



RESEARCH PAPER 04/79
28 OCTOBER 2004

The Gambling Bill

Bill 163 of 2003-04

The *Gambling Bill 2003-04* will consolidate all gambling law into a single Act of Parliament. It establishes a new regulator, the Gambling Commission, and passes responsibility for premises licensing to local authorities. It introduces new safeguards to protect children and the vulnerable, regulates betting exchanges and legalises online betting from UK-based websites. It also relaxes present restrictions on casinos.

The Bill applies to England, Wales and (with certain exceptions) Scotland.

This paper looks at the Bill as introduced into the House of Commons on 18 October 2004, concentrating on areas which have so far engaged public and parliamentary interest and noting comparisons with the draft Bill previously laid before Parliament and with the current law.

Philip Ward

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Summary of main points

In March 2002 the Government announced in a White Paper that it would bring forward legislation to consolidate all gambling law into a single Act of Parliament covering all categories of gambling activity. Draft legislation was published in stages. Following consultation and the publication of two reports by a Scrutiny Committee drawn from both Houses, the *Gambling Bill 2003-04* was introduced into the Commons on 18 October 2004; it is due for Second Reading on 1 November 2004.

Key points of the Bill include:

- Establishment of a three-pronged licensing system, which requires the licensing of operators, persons and premises, involving a new Gambling Commission and local authorities
- Gambling Commission to be responsible for licensing gambling operators and personnel working in the gambling industry
- Transfer to local authorities of responsibility for licensing gambling premises
- Powers for local authorities to resolve not to allow new casinos in their area
- A new criminal offence of inviting, permitting or causing a child to gamble
- New controls on the way gaming machines operate that will enable the Gambling Commission to control elements such as speed of play, near misses and making information on losses clearer to players
- Controls on the numbers and locations of new, high prize gaming machines so that they will only be allowed in the largest, regional casinos and their numbers will be capped to 1,250 per casino
- Three-tier categorisation of casinos into “regional”, “large” and “small”, each category to have a specified floor area and permitted number of gaming machines
- Abolition of the “24 hour” rule which requires that people must be a member of a casino or bingo club for 24 hours before they enter
- Abolition of the “permitted areas” rule that defines in law strict areas where casinos can be built
- Allowing casinos to advertise in a limited way for the first time
- Legalisation and regulation of internet gambling on websites based in the UK
- Tighter restrictions on betting exchanges

Regulations made under the legislation and codes of practice issued by the new Commission will address such issues as making social responsibility an explicit licence condition and conducting regular prevalence studies to monitor problem gambling.

Certain measures in the Bill have aroused controversy, especially the possibility that the legislation could facilitate the creation of a number of regional casinos offering gaming machines with unlimited jackpots.

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I Introduction

Gambling law has a long history in the United Kingdom, having been a subject of concern to Parliament since at least the eighteenth century. The last major reform was in the 1960s, prompted by rising concerns about potential links between gambling and organised crime. The underlying philosophy at that time was that gambling was a social “sin” to be tolerated but not encouraged.¹ While that legislation has proved effective, changes in habits and technology have led to calls for an update of the law. First, the introduction of “soft” forms of gambling, particularly the National Lottery, has made gambling socially acceptable and has brought it within the mainstream of public entertainment. Secondly, new media, including mobile phones, digital TV and the internet, have created a borderless environment for the delivery of new gambling products.

The gambling industry is a substantial one. A recent report estimated the total amount staked on all gambling in the United Kingdom in 2002/03 as £63.8 billion.² Of this, gross gaming yield (i.e. the amount retained by operators after the payment of winnings but before deduction of the costs of the operation) was £7.8 billion. This was £1 billion or about 15% more than seven years earlier. Of the £7.8 billion, £3 billion was accounted for by the gaming industries, £2.3 billion by the National Lottery and the remaining £2.5 billion by horserace and other betting.

There were 131 casinos open in Great Britain at 31 March 2004, more than in any other European country with the exception of France. London has 24 casinos, more than any other capital city. “Drop” (i.e. money exchanged for gaming chips) was £4.1 billion in 2003/04. Operators retained about 17% of this, or £674 million. Around 13,000 staff are estimated to be employed by British casinos and around 11.9 million separate visits to casinos were made by members and their guests in 2003/04.³

Great Britain had 696 commercial bingo clubs operating at 31 March 2004, with total stakes amounting to £1.4 billion in 2003/04. Bingo clubs have about 3 million active members, and they employ an estimated 18,500 people.

Nearly 250,000 gaming machines are sited around the country in a large number of different locations. It is estimated that over £10 billion a year is fed into these machines, of which around £1.7 billion is retained by suppliers and site owners.

¹ Carl Rohsler and Shannon Yavorsky, “Draft Gambling Bill: overview”, *Entertainment Law Review*, July 2004, p195

² Ernst and Young, *A Winning Hand – The Modernisation of UK Gambling*, November 2003

³ All figures in this and next two paragraphs taken from: Department for Culture, Media and Sport, *Report of the Gaming Board for Great Britain 2003-04*, HC 866 2003-04, p9

Gambling is a popular leisure activity. In 2004, a study into gambling participation, commissioned by the Department for Culture, Media and Sport and conducted by the survey company NOP found that 71% of those interviewed said that they had gambled during the previous 12 months (including participation in the National Lottery). This is slightly lower than the 73% participation rate found in the British Gambling Prevalence Survey conducted in 1999. The survey also revealed that in the past five years participation in most forms of gambling appears to have fallen. The exceptions are playing bingo and betting on non-race events with bookmakers, both of which have risen.⁴

Gambling-related duties amounted to £1.3 billion (approximately 0.3% of total Government revenues) in the year 2003/04.⁵

II The current law

The most substantial recent consideration of gambling regulation in the UK was the *Gambling Review Report* (known as the “Budd Report”)⁶ in 2001. This report, which is available online,⁷ includes a useful summary of the current law. The present legislation is contained in three statutes: the *Betting, Gaming and Lotteries Act 1963*, the *Gaming Act 1968* and the *Lotteries and Amusements Act 1976*.⁸

Casino gaming is confined to licensed premises, which are required to operate as members’ clubs. Before an applicant can apply for a gaming licence from the licensing justices, he must first obtain a certificate of consent from the Gaming Board for Great Britain. Certificates are only granted if the applicant is a fit and proper person and would be capable and diligent in ensuring compliance with the Act. An application for a gaming licence may be refused on the grounds that there is insufficient demand for the gaming facilities. In addition, casinos are permitted only in certain designated areas of the country; there are 53 such areas, defined by the *Gaming Clubs (Permitted Areas) Regulations 1971* and the *Gaming Clubs (Permitted Areas) (Scotland) Regulations 1971*. Within a permitted area, the licensing justices (who are magistrates) may refuse a licence for a casino if they consider that there is insufficient unmet demand for the gaming facilities. They will also take local issues into consideration, such as the suitability of the proposed premises. In considering applications the justices must take account of the advice of the Gaming Board. The system of permitted areas, first introduced in 1969, was

⁴ Stephen Creigh-Tyte and John Lepper: *Survey of participation in, and attitudes towards, gambling: key results from the 2004 NOP Survey*, Dept for Culture, Media and Sport, Technical Paper 4, April 2004, <http://www.culture.gov.uk/NR/rdonlyres/eivosj3s6wng4ifaekkgxay5coydjqewokpjrblnm5qceuxo2jakz hafrsp7u6an4gncwhiubijgizrgn6dy3dzroh/SURVEYRESULTS.pdf>

⁵ Dept for Culture, Media and Sport, *Gambling Bill: regulatory impact assessment*, 2004, p3

⁶ Dept for Culture, Media and Sport, *Gambling Review Report Cm 5206*, July 2001 (hereafter: “Gambling Review report”)

⁷ http://www.culture.gov.uk/global/publications/archive_2001/gamb_rev_report.htm

⁸ The following summary draws on the *Gambling Review report*, pp13-14, which also includes a précis of the current law on horserace and greyhound betting.

designed principally to reduce the number of casinos to a manageable amount (there were around 1,000 casinos in the 1960s). Only certain games can be played in casinos and a maximum of ten jackpot machines is permitted.

Commercial bingo is allowed in bingo clubs licensed under the 1968 Act. Unlicensed bingo is played in places such as working men's clubs. Clubs not registered under the *Gaming Act 1968* may offer games of equal chance,⁹ such as bingo, and impose small charges sufficient to recover the costs of gaming. Stakes and prizes are unlimited and all stakes must be returned in prizes.

The 1968 Act made provision for two types of gaming machine: jackpot machines and amusement-with-prizes (AWP) machines:

- Jackpot machines are confined to clubs licensed (i.e. casinos and bingo clubs) or registered (e.g. working men's clubs) under the 1968 Act. The maximum stake is currently 50p and the maximum payout £1000 in casinos, £500 in bingo clubs and £250 in registered clubs.
- AWP machines need permits from the local authority to be located in places to which the public has access, e.g. arcades and cafés. Permits are required from the liquor licensing justices for machines in pubs. The maximum stake for an AWP machine is 30 pence, and the maximum prize is limited to either £5 in cash or £8 in tokens. In addition, since June 1996 all-cash AWP machines which pay out a maximum of £15 cash have been permitted in liquor licensed premises, adult arcades, bingo clubs and, for the first time, in betting offices. Under 18s may not be admitted to an area in an arcade in which all-cash machines are located. (Many arcades operate as adult arcades and exclude under- 18s completely.)

All lotteries except the National Lottery are regulated under the *Lotteries and Amusement Act 1976* and the *Lotteries Regulations 1993*. The 1976 Act contains no definition of a lottery, but case law holds that the essential ingredients are that there is a distribution of prizes by lot or chance and that the chances should be secured by some payment or contribution by those who take part. Regulation of lotteries is essential to combat fraud, since the player has no independent means of knowing either the total amount paid in or that the promised prizes have been paid out. The 1976 Act makes all lotteries (including foreign lottery operations here) unlawful except those provided for by the Act. An important aim of the 1976 Act is to ensure that lotteries contribute to good causes rather than operate solely as gambling operations. The lotteries that are permitted are: small lotteries incidental to certain entertainments, private lotteries, society lotteries and local authority lotteries.

⁹ "Equal chance gaming" is defined in the Bill, clause 8, as play which does not involve playing or staking against a bank and where the chances are equally favourable to all participants

The principal regulator of gambling under current law is the Gaming Board for Great Britain. Created by the 1968 Act, the Board's main purpose is to keep criminal elements out of commercial gaming and to help ensure that where commercial gaming takes place it is properly managed and conducted fairly and in accordance with the law. In particular, the Board:

- investigates the trustworthiness of all applicants for licences for casinos and bingo clubs and issues to them certificates of consent
- issues certificates of approval to casino gaming managers, supervisors and operatives, and managers in bingo clubs
- issues certificates to people selling or supplying gaming machines
- advises the Secretary of State on all regulations made under the Act
- advises the justices on the demand for gaming, the suitability of premises and any restrictions to appear on licences
- appears before the justices to object to the grant or renewal of licences or to move for their cancellation, in appropriate cases
- assists the police in the enforcement of the Act through the Gaming Board Inspectorate.

The Gaming Board also agrees codes of conduct with the industry, which set out principles of good practice where the law is insufficiently clear or is silent.¹⁰

III The reform process

A. The Budd report and the White Paper

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

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.¹¹

The report of the independent Gambling Review Body, chaired by Sir Alan Budd, appeared in July 2001 and contained 176 recommendations for changes to gambling law and regulations. The Budd Review was also a public consultation exercise.

¹⁰ *Gambling Review report*, p15

¹¹ HC Deb 8 December 1999 c534W

Following the transfer of responsibility for gambling from the Home Office to the Department for Culture, Media and Sport, in March 2002 the Government published its response to the report in a White Paper, *A Safe Bet for Success*.¹² The Government accepted 157 of the Review Body's recommendations; 10 were felt to require further substantive consideration, while 9 were rejected.

The 2002 White Paper expressed dissatisfaction with the present law and called for an overhaul:

2.2 The legislation is also extremely inflexible and has not enabled regulation to keep pace with either technological advances, or customer expectations and the ability and desire of the gambling industry to meet them. In the Government's view it makes no sense to perpetuate a situation in which even quite minor adjustments can require amendments to primary legislation. Parliament itself has described the current statutes as a mess, and in a recent report the Commons Deregulation and Regulatory Reform Committee noted as follows:

"...repeated piecemeal amendment of the law relating to gambling has been an unwelcome feature of the deregulation procedure. Now that the report of the Gambling Review Body has been published, we look forward to the early introduction of a Bill which will obviate the need for any further such amendment".

These sentiments were universally echoed during our consultations.

2.3 The Government therefore agrees that all gambling legislation should be consolidated into a single Act of Parliament covering all categories of gambling activity. This Act should be up to date, simple to understand and sufficiently flexible to meet changing circumstances without the need for frequent amendment. It should provide a more flexible framework within which appropriate adjustments can be made via subordinate legislation or regulations. As a number of those responding to the consultation pointed out, the process for implementing changes to regulations must be transparent and fair, and the legitimate interests of all parties should be taken fully into account before they are made. We will also want to ensure that the many tried and tested legal and regulatory principles enshrined in the current statutes and related case law are not undermined as a result of consolidating and modernising the legislation.

The Government's main reform proposals as they emerged from consideration of the Budd report and the public consultation were as follows:

- The establishment of a single regulator for all gambling operators and key staff - the Gambling Commission

¹² *A safe bet for success – modernising Britain's gambling laws* Cm 5397, March 2002

- Local authorities to licence all gambling premises
- Abolition of demand tests for casinos, bingo clubs and betting offices and permitted areas restrictions for casinos
- On-line gambling (e.g. on the internet or interactive TV) to be licensed for the first time
- Abolition of the rule requiring membership of a casino or bingo club at least 24 hours before playing
- Casinos to be allowed to offer any form of legal gambling - including betting and bingo, and have linked gaming machines with unlimited prizes
- Casinos to be able to offer live entertainment and serve alcohol on the gaming floor
- Relaxation of advertising restrictions on gambling, subject to a new Code of Practice
- A new licensing framework for gaming machines - amusement machines will be for use by anybody, including children; gaming machines will be for adults only, and confined to places where access can be controlled effectively
- Bingo clubs, betting offices and adult gaming centres to be allowed to mix jackpot and other types of gaming machines, while members' clubs will retain current entitlements to jackpot machines
- Recognition of the special nature of the National Lottery, with no side betting to be allowed on National Lottery results and the retention of certain limits on society lottery sales and prizes - the latter will be doubled rather than abolished

Alongside these deregulatory measures the White Paper announced a number of proposed safeguards. These included:

- “Fit and proper” tests for all commercial gambling operators
- Tough new powers for the Gambling Commission to combat criminality, tackle illegal gambling and enforce licensing provisions
- Stricter controls on access by children to places where gambling takes place, especially gaming machines; signposting and effective supervision to be standard licensing conditions
- An industry-funded gambling trust to support problem gambling prevention and treatment programmes, with an initial budget of £3m; the Government will also take reserve powers to compel licensed operators to pay
- The Gambling Commission will issue statutorily-enforceable codes of social responsibility to all gambling operators¹³

¹³ Dept for Culture, Media and Sport press notice 58/2002, *A Safe Bet for Success*, 26 March 2002

It is noteworthy that the proposals on the relaxation of restrictions on casinos which attracted such media attention when the substantive Bill was published in October 2004 were already present in the White Paper published two and a half years earlier.

Initial response to the White Paper from the Opposition was positive:

The Conservatives have welcomed plans to liberalise the laws on gambling. Shadow Culture Secretary, Tim Yeo, said that he was pleased the Government had listened to the concerns of small clubs and gaming bodies. [...]Mr Yeo said he had a concern about the impact the plans would have on the income for good causes, raised by the National Lottery.¹⁴

Similarly from the Liberal Democrats:

Nick Harvey MP, Liberal Democrat Shadow Secretary for Culture, Media and Sport, commenting on today's shake-up of UK gambling laws, said:

“At last Britain is moving with the times, giving British resorts the opportunity to challenge America as a destination for casino holidays.

“It will be warmly welcomed by those members of the public who enjoy a bit of a gamble for recreation, as well as those who gain employment from new developments.

“But the Government must keep on top of the situation. The results of ignoring the bigger picture can be seen in Australia today where 2.5% of the population have problems with gambling and one in a hundred have serious gambling problems. Victoria alone has 156 000 gambling addicts.

“Gambling addicts are estimated to cost the community over A\$5.6billion on top of the A\$1 billion already staked and lost.

“If the Government does not keep an eye on Britain's gambling world they risk jeopardising the benefits of the shake up.”¹⁵

B. The Draft Bill

Draft legislation appeared in a series of stages beginning in July 2003. The first 50 clauses of the draft Bill to be published¹⁶ were chiefly concerned with the new licensing regime, and publication was accompanied by a Commons statement in which the Culture Secretary, Tessa Jowell, emphasised the regulatory aspect of the new legislation:

¹⁴ Conservative News, *Conservatives welcome plans for gaming industry*, 26 March 2004, http://www.conservatives.com/tile.do?def=news.story.page&obj_id=27754#

¹⁵ Liberal Democrat press release, *Don't risk benefits of gambling reforms by lack of scrutiny – Harvey*, 26 March 2002, <http://www.libdems.org.uk/index.cfm/page.homepage/section.home/article.2749>

¹⁶ Cm 5878, July 2003

The Bill will make major changes to the way in which gambling is regulated and controlled in Great Britain. It will build on the work undertaken by Sir Alan Budd and the Gambling Review Body that he led.

It is based on the three key principles.

First, the principle that the system of gambling law and regulation must keep the gambling industry free of crime. Our industry has a high international reputation for integrity, which must not be put at risk.

Second, the law must ensure that gambling is conducted fairly, so that players know what to expect.

Third, there must be effective protection for children and the vulnerable.¹⁷

On 19 November 2003, the Government published further clauses and schedules,¹⁸ making 242 clauses and 9 schedules in all, but this was still not the entire Bill. The clauses published covered the key elements of the new regulatory regime, including:

- Gambling Commission
- Offences and protection of children
- Operating, personal and premises licences
- Appeals
- Gaming machines
- Lotteries
- Inspection

On 5 February 2004, a number of additional clauses were published. These covered:

- Gambling in alcohol licensed premises;
- Gambling in members' clubs, commercial clubs and miners' welfare institutes;
- Gambling Commission powers to void unfair bets;
- Provisions allowing for the enforcement of contracts related to gambling, and;
- A revised offence of cheating.

On 12 March 2004, the Government published a further set of additional clauses from the Bill. These clauses covered:

- Restrictions on the provision of credit and inducements by gambling operators;
- Prohibitions on the use of credit cards in relation to gambling, and;

¹⁷ HC Deb 15 July 2003 vol 409 c28WS

¹⁸ Cm 6014-I, November 2003

- The prohibition of chain gifting schemes.

As of late March 2004, some clauses had still not appeared, an omission which troubled the Joint Committee established to scrutinise the Bill. These covered:

- Advertising of gambling;
- Travelling showmen's pleasure fairs;
- Licensing of vessels and vehicles;
- The Commission's powers to initiate prosecutions and share information through statutory “gateways”;
- Transitional provisions; and
- Provisions on the Scottish Executive's powers in relation to the licensing of premises in Scotland, and for other arrangements in Scotland.¹⁹

C. Pre-legislative scrutiny

1. The Joint Scrutiny Committee

A joint committee of both Houses was established in July 2003 to submit the draft Bill to pre-legislative scrutiny.²⁰ The Committee’s report appeared on 7 April 2004.²¹ Announcing the publication of the report at a press conference, John Greenway MP, Chairman of the Committee, said:

Reform of the law on gambling is long overdue. The existing law has been described as being “in a mess”, and those who have to use it – in particular the current regulator, the Gaming Board, are crying out for change. But this is a complex area which generates strong views, as we have heard during our long and detailed inquiry.

Although the Department for Culture, Media and Sport has shown its commitment to pre-legislative scrutiny, we have not had an easy task. The draft Bill was delivered to us in four tranches. It now stands at well over 250 clauses. Key documents and policy guidance have not yet been produced. There is still more to do, and we believe that there is a case for renominating this Committee once certain policy decisions have been taken. But we do not see the proposed legislation as fundamentally flawed. We make recommendations – nearly 140 in all – both in relation to policy and drafting, but there is no reason why the Gambling Bill should not be introduced in the current session of Parliament.

Many of the recommendations that we make relate to limiting the impact that this legislation could have on the number of people in the United Kingdom with a

¹⁹ Joint Committee on the Draft Gambling Bill, Report, vol 1, HL 63-I/HC 139-I, 7 April 2004, p11

²⁰ HC Votes and Proceedings, 10 July 2003

²¹ Joint Committee on the Draft Gambling Bill, Report, 3 vols, HL 63/HC 139, 7 April 2004

gambling problem. The Government must go into this with its eyes open. We do not believe that it is acceptable that casinos, once they reach a certain size, should be entitled to have as many high value slot machines as they want. We do not believe that fruit machines should be in fish and chip shops and taxi offices. We take the view that different parts of Government, including the Department of Health, must work together to form a proper strategy to address this public health issue, and that both the Government and the industry should foot the bill.

There has been a great deal of negative publicity about betting in particular in recent weeks, which demonstrates the need for a strong regulator within a proper legislative framework. We think that the proposed Gambling Commission has the powers to deal with these problems. There has also been a considerable amount of speculation about the future of betting exchanges. We think exchanges are a good thing. They must not be forced abroad by unnecessary regulation. But we have concluded that it is in the interest of the exchanges themselves, their customers, and sport at large, that those who lay bets to earn a living on the exchanges are registered with the new Gambling Commission, and we recommend that the Government takes steps to organise this.²²

After much publicity in the press about “Las Vegas-style” casinos opening in Britain as a result of proposals in the draft Bill, it was reported in early 2004 that ministers were seeking to link any new developments to regeneration projects in deprived areas.²³ The *Guardian* reported an appearance by the Culture Secretary before the Committee on 1 March:

The culture secretary, Tessa Jowell, yesterday moved towards a consensus with peers and MPs over the need to provide stronger "social responsibility" protection of vulnerable groups when the government publishes its bill to relax the laws on gambling.

If the minister responds to pressure it is likely to mean that licences to run the kind of big casinos which the government envisages - from Blackpool and Newcastle in the north to possible London venues such as Olympia at Earl's Court - will be made explicitly dependent on commitments to address issues such as gambling addiction and money laundering.²⁴

Opposition to any liberalisation of gambling laws has been strong among Christian groups. In January, the Salvation Army, the Methodist Church, Quaker Action on Alcohol and Drugs (QAAD) and the Evangelical Alliance gave evidence to the Joint Committee. They highlighted the dangers of introducing new gaming machines with unlimited stakes and of continuing to allow children and young people under 18 to play certain kinds of fruit machine. They stressed the risks of allowing people more opportunity to gamble by

²² http://www.parliament.uk/parliamentary_committees/jcdgb/jcdgb_press_notice_10.cfm

²³ “Gaming plans dealt a blow”, *Sunday Times*, 8 February 2004, p 3.2

²⁴ Michael White, “Jowell seeks to pacify casino bill critics”, *Guardian*, 2 March 2004, p11

credit card and run up large debts, and drew attention to the dangers of permitting drinking and gambling on the same premises, which they saw as increasing people's risk of losing more than they can afford.²⁵

Traditional bookmakers welcomed the Committee's recommendations for tighter controls on punters laying bets through online betting exchanges such as Betfair;²⁶ companies like Ladbrokes and William Hill argue that the new online exchanges, where punters bet "person to person", allow unlicensed bookies to take bets and offer an attractive climate for "fixing" horse races.²⁷

2. Government response to the Scrutiny Committee's first report

The Government's response to the Joint Scrutiny Committee's report appeared on 14 June 2004.²⁸ In it the Government signalled its acceptance of 121 out of 139 recommendations made by the Committee, including the following:

- Banning fruit machines from unlicensed premises such as minicab offices and takeaways, leading to the removal of machines from around 6,000 premises which children would otherwise be able to play
- Creating a new third category of largest "Regional" casinos on top of the existing categories of Small and Large
- Capping "Las Vegas-style" unlimited prize slot machines at 1250 in Regional casinos
- Preventing Small casinos from offering bingo

In addition, "in pursuit of robust protections that prevent any increase in problem gambling", as the accompanying press notice phrased it,²⁹ the Government announced proposals for new powers that go beyond the Committee's recommendations:

- Gambling prevalence studies every three years to monitor problem gambling, which will form the basis for evidence-based regulation by the new Gambling Commission
- "Las Vegas-style" slot machines will now only be permitted in the largest Regional casinos

²⁵ Joint Committee on the Draft Gambling Bill, Report, vol II, HL 63-II/HC 139-II, 7 April 2004, Ev 86-94

²⁶ The Committee recommended that the so-called "layers" who earn their living on exchanges should be identified, regulated, made subject to the appropriate levy arrangements and have their status checked.

²⁷ "UK bookies at odds with their internet counterparts", *Financial Times*, 12 March 2004, p20

²⁸ Cm 6253. Online at:

<http://www.culture.gov.uk/NR/rdonlyres/elv3jejqyr2oi5jhobvslt4dvkq3h2c5n2la3gry5tvbxc6bw5c2v4pr3oh2aavc6ankuclvurupeth2cguaiflxi6g/grjointcommitteedgambillCm6253.pdf>

²⁹ Department for Culture, Media and Sport press notice 067/04, *Government to introduce tough new gambling protections*, 14 June 2004

- Capping numbers of all machines in all casinos
- Compulsory non-gambling areas or “chill out rooms” in all casinos
- Giving local authorities powers to prevent new casinos opening up in their area, thus giving local residents a democratic voice in these decisions
- Compulsory registration for all users of betting exchanges,³⁰ not just “professional” users
- Gambling Commission to produce codes of practice on social responsibility that every gambling operator will be required to comply with as a licence condition

The *Times* reported dissatisfaction from the gaming industry with the Government’s latest position:

The compromise proposal from the Department for Culture, Media and Sport last week favoured the resort option but suppressed the development of the high streets. By setting a very large minimum floor size for casinos to operate the most lucrative games, the Government is in effect stopping the development of the medium-size local outlet. The result has been that traditional British operators are up in arms to an extent that shocked Westminster. [...]

The heart of the problem lies in the conflict between three objectives: to reinvigorate down-at-heel resorts through mega-casinos; the need to update the jaded existing legislation; and the "nanny state" imperative to protect the vulnerable, children and adults alike, from blowing their pocket money and pay packets in a local gambling den.³¹

3. The Joint Committee on the Draft Gambling Bill (Regional Casinos)

Parts of the Government’s response aroused concern in Parliament. As a result, the Joint Scrutiny Committee was reappointed, with a new brief to consider and report specifically on the Government’s response to certain recommendations of the Joint Committee’s original report.³² (These were recommendations concerned with the definition, location and economic and other implications of the largest casinos. The Committee was also instructed to consider the further statement of Government policy on casinos published as an annex to the response document.³³) This Joint Committee on the Draft Gambling Bill (Regional Casinos) delivered its report on 22 July.³⁴ Their recommendations, and the Government’s response, are discussed in section IV part D below.

³⁰ On “betting exchanges” see below, section IV part H of this paper

³¹ “Will this gamble pay off?” *Times*, Law Supplement, 22 June 2004, p9

³² HL Deb 22 June 2004 c1234

³³ Cm 6253, “Annex: Joint ODPM-DCMS statement on casinos”

³⁴ HL 146-I/HC 843-I, <http://pubs1.tso.parliament.uk/pa/jt200304/jtselect/jtregc/146/146.pdf>

IV The *Gambling Bill*

The *Gambling Bill* (Bill 163 2003-04) was introduced into the Commons and given First Reading on 18 October 2004.³⁵ In the previous week's Business Statement the Leader of the House, Peter Hain, had indicated that the Bill would be carried over into the next parliamentary session.³⁶ Detailed explanatory notes were published to accompany the Bill, providing clause by clause summary of the Bill's intentions.³⁷ On the front page of the Bill the Culture Secretary declares that, in her view, its provisions are compatible with the European Convention on Human Rights. (The Joint Committee on Human Rights did not examine the draft Bill.) A Regulatory Impact Assessment has also appeared, including detailed competition assessments for the bingo and casino sectors.³⁸ When the Scrutiny Committee considered the draft Bill, DCMS provided a "delegated powers memorandum",³⁹ a document intended to identify the provisions for delegated legislation in the Bill, explain the purpose of the delegated powers proposed, describe why the matter is to be dealt with in delegated legislation, and explain the procedure proposed for each power and why it has been chosen; a similar document is expected to accompany the substantive Bill.

The Bill applies to England, Wales and Scotland, but not generally to Northern Ireland, with two exceptions listed in clause 336. The Bill's effect in Scotland will be the same as that in England, with the exception of a number of clauses which are listed in the Explanatory Notes.⁴⁰ Gambling is a reserved matter. However, certain matters relating to premises licensing are devolved. When clauses of the draft Bill relating to Scotland failed to appear, the Scottish Executive launched a consultation of its own on the devolved powers under the Bill (with a closing date of 16 August).⁴¹ The Annex to this document set out what amendments and additions to the Draft Bill as published would be necessary in relation to Scotland.

The Bill repeals the previous legislation governing gambling and collects it in a single place. According to some legal commentators, it also represents a shift in the underlying philosophy:

³⁵ HC Deb 18 October 2004 c658

³⁶ HC Deb 14 October 2004 c425

³⁷ Dept for Culture, Media and Sport, *Gambling Bill: explanatory notes*, October 2004, <http://www.publications.parliament.uk/pa/cm200304/cmbills/163/en/04163x--.htm>

³⁸ Dept for Culture, Media and Sport, *Gambling Bill: regulatory impact assessment*, October 2004, <http://www.culture.gov.uk/NR/rdonlyres/ewcuvix3yyiz5o2wc4ikjarmaz2cmkti7yi5alpfrh25olilcid2kzd77s74svivbl6ymtgithloeevjus5gaggnbc/RIA.pdf>

³⁹ Dept for Culture, Media and Sport, *Draft Gambling bill: memorandum on delegated powers from the Department for Culture, Media and Sport*, February 2004, <http://www.culture.gov.uk/NR/rdonlyres/el5ex5vmyhmm6vkzn4mxwc5ishbyquwagdwktqoxslgnunevjskd4ehofkcct6sp5uplrjcur6wsihw14itbtjyxuqa/delmemo13finaldraft030204.pdf>

⁴⁰ *Explanatory notes*, pp7-8

⁴¹ Scottish Executive, *Devolved powers in the Draft Gambling Bill*, 25 June 2004, <http://www.scotland.gov.uk/Resource/Doc/1097/0002170.pdf>

Now, rather than curtailing the industry so as to allow it only to satisfy existing demand, the regulator is obliged to allow the industry to develop, provided that such growth is not inconsistent with the “key licensing objective[s]”.⁴²

Those licensing objectives, set out in clause 1, are that gambling should be fair, free from crime and organised in a way that protects the vulnerable. In the press notice announcing publication of the Bill, the Culture Secretary was at pains to emphasise that “this is a Bill about new protections, not new casinos” and this emphasis is reflected in the summary of the Bill given in the press notice:

Some of the key protections in the Bill include:

- A new Gambling Commission with new powers to investigate, prosecute, enter premises, seize goods, void bets, levy unlimited fines and remove gambling licenses
- Reducing the opportunities for children to gamble by removing fruit machines from over 6,000 take-aways and mini-cab offices
- A new criminal offence of inviting, permitting or causing a child to gamble
- Compulsory age checks by gambling websites operating from the UK. Mystery shopper surveys by the Commission to back this up
- Powers for local authorities to resolve not to allow new casinos in their area
- Local authorities to license gambling premises, enabling local communities to have their say
- New powers to control or remove entitlements to roulette machines in bookmakers if there is evidence they are driving problem gambling
- Prevalence studies every three years by the Gambling Commission to monitor levels of problem gambling
- An industry funded trust of at least £3m a year to pay for research into the causes of problem gambling and effective treatment methods
- New controls on the way gaming machines operate that will enable the Gambling Commission to control elements such as speed of play, near misses and making information on losses clearer to players
- Controls on the numbers and locations of new, high prize gaming machines so that they will only be allowed in the largest, regional casinos and their numbers will be capped to 1,250 per casino
- Minimum size restrictions on new casinos will mean people won't wake up one day and find that their local shop has become a casino
- Powers to void unfair bets and a tailored approach to regulating betting exchanges will make cheating much harder

⁴² Carl Rohsler and Shannon Yavorsky, “Draft Gambling Bill: overview”, *Entertainment Law Review*, July 2004, p196

- 'Social responsibility' will be an explicit licence condition, with breaches triggering penalties including unlimited fines or even loss of licence

The Gambling Bill will also lift some out of date restrictions on casinos and bingo halls, allowing them greater commercial freedom, providing they act in a socially responsible way. These include:

- Removing the '24 hour' rule that means people must be a member of a casino or bingo club for 24 hours before they enter
- Removing of the permitted areas rule that defines in law strict areas where casinos can be built
- Allowing casinos to advertise in a limited way for this first time⁴³

The following sections of this Paper consider the Bill on a thematic basis, concentrating on those provisions which have attracted most attention so far, either at draft stage or since publication of the substantive Bill. As new themes emerge during the Bill's parliamentary stages, Library Standard Notes may be written as appropriate.

A. The Gambling Commission

Part 2 deals with the establishment and powers of the Gambling Commission as a new, unified regulator for betting, gaming and lotteries in Great Britain. The Bill sets up a three-pronged licensing system, which requires the licensing of operators, persons and premises. The Gambling Commission will be responsible for licensing gambling operators and personnel working in the gambling industry under the provisions of Part 5 (operating licences) and Part 6 (personal licences) of the Bill. Local authorities will license premises. Clause 22 establishes this principle. The Commission will also have enforcement and prosecution powers (clause 26). The Commission will have a range of powers available to it. These, set out in clause 110, range from issuing a warning to the licensee through imposing a financial penalty to suspending or revoking the licence.

The Gambling Commission will be able to issue codes of practice under clause 23. This can include codes concerning how operators can provide facilities in a socially responsible manner (see subsection (2)). Clause 78 makes it a licence condition for all operators that they comply with any relevant social responsibility provision of a code of practice. Guidance and codes of conduct will be a matter for the Commission to issue, not the Secretary of State. The Scrutiny Committee were disappointed that they did not have sight of any draft guidance to aid their deliberations.⁴⁴ DCMS responds that the formal process for preparing them, and consulting upon them cannot take place prior to the Commission's establishment, which must wait until the Bill has Royal Assent (although it

⁴³ Dept for Culture, Media and Sport press notice 131/04, *Government publishes Gambling Bill*, 19 October 2004

⁴⁴ Joint Committee on the Draft Gambling Bill, Report, vol 1, HL 63-I/HC 139-I, 7 April 2004, p17

is hoped that the Gaming Board can begin some preparatory work after Second Reading in the Commons).⁴⁵

In line with the Government's stated policy of locating new bodies outside London and the South East, it is likely that the Commission's headquarters will be based elsewhere in the country.⁴⁶ Press reports have suggested Newcastle upon Tyne as the favoured location. The present staff of the Gaming Board had been expected to transfer to the newly established Commission, but such continuity would be under threat if, as has been reported, Gaming Board staff prove reluctant to relocate from the South East.⁴⁷

B. Local authorities

Responsibility for licensing premises passes to local authorities (clause 2). Their functions will include the licensing of gambling premises (Parts 8 and 9), the issue of permits authorising gaming and gaming machines in other premises (Parts 10, 12 and 13) and the registration of certain lotteries (Part 11). As the Explanatory Notes point out, The definition of "licensing authority" mirrors that in the *Licensing Act 2003*. This will allow licensing authorities in England and Wales to coordinate their functions in relation to alcohol licensing and the licensing of gambling premises.⁴⁸ In its response to the Scrutiny Committee, the Government held up the Scottish example as a model of how local authorities will be thus be able to limit the proliferation of casinos:

The same committee of the licensing authority (in England and Wales) will consider licence applications for gambling and alcohol; and will therefore be alive to issues of community safety and child protection that may well have implications for licence applications under both systems. Licensing Boards in Scotland already consider applications under the existing gambling regime as well as those for alcohol.⁴⁹

Part 8 (premises licences) covers local authorities' functions in more detail and includes a clause (146) allowing for these functions to be delegated to the licensing committees established under the *Licensing Act 2003*. There are, however, several functions which may not be delegated, the most significant being that the local authority has the power to decide not to issue further casino premises licences in its area (clause 157). Local people, provided they fit the definition of "interested parties" in clause 149 (i.e. they live sufficiently close or their business interests might be adversely affected), will be able to object in writing to a premises licence application (clause 152).

⁴⁵ Personal communication, DCMS official, 27 October 2004

⁴⁶ Dept for Culture, Media and Sport press notice 134/04, *New Gambling Commission to be located outside London and the South East*, 20 October 2004

⁴⁷ "Casino regulators gamble against move to the north", *Times*, 18 October 2004

⁴⁸ *Explanatory notes*, p8

C. Gaming machines

Clause 220 allows the Secretary of State to make regulations defining four classes of gaming machine, to be known as Categories A, B, C and D. These definitions have undergone some changes during consultation on the Bill, especially in respect of regional casinos (see the following section). The latest proposals, under which Category B will be subdivided into four, have been summarised as follows:⁵⁰

Category	Maximum stake	Maximum prize	Location(s)	Maximum number per premises
A	Unlimited	Unlimited	Regional casinos	1250
B1	£1	£2,000	All casinos	80 in small casinos; 150 in large casinos
B2	£100 per game; £15 per chip	£500	As above plus premises licensed for betting	4
B3	£1	£500	As above plus Bingo clubs and adult gaming centres	4
B4	£1	£250	As above plus Registered clubs and miners' welfare	3
C	50p	£25	As above plus premises licensed for alcohol	2, but may apply for more to local authority
D	10p (30p when non-exchangeable prizes)	£5 (cash or non-cash)	As above plus family entertainment centres and travelling fairs	

Although the definition of each category of machine is to be achieved through secondary legislation, the Bill itself lays down how many machines of each category may be held on each type of premises licence (clause 163). In response to a recommendation from the Scrutiny Committee,⁵¹ the Government agreed that there would be no Category D gaming machines permit for general, non-gambling premises such as fish and chip shops and minicab offices.⁵² They will still be permitted in premises such as pubs, clubs, tenpin bowling alleys and motorway service stations, as well as in what the Bill calls “family entertainment centres”.⁵³

“Category A” machines, those offering unlimited payouts, will be restricted to “regional casinos” (see following section). The Government argues that this precaution will avoid the unwanted consequences of deregulation seen in Australia. Following relaxation of gambling laws in the 1990s, Australia has seen a proliferation of slot machines with high payouts, nicknamed “pokies”, in pubs and clubs. It has been estimated that Australians spend more on the “pokies” each year (£32bn) than they do on food. Critics claim the results are visible in the country’s 330,000 “problem gamblers” and an “upsurge in the

⁴⁹ Dept for Culture, Media and Sport, *Government response to the First Report of the Joint Committee on the Draft Gambling Bill; session 2003-2004*, Cm 6253, June 2004, p13

⁵⁰ *Regulatory impact assessment*, p23

⁵¹ Joint Committee on the Draft Gambling Bill, Report, vol 1, HL 63-I/HC 139-I, 7 April 2004, p81 (recommendation 61)

⁵² Cm 6253, pp22-3

⁵³ Defined as “premises (other than an adult gaming centre) wholly or mainly used for making gaming machines available for use” (clause 222)

number of bankruptcies, embezzlement and theft cases, as punters fuel their addiction.”⁵⁴ The Government’s view is supported by Prof Peter Collins, Director of the Centre for the Study of Gambling and Commercial Gaming, University of Salford, who is quoted as saying:

Problem gambling is mostly a problem relating to impulse control. If you stick them ["pokies"] in casinos where people have to decide before they go what to do with the kids, how they will travel there, then they will also make a decision about how much to spend. But if they walk past venues housing gambling machines on their way to and from work, they will be tempted to drop in and gamble.⁵⁵

It is perhaps worth recalling here that “impulse control” was the rationale behind the introduction in the 1960s of the 24-hour “cooling off period” between joining a casino and being allowed to place one’s first bet.

While it is technically true that Category D machines will offer unlimited stakes and prizes, the Scrutiny Committee also received evidence referring to the fact that the main benefit to operators of these machines is not their ability to offer life-changing prize values, but to offer a variety of stakes and prizes that will appeal to a range of customers. For example, Mr Tobin Prior, Chief Executive Officer of Kernzer International, commented that “a mix of lower frequency lower payout machines typically predominate on the gaming floors”.⁵⁶

In granting a gaming machine technical operating licence, the Gambling Commission will be able to set standards for the manufacture and installation of such machines. These standards can address speed of play requirements in the manufacture of a machine, provided this does not conflict with any regulations issued by the Secretary of State under clause 224(2)(f). The Commission can impose licence conditions on a machine manufacturing licence, by virtue of clause 90, and this ensures speed of play standards are enforceable via the manufacturing licence.

D. Casinos

The most controversial measures in the Bill – even provoking one tabloid newspaper to launch a “Kill the Bill” campaign⁵⁷ – have turned out to be those concerning casinos. Clause 7 stipulates that there are to be three categories of casino licensed under the Bill: regional, large and small. A regional casino will have the largest floor space

⁵⁴ “Australia counts social cost of deregulation”, *Independent*, 20 October 2004, p17

⁵⁵ “A bit of a gamble?” *BBC News Online*, 19 October 2004, <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/uk/3754590.stm>

⁵⁶ Joint Committee on the Draft Gambling Bill (Regional Casinos), Report, HL 146-I/HC 843-I, 22 July 2004, p14 (Q265)

⁵⁷ “Hundreds of thousands face gambling addiction if Vegas comes to Britain”, *Daily Mail*, 15 October 2004, p19, and similar articles on subsequent days

requirements, followed by large casinos, and then small casinos. The exact specifications of each category will be set by regulations under clause 7, but the Government's current thinking is set out in a table included in its response to the Scrutiny Committee's report on the Draft Bill:⁵⁸

Licence category	Min table gaming area (child-free)	Min additional gambling area (child-free)	Min non-gambling area	Min total customer area	Min no of gaming tables	Categories of gaming machines permitted	Machine/table ratio	Bingo	Betting
Small	500m ²	0	250m ²	750m ²	1	Up to B	2:1 (Cap 80)	N	Y
Large	1000m ²	0	500m ²	1500m ²	1	Up to B	5:1 (Cap 150)	Y	Y
Regional	1000m ²	2500m ²	1500m ²	5000m ²	40	Up to A	25:1 (Cap 1250)	Y	Y

When the Scrutiny Committee reconvened to look specifically at the proposals for regional casinos, the so-called "Las Vegas-style" leisure complexes, they were unhappy with some aspects of these proposals. They argued that the decision to restrict Category A machines to regional casinos would encourage more such casinos to be developed than was desirable. They also contended that the minimum size threshold should be not less than 7,500 sq m, to include a non-gambling area of at least 4,000 sq m:

We believe this recommendation will help to secure the Committee's vision for a limited number of leisure destination casinos, offering a range of entertainment, sports, arts and cultural facilities to which people would be prepared to travel.[...] We believe it would also limit the number of such casinos likely to be developed. Instead of as many as 40-45 leisure destination casinos which we were told in evidence could be developed under the Government's proposals, we think that our revised plans might reduce this to perhaps 20-25, though we do not set a specific target.⁵⁹

In its response, published in September, the Government rejected the recommendation that the non-gambling area in a regional casino be increased to 4000 sq m, on the grounds that this would "add regulatory burden without any increase in protection for the vulnerable".⁶⁰ They likewise rejected the argument that increasing the minimum non-gambling area would necessarily restrict the number of casinos which the market will ultimately sustain:

⁵⁸ Cm 6253, p29

⁵⁹ John Greenway, Chairman of the Joint Committee on the Draft Gambling Bill (Regional Casinos), quoted in press notice announcing publication of Committee's report, 22 July 2004, http://www.parliament.uk/parliamentary_committees/jcdgb_rg/jcdgb_rg_4.cfm

⁶⁰ Dept for Culture, Media and Sport, *Government response to the First Report of the Joint Committee on the Draft Gambling Bill (Regional Casinos)*, Cm 6330, p2

If operators decide of their own volition to provide more than 1500 sq m of non-gambling areas, they are obviously free to do this. The bars, restaurants and other leisure, cultural or sporting facilities that will make up the non-gambling customer areas will be commercial enterprises run for profit. It is likely that at least some will choose to do so in order to provide the most attractive overall customer offer in a competitive leisure environment.

In response to another of the Committee's recommendations, the Government undertook to consider whether casinos should receive a separate classification within the Use Classes Order for planning purposes but they were unpersuaded by the argument on present evidence. However, in response to the further report on regional casinos, the Government stated that they were looking into this issue further and carrying out a review of the classification of casinos within the use classes order.⁶¹ The Government, "as part of its precautionary approach", was not to be moved from its conviction that "Category A" gaming machines – those offering unlimited pay-outs – should be confined to the largest, "regional" casinos.

The numbers of gaming machines permitted in each category of casino are set out in clause 163. Subsection (3) confirms that Category A machines will only be permissible under a casino premises licence for a regional casino and numbers of such machines will be capped at 1250.

According to a press report, UK-based casino operators are unhappy with these measures. Leading casino groups, such as Rank and Gala, reportedly object to the curbs on slot machines with unlimited jackpots, believing that it would give an unfair advantage to foreign competitors planning "Las Vegas-style" resorts, without any benefit in limiting problem gambling:

John Kelly, chairman of Gala, said: "I am extremely disappointed that after three-and-a half years of consultation with the industry, the proposals appear to be unbalanced and very disadvantageous to current operators who have already established their credentials running UK gaming in a responsible manner."

A public statement from Rank was more measured — "The response from DCMS (the Department for Culture, Media and Sport) is more restrictive in certain areas than originally envisaged," it said — but, privately, executives are seething about the outcome.⁶²

The Bill repeals the *Gaming Act 1968*, under which casinos currently operate, and makes access to casinos easier by not replicating certain restrictions in the previous Act. Casinos will no longer operate as clubs, at which only members and their guests can play. Also to disappear are the "24 hour rule", which required that after initially joining a member must

⁶¹ Cm 6330, p7

⁶² "Jackpot curbs hit UK casinos", *Times*, 20 June 2004, p11

wait 24 hours before being allowed to play, and the “permitted areas” regulations for the location of casinos.

There was some disagreement during the Scrutiny Committee’s inquiry as to the potential of the new “regional” casinos for regenerating local economies. The British Amusement Catering Trades Association (BACTA), a trade body, told the Committee that “resort⁶³ and large casinos will be adult gambling environments providing scant impetus for social and tourism-led regeneration”.⁶⁴ The Henley Centre, a marketing consultancy commissioned by BACTA to examine the social and economic impact of the draft Bill, was also sceptical:

Regeneration is fundamentally very difficult to achieve. Though improving the economic situation may go some way towards statistically proving regeneration has been achieved, it often takes some time to change the attitude and perspectives of residents in those areas.⁶⁵

On the other hand, a representative of Business in Sport and Leisure told the Committee that “there is no doubt that resort casinos will contribute to regeneration”.⁶⁶ This is the Government’s position likewise:

The Government’s strategy is based upon the direction of regional casinos to the most suitable areas. We believe that this strategy will, through the choice of location of these major developments, achieve the significant economic development and regeneration benefits through the development of the casino and ancillary activities, the substantial activity associated with the casino and its knock-on demand for goods and services both at the casino and in the wider local economy.⁶⁷

When the Committee suggested that there was a “lack of clarity surrounding regeneration benefits”, the Government responded that regions are better placed than central government to decide where regeneration efforts are best directed and it was for Regional Planning Bodies to identify suitable locations in their regions for such development.⁶⁸

Press reports suggest that, in anticipation of the change in the law, there are currently some 96 planning applications for new casinos before local authorities.⁶⁹ There are suggestions that councils have been offered a share of the profits from such ventures as a condition of granting permission. Caesars Entertainment, based in Las Vegas, reportedly

⁶³ “Resort” casino was the term originally used for what the Bill now calls “regional” casino

⁶⁴ Joint Committee on the Draft Gambling Bill, Report, vol II, HL 63-II/HC 139-II, 7 April 2004, Ev 295 para 2.2b

⁶⁵ Henley Centre, *Economic and social impact of the proposed Gambling Bill*, February 2004, p158

⁶⁶ Joint Committee on the Draft Gambling Bill, Report, vol II, HL 63-II/HC 139-II, 7 April 2004, Ev 106

⁶⁷ Cm 6253, p31

⁶⁸ Cm 6330, p7

⁶⁹ “Government ‘naïve’ to ease gaming laws”, *Times*, 14 October 2004, p10. The article includes a list.

offered Manchester City Council 2% of the casino's "gaming gross revenue" if its application to build on the eastern Sportcity site were successful. The Council declined.⁷⁰ Such arrangements, known as "Section 106 agreements", started as a means of allowing developers to pay for necessary infrastructure development related to the particular development. However, the *Planning and Compulsory Purchase Act 2004* would allow broader use, much more like a development tax. A consultation paper is expected on this subject and then regulation, so the new system is not in place yet.⁷¹ However, the Government does not anticipate there being as many as 96 regional casinos. Lord McIntosh is quoted as saying: "We've made it impossible for there to be a large number of regional casinos. [...] There will be very few for market reasons".⁷² A DCMS spokesman told the press: "Our estimates are between 20 and 40 more casinos".⁷³ The press has also reported a "suggestion being floated in Whitehall" which would "restrict the casinos to five or six zones, instead of allowing them to proliferate in every big city".⁷⁴ The Methodist Church, in its response to the Bill, has argued that the number of regional casinos should be capped at two per region until the impact of such casinos has been assessed.⁷⁵

The Conservatives have reservations about the proposals for regional casinos. Culture spokesman John Whittingdale is reported as saying:

Instead of adopting the cautious approach which the (joint scrutiny) committee recommended, the government's proposals open the door to a large number of super-casinos being built in our town and city centres while existing smaller UK operators are prevented from competing on an equal basis. There is a real danger that, as it stands, this legislation will increase problem gambling as well as doing damage to the UK gaming industry. We, therefore, urge the government to look at the conclusions of the scrutiny committee and think again.⁷⁶

A Liberal Democrat Member raised the issue during Business Questions:

Sue Doughty (Guildford) (LD): The Government are bringing forward the draft [*sic*] Gambling Bill, which changes the emphasis from out of town gambling to town centre gambling and could bring three casinos to the centre of Guildford—none of which are wanted. Will the Government take into account international research into the harm done when children are allowed to play slot machines and the link between that and the problems of adult gambling?

⁷⁰ "Councils offered millions for casinos", *Times*, 19 October 2004, p6

⁷¹ See Library Standard Note SN/SC/1298, *Planning obligations (planning gain or planning contribution)*, 23 June 2004

⁷² "Ministers defend gambling law reforms", *Financial Times*, 20 October 2004, p3

⁷³ "Government 'promised casinos cut in gambling tax'", *Independent*, 25 October 2004, p18

⁷⁴ "Jokers in the Cabinet pack create chaos over casinos", *Times*, 26 October 2004, p1

⁷⁵ Methodist Church briefing, *Gambling on our future?* October 2004, http://www.methodist.org.uk/downloads/ne_gamblingbriefing1004.doc

⁷⁶ "Tories express fears over giant casinos", *Financial Times*, 20 October 2004, p3

Mr. Hain: As the hon. Lady will be aware, the Bill has been subject to extensive pre-legislative scrutiny and the Government have taken account of many of the important points made during that process. The Bill is about properly regulating gambling. Whether any casino—let alone three—comes to Guildford is a matter for the local authority, not for the Leader of the House or even for my right hon. Friend the Secretary of State for Culture, Media and Sport. The hon. Lady should properly take her concerns to the local authority rather than raising them in this place. However, I emphasise the point that the Bill is welcome legislation for regularising and bringing up to date law and procedure that desperately need it.⁷⁷

Clause 307 covers advertising of gambling facilities, including casinos and will allow the Secretary of State, in regulations, to set the detail of how a casino may advertise.

E. Bingo

There was some deregulation of bingo clubs following the Gambling Review Body Report in 2001. The provisions in the Bill further deregulate the industry by abolishing the requirement for bingo clubs to operate as members' clubs and removing the limits on prizes for linked and multiple bingo which holders of standard operating licences will be able to offer. Bingo premises and casinos licensed to provide bingo will also be permitted to operate bingo rollovers, taking money from players' stakes in one bingo game to add to the prize pool in another. This will not be permitted in pubs, clubs or other areas. Clause 86 gives the Secretary of State powers to make regulations attaching conditions to all bingo operating licences.

The Scrutiny Committee, when it saw these provisions in draft, described them as “sensible proposals”.⁷⁸ However, the Committee expressed reservations about the potential consequences of all casinos being able to offer bingo. They considered that the guidance issued by the Gambling Commission to local authorities under (what is now) clause 24 should make it clear that local authorities should be able to take account of potential problem gambling implications of such conversions and the accompanying risks of merging “soft” and “hard” forms of gambling when deciding whether or not to grant a casino premises licence.⁷⁹ In its response the Government announced that it proposes, in the first place, to allow only Large and Regional casinos to provide bingo in addition to their core casino activities. They did not consider that licensing authorities would be best placed to assess the risks involved in mixing different forms of gambling. If monitoring suggests that the mixture of “hard” and “soft” gambling does not create enhanced risks to vulnerable consumers, then the Bill will allow the Government, through secondary legislation, to remove the restrictions in relation to small casinos.⁸⁰

⁷⁷ HC Deb 14 October 2004 cc436-7

⁷⁸ Joint Committee on the Draft Gambling Bill, Report, vol 1, HL 63-I/HC 139-I, p120

⁷⁹ Joint Committee on the Draft Gambling Bill, Report, vol 1, HL 63-I/HC 139-I, p122

⁸⁰ Cm 6253, pp33-4

The Joint Committee also recommended that pubs and clubs should have to apply to the Gambling Commission for an additional bingo licence if in any period of seven days stakes or prizes have totalled £2,000 or more. This suggestion was rejected by the Government on the grounds that £1,000 per week – the level recommended by the Budd Review⁸¹ – represents bingo on a “commercially significant scale” and is therefore the appropriate figure.⁸²

The bingo industry has extended a cautious welcome to the Bill, saying that while some of the representations it made to the Government have been reflected in the Bill, most remain dependent upon further conditions yet to be specified or subject to new regulations to be introduced by the Secretary of State. Sir Peter Fry, Chairman of the Bingo Association, commented:

To give the bingo industry a stronger base to meet new competition, particularly from overseas operators, we need to ensure that the Bill grants new freedoms for the sector and does not simultaneously erode existing ones. We shall be seeking further clarification of the unspecified conditions and lobbying to ensure that appropriate questions about such a significant piece of legislation are raised.⁸³

F. Lotteries

Part 11 of the Bill covers lotteries. Although the Bill will have the effect of repealing the present legislation, the *Lotteries and Amusements Act 1976*, many of the same principles are retained in the Bill. The National Lottery does not fall within the scope of the Bill. There is to be a specific offence of promoting lotteries without a licence (clause 242), unless the lottery falls within one of a limited number of exempt categories. These exemptions (set out in Schedule 9) include incidental non-commercial lotteries and private lotteries. Under clause 91, lottery operating licences may only be issued to non-commercial societies, local authorities or “external lottery managers” (the latter term being defined in clause 241). However, a non-commercial society will only require a licence if the lottery exceeds certain thresholds (although it will have to register with its local authority – clause 246).

The Gambling Review report recommended that financial limits on lotteries be removed. The Scrutiny Committee saw value in this proposal and suggested that it could be achieved progressively over time.⁸⁴ In response, the Government has included a delegated power in the Bill - at clause 92 - for the Secretary of State to vary the amounts and percentages set out in the clause. As the clause stands, at least 20% of the proceeds of any

⁸¹ *Gambling Review report*, p147 para 25.18

⁸² Cm 6253, p34

⁸³ Bingo Association press release, *No full house for bingo industry*, 19 October 2004

⁸⁴ Joint Committee on the Draft Gambling Bill, Report, vol I, HL 63-I/HC 139-I, 7 April 2004, p162 (recommendation 136)

lottery promoted under the licence must go to good causes, i.e. the purpose for which, in the case of a non-commercial society, it is conducted, or in the case of a local authority, for which it has the power to incur expenditure. Under any lottery operating licence, the proceeds of any single lottery must be limited to £2 million, and the proceeds of all lotteries in that year are restricted to an upper limit of £10 million. There is an upper limit on the size of a prize in a licensed lottery of £25,000, or 10% of the proceeds if this figure is greater.

A contributor to the GamCare⁸⁵ website was disappointed by the lottery provisions:

While there has been a slight tightening of the prize competition rules which is welcome, there has been no move to increase the maximum proceeds of a lottery or the maximum prize limit. It seems strange to me that you can have a purely materialistic entertainment device such as a fruit machine offering a million pound prize while society lotteries are limited to a top prize of £25,000 or 10% of the proceeds of the lottery up to a maximum of £200,000. This capping of the prizes means that society lotteries are not able to compete with the National Lottery or other forms of gaming amusements. Considering that lotteries are by law socially responsible entities and have to give at least 20% to charity, I do not understand why they are not being encouraged.⁸⁶

G. Online gambling

In a DCMS survey in 2004, 1% of adults said that they had gambled on the Internet in the previous 12 months.⁸⁷ Research reported in the *Financial Times* places the figure much higher: a survey by Nielsen/NetRatings found that “almost 4.2m Britons visited a gambling or sweepstakes website last month”.⁸⁸ Under current law, such gambling can only take place on websites hosted outside the UK. One of the major recommendations of the Budd Report was that online gambling should be permitted in the UK.⁸⁹ A DCMS paper, published in April 2003, set out the Government’s proposals for regulating a legalised onshore remote gambling industry, including such issues as the role of the Gambling Commission, licensing, player protection, safeguards for the young and vulnerable, player identification and verification standards, money laundering and payment methods, systems and software, territoriality, taxation, advertising and remote gambling in non-licensed public premises.⁹⁰ These proposals have attractive economic

⁸⁵ GamCare, a registered charity, describes itself as “the leading authority on the provision of information, advice and practical help in addressing the social impact of gambling”

⁸⁶ GamCare news, “Gambling law changes to be unveiled”, <http://www.gamcare.org.uk/shownews.php/000112.html>

⁸⁷ *Regulatory impact assessment*, p60

⁸⁸ “Internet betting move forecast to tempt bookmakers back onshore”, *Financial Times*, 20 October 2004, p3

⁸⁹ *Gambling Review report*, pp169-70 (paras 30.20 to 30.43)

⁹⁰ Dept for Culture, Media and Sport, *The future regulation of remote gambling: a DCMS position paper*, April 2003

benefits for UK operators. The *Financial Times* reported that Ladbrokes, the UK's largest bookmaker, would consider moving its online casino operations back to the UK if the Bill becomes law.⁹¹

Clauses 63 and 84 of the Bill create a new class of "remote operating licence", allowing the website (or any "remote gambling equipment") to be based in Great Britain and licensed by the Gambling Commission. The term "remote gambling" is defined with obvious latitude to allow for present and future communications developments (clause 4). Effective regulation is seen as fundamental to securing confidence in this change to the law, as the Department's position paper stresses:

39. For various reasons more questions may be asked of the new online gaming sector than any other part of the gambling industry. It is untested, it lacks many of the physical controls available to premises based gambling, it facilitates unsupervised gambling, and it will be more widely available than any other gambling product. This underlines why the Government attaches so much importance to regulating it effectively.

40. Detailed measures will be for the Gambling Commission to finalise in co-ordination with operators and experts in the field, but this aspect of online gambling is one on which the public and Parliament will want some reassurance that the risks can be properly managed. While there can be no absolute guarantees, it will be essential to put in place a package of viable measures that will minimise the downside of any reforms.⁹²

The Scrutiny Committee recommended that the new Commission adopt codes of practice requiring remote operators to "take all possible steps to prevent under-age access".⁹³ The Government has proposed various means to achieve this, among them compulsory age checks and "mystery shopper surveys". Legislatively, the Bill would effect this by two routes. Clause 84 allows the Commission to set standards (rather than guidance) concerning remote gambling processes and systems, and these standards can be the subject of independent testing. However, the condition-making powers in clause 71 will be also deployed to attach conditions to licences which require on-line operators to provide facilities in accordance with Commission requirements. The Commission will be able to review licences, and carry out its own inspections and checks, to ensure that conditions are being complied with.

⁹¹ "Internet betting move forecast to tempt bookmakers back onshore", *Financial Times*, 20 October 2004, p3

⁹² Dept for Culture, Media and Sport, *The future regulation of remote gambling: a DCMS position paper*, April 2003

⁹³ Joint Committee on the Draft Gambling Bill, Report, vol I, HL 63-I/HC 139-I, 7 April 2004, p150 (recommendation 121)

H. Betting exchanges

Betting exchanges, which have recently become a lucrative part of the gambling industry, enable punters to bet directly with each other, rather than with bookmakers. The operator matches opposite bets and takes a commission from the winner. Such operators are defined as “betting intermediaries” by clause 13. A “betting intermediary operating licence” is to be one of the ten kinds of operating licence created by clause 61. The detail here has undergone refinement during consultation. The Scrutiny Committee recommended that using betting exchanges in a non-recreational fashion should be regulated.⁹⁴ The Government, in its response, confirmed that persons using betting exchanges in the course of business would require an operating licence.⁹⁵ The Committee also took the view that betting exchanges should be required to register users who “lay” (i.e. offer) bets above a specified level.⁹⁶ The Government accepted this recommendation, but proposed instead that all exchange users be registered.⁹⁷

These proposed restrictions on betting exchanges do not appear on the face of the Bill. Clause 61 creates a specific kind of licence but, unlike some other kinds of licence (clause 84 *et seq*), the betting intermediary operating licence does not have a free-standing clause attaching particular statutory conditions to this type of operating licence. Clause 75(9) gives express power for licence conditions to be attached, to any kind of operating licence, about establishing and recording the identity of users or restricting facilities to registered users. These can be set as Commission imposed licence conditions, under clause 71, or conditions imposed by the Secretary of State under clause 74. At present DCMS envisage the Commission exercising this power, in relation to betting exchange operating licences, and imposing registration requirements using clauses 71 and 75(9).⁹⁸

I. Protection of children

A survey by the children’s charity NCH found that children as young as 11 were potentially able to set up accounts and gamble online. According to NCH, only seven out of 37 gambling sites tested stopped a 16-year-old registering her details online. The girl was able to lie successfully about her age and register her details on websites using her Solo card, a debit card where each transaction is authorised before being completed. She was then free to gamble using interactive TV and telephone betting using the same account she had set up online, all this despite such websites featuring systems designed to verify people’s ages and block under-18s from setting up gambling accounts. Since Solo

⁹⁴ Joint Committee on the Draft Gambling Bill, Report, vol I, HL 63-I/HC 139-I, 7 April 2004, pp138-9 (recommendation 108)

⁹⁵ Cm 6253 p38

⁹⁶ Joint Committee on the Draft Gambling Bill, Report, vol I, HL 63-I/HC 139-I, 7 April 2004, p133 (recommendation 107)

⁹⁷ Cm 6253 p37

⁹⁸ Personal communication, DCMS official, 27 October 2004

cards can be issued to children as young as 11, NCH expressed concern that young children could get hooked on gambling.⁹⁹

Part 4 of the Bill creates a number of offences which have the effect of establishing the extent to which children and young people (the terms are defined in clause 42) may become involved in gambling, whether in terms of participation in the gambling, entry into gambling premises, or employment in relation to the provision of such facilities. There are new criminal offences of inviting children and young persons to gamble (clause 43) and inviting them to enter gambling premises (clause 44). It is also to be an offence for young persons (those aged 16 and 17) to gamble. Children (those not yet aged 16) do not commit an offence if they gamble. Clause 56 gives the Secretary of State power by order to create an offence of inviting, causing or permitting a child or young person below a specified age to use a category D gaming machine (one with the lowest maximum stake and prize). There will be a further protection for children afforded by the fact that they will no longer encounter gaming machines in premises such as fish and chip shops (see above, section C).

Critics of the Bill have drawn attention to a supposed loophole in the Bill. Clause 79 stipulates that licensed betting firms would have to “return any money paid” once they realise that it came from someone under 18 (subsection 1). However, under subsection (3)(b) these firms cannot demand or require the return of a “prize paid before the licensee becomes aware that the participant is a child or young person”. A newspaper reported the criticism, together with DCMS’s defence of the provision:

Don Horrocks, of the Evangelical Alliance, one of a number of faith groups opposing the Bill, said: “This loophole means that under-age gamblers will flood in. It’s simply stupid. It’s yet another example of an internal contradiction in the Gambling Bill.” [...] Officials said yesterday that the measure was designed to be an “incentive for operators to stop children at source”. They pointed out that the proposed legislation would also introduce unlimited fines on companies taking bets from children.¹⁰⁰

J. Social effects

The Henley Centre report concluded that while big casinos and remote gambling services - through the internet, digital TV and mobile phones - would prosper under the proposals, many smaller businesses would be frozen out. In other negative side-effects, the report forecast that the plans would lead to an increase in the number of people addicted to gambling from 370,000 to 700,000 in 2010. Without the bill the increase would be much shallower, it said. The Henley Centre also claimed that while there would be “no

⁹⁹ Tim Richardson, “11 year-old kids free to gamble online”, *The Register*, 27 July 2004, http://www.theregister.co.uk/2004/07/27/kids_gamble_nch/

¹⁰⁰ “Gambling loophole ‘would lure children into betting’”, *Times*, 23 October 2004, p13

significant employment gains", the rule change would deliver the Exchequer an extra £400m a year in taxes by 2010.¹⁰¹

The Joint Committee in its consideration of the Draft Bill gave much thought to the issue of problem gambling; an entire chapter of their report is devoted to the matter.¹⁰² In response to the Committee's expressed fear that the draft Bill would lead to an increase in problem gambling, the Government said that it did not accept that these claims were supported by a "sound analysis of the evidence":

The Henley Centre report forecast that the number of problem gamblers in Britain would rise to about 500,000 by 2010 without legislation, and that the proposed Gambling Bill would see this figure increase to about 700,000. An earlier report by NERA suggested an even higher figure.¹⁰³ Yet, neither report produced new evidence about the underlying causes of problem gambling. Nor, critically, did they take any account at all of the important new safeguards across the entire gambling industry that the Bill will introduce and enable the Gambling Commission both to enforce and where necessary strengthen. Nor could either study have taken account of all of the new protective measures proposed in this response.¹⁰⁴

Clause 116 provides for a reserve power to be exercised if it proved necessary to raise additional funding for tackling problem gambling. The contribution of the Responsibility in Gambling Trust, a voluntary body set up by the industry, is discussed in section V below. The Explanatory Notes to the Bill outline the clause's intention:

302. This clause provides the Secretary of State with reserve powers to impose an annual financial levy on the holders of all operating licences. The levy would be paid to the Commission, and treated as if it were part of the annual fee. This means that a licence would be revocable if the levy was not paid.

303. The money raised by a levy would be used for alleviating problem gambling. Thus, the Commission could spend it on purposes or projects related to gambling addiction or other forms of harm or exploitation associated with gambling. The Treasury and the Secretary of State must consent to the Commission's expenditure of the levy. Such projects need not be undertaken by the Commission itself, but the Commission could fund others (including other public sector bodies) who are undertaking projects connected with problem gambling.

¹⁰¹ Henley Centre, *Economic and social impact of the proposed Gambling Bill*, February 2004

¹⁰² Chapter 6, "Social implications of the draft bill", Joint Committee on the Draft Gambling Bill, Report, vol 1, HL 63-I/HC 139-I, 7 April 2004, pp57-82. Recommendations 39 to 61 are relevant to problem gambling.

¹⁰³ A reference to: National Economic Research Associates, *Gambling liberalisation and problem gambling*, November 2003

¹⁰⁴ Cm 6253, p16

304. The clause sets out the matters relating to the levy which must be set out in the regulations. A number of alternative methods for calculating the levy are listed, but none are mandatory. Before making these regulations imposing a levy, the Secretary of State must consult the Commission.¹⁰⁵

The Bill also empowers the new Gambling Commission to issue codes of practice about the manner in which gambling services are provided (clause 23). These would become part of the conditions of operating licences. The requirement that gambling operators demonstrate compliance with a code of social responsibility would be one means by which the Gambling Commission would be able to address the potential downsides of gambling. The Government has indicated that such codes might include the provision of information to customers about problem gambling and advice about where to go for help.¹⁰⁶ In evidence to the Committee the Methodist Church recommended that a reference to social responsibility codes should be included in the Bill itself.¹⁰⁷

The Scrutiny Committee recommended that the Government should fund prevalence studies at five-yearly intervals to monitor any increase in problem gambling.¹⁰⁸ In its response the Government went further than expected by announcing gambling prevalence studies every *two to three years* as a basis for evidence-based regulation by the new Gambling Commission.¹⁰⁹

Much criticism of the Bill so far has come from those who foresee the social downside to allowing greater opportunities for gambling. The international Catholic weekly *The Tablet* commented:

Addictive gambling is a well-known mental illness, akin to alcoholism in the way it undermines close relationships and akin to drugs in the way its victims feel driven to steal to feed their habit. [...] Gambling attracts the poor and powerless at least as much as the rich and powerful, because it offers them the false premise of a quick escape. It is to that degree a measure of an unjust society. Their susceptibility makes them vulnerable. The Government should not allow that vulnerability to be exploited. This is an unnecessary bill likely to do more harm than good.¹¹⁰

The Salvation Army

accepts that Britain's gambling laws are out of date. The world has moved on, the gambling industry has moved on, and the law needs to catch up quickly. But

¹⁰⁵ *Explanatory notes*, p54

¹⁰⁶ *A safe bet for success – modernising Britain's gambling laws* Cm 5397, March 2002, para 7.4

¹⁰⁷ Joint Committee on the Draft Gambling Bill, Report, vol II, HL 63-II/HC 139-II, 7 April 2004, Ev 77, para 3.3.2

¹⁰⁸ Joint Committee on the Draft Gambling Bill, Report, vol I, HL 63-I/HC 139-I, 7 April 2004, p61 (recommendation 41)

¹⁰⁹ DCMS, *Government response to the First Report of the Joint Committee on the Draft Gambling Bill; session 2003-2004*, Cm 6253, June 2004, p17

¹¹⁰ "No need for a casino culture", *The Tablet*, 23 October 2004, p3

'modernisation' of the law has become 'liberalisation' - and that is why people are worried.¹¹¹

However, GamCare takes a more sanguine view. Its director, Peter Cox, said:

[GamCare] believes that provided access to the new big prize machines is appropriately limited and regulated, the number of problem and pathological gamblers in the population need not increase.¹¹²

K. Financial effects

The Bill does not contain any proposals relating to tax. In his evidence to the Scrutiny Committee, Lord McIntosh of Haringey, Parliamentary Under-Secretary of State, DCMS, said that he saw gambling reform

as having three aspects: one is regulation, [...] the second is the tax regime; and the third is the location regime. You will not fully understand the gambling reform unless you have all those three legs of the stool in place.¹¹³

The gambling industry complains that, without all three legs in place, they cannot know how sturdy the stool will be. For example, the British Casino Association told the Committee that, “nobody can assess the future viability of a casino until the future tax and duty regime has been resolved”.¹¹⁴

Although stories have appeared in the press speculating about the possible tax yield from the introduction of regional casinos and suggesting that overseas investors may have been promised a favourable tax regime,¹¹⁵ the Government has made no statement about gaming tax in the context of the Bill. The Treasury has committed itself merely to looking at the issue:

5.111 Following consultation, the Government has decided to defer any reform of Amusement Machine Licence Duty (AMLDD), and any further major reform of other gambling taxes, to align with the Gambling Bill. Examination of the future of gambling taxation will include:

- consideration of whether a gross profits tax structure for the lottery would be more efficient and provide a better basis for generating money for the

¹¹¹ Salvation Army press notice, *Gambling: the argument against the proliferation of mega-casinos*, 19 October 2004

¹¹² Dept for Culture, Media and Sport press notice 131/04, *Government publishes Gambling Bill*, 19 October 2004

¹¹³ Joint Committee on the Draft Gambling Bill, Report, vol II, HL 63-II/HC 139-II, 7 April 2004, Ev 11

¹¹⁴ Joint Committee on the Draft Gambling Bill, Report, vol II, HL 63-II/HC 139-II, 7 April 2004, Ev 140 para 3. See also Library Standard Note SN/BT/3233, *Casino taxation*, 26 October 2004

¹¹⁵ E.g. “Why the Treasury can’t bet on a tax windfall”, *Times*, 25 October 2004, p2; “Secret offer to cut casino tax angers Chancellor”, *Times*, 25 October 2004, p1

good causes while protecting tax revenues. Furthermore, the Government intends that the same principles that apply to the existing National Lottery would apply to any Olympic themed lottery games;

- development of the Government’s work with the machines sector, following this year’s consultation on AMLD, and in the context of Gambling Bill proposals;
- re-examination of the tax treatment of Fixed Odds Betting Terminals (FOBTs), in light of the potential competition and machine definition issues they raise in a developing UK gambling industry;
- continuing work with the industry to settle a fair and equitable tax treatment for betting exchanges and their clients; and
- consideration of the appropriate tax treatment of hedged bets.¹¹⁶

The Regulatory Impact Assessment for the Bill, produced by DCMS, goes a little further:

Higher revenue generation - With the removal of the demand test and the system of restricting casinos to “permitted areas” the number of casinos seems likely to increase from the current figure of 131, many from new builds. There is likely to be a move towards a higher proportion of large casinos offering a wider range of gambling activities. Some will offer a larger range of gaming machines with jackpot gaming machines with unlimited stakes and prizes. There will be the ability to link machines offering large prizes. This should increase casino turnover and therefore (all being equal) tax/duty revenue.¹¹⁷

V Problem gambling

“Problem gambling” has been defined as “gambling to a degree that compromises, disrupts or damages family, personal or recreational pursuits”.¹¹⁸ The term is used to refer to a range of “addictive”¹¹⁹ or potentially addictive behaviour. A recent report makes one basic distinction:

It is useful to identify two levels of problem gambling: that where the severity and character of the gambling problem makes it plausible to speak of addiction by analogy with drug, alcohol and other addictions; and that where people simply gamble more than they intend and can afford. The latter type of problem is not only less severe; it may or may not indicate that the subject is in the early stages of gambling addiction. In particular, excessive gambling may be due to non-

¹¹⁶ HM Treasury, *Budget 2004: economic and fiscal strategy report*, chapter 5 (“Building a fairer society”), p124

¹¹⁷ *Regulatory impact assessment*, p46

¹¹⁸ Kerry Sproston, Bob Erens and Jim Orford, *Gambling behaviour in Britain: results from the British Gambling Prevalence Survey*, London: National Centre for Social Research, 2000, p41

¹¹⁹ Here the term “addictive” is used in the popular rather than clinical sense. Annex G of the Budd Report develops this distinction.

pathological factors such as inadequate understanding of how gambling works and poor money management skills.¹²⁰

Other commentators prefer to speak of a “gambling continuum”, with gambling as an enjoyable pastime at one end and, at the other end, pathological addiction.¹²¹

Research suggests that not all gambling forms are equally likely to lead to excess: those which allow for continuous play and have relatively short time-spans between staking and outcome (e.g. casino games, fruit machines, scratchcards and horse/dog racing) are particularly likely to lead to excess.¹²²

The British Gambling Prevalence Survey, conducted in autumn 1999, suggested that:

- Between 275,000 and 370,000 people aged 16 or over in Britain were problem gamblers.
- The proportion of problem gamblers amongst adolescents could be more than three times that of adults: 1.7% for 16-24 year olds; 0.5% for 25 plus.
- Problem gambling prevalence rates are higher for males than females (0.9% compared to 0.3%)
- The study also showed that the group most vulnerable to developing a gambling problem is 16-24 year old males, with 4% of those who have gambled *in the last year* developing a gambling problem. The same age group for women also had the largest prevalence of all age groups at 1%.
- The prevalence of problem gambling in Britain (0.6%-0.8%) appears to be relatively low compared with other countries which have used similar screening methods: Australia (2.3%), USA (1.1%), NZ (1.2%) and Spain (1.4%).
- Problem gambling has been statistically associated with the following factors: being male, reporting that a parent has/had been a problem gambler and being in the lowest income category. Additionally being separated or divorced was significantly associated with becoming a problem gambler.¹²³

Problem gambling was discussed at several points in the Budd Report, particularly chapters 17 and 32, and Annex G. Budd cites a number of potential negative consequences of gambling, including: job loss, absenteeism, poor work/study performance, stress, depression and anxiety, suicide, poor health, financial hardship, debts, asset losses, exposure to loan sharks, bankruptcy, resorting to theft, imprisonment,

¹²⁰ *Towards a strategy for addressing problem gambling in the UK: a report to the Gambling Industry Charitable Trust*, March 2003, p32,
http://www.rigt.org.uk/downloads/towards_a_strategy_report_chapter_1.pdf

¹²¹ See the Australian material reproduced in: Joint Committee on the Draft Gambling Bill, Report, vol 1, HL 63-I/HC 139-I, 7 April 2004, p57 fig 2

¹²² Michael B Walker, *The psychology of gambling*, 1992

¹²³ Kerry Sproston, Bob Erens and Jim Orford, *Gambling behaviour in Britain: results from the British Gambling Prevalence Survey*, London: National Centre for Social Research, 2000, p.iii

neglect of family, impacts on others, relationship breakdown, domestic or other violence, burdens on charities and burdens on the public purse.¹²⁴ Budd also acknowledges the link between deregulation of gambling laws and problem gambling:

17.7 A central question for us has been whether increasing the availability of gambling will lead to an increase in the prevalence of problem gambling. The weight of evidence suggests that it will do so. We therefore propose that deregulation proceeds cautiously and that it is accompanied by increased social responsibility by those who provide it.

The report justifies this caution in the light of the evidence (albeit relatively little) available:

17.62 Researchers and clinicians have long argued that the increased availability of gambling leads to increases in the prevalence of gambling problems. It is generally acknowledged in submissions to us that widening the availability of gambling may lead to increasing prevalence of problem gambling. Although some submissions claim that it is possible to increase the availability of gambling without increasing problem gambling, the weight of the evidence is the other way. Sue Fisher's studies^[125] of adolescent gambling show higher rates of problem gambling in seaside towns, where access to commercial gambling is far easier for children. However, correlation does not establish causation, and more sophisticated research is required to tease out the relationships and allow stronger causal inferences to be made.

17.63 There are a number of North American jurisdictions where repeat surveys of problem gambling have been carried out. Some of these comparative studies suggest a linkage between increased availability of gambling and the prevalence of problem gambling. A small number of studies have not found an increase in problem gambling following increasing availability, and in some cases prevalence has actually decreased. However, where this has been observed there are typically strong systems in place to provide problem gambling services. This has implications for the role which treatment services might play in limiting problem gambling and we refer to it again in chapter 32.

The Budd Report makes clear that the preceding paragraph relies on the contents (particularly page 108) of the New Zealand Gaming Survey:¹²⁶ *Gambling and problem gambling in the community*:

¹²⁴ *Gambling Review Report*, p94 para 17.70

¹²⁵ A reference to *Gambling and problem gambling among young people in England and Wales*, a report commissioned by the Office of the National Lottery from Dr Susan E. Fisher, Centre for Research into the Social Impact of Gambling, University of Plymouth, February 1998

¹²⁶ Max Wenden Abbott and Rachel A. Volberg, *Gambling and problem gambling in the community: an international overview and critique*, Report Number One of the New Zealand Gaming Survey, December 1999

http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Our-Research-and-Reports-New-Zealand-Gaming-Survey?OpenDocument

The results of replication prevalence surveys completed in North America do suggest that the prevalence of gambling problems increases as a consequence of the introduction of casino-style gambling. In Minnesota and Iowa, the prevalence of gambling problems increased significantly over a four-year and six-year period, respectively (Emerson & Laudergeran, 1996; Volberg, 1995). The increase in the prevalence of problem gambling in Minnesota followed a dramatic increase in the availability of legal gambling around the state, including a lottery, pulltabs, high-stakes bingo, and full-scale casinos run by nearly 20 American Indian tribes. The increase in the prevalence of problem gambling in Iowa followed the introduction of riverboat casinos, Native American casinos and slot machines at racetracks. However, a significant increase in the lifetime prevalence of problem and probable pathological gambling in New York between 1986 and 1996 appeared to be related to increases in the availability of legal gambling regionally rather than to specific introductions within the state (Volberg, 1996a).

The recent National Opinion Research Center (NORC) survey examined casino proximity in relation to problem and probable pathological gambling prevalence. It was found that the location of a casino within 50 miles (versus 50 to 250 miles) is associated with about double the prevalence (National Opinion Research Center, 1999b). Lower prevalence rates found for country areas in some of the Australian state surveys could also, at least in part, reflect gambling availability differences.

Chapter 32 of the Budd Report repeats the Gambling Review Body's acknowledgement that implementation of their recommendations (i.e. via the *Gambling Bill*) will probably affect the prevalence of problem gambling:

32.21 Although we anticipate a modest rise in problem gambling as a result of the implementation of our recommendations, we cannot be sure. Consequently we recommend that research is carried out to monitor the effect on problem gambling of changes in regulation.

In noting the need for further research, the Gambling Review Body referred to a recommendation in a report produced by the Royal Commission on Gambling in July 1978 (chairman: Lord Rothschild) – the previous review of gambling legislation:

32.2 It is estimated that there are between 275,000 and 370,000 problem gamblers in the UK. The recommendations in this report will increase access to gambling, at least for adults. We accept that this is likely to lead to an increase in problem gambling, even though many of our recommendations are framed with the intention of keeping such an increase to the minimum.

32.3 Accordingly we need to face the questions, first, of whether current facilities are adequate to deal with the current level of problem gambling, and second, whether facilities are available, or could be made available, to deal with any possible increase.

32.4 We note that the Rothschild Commission's first recommendation was that the "Government should establish a Gambling Research Unit to monitor the incidence, sociology and psychology of gambling". As this recommendation was not acted upon, our task in this respect has been made that much more difficult. In chapter 17 we point out how little research has been conducted in the UK on the nature of problem gambling. We have also had to rely on our own researches to establish what measures exist in the UK to limit and treat problem gambling, and we cannot be confident that we have uncovered the entire picture. Nevertheless, as detailed below, we strongly believe that current provision is woefully inadequate.

The Government accepted the need for further research into problem gambling, along the lines recommended by the Gambling Review Body.¹²⁷

The Budd Report recommended that an independent Trust, should be set up and provided with voluntary funding of £3 million per annum by the gambling industry, to research and limit problem gambling.¹²⁸ This recommendation was implemented in January 2002. Originally known as the Gambling Industry Charitable Trust, the Responsibility in Gambling Trust (as it is now known) was established on a voluntary basis by the gambling industry with the following mission statement: "The aim of the Trust is to make it less likely that people will become problem gamblers and more likely that those who do will be able to seek and to secure effective help." It has a majority of trustees, including its chairman, who are independent of the gambling industry. By January 2004, according to its website, the Trust had a number of achievements to its credit – it had:

- agreed to pay grants in excess of £1.45m, to organisations providing support for problem gamblers, and public education about the risks of gambling
- commissioned and received a report from independent consultants on the options for its future strategy
- adopted a strategy for its future activities
- raised cash and commitments from the industry in excess of £2m
- agreed to commission research into the implications and opportunities of on-line counselling
- appointed an independent Chairman.¹²⁹

¹²⁷ *A safe bet for success – modernising Britain's gambling laws* Cm 5397, March 2002, p32 (para 7.14)

¹²⁸ *Gambling Review Report*, p176 para 32.29

¹²⁹ <http://www.gict.org.uk/about.asp>

A parliamentary answer gave the Government's view of the Trust's funding requirements:

Jim Knight: To ask the Secretary of State for Culture, Media and Sport what assessment her Department has made of the size of fund the proposed Gambling Industry Charitable Trust will need to address problems of gambling addiction over the next 10 years; and if she will make a statement. [148470]

Mr. Caborn: We have accepted the advice of the Gambling Review Body that the gambling industry should in the first place be asked to provide £3 million a year to fund the Trust's work. The size of this contribution will need to be kept under review in the light of experience and the Trust's own views; and if it proves necessary to ask the industry to consider a larger contribution then we will do so.¹³⁰

According to its most recent Newsletter (May 2004), the Trust has received pledges from the gambling industry totalling £2.4m for the current financial year.¹³¹

There is nothing in the Bill relating to the Responsibility in Gambling Trust; the industry has established the Trust of its own volition. The Bill would create levy powers (clause 116) to be taken in the event that the Secretary of State wishes to impose mandatory requirements on operators, rather than the existing voluntary arrangements.

One of the first actions of the Responsibility in Gambling Trust was to commission a report on the Trust's future strategy from a team of independent consultants led by Professor Peter Collins of Salford University. This is a very substantial document, which includes a survey of relevant research evidence. Its aims are:

To review the evidence internationally and locally and to make recommendations about

- How (in general) up to £3m can most fruitfully be spent to reduce the harm caused by excessive gambling and
- How (in particular) the Trust should be helping to:
 - Understand problem gambling (Research)
 - Prevent problem gambling (Education)
 - Support problem gamblers and those close to them (Counselling and Treatment)
 - Manage the appointment and work of service providers.¹³²

¹³⁰ HC Deb 19 January 2004 c998W

¹³¹ http://www.rigt.org.uk/newsletters_10.asp

¹³² *Towards a strategy for addressing problem gambling in the UK: a report to the Gambling Industry Charitable Trust*, March 2003. The report is available on the Trust's website. There is an executive summary at http://www.rigt.org.uk/downloads/towards_a_strategy_report_executive_summary.pdf

The Budd Report recommended that “increased funding should be made available by the NHS for the treatment of problem gambling; that problem gambling should be recognised as a health problem by the Department of Health; and that Health Authorities should develop strategies for dealing with problem gambling.”¹³³ In its response to the Budd Report the Government stated that it agreed with the Review Body’s view that “NHS mental health services should be prepared to offer assessment and treatment to those with severe gambling problems.”¹³⁴ Likewise, the Scrutiny Committee recommended that “the Government should accord greater priority and resources to problem gambling and that problem gambling should be recognised as a public health issue.”¹³⁵

In a Written Question Sue Doughty MP asked about the assessment the Government has made of the best method of meeting the health needs of problem gamblers. Rosie Winterton, Minister of State at the Department of Health, replied:

The national development group for specialised mental health services will review treatment of problem gambling to provide guidance that will help groups of primary care trusts to commission appropriate services and support the development of services in those areas where there are significant problems.¹³⁶

The Responsibility in Gambling Trust expects to work closely with the National Development Group on this issue:

3.3. The Trust’s published strategy states that it would not expect to pay for any support which requires the prescription of drugs, nor the involvement of persons with medical qualifications. This is because the Trust considers that this is properly the domain of the NHS. Nevertheless there is scope for ensuring that there is a smooth interface between the provision of NHS public health screening at one end and NHS treatment at the other and the sorts of advice and counselling provided by Gamcare and others with funding from the Trust. As primary health trusts develop their own strategies it will become increasingly important to establish clear boundaries between support offered by the Trust and the NHS, and an effective interface between the two. We would therefore welcome discussions with the National Development Group for this purpose as well.¹³⁷

A recent Guardian/ICM poll found that 59% of the public want the Government to go further than the voluntary levy arrangement and provide free NHS treatment for those with a chronic gambling habit in the same way that smokers and problem drinkers are given help by the state.¹³⁸

¹³³ *Gambling Review Report*, p176 para 32.26

¹³⁴ *A safe bet for success – modernising Britain’s gambling laws* Cm 5397, March 2002, para 7.16

¹³⁵ Joint Committee on the Draft Gambling Bill, Report, vol 1, HL 63-I/HC 139-I, 7 April 2004, p71

¹³⁶ HC Deb 8 March 2004 c1330W

¹³⁷ http://www.rigt.org.uk/reports_choosing_health.asp

¹³⁸ “Public rejects Blair’s casino plans”, *Guardian*, 26 October 2004, p1