with Home Office endorsement.

The Methodist Church in their response to the February consultation paper referred to this as a "splendid" study and they commended the casino industry for allowing such a thorough examination of their trade. The Church has also been gratified by the candid manner in which the British Casino Association (BCA) has discussed its business with them. We agree with this view and appreciate the open and professional way in which the casino industry conducts itself.

- 3.6 In this study, 1105 interviews were conducted in 40 casinos in Britain. The study indicated that casino gaming was a pleasurable social activity which

⁴³ *Home Office research study on the Social Implications of Casino Gambling*, September 1996

⁴⁴ *Gambling and Problem Gambling among Casino Patrons*, February 1996

did not disrupt the lives of most customers, but that there was a small hard core of problem gamblers in British casinos. A small minority of customers, 7%, were identified as problem gamblers with 2% regarded as having serious problems.

- 3.7 Our proposals reflect the need to maintain tight control of casino gaming. We made it clear in our earlier consultation paper that we did not propose to allow resort style casinos in Britain. Casinos will remain members clubs; there will still be a waiting period for membership; casino advertising will be strictly limited; there will still be restrictions on the location of casinos; they will not be places of general entertainment; credit will still be banned and the number of slot machines will be controlled.⁴⁵

In this second paper the Conservative Government proposed further deregulatory measures intended:

- (i) to allow members of a casino to have immediate access to gaming facilities in other casinos within the same group (rather than having to apply as now separately at each casino at which the person wishes to game).
- (ii) to remove the requirement for applications in person for casino club membership, thus allowing postal applications.
- (iii) to allow notices giving factual information about casinos - name, address, telephone numbers and limited details about the facilities available - in non-national publications, including newspapers and magazines. (Notices would not be permitted on billboards or in mailshots or in publications which are wholly or mainly designed to promote the casino.)
- (iv) to permit casinos a maximum of three slot machines per gaming table subject to a discretion for the licensing justices to substitute a lower number on grounds of demand and suitability of premises. There would be no maximum limit on either stakes or prizes, although a power to impose them would be retained, and machines could be linked within (but not between) casinos.
- (v) to consider further what new "permitted areas" should be added to the current list of areas in which casinos can be located.

Eight new areas were added to the list: one in London (Docklands) and seven conference towns (Bath, Eastbourne, Exeter, Harrogate, Norwich, Telford and York). The case for adding these conference towns was as follows:

- Those attending conferences and conventions are adults with spare time in the evenings and above average spending power.

⁴⁵ Home Office, *Second consultation on casino deregulation*, November 1996 pp 5-6

- In addition to their resident populations, conference towns attract a range of other visitors who would increase their market.
- Conference business is year-round, not seasonal.
- Such locations often have extensive accommodation facilities and transport infrastructure.⁴⁶

In its response to the second paper the Gaming Board:

- (i) reiterated that it had no objection of principle to the, albeit somewhat revised, proposals on the five matters covered by the second paper, subject to satisfactory safeguards and the provision of adequate additional resources to allow it to continue to regulate the industry effectively. The Board was pleased that the Government had acknowledged the importance of, and planned to adopt, most of the safeguards and protections suggested by the Board.
- (ii) re-emphasised however that the changes were likely to lead to a substantially enlarged industry, with both more and larger casinos and with considerable implications for the resources needed by the Board. The scale of the proposals (specifically in respect both of the new, additional casinos which would result in particular in the new "permitted areas" and of the new regulatory regime for casino slot machines) was such that the Board could not absorb the extra work resulting from them. The Board would not be willing to place standards, quality and effectiveness of regulation at risk and it would not be in the industry's interest, let alone that of the general public, for it to do so ...

The Board also said that, in introducing new permitted areas, the Government should produce a single consolidated list of all, new and existing, areas defined in a way which used current local authority boundaries which as far as possible were consistent one with another but did not substantially extend the coverage of any current area.

- (iii) pointed out that the proposals would increase the opportunities for casino gaming and that there is generally agreed to be a correlation between the amount of problem gambling and addiction and the availability and accessibility of gambling outlets. The Board did not believe that it should oppose the proposals in the consultation paper on the grounds of their impact on the small minority of the population who suffer, or potentially may suffer, problems with their gambling activities.

It did however believe that the Government should arrange that careful analysis is made of the impact of the proposed changes on the number of problem gamblers, and the extent of their problems, and that the

⁴⁶ *op.cit.* pp 20-21 These conference towns were selected "using information provided by the British Association of Conference Destinations [as] areas [with] conference capacity of over 5,000 places in England and Wales which are not already current or proposed permitted areas for casinos" (*op.cit.* p 21).

Government, the Board and the industry should consider in the light of that analysis whether there is need to build on the initiatives to help and support those adversely affected.⁴⁷

On 13 March 1997 the then Home Office Minister, Timothy Kirkhope, announced the implementation of the two deregulation Orders on casinos mentioned above, and set out the Conservative Government's position following the second casino consultation, in a long written answer from which the following text is taken:

Mr. Hargreaves: To ask the Secretary of State for the Home Department if he will make a statement on casino deregulation.

Mr. Kirkhope: The information is as follows ...

The Second Casino Consultation

Advertising, group and postal membership and slot machines: Following initial consultation earlier in 1996, we went out to consultation on 12 November on a package of measures to relax certain other controls on the operation of casinos. The proposals were as follows:

- Relax the total ban on advertising to allow casinos to give their name, address, telephone number and limited factual information about their facilities in non-national publications, including newspapers and magazines;
- Allow group membership and postal applications;
- Permit a maximum of three slot machines per gaming table subject to a discretion for the licensing justices to substitute a lower number on grounds of demand and suitability of the premises;
- There would be a power to regulate the size of stakes and prizes, although this would not be used initially;
- Made a number of detailed requirements including certification of manufacturers and agents by the Gaming Board and a monitoring and testing regime.

There was broad support for the advertising proposals. A few organisations were against any relaxation in the controls. However, this is a very modest relaxation, allowing casinos merely to give out information about themselves. I do not believe that necessary protection for the public would be removed by this measure. Most respondents also supported the proposals for group membership and postal applications. A few were opposed but most were content with the detailed safeguards proposed. We will prepare draft proposals in the form of a deregulation order.

I am still considering the more extensive proposals for slot machines in casinos. Some concerns have been expressed about the nature of such machines. However, they are common in casinos throughout the world, usually in substantially greater

⁴⁷ *Report of the Gaming Board 1996/97* HC 112 pp 4-5

numbers than we propose. But I consider that such machines must be strictly regulated. More detailed work would be required on the technical specification, monitoring and other arrangements before we could introduce legislation. We will continue our discussions with the Gaming Board and the industry.

Permitted areas : We proposed to allow casinos in 21 new locations, including London Docklands and a special category of seven conference towns. Outside London, most of the proposed new areas attracted support or neutrality from their local councils and reasonable support from other local interests. I propose to remove Peterborough from the list; its council remained opposed and there was also significant other local opposition. In the London area, most local authorities have welcomed our proposals. Slough is considering its position. I am in further contact with Croydon council, which has recently sought more information about the implications of permitted area status and its role in the regulatory regime for casinos.

I have taken account of representations in favour of greater casino provision in east London. In addition to Dartford and Redbridge, I intend to designate a permitted area within Docklands, which will put it on a par with other urban development areas within Great Britain. On the basis of up-to-date information provided by the British Association of Conference Destinations, I propose to add Milton Keynes and Weston-Super-Mare to the category of conference towns to be designated as permitted areas. I also propose to redefine existing permitted areas to reflect local authority boundary changes. The changes that I wish to make could be implemented by secondary legislation. Before any new areas are introduced, however, I will need to address the resource, timing and other practical implications.⁴⁸

D. Developments since the 1997 General Election

The intervention of the General Election on 1 May 1997 brought a temporary halt to the deregulation process. On 11 November 1997 George Howarth – then Home Office Minister with responsibility for gambling – stated, “the previous Government consulted on proposals to designate additional permitted areas. We are considering whether new permitted areas are desirable in principle.”⁴⁹ When Mr Howarth was interviewed by the *Financial Times* in March 1998, he suggested that any change would take quite some time. The interview implied that the reliance on deregulation to implement legislative change in this area was flawed:

The previous Conservative government implemented reforms through deregulation orders to avoid the need for primary legislation ... Labour appears less comfortable than the previous government with the deregulation mechanism

⁴⁸ HC Deb 13 March 1997 cc 276-277W The question of resources is worth noting. Clearly any expansion in the industry would require an appropriate increase in the number of inspection officers.

⁴⁹ HC Deb 11 November 1997 c 460W

- regarded by critics as law-making through the back door. Mr Howarth cites the case of Sunday dancing when proposals to allow dancing on a Sunday failed as a deregulation measure and subsequently as primary legislation. "Unless you can establish a reasonable consensus in the consultation process then you are liable to always be in difficulties," he said.⁵⁰

In the event, Mr Howarth announced the conclusions to this review on 15 July 1998; the full text of his statement is reproduced below:

Mr. Stephen Twigg: To ask the Secretary of State for the Home Department if he will make a statement on casino deregulation.

Mr. George Howarth: I am pleased to announce our conclusions on casino deregulation.

Casino membership and advertising

We intend to bring forward proposals to allow

- postal applications for membership of casinos;
- group membership; and
- limited factual advertising.

These will be the first gambling deregulation proposals to be brought forward under this Government. The previous administration consulted on similar proposals in November 1996{1}. They announced on 13 March 1997 that the proposals had broad support and were suitable for a deregulation order, but the General Election intervened before that work could be taken forward.

We will need to consult afresh because some changes are appropriate in the light of the earlier consultation. In particular, it was previously proposed to allow advertising only in non-national publications. We think this would be unduly restrictive and difficult to enforce. We propose to allow factual advertising in national publications. The procedures for deregulation orders require consultation on specific proposals before an order can be laid. The consultation paper will give full details of the proposals. They have been agreed in principle by the Gaming Board and the British Casino Association. We have also discussed the advertising proposals with the Advertising Association and the Advertising Standards Authority.

The consultation paper will be published in the next few weeks. Subject to the outcome, we expect to lay deregulation proposals in the autumn for scrutiny by the Deregulation Committees. We acknowledge the comments made by the previous Deregulation Committees to the effect that the gambling law is complex and that some previous deregulation orders have increased that complexity. They called for a general overhaul and consolidation of the gambling legislation. I have discussed these concerns with the Chairmen of the current Committees.

⁵⁰ "Casino industry hustles for a better hand", *Financial Times*, 23 March 1998

It was recognised that general gambling reform would be a large undertaking, involving three main Acts of Parliament - the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. There is a case for such an exercise, but we are not able to take it forward in the short term, and we propose meanwhile to continue to use the deregulation process to make appropriate, selective changes. We have also considered the other casino proposals consulted on in November 1996 - for slot machines and permitted areas. We have no fundamental objections to some change in these areas, but we will need to consider further the resource issues.

Slot machines

The November 1996 paper recommended the introduction of casino slot machines with unlimited prizes. We have concluded that;

- In principle, there should be no objection to casinos, which are premises expressly licensed for hard gambling, having the same type of slot machines as are common in casinos in other countries;
- But there should be a staged approach with a smaller number of machines initially, to allow the impact to be assessed. A maximum of 20 machines per casino would be the most suitable figure;
- However, at a time of pressure on public expenditure, it is not clear how the necessary additional funding could be found for the Gaming Board to supervise a new slot machines regime;
- Discussions on machines are continuing within Government and with the Gaming Board and the casino industry.

Jackpot machines

In the meantime, following a recommendation by the Gaming Board, we have agreed in principle to make regulations with effect from 1 October 1998 to increase the maximum prize for jackpot machines in casinos from £250 to £1,000 and the maximum stake from 30p to 50p. These proposals arise from the triennial review of machine stake and prize limits, full details of which I am announcing separately today. At present, casinos are allowed up to six jackpot machines. The number was increased from two to six machines in June 1996 by deregulation order. I consider that a further modest increase would be appropriate, and will include in the consultation paper a proposal that casinos may have up to ten such machines.

Permitted areas

The previous Government also proposed allowing casinos in additional areas, to be implemented by secondary legislation. It was made clear at the time that no timetable for implementation could be set because of the resource implications for the Gaming Board and the courts. We have carefully considered the case for additional areas. We have concluded that Great Britain is already well served with casinos and that there is not a compelling case for a large extension to that provision. The pressure for additional casinos has come mainly from the industry or individual local authorities rather than the general public. There are already 53 permitted areas. The previous proposals would have added 21.

We do not consider it appropriate to designate so many additional areas, particularly those which do not have a significant resident population. Further work would need to be done on the criteria; and additional funding would need to be found for the Gaming Board and the courts. In the light of other, more pressing priorities, we have decided not to take forward any changes for the time being. We may wish to make proposals for a small number of additional areas in the future. There would need to be a good case on population grounds, and any proposal would also need local authority and public support.

{1}Home Office paper entitled Second Consultation on Casino Deregulation.⁵¹

The consultation paper on the Government's proposals for further deregulation was published on 5 August; responses were requested by 21 October.⁵² The Government received 39 responses, most in favour of its proposals.⁵³ Secondary legislation was introduced in July 1999 to relax certain controls imposed by the *Gaming Act 1968* on casino membership, advertising and jackpot machines.⁵⁴

When these provisions were debated in the Lords, Lord Burlison, speaking for the Government, said:

My Lords, this order contains modest relaxations of the law governing casinos in Great Britain. Casinos in this country will still be the most strictly regulated in the world. Most people have never visited a casino here and have a completely erroneous impression that they are like those in Las Vegas or Monte Carlo. In fact, British casinos are very discreet places, offering mainly blackjack and roulette in secure and well ordered surroundings. They are run as members' clubs and are strictly regulated by the Gaming Board.

The order seeks to relax slightly the strict controls on membership, advertising and machines. It will make it a little easier to visit casinos while maintaining the controls which have maintained a respectable and well regulated industry. The order amends the Gaming Act 1968 as follows: it removes the requirement that people must apply in person at a casino for membership, thus allowing postal applications; it allows limited casino advertising in written publications; and it increases the maximum number of jackpot machines permitted in casinos from six to 10.⁵⁵

The Order came into effect on 24 August 1999.

⁵¹ HC Deb 15 July 1998 cc 187-189W

⁵² Home Office press notice 318/98, 5 August 1998

⁵³ HC Deb 9 March 1999 c 129W

⁵⁴ The *Deregulation (Casinos) Order* SI 2136/1999

⁵⁵ HL Deb cc 1260-1261

On 10 November 1999, Home Office Minister Mike O'Brien announced proposals to extend casino opening hours in England & Wales.⁵⁶ The Minister confirmed that the Scottish Executive would embark on a similar exercise, with the intention of introducing regulations simultaneously. Details of these proposals were given in a written answer:

Mr. David Taylor: To ask the Secretary of State for the Home Department what plans he has to extend the opening hours of casinos in England and Wales.

Mr. Mike O'Brien: We have issued a consultation letter to interested parties regarding casino opening hours. Copies have been placed in the Library.⁵⁷ At present, casinos must close at 4 am. We propose an extension from 4 am to 6 am (except Sundays) for casinos in England and Wales. Comments are requested by 31 January 2000. The Gaming Act 1968 imposes restrictions on the hours that gaming establishments may open. Under section 18 of the 1968 Act, casinos must close between 4 am and 2 pm on Sundays. The hours on other days are prescribed by regulations made by the Secretary of State in respect of casinos in England and Wales. Under the Gaming Clubs (Hours and Charges) Regulations 1984, the opening hours of casinos are currently from 2 pm to 4 am.

The British Casino Association, which represents all casinos in Great Britain, has asked for a change in the law to allow casinos to open until 6 am on Monday to Saturday mornings. Following consultation with the Gaming Board for Great Britain, we have agreed in principle to the proposed change. Casinos are places for late night entertainment and we see no objection to a later closing time. This change would not affect the current permitted hours during which casinos may serve alcohol - 3 am in London and 2 am elsewhere. Gaming is a reserved subject but some powers to make secondary legislation have been devolved to the Scottish Parliament, including gaming hours.⁵⁸ The Scottish Executive is embarking on a similar exercise in respect of casinos in Scotland. We would aim to make regulations simultaneously.⁵⁹

A draft regulatory impact assessment published at the time summarised the potential benefits from this measure:

Identify the Benefits

There would be benefits to operators, customers and staff. Extended opening hours would provide greater flexibility. Casinos would have the choice to open between 2pm to 6am. Most casinos are expected to take advantage of the change, depending on customer demand. In tourist or business oriented cities and towns, visitors expect longer hours of opening, as in other jurisdictions.

⁵⁶ Home Office press notice 349/99, 10 November 1999

⁵⁷ Home Office, *Proposal to extend casino opening hours*, November 1999 [Dep 99/1826]

⁵⁸ in particular, designation of casino areas, *setting of gaming hours* and fees for certain licences, registrations, certificates and permits and the power to make regulations concerning the refusal to grant or renew gaming licences (under SI 1999/1750).

⁵⁹ HC Deb 11 November 1999 cc 790-791W

The industry is heavily labour intensive, shift work orientated and directly provides some 11,700 jobs across Britain. Extension of the working period to 6am would provide the opportunity for better shift patterns. Travel home at the end of the shift would be safer at 6am when more public transport would be available. Over 40% of casino staff are female. About 90% of staff would be affected and it is understood the majority would prefer the change. A high proportion would switch to public transport with a reduction in commuting costs.

Customers' travel arrangements and costs would be unaffected.

There would also be a benefit in terms of security of cash held by the casino and by customers.

Quantifying and Valuing the Benefits

On average in casinos outside London, 95 players usually leave at 4am and it is estimated 80% would stay on if given the chance to do so. In inner London at the casinos with an international clientele the estimate is 78 and 84% respectively. Consequently the casinos expect a material increase in gross gaming yield (GGY); restaurant receipts might also rise slightly.

Gross gaming yield (GGY) in 1998/99 for casinos in England and Wales was £444 million. It is difficult to be precise in estimating the impact of extended hours but for illustrative purposes, a 5 % increase in GGY might provide an extra £22 million a year across the industry. There would also be a corresponding increase in gaming duty receipts.⁶⁰

The issue was not the subject of substantive comment in the House or the press, though Jonathan Shaw MP put down an Early Day motion raising concerns about the consultation exercise; the text is reproduced below:

That this House notes the proposals published by the Home Secretary to extend casino opening hours which are currently limited to the hours of 1400 p.m. through to the following 0400 a.m. and that the new proposal will extend the week-day opening until 0600 a.m.; further notes that the draft Regulatory Impact Assessment states that the majority of the 11,700 staff effected would prefer the change; believes this is the view of the employer and not the staff; notes that the British Casino Association does not recognise trade unions and is concerned that there has been little if any meaningful consultation about the consequences of the extended licence; further notes that the vast majority of staff are completely opposed to the new hours because of issues arising from health and safety that are specific to people working in the industry; and therefore calls upon the Home Secretary to ensure full consultation is undertaken before giving further consideration to the proposed changes.⁶¹

⁶⁰ Home Office, *Proposal to extend casino opening hours*, 1999 (Deposited paper 99/1826) para 2

⁶¹ EDM 321 of 1999/2000, *Casino hours - effect upon workers*, 25 January 2000 At date of writing, this had obtained 77 signatures.

On 3 April the Minister confirmed that the Government had decided to proceed with the proposals, although implementation would be delayed until 31 July 2000:

Mr. Burgon: To ask the Secretary of State for the Home Department what responses he has received to his consultation letter regarding proposals to extend the opening hours of casinos in England and Wales; and if he will make a statement.

Mr. Mike O'Brien: I published this consultation paper on 11 November 1999 and the consultation period ended on 31 January 2000. The Home Office received 2,820 responses, mostly from casino staff. 2,809 of the responses opposed the proposals. Six were neutral and five expressed support.

Many casino staff were concerned about the impact which the proposal would have on them and their families, about the difficulties in travelling home especially for female staff in the early hours, and about more exposure to passive smoking. Some also said that management had not consulted them about the proposed change. They wanted us to regulate these employment issues by using the law rather than through employee/employer negotiations.

The unions opposed the change. They drew attention to the lack of recognition for collective bargaining purposes in casinos and to the timing of the implementation of the union recognition provisions of the Employment Relations Act 1999. Some residents' associations were also worried about increased noise early in the morning and additional traffic.

Having considered the responses very carefully, I have nevertheless concluded that we should proceed with the proposal. The issue is not the number of responses, but the strength of the argument for restricting commercial freedom. Casinos will not be obliged to adopt longer opening hours, but they will have more flexibility to meet consumer demand and increase their competitiveness. The changes will not so significantly affect the running of casinos as to require deferment pending the outcome of the independent gambling review, which is to start after Easter. The Gaming Board for Great Britain has no objections.

The Government understand the concerns about the impact of additional operating hours on casino staff and their families or on local residents. But the Gaming Act 1968 provides a regulatory framework for gambling in the public interest and is not designed to regulate normal employer/employee relations, which is subject to employment laws and the new provisions of the Employment Relations Act 1999.

We agree with the view expressed by the unions that any changes to casino hours should not be made before the union recognition provision of the Act is in force. The longer hours will not, therefore, be available until the end of July this year. In addition, it will continue to give to licensing authorities power to impose restrictions on casino hours where necessary to prevent disturbance or annoyance to the occupiers of other premises in the vicinity so that the concerns of residents can be considered.

The Scottish Executive has consulted on a similar exercise in respect of casinos in Scotland and will report the outcome separately. We will place a revised Regulatory Impact Assessment in the Library when the Order is laid.⁶²

To date the regulations and the revised regulatory impact assessment have not been laid. The Scottish Executive has announced that it will also introduce regulations to implement the same change in opening hours for Scottish casinos, with effect from 31 July 2000.⁶³

⁶² HC Deb 3 April 2000 cc 383-384W

⁶³ SPOR PQ S1W-5789, 31 March 2000

II Gambling law review

Despite the changes discussed in Section I of this paper, some commentators have argued that gambling legislation needs a thorough overhaul. In their 1996/97 annual report, the Gaming Board made their case for a substantive reform of the 1968 Act:

When commenting on the February 1996 consultation paper, the Board expressed surprise that the Deregulation Act was considered capable of carrying such an extensive range of amendments, some of which at least were likely to prove controversial. It added that very extensive amendments to the Gaming Act might in due course call at least for a Consolidation Act if not a new Gaming Bill: it was not clear that it would be satisfactory to leave them in a range of orders under the Deregulation Act.

When it commented on the draft Deregulation (Betting and Bingo Advertising etc) Order, the House of Commons Deregulation Committee said that the current gaming law was too complex. They requested the Law Commission to examine gaming law with a view to consolidating and simplifying it, and they urged the Government to bring forward any resulting measure as a priority. The House of Lords Delegated Powers Scrutiny Committee noted that the proposed changes would add further to the piecemeal amendment of this highly complex area of the law, reinforcing the already strong case for early consolidation. The present regulatory arrangements for gaming, and in particular the certification and licensing arrangements, are still remarkably effective ... With relatively minor continuing adjustments, the 1968 Act could last for a further period, perhaps five or ten years, though the Gaming Board agrees with the Committees that consolidation and simplification is highly desirable.

However there are various factors, making for significant change at the present time. The advance of the National Lottery has challenged the conceptual basis on which gambling and lotteries are regulated in Great Britain and disturbed the competitive balance between those industries. The technology available to the gambling and lottery industries at home and overseas is changing, rapidly and becoming more similar. The industries themselves are converging. Concern about problem and addictive gambling is growing, as gambling opportunities grow. There is the prospect of devolution, which will raise inevitable questions about where responsibility for gambling legislation in Scotland and Wales should rest. The questions of unregulated gambling on the Internet, ships and aircraft and the possible effects of interactive television need to be-addressed.

For all these reasons the Gaming Board considers that the time is becoming ripe for a thorough review of all the gambling and lottery legislation by an independent review body which could seek the views of the wider public and those who are concerned about the effects of gambling as well as those of the industry, of the various bodies engaged in regulation and of Parliament. Instead of proceeding as now by means of piecemeal proposals aimed at deregulation, an independent review body should seek a comprehensive approach to the regulation of all the gambling and lottery industries which meets the three objectives of regulation in a way appropriate for the 21st century. This should take account of

the relative softness and hardness of the various types of gambling and lotteries offered and apply consistent standards over the whole field including, in particular, to the minimum age for participation in gambling and the protection to be given to children and the vulnerable.⁶⁴

The following year, the Board conceded that major legislative reform was unlikely to happen in the near future,⁶⁵ but went on to argue that the Government should consider a review of gambling legislation ‘within the next year or two.’⁶⁶ In their most recent report, the Board made the following comments:

Granted that the gambling industry remains, in the Board’s belief, for the most part legitimate and crime-free, there are nonetheless a range of aspects of the current legislation which appear outmoded and outdated and would benefit from review. Some of the types of issues the Board thinks could be addressed include the following:

- Strict separation still generally exists between types of gambling premises. For instance, no fixed odds betting transactions may take place in a casino. Many other parts of the world have moved away from such strict demarcations.
- The certification and licensing requirements are different for casinos and bingo clubs on the one hand and betting offices and bookmakers on the other. A single system might be more sensible.
- Much of the original legislation is based on the concept known as ‘unstimulated demand’: in other words, that gambling facilities should be sufficient, but no more than sufficient, to meet the unstimulated demand for them. Some recent changes, and in particular the introduction of the heavily promoted National Lottery, call into question the continued relevance of the principle.
- Gaming machines legislation was framed when machines were entirely mechanised, of the original one-arm bandit type. It is ill-equipped to cope with the modern electronic micro-processor driven machine. The legislation also uses the concept of a club as the distinction as to which types of premises may have higher prizes or jackpot machines. This may no longer be the appropriate distinction
- ... There are concerns about the potential proliferation of uncontrolled and unregulated gambling on the Internet.

⁶⁴ *Report of the Gaming Board 1996/97* HC 112 p 7

⁶⁵ As noted above, George Howarth, then Minister with responsibility for gambling law, ruled out a review for the short term in his statement on casino regulation in July 1998 (HC Deb 15 July 1998 cc 187-189W).

⁶⁶ *Report of the Gaming Board 1997/98* HC 807 p 5

- Concerns about problem gambling and addiction, particularly among young people, are growing as gambling opportunities increase ... In turn, this raises the question of whether there should be a single minimum legal age, of 18, for gambling.

... The Board believes that the need has developed for a thorough review of all the gambling legislation by an independent review body ... [it] recommends the Government at least to decide soon what priority to give a review of gambling and when it should be set in train.⁶⁷

In his commentary on the *Annual Report*, the Board's Chairman, Peter Dean, noted, "while acknowledging the pressures on the Parliamentary timetable, I would urge the Government to set a firm time-scale for the process of reform, rather than allow anachronisms to become more and more glaring to the point where the law risks falling into disrepute. Over the next year the Board will be developing its own suggestions on some of the areas in need of reform."⁶⁸

On 8 December 1999 the Home Secretary, Jack Straw, announced that he would appoint an independent body to conduct a 12-month review of the laws governing gambling:

Mr. Ernie Ross: To ask the Secretary of State for the Home Department when he last reviewed the working of legislation on gaming; what plans he has for further reviews; and if he will make a statement.

Mr. Straw: Much of the law on gambling is more than 30 years old. Social attitudes have changed markedly in these three decades and the law is fast being overtaken by technological developments. The Gaming Board for Great Britain and the Deregulation Committees of the House of Commons and the House of Lords have recommended reform. There is therefore a good case for a wide-ranging review to design a new structure of regulation for the gambling industry and to test public perception.

This will not be a simple task. The main controls are laid down in three major Acts of Parliament - the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusement Act 1976, together with associated secondary legislation. Reform will raise important issues. The social and economic impact of any change will have to be carefully assessed.

I intend to set up an independent review body next year, bringing together a wide range of relevant expertise. It will be asked to report to me within 12 months on proposals for reform. The Government will not be asking the review body to consider changes to the National Lottery, although the review will clearly need to

⁶⁷ *Report of the Gaming Board of Great Britain 1998/99* HC 525 pp 5-6

⁶⁸ *op.cit.* p v

address the impact on the Lottery of changes proposed for the regulation of gambling generally. We will announce the full terms of reference shortly.⁶⁹

The Gambling Review Body's terms of reference were confirmed on 16 February 2000:

Mr. Stephen Twigg: To ask the Secretary of State for the Home Department when he plans to announce the appointment of the Chairman of the Gambling Review Body and the body's terms of reference.

Mr. Straw: Further to the reply I gave my hon. Friend the Member for Dundee, West (Mr. Ross) on 8 December 1999, Official Report, column 534W, I have today appointed Sir Alan Budd as Chairman of the Gambling Review Body. Sir Alan Budd is Provost of Queen's College, Oxford, and a former Chief Economic Adviser to the Treasury. The position is unpaid. We will make a further announcement on the membership of the Review Body in the next few weeks. We hope it will start work shortly after Easter to report by the Summer, 2001.

The terms of Reference for the gambling review are as follows:

Consider the current state of the gambling industry and the ways in which it might change over the next 10 years in the light of economic pressures, the growth of e-commerce, technological developments and wider leisure industry and international trends.

Consider the social impact of gambling and the costs and benefits.

Consider, and make recommendations for, the kind and extent of regulation appropriate for gambling activities in Great Britain, having regard to:

- their wider social impact; the need to protect the young and vulnerable from exploitation and to protect all gamblers from unfair practices;
- the importance of preventing gambling from being carried out in a way which allows crime disorder or public nuisance;
- the need to keep the industry free from infiltration by organised and other serious crime, and from money laundering risks;
- the desirability of creating an environment in which the commercial opportunities for gambling, including its international competitiveness, maximise the United Kingdom's economic welfare; and
- the implications for the current system of taxation, and the scope for its further development.

Consider the need for, and, if necessary, recommend new machinery appropriate for carrying out that regulation which achieves a more consistent and streamlined approach than is now possible and which is financed by the gambling industry itself.

⁶⁹ HC Deb 8 December 1999 c 534W

Consider the availability and effectiveness of treatment programmes for problem gamblers and make recommendations for their future provision, potential costings and funding.

In conducting this review, the body should not consider changes to the National Lottery, but it will need to look at the impact on the Lottery of any proposed changes, including an assessment of the potential effect on the income to good causes.⁷⁰

The membership of the review body is:

- David Bishop (Former partner in KPMG and past President of the Association of Chartered Certified Accountants)
- Mihir Bose (Author and journalist)
- Peter Dean CBE (Chairman of the Gaming Board for Great Britain)
- Professor Jeffrey Gray (Experimental and clinical psychologist)
- Sir John Hoddinott QPM (Former Chief Constable of Hampshire)
- Anthony Mackintosh (Chairman, Groucho Club)
- Phillipa Marks (Director, Indepen Consulting Limited)
- Sara Nathan (Journalist)
- Anesta Weekes QC (Barrister)
- Jonathan Wolff (Reader and Head of Department of Philosophy, University College London)⁷¹

On 16 May the review body issued an open invitation for written submissions on the future of gambling.⁷² The deadline for responses is 21 July 2000. It has also written to individuals and organisations with a known interest in gambling to invite them to submit written evidence. Thereafter the group anticipates inviting a selection of individuals and organisations to give oral evidence or submit further written evidence. Further details of the group's work are available on its Internet site at: www.gamblingreview.gov.uk.

It is anticipated that the review body will report back to Ministers in the summer of 2001.⁷³

⁷⁰ HC Deb 16 February 2000 cc 537-538W

⁷¹ HC Deb 10 March 2000 cc 857-858W

⁷² Home Office press notice 130/2000, 16 May 2000 The group's address is: Gambling Review Body, Room 423, Horseferry House, Dean Ryle Street, London SW1P 2AW Tel. 020 7217 8767 Fax 020 7217 8096

⁷³ Home Office press notice 053/2000, 10 March 2000

III Casino taxation

A. General principles

Under the *Betting and Gaming Duties Act 1981* HM Customs & Excise is responsible for collecting gaming duty. In addition to obtaining a certificate of consent from the Gaming Board, all commercial gambling clubs must register with Customs, and pay duty based on the club's gross gaming yield (ggy). For games in which the house is the banker, ggy consists of the total value of stakes, minus players' winnings. For games in which the bank is shared by the players, ggy consists of participation charges – 'table money' - exclusive of VAT.⁷⁴ Receipts from gaming duty – and its predecessor, gaming licence (premises) duty – since 1989-90 are shown in the table below:⁷⁵

| Year | Gaming duty |
|---------|-----------------------|
| 1989-90 | £50.2 m |
| 1990-91 | £57.4 m |
| 1991-92 | £79.9 m ⁷⁶ |
| 1992-93 | £55.9 m |
| 1993-94 | £82.1 m |
| 1994-95 | £72.3 m |
| 1995-96 | £84.1 m |
| 1996-97 | £79.4 m |
| 1997-98 | £92.4 m |
| 1998-99 | £90.8 m |

Over 80 per cent of the gaming duty is paid by those casinos based in London.⁷⁷

The taxation of casinos was reformed fundamentally in 1980. Prior to then, casinos were charged an amount of gaming licence duty based on the rateable value of its property and the number of gaming tables it possessed. In their 1978 report on gambling the Royal Commission were strongly critical of the method of taxation:

18.81 The existing method of taxing casinos consists of requiring each casino to pay gaming licence duty, the amount being determined by a formula related to the rateable value of the premises and the number of gaming

⁷⁴ A guide to the administration of this duty is published by HM Customs & Excise (*Gaming duty Customs Notice 453*, May 1999), and is available on Customs' internet site at:

www.hmce.gov.uk/notices/453.htm

⁷⁵ *HM Customs and Excise Annual Report 1998/99* Cm 4447 p 98

⁷⁶ Owing to the restructuring of duty from 1 October 1991, the duty yield for 1991-92 covers a 15 month period.

⁷⁷ HM Customs & Excise Budget press notice C&E12, 17 March 1998 21 casinos were based in London when this estimate was made; since then, the number has risen to 23.

tables. In their evidence, HM Customs and Excise explained that they would have preferred, had it been practicable, to have a duty on stakes in line with general betting duty, but felt that the continuous rapid transfer and re-investment of stakes in casino games made such a duty impossible to control in an adequate and economical manner. The Department hoped that a duty reflecting rateable values would "bear some relation to the scale of gaming".

The system has been somewhat modified since its introduction but its essential features have remained the same. It is clear that the system is regarded, even by the authorities, as a second best, the first choice of a duty on stakes being impracticable. The duty yield ... is very low in absolute terms and in relation to the money staked or spent in casinos, and by comparison with other forms of gambling. The profits, as we have already seen, are extremely high. In all these circumstances it is perhaps surprising that the casino industry and the casino punter have been asked to carry so light a tax burden.

18.82 We believe that the existing system and rates of casino taxation need a complete overhaul. The main criticisms of the system, which amount to a compelling indictment, are the following:

- (i) It is inequitable that the system does not relate the duty to the scale of gaming, the level of gross income of the casino or indeed to its net profits.
- (ii) It is incongruous that the casino gambler pays so little in tax.
- (iii) The duty yield is very low absolutely and in relating to the money spent in casinos and in comparison with other forms of gambling.
- (iv) The present system fails to control the high profits being made by some but not all casino operators.
- (v) The duty can be partially avoided by legal devices known to HM Customs and Excise, the Gaming Board and ourselves.

18.83 We propose a new system of casino taxation to remedy these defects so far as possible. There are two separable strands:

- (i) The question how casinos get money from the punters. At present this is almost entirely done through the operation of the edge which results from the rules of the games laid down by the regulations and designed with the expressed intention of allowing only moderate profits.
- (ii) The question how the authorities extract money from casinos in the form of gaming duties. The present system is simple to administer and an alternative system should combine this virtue with the remedy for some of the deficiencies of the existing system mentioned above.

18.84 Ideally there should be a Customs and Excise duty, like the general betting duty, of 7.5% on drop, so that whenever a casino gambler buys chips he would be liable to this duty, as a punter in a betting office is. The general betting duty which the latter punter pays is 7.5% of the money he

stakes. Since in practice casino drop is about one-seventh of stakes, a tax of 7.5% of drop would raise only one-seventh of what it would have raised had it been possible to apply general betting duty to each stake as is done in the betting office, though the analogy is admittedly inexact.

We do not recommend such a tax, however, since there are considerable administrative and practical problems in the secure collection of a duty in this form, partly because casinos and gamblers would share a common interest in avoiding it. Accordingly, we propose separating the way the casino passes on the tax to the punter from the way in which the money is recovered from the casinos; and this separation would have obvious enforcement advantages. This is because the natural interest of the punter to avoid the impost on him would not be shared by the casino; and the casino would be unable to avoid the duty which in turn would be liable to pay.

18.85 We therefore recommend that in future:

(i) Casinos should be allowed, though they are not now, to charge punters at a maximum rate of 7.5% of the value of the chips they sell to punters. For convenience we refer to this charge as the "casino general betting duty" though it is not a duty and will not be passed directly to HM Customs and Excise.

(ii) The money raised by this "casino general betting duty" should be recovered from casinos by multiplying by eight,⁷⁸ across the board, the current (1977) annual rate of casino gaming licence duty.⁷⁹ If this were not done the introduction of "casino general betting duty" would simply increase the profits of the casino.

It is likely that the introduction of "casino general betting duty", which, in effect, puts up the price of gaming to the punter, would lead to some reduction in the amount of money staked in casinos. The assumption made about this are explained later.

18.86 We do not propose that a casino *must* charge its clients the money value of the chips he buys plus 7.5%; simply that the increased casino gaming licence duty *is based* on the "casino general betting duty". If, therefore, a casino proprietor decides, for business reasons, not to charge his clients the full 7.5%, that is his affair. He pays the increased gaming licence duty all the same.

⁷⁸ See, however, the footnote to paragraph 18.89(i) ["As a result there may be some loss to the revenue through corporation tax and income tax. This will be offset by the increase in gaming licence duty."]

⁷⁹ It must be emphasised that multiplying the current duty by eight does not impose any tax increase on casinos except insofar as the introduction of the "casino general betting duty" on drop may cause a reduction in drop and, therefore, in gross revenue. The increase in casino gaming licence duty relates to the *recovery* of this "casino general betting duty".

18.87 The recommendation made above and others made later require three subordinate recommendations: first, that no currency should be accepted as a stake in a casino (if it ever is) - only chips; secondly, in casinos with individual drops of £10 million or more a year, that whenever a player buys chips, he should receive a receipt for the money paid to the casino; and thirdly, that monthly audited accounts, including figures for drop and gross gaming revenue, should be rendered to HM Customs and Excise, and, separately, to the Gaming Board.⁸⁰

In his March 1980 Budget speech the then Chancellor, Geoffrey Howe, announced that the Government had been persuaded by the Royal Commission's argument: gaming licence duty would be reformed, to increase its yield, and to ensure it related more closely to the profitability of casinos:

I do not propose any changes in the general betting duty or the pool betting duty. But the Government have been persuaded by some of the criticisms of the present duty on casinos made by the Royal Commission on Gambling. The duty depends heavily on rateable value. It is not an equitable tax, and the more profitable casinos are seriously undertaxed. From 1 October, therefore, the present duty will be replaced by one related more closely to the profitability of casinos, and designed to produce about two and a half times as much revenue in a full year. At about the same time, the duty on bingo will be increased from 5 per cent to 7½ per cent. Provision will also be made in the Finance Bill for restructuring the duty on gaming machines. We intend to remove the duty on penny machines, and propose to increase the revenue from the very profitable jackpot machines usually found in clubs. These changes will yield £5 million in 1980-81 and £20 million in a full year.⁸¹

Legislation to amend the structure of gaming licence duty was introduced in the *Finance Act 1980*.⁸² In 1980-81 total duty receipts were just under £5.4m, but two years later receipts had risen to £25.4m for 1982-83 following these changes.

In 1991 the arrangements for duty payments were revised, to reduce the risk of default. To minimise the impact of this change on smaller casinos, a fixed annual fee which clubs had to pay - then set at £250 - was cut to £10. Details were given in a press notice issued at the time of the March 1991 Budget:

The duty, which is based on half-year licence periods ending 31 March and 30 September, will be chargeable and payable in three stages for licence periods commencing on or after 1 October 1991:

⁸⁰ *Royal Commission on Gambling (Rothschild Report)* Cmnd.7200 July 1978 pp 308-310

⁸¹ HC Deb 26 March 1980 c 1470

⁸² Section 6 & schedule 5 of *FA 1980*. From the debate on these provisions in Standing Committee it appears that this reform was not controversial (Standing Committee A 22 May 1980 cc 175-179).

- (i) a fixed charge of £10 payable on application for a gaming licence (this will replace the current fixed charge of £250);
- (ii) a graduated payment on account based on a casino's accrued gross gaming yield at the midway point of each licence period;
- (iii) a final charge at the rates set out below on the total gross gaming yield for the full licence period (less the payment on account under (ii)).

Part of gross gaming yield

| Old Structure | New Structure | Rate of duty |
|-----------------|-----------------|---|
| First £375,000 | First £450,000 | 2½ per cent |
| Next £1,875,00 | Next £2,250,000 | 12½ per cent |
| Next £2,250,000 | Next £2,270,000 | 25 per cent |
| Remainder | Remainder | 33 ¹ / ₃ per cent |

Under these proposals graduated payments on account will be due by 31 January and 31 July each year; finally payments will be due by 30 April and 31 October.

Duty for licence periods ending before 1 October 1991 will be chargeable and payable under existing arrangements.⁸³

Legislation to this effect was introduced under section 6 of the *Finance Act 1991*.⁸⁴

In 1997 a number of changes were made in the administration of this tax, including its being renamed 'gaming duty'.⁸⁵ They were the subject of relatively little comment when scrutinised at the Committee stage of the Finance Bill that year, though the then Exchequer Secretary - Philip Oppenheim - confirmed that the yield from this tax was not expected to change.⁸⁶ A summary was provided in the press notice issued at the time of the November 1996 Budget:

1. From 1 October 1997 the following changes will take place:
 - six monthly licences will no longer be issued but replaced by a registration system, similar to that for VAT, replacing the need for regular renewals. Once registered, casinos will only need to advise Customs and Excise of changes.
 - casinos will be able to adopt more flexible accounting periods. Currently, accounting periods run from 1 April to 30 September, and

⁸³ HM Customs & Excise press notice, *Revised charging and collection arrangements*, 19 March 1991

⁸⁴ This was agreed to without debate in Standing Committee (Standing Committee B 16 May 1991 c 42).

⁸⁵ These provisions were introduced by sections 10-15 of the *Finance Act 1997*.

⁸⁶ Standing Committee B 30 January 1997 c 102

from 1 October to 31 March. Six-monthly accounting periods will remain, but casinos will be able to choose ones that suit their business needs;

- the requirement for a financial statement each year from each casino, certified by an independent accountant, will be withdrawn and groups of casinos will be able to make a single composite return; and,
 - liability to duty will no longer be dependant on casinos having a licence under the Gaming Act.
2. The changes will also make it possible for Customs to tax illegal gaming. Previously the Department did not have the power to collect duty on any gaming not licensed under the Gaming Act 1968. They will now have the powers to impose penalties and collect duty which has been evaded.
 3. These changes follow extensive consultation. Implementation is also being discussed with the trade to minimise the administrative burden to casinos from the changeover.⁸⁷

It is worth noting that scrapping the requirement for casinos to obtain a revenue licence each six months meant that casinos were no longer liable to pay a £10 fixed charge as part of their liability to gaming duty. In a written answer given on 13 November 1997 the then Financial Secretary, now Paymaster General, Dawn Primarolo, stated that a "post-implementation review will be conducted after twelve months to evaluate the impact of the changes."⁸⁸

B. Changes in the March 1998 Budget

At the time of the March 1998 Budget the Government announced that the top rate of gaming duty would be increased from 33¹/₃% of gross gaming yield to 40%, and the three thresholds for paying duty would be revised. The changes would be effective for accounting periods beginning on or after 1 April 1998, and were expected to yield £25 million in a full year. Details were given in a press notice issued at the time:

The new rates and reduced gross gaming yield (ggy) thresholds for each band are shown in the table below alongside the current rates.

| New rates | | Current rates | |
|----------------------------|-------|----------------------------|----------------------------------|
| The first £400,000 of ggy | 2.5% | The first £450,000 of ggy | 2.5% |
| The next £1,000,000 of ggy | 12.5% | The next £2,250,000 of ggy | 12.5% |
| The next £1,500,000 of ggy | 25% | The next £2,700,000 of ggy | 25% |
| The remainder | 40% | The remainder | 33 ¹ / ₃ % |

⁸⁷ HM Customs & Excise press notice, *Deregulation for casinos*, 26 November 1996

⁸⁸ HC Deb 13 November 1997 c 624W

The current rates have been in force since 1 October 1991 firstly as gaming licence duty and from 1 October 1997 as gaming duty. The changes made on 1 October 1997 removed the need for a revenue gaming licence, introduced flexible accounting periods and made provision for group registrations ...

The duty is calculated on the ggy for a period of six months, which allows for seasonal variations and any exceptional wins and losses to be evened out. Casinos make an interim payment based on the ggy for the first three months of the six month period and then deduct this payment from the duty due on the ggy for the full six months.

The revenue effect of this measure will be to yield an additional £20 million in the years 1998/99 and £25 million in 1999/2000 and 2000/01 on an indexed basis, and £20 million in 1998/99 on a non-indexed basis. The effect on RPI will be negligible.⁸⁹

The impact that this proposal might have on the industry was raised in a written question:

Mr. Heathcoat-Amory: To ask the Chancellor of the Exchequer (1) what estimate he has made of the impact on the profitability of British casino companies of the increase in gaming duty announced in the Budget; (2) what assessment he has made of the economic impact of the increase in gaming duty announced in the Budget.

Dawn Primarolo: Overall the casino industry is undertaxed compared to most other betting and gaming sectors when looked at in terms of the effective rate of tax on the net consumer spend (broadly equivalent to the house winnings). In determining the changes to the duty rates and thresholds careful consideration was given to the overall profitability of the industry as well as the likely impact on casino companies, taking account of their turnover, profitability, location and ability to bear the cost of the increase. The increase in gaming duty will raise £25 million in the first full year.⁹⁰

The industry was highly critical of these proposals, particularly the two largest London casino companies, London Clubs and Capital Corporation, as well as a number of institutional investors with holdings in each company:

Fund managers have taken the unusual step of protesting to the government about a Budget increase in casino gaming duty. Scottish Widows, Mercury Asset Management and Jupiter Asset Management are among the institutional investors in London Clubs and Capital Corporation, the two most affected casino companies, to have written to the Treasury. Shares in London Clubs and Capital Corporation have fallen by 26 per cent and 20 per cent respectively since the Budget measure two weeks ago which increased the top rate of gaming duty from

⁸⁹ HM Customs and Excise Budget press notice C&E12, 17 March 1998

⁹⁰ HC Deb 8 April 1998 cc 246-247W

33 1/3 per cent to 40 per cent. The four casino duty thresholds were also lowered. The measure, which came into effect yesterday primarily affects London casinos, which pay 80 per cent of gaming duty.

London Clubs, the largest London operator, said if the increases had been applied last year, it would have paid 60 per cent of the sum, amounting to £12m - or 30 per cent of pre-tax profits. "It's a body blow to us. Where does it end? Are they going to attack us next year again?", said Alan Goodenough, chief executive of London Clubs yesterday. He said the company would consider moving its corporate headquarters to Las Vegas where the tax regime was less punitive and could also encourage its customers, more than 80 per cent of whom are from overseas, to gamble at its casinos outside the UK.

The company would also no longer be able to invest in its London properties, which include Les Ambassadeurs and the Ritz casinos. Mr Goodenough called for the measure to be reversed or to be spread equally spread across the industry. Fund managers said they were concerned at the apparently arbitrary nature of the rise and questioned why it affected primarily two companies. Stan Pearson, head of UK equities at Scottish Widows, which has a 5 per stake in London Clubs asked whether the Budget measure represented a shift in attitude towards the gaming industries. "This has a material effect on the profits of London Clubs. Can we expect other industries to be hit similarly? What is next - property perhaps?"⁹¹

Legislation to this effect was included in that year's Finance Bill, and it was selected for debate by a Committee of the Whole House on 28 April 1998.⁹² During the debate Dawn Primarolo (then Financial Secretary, now Paymaster General) noted the industry's concerns, and promised to consult on possibly amending the structure of the rate bands:

Some serious points were made in the debate ... The argument covered four categories: the phasing of the introduction of the increase; bad debt; indexation; and the structure of the bands that are being introduced, to which the hon. Member for Rochford and Southend, East referred particularly. He argued that the burden of the increase falls less on the profitable casinos and more on those in the middle band. Reducing the bands would not result in casinos other than the top, most profitable clubs paying increased amounts of duty. The Government's proposal is deliberately designed to spread the burden of the tax, attaching it to those casinos most able to bear it. It is the Government's opinion that the industry pays an unfair level of tax: it could pay additional tax. The industry's response has not been to dispute whether it could afford to pay the increase or whether it should pay it, but to argue about the distribution of the tax ...

Let me deal first with the changes to the gaming duty bands and the top rate of gaming duty. The House will wish to know that the casino industry is under-taxed

⁹¹ "Fund managers in protest at casino tax rise", *Financial Times*, 2 April 1998

⁹² HC Deb 28 April 1998 cc 221-237 This legislation is now set out in section 11 of the *Finance Act 1998*.

compared with most other betting and gaming sectors. However, there is little scope for increasing the duty burden on smaller, less profitable casinos. There is every indication that the casino industry is thriving and can afford to pay the increased duty. Receipts of gaming duty are up on previous years and the drop - the amount staked at a casino - has increased, particularly in larger, more profitable casinos. In the 12 months to December 1997 - the most recent figures we have - the drop in larger, more profitable casinos increased by around 8 per cent. over the previous 12 months and the gross gaming yield increased by around 10 per cent. That demonstrates the industry's ability to pay more tax.

Secondly, I am aware of the industry's representations on indexation and I am persuaded that there is a case for creating an environment that allows the industry and its investors a reasonable level of certainty in which to operate and plan. Therefore, I am prepared to give a commitment to index the gaming duty bands for the remainder of this Parliament. That said, I should make it clear that, if the business climate in which the casinos operate were to change significantly - through further deregulation, for example - we would not rule out the possibility of further restructuring the duty in future, to ensure that the level of taxation remained fair. Subject to that proviso, I accept the principle of indexation for the lifetime of this Parliament ...

I now turn to the restructuring of the bands proposed in amendment No. 15.⁹³ I am not persuaded by the argument that the amendment would reduce the liability of London casinos as the proposed changes would significantly reduce the revenue that we intend to collect from the casino industry. It is quite clear to the Government that the industry can afford to pay the additional duty. I am aware of the trade representations concerning the structure of the duty bands, in particular the impact of the Budget changes on some of the less profitable London clubs--those with gross gaming yields of between £5 million and £12 million--and the points that the hon. Member for Rochford and Southend, East made about his experience in Southend.⁹⁴

I shall continue to ensure that the forecast revenue yield on the measure is maintained, but as a member of a Government who are prepared to consult and listen, I am prepared to consider the industry's proposals on the best way forward in respect of the structure of the bands. As has already been said, my officials continue to discuss the issue with representatives of the industry. I shall report back to the House with my findings ... As I have said on a number of occasions, the industry is under-taxed compared with most other betting and gaming sectors

⁹³ The amendment proposed increasing the ggy band for 25% from £2.7m to £3.5m, whereas the Government has proposed cutting it from £2.7m down to £1.5m.

⁹⁴ Sir Teddy Taylor MP had argued at an earlier point in the debate that casinos outside London would find it much harder to pay the increase in duty: "In a seaside town - where things can be tough and where unemployment tends to be high - it seems irrational to impose the increase. In London clubs - where exciting people come from overseas countries, where they appear to be wealthy - one might see that there is an opportunity to get more tax" (HC Deb 28 April 1998 c 225).

and we believe that it can afford and should pay the proposed increase in the name of fair taxation.⁹⁵

At the Report stage of the Finance Bill, Ms Primarolo moved an amendment to restructure the new rates of gaming duty, in line with the criticisms that less profitable clubs would be hard hit by this reform. The new rates were the following:⁹⁶

| New rates | | Budget proposals | |
|----------------------------|-------|----------------------------|-------|
| The first £450,000 of ggy | 2.5% | The first £400,000 of ggy | 2.5% |
| The next £1,000,000 of ggy | 12.5% | The next £1,000,000 of ggy | 12.5% |
| The next £1,000,000 of ggy | 20% | The next £1,500,000 of ggy | 25% |
| The next £1,750,000 of ggy | 30% | | |
| The remainder | 40% | The remainder | 40% |

Ms Primarolo's explanation of the Government's amendment - which was accepted - is reproduced below:

During an earlier debate on clause 11 on the Floor of the House, in response to points made by several hon. Members, particularly the hon. Member for Rochford and Southend, East (Sir T. Taylor), I undertook to re-examine the table in clause 11 and its specific impact on casinos outside London whose gross gaming yield was in the range of £5 million to £12 million annually. The hon. Gentleman said that the provision would have a damaging impact on casinos and cited the cases of casinos in his own constituency. Government amendment No. 19 will replace the table in clause 11 - which will substitute for the table of gaming duty rates in section 11(2) of the Finance Act 1997 - introduce new 20 per cent. and 30 per cent. duty rate bands, and revise the gross gaming yield thresholds set out in clause 11.

I agreed to consider the matter further, and there have been discussions with the industry on how the objectives could be achieved. In the light of representations about the impact of the Budget changes on the casino industry, I have tabled the amendment. I should say that, unfortunately, the industry was itself unable to reach any consensus on the model that it would prefer. I suppose that I should not be surprised that a number of individual groups offered proposals that met their own objectives but not necessarily those of their competitors. Government amendment No. 19 will reduce the burden on casinos that are within the £5 million to £12 million gross gaming duty range. The Government's amendment deals with the specific point that was raised and will significantly reduce the burden on casinos in that range.⁹⁷

⁹⁵ HC Deb 28 April 1998 cc 233-235

⁹⁶ HM Customs & Excise press notice 14/98, 30 June 1998

⁹⁷ HC Deb 1 July 1998 c 373

C. Changes since March 1998

There have been only two changes to gaming duty since the March 1998 Budget: duty bands have been increased in line with inflation for two years in succession. As mentioned above, the Paymaster General Dawn Primarolo, gave a commitment during the debate of the Committee of the Whole House in April 1998 that duty bands would be adjusted annually for the life of this Parliament, provided that any future changes in the business climate did not result in the level of taxation being unfair.⁹⁸

As a consequence of these two increases, the duty bands from 1 April 2000 are:⁹⁹

| Current rates | |
|----------------------------|-------|
| The first £470,500 of ggy | 2.5% |
| The next £1,045,500 of ggy | 12.5% |
| The next £1,045,500 of ggy | 20% |
| The next £1,830,000 of ggy | 30% |
| The remainder | 40% |

When the increase in duty bands for 1999 was debated, Barbara Roche, then Financial Secretary, noted that, “the Government keep rates of gaming duty and all other duties under constant review, although we consider the present level of taxation to be fair and appropriate.”¹⁰⁰

When the second of these duty band increases was scrutinised in Committee, Nick St Aubyn MP noted that the predicted receipts from all betting and gaming duties showed a fall: from £1.5 billion in 1999-2000, to £1.4 billion in 2000-01,¹⁰¹ and asked, “to what extent is that due to forms of betting – for example, on the internet – that are beyond the Government’s tax base?” In response the Financial Secretary Stephen Timms simply stated, “the relevant table reflects the fact that receipts from the national lottery have been on a downward trend.”¹⁰²

Nonetheless the growth in online betting has been considerable over the last two years, and this may have serious implications for tax receipts: as an article in the *Financial Times* noted, “the pace of change poses a huge headache for governments. Internet

⁹⁸ HC Deb 28 April 1998 c 234

⁹⁹ HM Customs & Excise Budget Notice BN 67/00, 21 March 2000

¹⁰⁰ Standing Committee B 11 May 1999 c 101

¹⁰¹ HM Treasury, *Budget 2000*, HC 346 March 2000 p 203

¹⁰² Standing Committee H 11 May 2000 cc 123-124 Duty is charged at 12% on the sale of National Lottery tickets. Receipts declined over the period 1997-98 to 1998-99 from £675m to £628m. In this second year, lottery duty receipts represented 41% of total betting and gaming duties; the share accounted for by gaming duty was 6% (Cm 4447 November 1999 p 98). For details on lottery duty see *The National Lottery*, Library Research paper 00/24 8 March 2000.

gambling is unregulated, unlicensed and pays little or nothing in tax. Yet scarcely another day goes by without new corporate activity in the sector.”¹⁰³ Indeed, it has been suggested that it has been the rapid rise in internet gambling that has led to the government’s decision to launch the Gambling Review Body,¹⁰⁴ as this phenomenon “threatens not only [the government’s] tax take but runs the risk of a return to the dark ages of unregulated gambling that the [*Gaming Act 1968*] sought to address.”¹⁰⁵

The impact of the internet on the tax base and on gambling generally is beyond the scope of this paper.¹⁰⁶ However, it is notable that the review body’s terms of reference refer explicitly to the rise on online gambling. In addition, in framing its recommendations, the review body is to have regard to, “the implications for the current system of taxation, and the scope for its further development.”¹⁰⁷

¹⁰³ “High stakes in the cybercasino”, *Financial Times*, 29 August 1999

¹⁰⁴ The review body is discussed in Section II of this paper.

¹⁰⁵ “Government set to take a chance on gaming review”, *Financial Times*, 11 December 1999

¹⁰⁶ An excellent introduction to this issue was provided in a recent *Economist* survey: “The mystery of the vanishing taxpayer”, 29 January 2000.

¹⁰⁷ HC Deb 16 February 2000 cc 537-538W

IV Appendix : List of permitted areas for casinos

List of areas in which the licensing of clubs for gaming other than bingo is permitted showing the number of licensed clubs operating on 31 March 1999.¹⁰⁸

| | NUMBER OF CASINOS |
|--|-------------------|
| ENGLAND | |
| London ¹⁰⁹ | 23 |
| THE AREAS OF THE FORMER COUNTY BOROUGHS, NON-COUNTY BOROUGHS AND URBAN DISTRICTS OF: | |
| Birkenhead | 1 |
| Birmingham | 5 |
| Blackpool | 2 |
| Bolton | 1 |
| Bournemouth | 2 |
| Bradford | 2 |
| Brighton | 2 |
| Bristol | 4 |
| Coventry | 2 |
| Derby | 2 |
| Dudley | 1 |
| Great Yarmouth | 2 |
| Hove | 1 |
| Huddersfield | 1 |
| Kingston-upon-Hull | 1 |
| Leeds | 4 |
| Leicester | 2 |
| Liverpool | 3 |
| Luton | 2 |
| Lytham St Annes | 1 |
| Manchester | 5 |
| Margate | 2 |
| Newcastle-upon-Tyne | 2 |
| Northampton | 1 |
| Nottingham | 2 |
| Plymouth | 2 |
| Portsmouth | 3 |
| Ramsgate | 1 |
| Reading | 2 |
| Ryde | - |
| Salford | 1 |
| Sandown/Shanklin | - |
| Scarborough | 1 |
| Sheffield | 3 |
| Southampton | 2 |
| Southend-on-Sea | 2 |

¹⁰⁸ source: *Gaming Board Annual Report 1998-99* pp 103-104

¹⁰⁹ That area which is within the area specified in the licensing (Metropolitan Special Hours Area) Order 1961 - plus the City of Westminster and the Royal Borough of Kensington and Chelsea.

| | |
|--|------------|
| Southport | 1 |
| Stockport | 1 |
| Stoke-on-Trent | 1 |
| Sunderland | 1 |
| Teesside Middlesbrough | - |
| Torbay | 1 |
| Walsall | 1 |
| Warley | - |
| West Bromwich | - |
| Wolverhampton | 1 |
| WALES | |
| THE AREAS OF THE FORMER COUNTY BOROUGHES OF: | |
| Cardiff | 3 |
| Swansea | 1 |
| SCOTLAND | |
| THE AREAS OF THE FORMER COUNTIES OF THE CITIES OF: | |
| Aberdeen | 2 |
| Dundee | 1 |
| Edinburgh | 4 |
| Glasgow | 5 |
| TOTAL | 116 |