
LEGISLATION/REPORTS

The Gambling Act 2005: Regulatory Containmentment and Market Control

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The Act marks a fundamental shift from legislative to market control of gambling. While plans for Las Vegas style casinos and internet gambling sites in Britain have suffered setbacks, restrictions on the availability, advertising and stimulation of demand for gambling, enshrined in the Gaming Act 1968, have been abandoned. In their place, a new regulatory body, the Gambling Commission, has been established to take primary responsibility for ensuring that three licensing objectives are promoted. These objectives are the prevention of crime and disorder, the conduct of gambling in a fair and open way and the protection of children and the vulnerable. The Commission has been given strong and wide ranging powers to regulate gambling, but can the safeguards proposed meet the challenge presented by a gambling industry released from restraints?

INTRODUCTION

The Gambling Act 2005 is the second phase in the Government's major overhaul of what may be termed 'leisure legislation'. It follows the Licensing Act 2003 which introduced a new regime for alcohol, dancing and other entertainments.¹ The Acts share many features, most notably a dramatic shift in policy from regulatory containmentment to market-led expansion.

The gambling industry in Britain is already substantial, with the latest figures putting the turnover for gambling for 2003–04 at £53 billion.² Additionally, remote gambling is extensive and increasing rapidly with an estimated one million regular online gamblers in Britain, 3.5 million in Europe and a combined annual stake for Europe, Asia and the United States of some £30 billion (although recent arrests of remote gambling company executives and prohibitionist moves in the US may have resulted in a reduction in US online gambling).³ Gambling in Britain is big business for the Government too, with £1.42 billion gambling duty

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The author acknowledges the valuable comments made by the anonymous referees of this article.

- 1 For a review see R. Light, 'The Licensing Act 2003: Liberal Constraint?' (2005) 68(2) MLR 268–285.
- 2 Estimates put £8 billion of this from the national lottery with most of the remainder from gambling covered by the new Act. *Report of the Gambling Commission 2005/06 HC 1226* (London: the Stationery Office, July 2006) para 1.3. Up-to-date figures for the nature and size of the industry are not easily available from a single source; although the Gambling Commission aims to rectify this with a national study commissioned to report in summer 2007.
- 3 DCMS, *Remote Gambling Fact Pact* (London: DCMS, 2006).

collected in 2004–2005⁴ and some 100,000 people with full time equivalent employment in the gambling industry.⁵

There has been legislative control of gambling in Britain for more than 600 years.⁶ Moral, social and economic imperatives have shaped the legislation, as has the need to control an activity that could, if left unregulated, be exploited by unscrupulous operators.⁷ Shaking free from Victorian prohibitionism, the mid-twentieth century saw three Royal Commissions endorse a loosening of restraints.⁸ The prohibition on commercial gambling, which meant among other things that there were no casinos or bingo clubs in Britain, was lifted by the Betting and Gaming Act 1960. Gambling was to be controlled principally by way of regulation rather than criminal prohibition. Underlying the 1960 Act was 'a liberal strategy which permit[ed] the provision of sufficient facilities to meet "unstimulated demand."'⁹

However, the 1960 Act, as amended by the Betting Gaming and Lotteries Act 1963, unintentionally heralded a gambling explosion.¹⁰ By the mid-60s gaming machines had appeared in places such as clubs and hotels, casino gaming had flourished and expanded dramatically and what became known as the 'bingo craze' was in full swing. Further, the law seemed ineffective against criminal infiltration and exploitation of the gaming industry. 'There were no requirements whatever within the Act concerning either the quality of casino management or the quantity and location of gaming outlets'.¹¹ Gaming machines similarly lacked controls.

Concern mounted over escalating numbers of problem gamblers and related bankruptcies. Violent enforcement of gambling debts, protection rackets and money laundering were said to be rife. These issues were regularly raised in Parliament, culminating in 1966 in a debate in the House of Lords 'decrying the apparent inability of the government to control a national scandal'.¹² In response, the gaming provisions of the 1963 Act were replaced by the Gaming Act 1968 which introduced both a closely drawn regime and a regulatory body, the Gaming Board for Great Britain. The tightened regulatory framework succeeded in bringing Britain's gambling industry under much more effective control.¹³

4 Department of Customs and Excise Annual Report 2004–2005 Cm 6691 (2005) Table L2.

5 DCMS, *Gambling Act: Regulatory Impact Assessment* (London: DCMS, 2004), para 1.3.

6 Probably starting with an Act of 1388 which prevented the playing of games on the Sabbath.

7 For an account of the regulation of commercial gambling in Britain from the early eighteenth century see D. Miers, *Regulating Commercial Gambling: Past, Present, and Future* (Oxford: OUP, 2004).

8 Final Report of the Royal Commission on Lotteries and Betting 1932–1933 (London: HMSO, 1933, Cmd 4341); Report of the Royal Commission on Betting, Lotteries and Gaming 1949–1951 (London: HMSO, 1951, Cmnd 8190); Final Report of the Royal Commission on Gambling 1976–1978 (London: HMSO, 1978, Cmnd 7200).

9 D. Dixon, *From Prohibition to Regulation* (Oxford: Clarendon Press, 1991) 1.

10 For a history of betting see M. Clapson, *A bit of a flutter: popular gambling and English society, c.1823–1961* (Manchester: Manchester University Press, 1992); C. Chinn, *Better Betting with a Decent Feller: Bookmakers, Betting and the British Working Classes 1750–1990* (London: Harvester Wheatsheaf, 1991).

11 n 7 above, p 87.

12 *ibid.*

13 For an historical account and an examination of pre-2005 Act provisions see S.P. Monkcom, *Smith & Monkcom: The Law of Betting, Gaming and Lotteries* (London: Butterworths, 2001).

Yet, by the end of the twentieth century momentum for a relaxation of Britain's gambling laws had once again become apparent. Gambling in Britain had undergone some fundamental changes. It had spilled out from the mainly male, specialised preserve of the casino and betting office into the high street and home by way of the National Lottery and the internet.¹⁴ A more relaxed attitude to gambling had become apparent¹⁵ and moral arguments carried less weight.¹⁶ Crime control, a major justification for legislative intervention, particularly with regard to gaming, was seen as less urgent.¹⁷

Expanded opportunities to participate and a changing view of gambling, as an industry to be regulated rather than a vice to be suppressed, underpinned pressure from the trade to remove what they perceived to be unnecessary restrictions and enable them to compete with the operators of the National Lottery¹⁸ and remote gambling. The government agreed:

The current system of gambling law and regulation was established in the 1960s, and has changed little since then . . . However, the regulation reflects social attitudes that were prevalent then and the technology that was available . . . The system no longer works . . . We are committed to reforming gambling regulation to offer freedom with protection for the vulnerable.¹⁹

The prospects for increased revenue from an expanded industry and online gambling further excited government ambitions. Pressure for reform became 'driven . . . as much by . . . the Gaming Board, and by its then parent department, the Home Office, as by the industry itself'.²⁰ In December 1999 the Home Secretary announced a major review of gambling legislation and the Government established the Gambling Review Body, chaired by Sir Alan Budd. It began work in February 2000, and its brief was to 'Consider the current state of the gambling industry and the ways in which it might change over the next ten years in the light of economic pressures, the growth of e-commerce, technological developments and wider leisure and industry trends'. The *Gambling Review Report* was published in July 2001.²¹ Its deregulatory and free-market recommendations were warmly welcomed by the trade which was 'delighted that the DCMS [Department for Culture Media and Sport] has listened to the views of the Gambling

14 The National Lottery was launched in November 1994 (National Lottery Act 1993). For an account of the rapid development of 'high street' gambling see P. Bellringer, *Understanding Problem Gamblers: A Practitioner's Guide to Effective Intervention* (London: Free Association Books, 1999).

15 For a short survey into gambling participation and some attitudes towards gambling see S. Creigh-Tyte and J. Lepper, *Survey of Participation in, and Attitudes towards, Gambling: Key Results from the 2004 NOP Survey* (London: DCMS, April 2004).

16 n 5 above, paras 1.2 and 1.3.

17 'Because of the 1968 Gaming Act we have one of the cleanest, crime free gambling industries anywhere' *Department for Culture, Media and Sport Five Year Plan: Living life to the full* (London: DCMS, March 2005) 46.

18 See D. Miers, 'The implementation and effects of Great Britain's National Lottery' (1996) 12 *Journal of Gambling Studies* 343.

19 n 17 above, p 46.

20 D. Miers, 'The Gambling Review Report: Redefining the Social and Economic Regulation of Commercial Gambling' (2003) 66 *MLR* 604, 605.

21 *Gambling Review Report* Cm 5206 (July 2001).

industry'.²² The White Paper, published in 2002, accepted most of the Review's recommendations²³ and endorsed 'the principles set out in the Report as the key objectives of gambling law and regulation'²⁴ – provided crime was excluded, the vulnerable protected and the gambler treated fairly, 'unnecessary barriers to customer access and new entrants to the industry will be removed'.²⁵ As the Culture Secretary, Tessa Jowell, put it 'Many of the restrictions on choice seem out of place and draconian. The current law tends to treat gambling as a dirty secret – something to be slightly ashamed of but the world has moved on'.²⁶

A draft Gambling Bill, published by the Secretary of State for Culture Media and Sport in November 2003,²⁷ was based on three key principles: keeping the gambling industry free of crime; ensuring that gambling is conducted fairly; and protecting children and the vulnerable effectively.²⁸ The final Bill was introduced into the House of Commons on 18 October 2004.²⁹

Despite some significant amendments,³⁰ considerable opposition was still encountered, mostly over the planned expansion of casinos. The Government fought hard to defend the Bill and 'to address a number of myths about our casino policy',³¹ but was forced to concede further amendments – including a reduction in the number of regional casinos from eight to one – in order to save the Bill which received royal assent on 7 April 2005.³²

The Act reunites gambling regulation into a single enactment,³³ repealing the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. Most significantly, it represents a fundamental shift from regulatory constraint to a free-market, commercially moulded model. As with the Licensing Act 2003 the provision of greater freedom for operators and

22 'Business in Sport and Leisure' quoted in DCMS, Press Release, *A Safe Bet for Success* (26 March 2002).

23 157 of 176 recommendations accepted – see table in White Paper *A Safe Bet for Success*, Cm 5397 (March 2002), Appendix B.

24 *A Safe Bet for Success*, Cm 5397 (March 2002) para 10.2.

25 *ibid.* paras 10.9–10.10.

26 Secretary of State's speech to the Business in Sport and Leisure annual conference, 19 November 2003.

27 *Draft Gambling Bill* Cm 6014. With a consultation period to February 2004. As with alcohol, responsibility for gambling moved from the Home Office to the DCMS in 2001.

28 Secretary of State, Department for Culture, Media and Sport, HC Deb col 27 15 July 2003.

29 Developed from the White Paper's response to the *Gambling Review Report* and modified in light of the consultation process, the DCMS Select Committee report *Nothing to Lose? The Government's Proposals for Gambling* (HC – I 2001–02) and two joint scrutiny committee reports; the first on the Bill published on 7 April 2004 (HL paper 63–1, HC 139–1) and the second on regional casinos on 22 July 2004 (HL paper 146–1; HC 843–1). The Government's responses published on 14 June 2004 (Cm 6253) and 22 September 2004 (Cm 6330) accepted 121 of the scrutiny committee reports' 139 recommendations.

30 See, Press Release, *Government to Introduce Tough New Gambling Protections* (14 June 2004).

31 A. McIntosh, Minister for Gambling Regulation, press conference 27 October 2004; see also DCMS, Press Release, *McIntosh Sets the Record Straight On Gambling Bill 'Media Myths'* (28 October 2004).

32 Second reading 1 November 2004, carried over to 2004–2005 session and reintroduced into Commons 24 November 2004.

33 The National Lottery continues to be regulated by the Lottery Acts (although Schedule 3 of the 2005 Act contains amendments) and Lottery Commission. Spread betting remains regulated by the Financial Services Authority under the Financial Services Act 1986. For an account of the tensions created by separate regulation of the National Lottery see n 7 above, chapter 15.

customers is to be balanced by better controls and protection for the vulnerable. But 'the balance between these two objectives is a fine one'.³⁴

This essay explores the detail of the regulatory framework introduced by the Act, its liberalising agenda and the implications for problem gambling in Britain. It concludes with a consideration of whether the safeguards proposed by the Government can meet the social challenge posed by a gambling industry released from restraints and left to free-market economic forces.

THE NEW REGULATORY FRAMEWORK

The Act fundamentally changes the regulatory framework for gambling in England, Wales and Scotland³⁵ and comes into force on 1 September 2007.³⁶ Running to 362 sections and 18 schedules the Act is accompanied by a 138 page regulatory impact assessment³⁷ and a similarly lengthy set of explanatory notes.³⁸ Considerable secondary legislation is necessary with 40 statutory instruments planned for 2007 and a similar number of consultation exercises. The Act creates a new regulatory body, the Gambling Commission, which will set the detailed framework for the regulation of gambling.

The Act for the first time defines gambling activities and provides a set of 'licensing objectives'. The objectives are 'preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; ensuring that gambling is conducted in a fair and open way; and protecting children and other vulnerable persons from being harmed or exploited by gambling'.³⁹ These objectives 'underpin the whole structure of the Act and the licensing regime it creates'.⁴⁰

A new system of 'operating', 'personal' and 'premises' licences is introduced and magistrates' courts lose their licensing responsibility to newly defined licensing authorities (generally local authorities). Remote (online) gambling from UK based websites is permitted for the first time, betting is brought within the ambit of the statutory regulator and a number of restrictions on commercial gambling are relaxed.⁴¹ Limits for gaming machines are increased and a four-fold classification introduced; while three new types of casino, enjoying a wider range of

34 Secretary of State's Foreword to the White Paper, n 24 above.

35 With the exception for Scotland of ss 148 (legal assistance scheme), 221 (fees) and 346 (prosecution by licensing authority). There is also some difference of detail with a number of other sections. Apart from ss 43 (chain gift schemes), 331 (foreign gambling) and 340 (foreign betting) the Act does not apply to Northern Ireland.

36 Although parts of the Act were brought into force on 1 October 2005 – s 358 makes provision for staggered commencement of the Act.

37 n 5 above.

38 *Gambling Act; explanatory notes* (London: DCMS, 2005).

39 s 1 (a), (b) and (c).

40 *Report of the Gambling Commission 2005/06 HC 1226* (London: DCMS, 2004) para 1.6.

41 Of interest to contract lawyers is the repeal, by section 334, of provisions dating from the Gambling Act 1710 that prevent enforcement of gaming and wagering contracts and arrangements associated with them by declaring them void. The fact that a contract relates to gambling will not, by section 335, prevent its enforcement. The Act also includes an offence of cheating at gambling s42(1).

activities, are created. The new casinos – regional, large and small – are in addition to existing casinos which will continue to operate. There are measures in the Act designed to provide protection for children and the vulnerable.

The Gambling Commission

Operational from 1 October 2005,⁴² the Gambling Commission⁴³ replaced the Gaming Board for Great Britain as the principal regulator of gambling in Britain. Added to the functions of the Gaming Board, which regulated casinos, bingo, gaming machines, and certain lotteries, is responsibility for regulation of betting and remote gambling. The inclusion of betting brings bookmakers under a statutory regulator for the first time. This has caused considerable disquiet within the bookmaking trade, concerned about what this new regulatory regime may bring, and facing a higher regulatory burden with increased compliance costs.

The Commission is responsible for advising local and central government on gambling issues and for collection of information from local authorities and elsewhere to assist effective regulation. It is under a duty to issue guidance to local authorities on the exercise of their functions under the Act⁴⁴ and is required to prepare and publish a 'statement of principles for licensing and regulation', which it should review 'from time to time' setting out the principles it will apply when exercising its functions under the Act.⁴⁵

The Commission's functions include responsibility for the issue of operating and personal licences.⁴⁶ This tasks the Commission with management of entry to the industry and allows strong regulatory control of the scope of gambling as the Commission has wide powers to impose conditions on licences. There is also power to review, suspend and revoke licences and to issue a financial penalty for breach of conditions.⁴⁷ This regulatory control is strengthened further by the Commission's responsibility to formulate codes of practice⁴⁸ and to ensure their compliance. The Commission can make compliance a condition of an operating licence, breach will amount to a criminal offence and render the activity unlicensed.⁴⁹ Moreover, while failure to comply with the provisions of a code *per se* does not make an operator liable to criminal or civil proceedings, such a fact will be admissible in evidence in civil or criminal proceedings.⁵⁰ The Commission also has powers to investigate and prosecute illegal gambling.⁵¹

Of central importance is section 22 of the Act which provides that the Commission must exercise its functions with a view to pursuing the licensing

42 Gambling Act 2005 (Commencement No 2 and Transitional Provisions) Order 2005, SI 2005/2455, art 2 and Schedule.

43 Gambling Act 2005 Part 2.

44 s 25.

45 s 23. Before issuing or revising the statement the Commission must consult with a number of specified people and groups.

46 Under Parts 5 and 6 of the Act respectively.

47 ss 116–121.

48 s 24. Before issuing or revising a code the Commission must consult with a number of specified people and groups.

49 See also s 82.

50 s 24(8) and (9).

51 Under ss 27 and 28.

objectives and to 'permit gambling, in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives'.⁵² This is the legislative expression of the fundamental shift in policy from restricted entry to free-market liberalisation.

The licensing regime

Operating, personal and premises licences

The Act provides for a three-fold licensing system. The Gambling Commission will be responsible for licensing gambling operators and personnel working in the gambling industry, while local authorities will license premises.⁵³ Ten categories of operating licence are specified under the Act. An operator may apply for one or more of these.⁵⁴ As well as the 'standard' operating licence, the Act introduces for each type of activity a 'remote operating licence', which is required where the participants are not face to face on the same premises, and has to be applied for separately from a 'standard' operating licence.⁵⁵ The Commission will consider the licensing objectives when determining applications. A licence cannot be granted to those with 'relevant convictions' and the Commission will consider the applicant's suitability to carry on the licensable activity as well as the suitability of any gaming machine or other equipment used for the activity.⁵⁶ The Commission has wide powers to attach conditions to the licence.⁵⁷

In respect of each operating licence at least one person must occupy 'a specified management office' in relation to the operating licence holder or licensed activity and must be a personal licence holder.⁵⁸ In addition, those with a management role (for example, managing director/chief executive, finance director, area manager, casino club manager) and those with an 'operational function' (for example, casino dealer, cashier) in the provision of the gambling activity must hold a personal licence.⁵⁹ The Commission has power to review, suspend and revoke a personal licence and to impose a financial penalty for breach of a condition.⁶⁰

The Act establishes the Gambling Appeals Tribunal to hear appeals from the decision of the Commission on any application to, giving of notice by and action taken in respect of an operating or personal licence.⁶¹ Further appeal lies to the

⁵² s 22 (a) and (b).

⁵³ There are complex transitional provisions which include 'continuation rights' and so-called 'grandfather rights'. See DCMS, *Gambling Act 2005: Transitional Arrangements* (London: DCMS, 2006) and Gambling Act 2005 (Commencement and Transitional Provisions) (Amendment) Order 2007.

⁵⁴ The categories are casino, bingo, betting other than pool betting, pool betting, betting intermediary, gaming machine for use in adult gaming centre, gaming machine for use in a family entertainment centre, gaming machine technical operation, gambling software and lottery. s 65.

⁵⁵ s 67.

⁵⁶ s 70. For non-remote casinos see subsection (3) for an extra consideration relating to protection of vulnerable people.

⁵⁷ ss 77–99.

⁵⁸ s 80. Although there is an exception for 'small-scale operators' under s 129.

⁵⁹ See *Licence Conditions and Codes of Practice (Draft)* (London: Gambling Commission, March 2006) chapter 2.

⁶⁰ ss 116–118.

⁶¹ s 140 and Sched 8. See also ss 142, 144–149.

High Court (where the Tribunal proceedings were in England or Wales) and the Court of Sessions (where the Tribunal proceedings were in Scotland).⁶²

*Local authorities*⁶³

The Act removes responsibility for gambling from magistrates' courts⁶⁴ and increases the role of local authorities in England and Wales⁶⁵ and licensing boards in Scotland (which perform the same function). Local authorities will become the licensing authority for their area and take responsibility for the grant of premises licences⁶⁶ which authorise the provision of gambling activities under the Act,⁶⁷ permits for gaming machines in public houses and clubs,⁶⁸ temporary use notices;⁶⁹ and registering small-scale lotteries.⁷⁰

The 'demand' criterion (defined below) is abolished and local authorities cannot impose any form of blanket ban on gambling facilities within their area. The exception to this, conceded by the Government during passage of the Bill, is casinos. An authority may resolve to have no or no more, casinos in their area.⁷¹ Beyond this there is little in the Act to assist local authorities on how they should exercise their functions as a licensing authority. The Act states merely that licensing authorities 'shall aim to permit the use of premises for gambling in so far as the authority think fit'. This must be done in accordance with any relevant code of practice, the guidance issued by the Commission, the authority's own licensing statement and the licensing objectives.⁷² The Act allows for delegation of some functions to the licensing committees established under the Licensing Act 2003⁷³ and to an officer.⁷⁴

Application for a premises licence is made to the local authority in whose area the premises are situated.⁷⁵ An applicant must hold or have applied for an operating licence for the activity to be provided at the premises.⁷⁶ Responsible authorities and interested parties may make representations to the local authority concerning an application. While responsible authorities and interested parties

62 s 143.

63 Defined by s 25(6).

64 Which had responsibility, for example, for bookmakers' permits, betting office and casino licences and permits for Amusement with Prizes machines in premises holding a liquor licence.

65 Responsibility under the old law included greyhound tracks, registering pool promoters and small society lotteries and permits for AWP machines other than in premises with a liquor licence.

66 Part 8.

67 Premises licences replace betting office licences under the 1963 Act, casino and bingo licences under the 1968 Act and permits for amusement centres and amusement arcades under the 1968 Act and Lotteries and Amusements Act 1976.

68 Parts 10, 12 and 13.

69 Part 9.

70 Part 11.

71 ss 166. This would not affect existing casinos in the area.

72 s 153. A section that has been described as 'perhaps one of the most opaque provisions ever to creep into licensing law' (P. Kolvin, 'Blueprint for uncertainty', 64 *Licensing Review*, 16).

73 It is intended that licensing authorities will 'coordinate their functions' in relation to alcohol and gambling licensing (n 38 above, para 32).

74 s 154 for England and Wales, s 155 for Scotland.

75 For application and hearings procedure see ss 159–165.

76 An application cannot be determined until the relevant operating licence has been issued s 163(2).

are broadly defined in the Act⁷⁷ the extent to which interested parties, in particular those who live close by or have business interests which might be affected, will be able to object is unclear and will depend on interpretation of the provisions in light of Commission guidance⁷⁸ and licensing authority statements.⁷⁹

The local licensing statement is to be given less weight than the Commission's codes and guidance and any conditions attached to the premises licence must not be in conflict with the operating licence. This represents a further diminution of the interests of local people. Further, there is no local authority representation on the Commission. Lastly, the *Gambling Review Report* recommendation that local authorities be given the power to ban gambling from all or part of their area was rejected by the Government; although it was later forced to concede the power to restrict casinos.

Further, while previous legislation set out clearly the matters which should be considered in determining an application for a betting office, casino or bingo club licence, the Act is silent. The operator's suitability is no longer relevant, premises suitability is largely governed by planning and building regulations and the demand criterion has been abolished. The authority is left with promotion of the licensing objectives as discussed below.

Three types of condition may be imposed by a local authority⁸⁰ and they will undertake inspections,⁸¹ enforce conditions and may review a licence. At a review the authority may revoke the licence or suspend it for a period not exceeding three months as well as adding, removing or modifying the licence conditions.⁸² Appeal from a decision of the licensing authority in respect of both applications and review proceedings lies to the magistrates' court.

LIBERALISATION AND REGULATION

For the Government gambling is no longer a potentially harmful activity to be regulated but a mainstream leisure activity to be promoted:

The reform package we are bringing forward signals a new and exciting future for the gambling industry in this country. In the future, well-informed adults will have greater freedom and choice to spend their leisure money on gambling if they want to. The law will, for the first time, treat them like grown ups. Outdated restrictions . . . will be removed and the industry will be able to develop innovative new products. Gambling will be increasingly combined with other leisure products in attractive surroundings – providing high quality entertainment for adults.⁸³

⁷⁷ ss 157 and 158 respectively.

⁷⁸ *Guidance to Licensing Authorities* (Birmingham: Gambling Commission, April 2006).

⁷⁹ *ibid*, Part 6.

⁸⁰ Mandatory conditions must be attached to the licence; default conditions must be attached unless the authority decides to exclude or modify them; the third type of condition is at the discretion of the licensing authority, presumably for promotion of the licensing objectives based on the particular facts and circumstances of the application (ss 167–169). No condition may be attached which prevents compliance with a condition of the operating licence.

⁸¹ Part 15.

⁸² ss 197–203.

⁸³ n 26 above.

Yet unlike most leisure activities gambling poses serious threats to social well-being. Not all forms of gambling carry the same level of risk. 'Hard gambling', casino games, betting and gaming machines, have potential for patterns of play, such as quick-fire repeat gambling or loss chasing, which are more likely to produce patterns of problem gambling; while 'soft gambling', bingo and lotteries, possess fewer of these characteristics. While the Act recognises this distinction it is blurred in places and the reforms represent a move towards an increase in harder forms of gambling.

Gambling in Britain has been liberalised through a process of relaxing restrictions. The Act, while promising safeguards, consolidates this process and, in particular, abandons the demand criterion as a method of restricting supply of gambling services. It provides new opportunities for the expansion of all types of gambling – casinos, gaming machines, betting, bingo, lotteries and remote gambling.

Relaxing restrictions

Many of the restrictions thought to hamper access to, or enjoyment of, gambling have been removed. For example, scrapping of the requirement that in order to gamble at a casino or bingo hall a customer must have been a member for a minimum of 24 hours, removal of the bar on live entertainment at casinos and permitting the supply of alcohol on the gaming floor. Thus the 'cooling off time' that prevented spur of the moment decisions to gamble or deterred the less committed gambler no longer exist; nor does the need to leave the gaming floor or the premises to consume alcohol or be entertained – and some attracted to the premises by the entertainment on offer once on the premises will engage in gambling. While this is a victory for freedom of choice, it also allows operators to generate increased customer numbers and retention. Relaxation of the restrictions on advertising under the Act, although subject to a Commission code, will allow demand to be stimulated further. The relaxation of gambling advertising is an integral component, along with abandonment of the 'demand criterion,' of the shift in policy that has discarded attempts to regulate control of the demand for gambling.

Removal of demand criterion

Applications for a gambling licence or certificate under the earlier law were, generally, considered by a betting and gaming committee of the justices of the peace for the area in which the premises were situated. The gaming committee could refuse a licence if not satisfied that there was substantial unmet demand for the gambling facilities applied for in that area.⁸⁴ The rationale for the demand criterion was that facilities should be no more than are sufficient to satisfy an *unstimulated* demand for gambling.

⁸⁴ Gambling Act 1968, Sched 2, para 18(1), Betting Gaming and Lotteries Act 1963, Sched 1, para 19(b).

However, under the 2005 Act consideration of demand is expressly excluded when the Commission or a licensing authority considers an application for an operating or premises licence.⁸⁵ Although the primacy of the demand test had in any event lessened over recent years (except for casinos) its abolition removes a useful tool for controlling numbers of gambling premises and leaves matters to the market. This might have adverse consequences. The removal of demand (generally termed 'need') as a criterion in applications for alcohol licences under the Licensing Act, 1964 for example, precipitated a huge increase in the number of outlets for alcohol.⁸⁶ Continuing the free market tenor, is the clearly permissive regime envisaged by the 2005 Act. The Commission is to 'permit gambling'⁸⁷ and licensing authorities 'shall aim to permit the use of premises for gambling'⁸⁸ provided this is consistent with the gambling objectives.⁸⁹ Thus 'the primary emphasis is on allowing gambling to occur'.⁹⁰ Provided an application is consistent with the licensing objectives it should be granted. This clears the way for increased outlets, with numbers limited by commercial rather than control-based constraints. More gamblers will be needed to support the increased number of outlets. Competition for customers in such an environment will intensify design, marketing and operational practices aimed at increasing custom and thus stimulating demand. This may be achieved by attracting new gamblers and/or increasing the number of visits and expenditure by existing gamblers.

'Resort Casinos'

Casinos currently licensed under the Gaming Act 1968 will continue to operate when the Act comes into force. Additionally, three new types of casino are introduced which make it 'possible to establish in Great Britain "resort casinos" of the type seen elsewhere in the world, for instance in Las Vegas or Atlantic City'.⁹¹ Other provisions include: permitting a mix of gambling activities; the introduction of gaming machines with unlimited stakes and prizes; the removal of 'permitted areas'; scrapping of the membership rules and demand criterion and relaxations on advertising as mentioned above. This continues a process of deregulation apparent for a number of years which included postal application for membership, factual print advertising, extended opening hours, an increase in the number of jackpot machines from eight to ten and the introduction of new casino games.⁹²

85 s 72 and s 153(2) respectively.

86 n 1 above.

87 s 22.

88 s 153.

89 s 1.

90 S. Mehigan, J. Phillips & HHJ J. Saunders, *Paterson's Licensing Acts 2006* (London: Butterworths 2005) v.

91 n 24 above, para 4.29.

92 The background to casino regulation can be found at n 5 above, annex A. See also, Office of the Deputy Prime Minister/DCMS, Joint Press Release, *Future Set Out For UK Casinos* (92/03, 7 August 2003).

The Act for the first time defines a casino – ‘an arrangement whereby people are given an opportunity to participate in one or more casino games’ and introduces a new three-fold classification⁹³ – regional,⁹⁴ large⁹⁵ and small.⁹⁶ As well as casino games⁹⁷ the one regional and eight large casinos will be permitted to offer bingo and all three categories will be permitted to offer betting. After the April 2006 cut-off date for applications under the Gaming Act 1968 only casinos which conform to one of the new classifications can be licensed. However existing casinos will continue to operate.⁹⁸ Transitional arrangements apply to casinos licensed under the 1968 Act which require licensing authorities to grant a converted premises licence to the existing operator.⁹⁹

The significance of this part of the Act can be gauged from the fact that most existing casinos are below the minimum size even for a ‘small casino’. These Las Vegas style casinos and high prize slot machines provoked strong media, church and other opposition forcing the Government to restrict the number of regional casinos to a maximum of eight¹⁰⁰ and then, in order to obtain Opposition cooperation to secure the Bill, to reduce this to one with an undertaking that selection of locations for the new style casinos would be determined by an independent panel.¹⁰¹ Similar pressure led the Government ‘to set an initial limit’ of eight for each of both large and small casinos.¹⁰² The Act therefore initially allows premises licences to be issued for a total of 17 new casinos – one regional, eight large and eight small.¹⁰³

The Casino Advisory Panel was appointed to advise the government where the 17 new casinos should be located.¹⁰⁴ The primary criterion was ‘to ensure that locations satisfy the need for the best possible test of social impact’ and subject to that ‘to include areas in need of regeneration which are likely to benefit in these terms from a new casino’.¹⁰⁵ In January 2006, local authorities were invited to submit formal proposals to the Panel to be considered for one or more of the 17 new casino locations. Twenty-seven applications were received for the regional casino and 41 for large and small casinos. The Panel produced a shortlist of seven for

93 s 7(6). See *The Gambling (Categories of Casino) Regulations 2006 – Draft Order* and *The Gambling (Categories of Casino) Regulations 2006 – Consultation Document and Draft Regulatory Impact Assessment*.

94 Minimum total customer area 5,000 square metres and up to 1,250 Category A unlimited stake/prize gaming machines.

95 Minimum total customer area 1,500 square metres and up to 150 Category B1 gaming machines with a maximum jackpot of £4,000.

96 Minimum total customer area 750 square metres and up to 80 Category B1 gaming machines with a maximum jackpot of £4,000.

97 Defined by s 7(2) as games which are not equal chance games.

98 s 7(5).

99 Part 18 – see *Gambling Act 2005 – Transitional Arrangements* (London: DCMS, February 2006).

100 DCMS, Press Release, *New Proposals on Regional Casinos* (148/04, 16 November 2004).

101 And to allow local authorities to refuse to issue casino licences in their area (s 166).

102 DCMS, Press Release, *Government Sets Out Cautious Approach to New Casino Regime* (168/04, 16 December 2004).

103 s 175 – although the section gives power to the Secretary of State to alter the maximum number.

104 DCMS, Press Release, *Independent Panel Appointed to Advise Government on New Casino Locations* (30 September 2005).

105 ‘Welcome to the Casino Advisory Panel (CAP)’ at <http://www.culture.gov.uk/cap> (last visited 20 February 2007).

the regional casino and 29 for large and small casinos.¹⁰⁶ Its final recommendations were reported to the DCMS on 30 January 2007.¹⁰⁷ The surprise location for the regional casino was Manchester, while small and large casinos were widely spread around the country. The draft order setting out the local authorities able to issue the 17 licences was made on 1 March 2007.¹⁰⁸ It accepted in full the recommendations of the Casino Advisory Panel. Although the expected legal challenges from unsuccessful bidders have, at the time of writing, not materialised the House of Lords Select Committee concluded that the Order 'may imperfectly achieve its policy objective'.¹⁰⁹ Specifically, in relation to the regional casino in Manchester, there was considered to be no guarantee that the social impact and regeneration effects could be properly measured. On the 28 March 2007, after a last-minute package of concessions, the House of Commons approved the Order; but the House of Lords passed an amendment calling for the creation of a fresh Joint Committee to look at the Casino Advisory Panel report, effectively rejecting the Order.¹¹⁰

The process thus continues to prove controversial, particularly in respect of the regional casino, dubbed 'Britain's Vegas'.¹¹¹ It was revealed in July 2006 that the Deputy Prime Minister, John Prescott, had failed to declare a trip to the US to visit a businessman, Philip Anschutz, the owner of a company with a stake in the Millennium Dome which was a front runner to be granted the regional casino licence.¹¹² This led to speculation linking gambling reform, the saving of the Dome, government shenanigans, and questions over the ability of the Casino Advisory Panel to reach an independent decision.¹¹³ Finally, after much prevarication, the Government was, in November 2006, forced by the Freedom of Information Act to concede that John Prescott had been involved in discussions with government officials and Philip Anschutz concerning a regional casino being built at the Dome. Further, James Froomberg, one of the five-person casino advisory panel members, had had business dealings with Philip Anschutz over the possible acquisition of Wembley Arena¹¹⁴ and Lord Falconer had met representatives of Philip Anschutz on 13 occasions between October 2001 and May 2002, 'when he was minister responsible for the dome and the Government was desperate to get the empty building off its hands'.¹¹⁵

The curtailment of the number of new casinos permitted under the Act led to a flurry of 1968 Act applications prior to the April 2006 cut-off date. At the cut-off date there were 140 operating casinos (including one card club), 27 casinos licensed

106 DCMS, Press Release, *Casino Advisory Panel Publishes Shortlist of Successful Proposals* (undated).

107 Casino Advisory Panel, 'Final Report of the Casino Advisory Panel' at <http://www.culture.gov.uk/cap> (last visited 20 February 2007).

108 Draft Gambling (Geographical Distribution of Casino Premises Licences) Order 2007.

109 House of Lords Merits of Statutory Instruments – Thirteenth Report, 13 March 2007, para 39.

110 HC Deb vol 690 col 1658 28 March 2007.

111 'Councils vie to be Britain's Vegas', *The Sunday Times* (5 February 2006) 7.

112 'Prezza's Big Gamble on Dome Billionaire' *The Sunday Times* (9 July 2006) 12–13.

113 Professor Stephen Crow, chairman, Casino Advisory Panel stated 'we are objective, and it's plain wrong to suggest otherwise' (*The Guardian*, 2 September 2006, 12).

114 'Casino panel member admits Dome bid link', 12 November 2006, at <http://www.timesonline.co.uk> (last visited 21 November 2006).

115 'Falconer's 13 meetings with casino group', *Sunday Times*, (26 November 2006) 10.

but not operating, 32 awaiting the outcome of licence applications (two for substitute or extended premises) and 79 awaiting the outcome of certificate of consent applications (of which eight were for card clubs and 17 were for substitute premises). If all of the applications were successful there would be nine card clubs and 250 casinos (there were also two outstanding appeals against refusals to issue a licence). Not all of these applications will result in a licence being granted, but there is certain to be a significant increase in the number of 1968 Act casinos, with informed estimates seeing the figure rise from 140 to some 200.¹¹⁶ This is in addition to the 17 new-style casinos and represents a 43 per cent increase in the number of casinos, with an even greater increase in the facilities provided due to the size of the new-style premises.

As a result of these measures, there will be significantly amplified opportunity for casino gambling in Britain. The encouragement to participate is further enhanced by relaxations in the way casinos operate as '[v]isiting a casino will be easier . . . and a more complete leisure experience, potentially appealing to a far wider range of customers'.¹¹⁷ Three per cent of the population is estimated to gamble at casinos,¹¹⁸ it is clearly envisaged that people who have not visited a casino before will be encouraged to do so. The link between deregulation and increased gambling is illustrated by the Gambling Commission's attribution of a 'significant' 13 per cent increase in casino attendances for 2005/06 over 2004/05 'to some degree [as] a consequence of the abolition of the 24 hour rule in October 2005'.¹¹⁹

Unlimited stake and prize gaming machines

Surprisingly, for a gambling activity at the hard end of the spectrum, gaming machines are found in a wide range of locations – a number of which allow access to children. The machines are physically complex, easily manipulated to the operator's advantage and exhibit factors associated with problem gambling, such as the potential for repetitive play.

Three types of gaming machines are permitted under current legislation. Club or jackpot machines have a maximum stake of £2 in casinos and £1 elsewhere with a maximum prize of £4000 in casinos, £500 in bingo clubs and £250 in other clubs. 'Amusement with prizes' machines, allowed in adult environments such as public houses, betting shops, bingo clubs and adult amusement arcades, have from October 2006 a maximum stake of 50p with a maximum prize of £35. 'Amusement with prizes' machines, allowed in premises such as cafes and family amusement arcades, have a maximum stake of 30p and a maximum prize of £8 non-cash or £5 cash.

¹¹⁶ British Casino Association, personal communication, 16 November 2006.

¹¹⁷ n 24 above p 72.

¹¹⁸ Gambling Commission, *Basic Facts about the British Gambling Industry*, (Birmingham: Gambling Commission, 2006), p 9.

¹¹⁹ *Report of the Gambling Commission 2005/06 HC 1226* (London: the Stationery Office, July 2006) para 3.48.

The Act contains powers to prescribe new categories of machine¹²⁰ and the category and numbers of machines allowed will be linked to the type of gambling licence held.¹²¹ Permits can also be issued for lower stake gaming machines in specific locations. Machines are ranked from Category A, with unlimited stakes and prizes permitted only in Regional casinos to Category D with a maximum 10p stake and £5 cash prize (or 30p stake with an £8 non-cash prize) located at any licensed premises including family entertainment centres and travelling fairs.¹²² The Act also allows technical standards to be set for machines governing matters such as minimum game cycle time periods.¹²³ Concerns centre on increased numbers of machines and the introduction unlimited stake and prize money machines. The Government acknowledges overseas research linking unlimited stake and prize machines to problem gambling;¹²⁴ nevertheless such machines (category A) will for the first time be legalised in Britain. Further fears focus on the propensity for machines to trigger repetitive and compulsive play¹²⁵ and the fact that gaming machines are most popular with those aged 16 to 24.¹²⁶

Amusement arcades will be divided into two categories, adult gaming centres and family entertainment centres. Only the latter will be allowed to admit children and will be limited to category D machines; unless there is an adult only area in which category C machines will be permitted. Adult gaming centres may have up to four category B3 or B4 machines and any number of category C or D machines. The Government has expressed its determination to keep gambling out of the reach of children. Yet while category D machines may be classified as amusement with prizes, as distinct from gaming machines, they are on any definition gaming machines with cash stakes and cash or non-cash prizes. The stake and prize money may be low but so might the resources of the child and it is of course an introduction to gambling.¹²⁷ Nevertheless, the Government refused to review its decision on children and category D machines preferring instead to conduct research into 'the risks presented to children by machine gaming'.¹²⁸

Betting expansion

Betting can be either 'on-course' at race tracks, 'off-course' at licensed betting offices or remote via, for example, the internet or mobile phone. There are also online betting exchanges which allow gamblers to bet against one another, with

120 s 236 and Part 10.

121 s 172 and Part 10.

122 A summary of current and proposed types of machine and location are at n 21 above, Appendix D.

123 Gambling Commission, Press Release, *Gambling Commission publishes draft new technical standards for gaming machines* (27 June 2006).

124 n 5 above, para 2.6.

125 n 24 above, para 4.8.

126 n 118 above, page 11.

127 K. Sproston, B. Erens and J. Orford, *Gambling Behaviour in Britain: Results from the British Gambling Prevalence Survey* (London: National Centre for Social Research, 2000), 262–263.

128 n 24 above, p 69; see also DCMS, *The Government's Response to the Seventh Report of the Culture, Media and Sport Select Committee* (London: DCMS, 2002, Cm 5622) para. u.

no bookmaker, where the operator of the site takes a commission.¹²⁹ While bookmakers are for the first time brought within the regime of a statutory regulator, the liberalising ambitions of the Act appear set to continue the expansion and mainstream development of betting shops which no longer rely solely on horse and greyhound racing. Football and sports betting, as well as 'numbers betting' which includes such things as 'virtual' horse and greyhound racing are now permitted. From 1996 betting shops have been allowed to house two gaming machines, maximum stake 50p and payout £35, and, from 2002, fixed odds betting terminals which provide betting on roulette type events with prizes up to £500. Telephone and internet betting facilities are also provided. The traditional delay between races and the spectator element that accompanied horse racing can now be excluded by the determined gambler who can stake his or her money much more quickly. Fixed odds betting terminals, of which there may be some 24,000 in Britain, have particularly high figures for customer loss, on average between £200 and £400 per machine per week.¹³⁰ Recognising that these terminals 'risk seriously increasing problem gambling' they are to be brought within the relevant controls for gaming machines.¹³¹

Modern betting shops too have changed – 'some of the latest . . . look like up-market coffee shops, a world away from the dingy betting shops of the 1960s'.¹³² Live televised sports events were permitted from 1986 and from 1993 the opening times of 7am to 6.30 pm extended for the summer months (April to September) to 7am to 10pm. Under the Act the later hours are to be extended throughout the year. Extended hours, abolition of the demand criterion, improved betting shop environments, relaxation on advertising, extension of gambling activities and continued growth in remote betting will facilitate increased spend from existing gamblers and attract new gamblers.

Bingo clubs in decline?

Bingo clubs appeared in the 1960s.¹³³ There are now some 650 in Britain and bingo is played in over 1000 other clubs and institutions.¹³⁴ The only form of gambling that attracts more female than male gamblers,¹³⁵ bingo also appeals to older age groups and bingo clubs have an important 'social dimension'.¹³⁶ While the number of bingo clubs has declined, the establishment of larger premises has seen customer numbers show a slight increase.¹³⁷ As a result of recent deregulatory

129 Betfair.com, a leading online betting exchange operator processes five million transactions a day and more than 300 bets per second.

130 n 5 above, para 2.4, 2.5.

131 *ibid*, para 2.18.

132 Association of British Bookmakers, 'The modern Bookmaker' at <http://www.abb.uk.com> (last visited 18 February 2007).

133 See R. Dixey, 'Bingo in Britain' in J. McMillen (ed) *Gambling Cultures: studies in history and interpretation* (London: Routledge, 1996).

134 The latter under ss 40 and 41 Gaming Act 1968 subject to a number of restrictions and intended to be small scale and non-commercial.

135 S. Creigh-Tyte & J. Lepper, *Gender Differences in Participation, and Attitudes towards, Gambling in the UK: Results from the 2004 NOP Survey* (London: DCMS, Technical Paper 7, 7 June 2004).

136 n 2 above, p 17ff.

137 n 118 above, para 3.2.

measures bingo clubs are now permitted a mix of gaming machines; relaxed restrictions on maximum prizes for linked and multiple games; and the statutory distinction between cash and prize bingo has been abolished. Changes for commercial bingo clubs under the Act include stakes, participation fees and prizes (including linked and multiple bingo) to be set by regulation; rollovers to be permitted; scrapping of the demand test, membership and 24 hour requirements; permission for up to four category B gaming machines; and relaxed advertising rules. Despite these relaxations traditional bingo clubs are thought to be at risk from the Act's provisions which allow bingo to be played in casinos; as the increased competition may cause bingo clubs to close or convert to casinos.

While 'bingo is generally regarded as a more social and less problematic form of gambling', figures for 1999 show that 'between 2 and 2.6 per cent of those who played bingo in the previous year were classed as problem gamblers'.¹³⁸ Efforts to keep bingo competitive may damage its social aspect and increase the risks for problem gambling.¹³⁹

Relaxation and increased control for lotteries

Prior to the Act 'lottery' was not defined by statute. The Act adopts the definition of a simple lottery approved by the House of Lords in 1980 – persons are required to pay to participate; one or more prizes are allocated to the participants in the scheme; and prizes are allocated wholly by chance.¹⁴⁰ There are, aside from the National Lottery, four types of lottery permitted in Britain.¹⁴¹ 'Small lotteries incidental to an exempt entertainment' are one-off events at certain entertainments (defined by the Act as a 'bazaar, sale of work, fete, dinner, dance, sporting or athletic event or other entertainment of a similar character') where the value of prizes must not exceed £250, no prize may be a money prize and all tickets must be sold and the results declared at the entertainment. Private lotteries are not-for-profit and confined to members of the same society, or to persons all of whom work or reside at the same premises. Small and private lotteries do not need to register with any statutory body. 'Society lotteries', which cannot be run for private gain, are used for fund raising by, for example, charities, sports groups and the arts. Depending on the level of ticket sales society lotteries have to register with either the relevant local authority or the Gambling Commission. 'Local lotteries' which may be promoted by local authorities to raise funds,¹⁴² must register with the Gambling Commission and are regulated in much the same way as society lotteries.¹⁴³

The Act continues the prohibition on commercial lotteries, maintains the existing types of permitted lottery, with the addition of small lotteries in connec-

¹³⁸ n 5 above, para 3.5.

¹³⁹ See further n 29 above, Joint Committee First Report, paras 452–459.

¹⁴⁰ *Imperial Tobacco Limited v A-G* [1980] 2 WLR 466 adopting the essential features of a lottery from Lord Widgery CJ in *Readers Digest Association Limited v Williams* [1976] 1 WLR 1109 at 1113.

¹⁴¹ Lotteries and Amusements Act 1976, ss 3–6.

¹⁴² Never numerous, only one was registered in 2003/04 and none 2004/05 (n 118 above, Appendix II).

¹⁴³ See further *Lotteries and the Law: Notes prepared by the Gambling Commission for the Guidance of Societies and Local Authorities* (Birmingham: Gambling Commission, 2005).

tion with a business and open only to customers on the premises. The regulatory regime remains much the same but the rules are relaxed in a number of ways. Society and local authority lotteries are permitted to have 'rollovers', while percentage limits on expenses and prizes as a proportion of proceeds and absolute limits on ticket prices are removed. Lottery tickets can be sold by machine and remote lotteries are permitted. The bar on money prizes for small lotteries is lifted, but the primacy of the National Lottery is underlined by the Government's rejection of the Review Body's recommendation that prize and proceeds limits on society lotteries should be lifted. The introduction of online lotteries, and the removal of restrictions on the types of premises that can house terminals, expose lotteries, traditionally considered a soft form of gambling, to repetitive play and increase the risk of problem gambling.

The Act also regulates a complex lottery in which prizes are allocated by a series of processes where the first of these processes relies wholly on chance. A simple lottery has one 'process' which relies wholly on chance while a complex lottery has more than one 'process,' the first of which relies wholly on chance. Despite pressure from media groups to do otherwise, complex lotteries seek to catch commercial schemes such as television quiz shows in which all who call a premium rate number to enter are charged and then a smaller group is randomly selected to be put through to the programme and be given the opportunity of answering a question.¹⁴⁴ Such schemes will be illegal unless run as a society lottery. Television competitions which start with skill rather than chance and then go on to a draw will fall outside the definition of a lottery.

The Act seeks also to deal with competitions which purport to exclude the element of 'chance', and therefore definition as a lottery, by purportedly requiring a contestant to exercise skill or knowledge when what is required is so simple that most people could successfully complete it. For example a question such as 'what is the capital of the France?' The Act provides that a process which requires persons to exercise skill or judgement or display knowledge shall be treated as relying wholly on chance if it cannot reasonably be expected to prevent a significant proportion of participants from getting a prize and prevent a significant proportion of those who wish to do so from entering.¹⁴⁵ The meaning of 'significant' will of course be crucial, but so far no assistance has been offered by the Gambling Commission. The present law struggles with a similar definitional problem. Under existing provisions, to be lawful, a competition must depend 'to a substantial degree' on the exercise of skill.¹⁴⁶ The meaning of 'substantial' has long been argued; and so too will the interpretation of 'significant'.

The Government's desire to safeguard the position of the National Lottery has ensured little liberalisation of simple lottery regulation and a tightening of the rules in relation to complex lotteries.

144 See Gambling Commission, *Prize Competitions and Free Draws* (Birmingham: Gambling Commission 2006).

145 s 14(5).

146 Lotteries & Amusements Act 1976, s 14.

Remote gambling: bringing online onshore?

Remote gambling is defined as that in which the participants are not face to face on the same premises but rather use the internet, telephone, television, radio or any other type of technology for facilitating communication.¹⁴⁷ This can involve placing bets remotely or more usually participating in virtual gambling activities such as poker games or roulette.

Gambling has been transformed by technology. Current legislation has proved unable properly to regulate such activity – the law predates and could not have foreseen such fundamental developments in technology. As it is ‘unregulated, unlicensed and would pay little or no tax’ the growth of remote gambling has been a particular cause for concern to both the established gambling industry and the Government.¹⁴⁸ One of the primary aims of the Act is to permit and effectively regulate remote gambling, which generally is not permissible under existing legislation.¹⁴⁹

By legalising remote gambling the Act seeks to address what the Government sees as the anomalous situation where British residents are free to play on overseas sites which can accept bets from British based gamblers without infringing the law.¹⁵⁰ The Act will allow operators to provide remote gambling facilities using equipment based in Britain. The Government hopes this may catch not only current users of offshore, remote gambling, but also new players as ‘sites would be trusted and players would be confident that the product was safe to use’.¹⁵¹ As well as bringing online gambling under domestic regulatory control,¹⁵² a major incentive for the Government is the prospect of the revenue generated if this business was transferred to British based sites. It is government policy ‘that Britain should become a world leader in the field of online gambling’.¹⁵³ The result could be the creation of more than a million gambling addicts in a year.¹⁵⁴

Would a remote operator wish to subject itself to the Gambling Commission’s regulatory control and to the British tax regime? Advantages of being based in Britain include better credibility and trust, strong legal jurisdiction, established financial centre, no management and control problems, gambling friendly country, mobile and iTV provision, advertising advantages, bringing together remote and non-remote offering and branding benefits. Advantages of being based offshore include lower tax rates, laxer licence requirements, lower set-up costs, less expensive ongoing compliance, less intrusion and easier compliance regime, more

147 s 3.

148 J. Orford, K. Sproston, B. Erens, C. White and L. Mitchell *Gambling and Problem Gambling in Britain* (Hove: Brunner-Routledge, 2003) 36.

149 Remote gambling for fixed odds betting, betting exchanges, pool betting and non-commercial lotteries are permitted under current law – as is spread betting.

150 A visit to <http://www.gamblingonline.com> will provide links to a huge number of offshore remote gambling sites available to British gamblers.

151 n 24 above, 71.

152 The DCMS hosted an International Governmental Summit on Remote Gambling on 1 October 2006 to ‘put in place a road map that will lead to better regulated remote gambling across the world’ Minister for Sport, Richard Caborn, Gambling Commission E-Bulletin – Issue 14, 3 November 2006, para 7.

153 ‘Labour bids to put UK at heart of online gambling,’ *Sunday Times Business*, 8 October 2006, p 1.

154 J. Orford, BBC Panorama, ‘Online Gambling: Britain’s New Obsession’, 26 November 2006.

flexibility in operation and no advertising disadvantage if EEA, Gibraltar or 'white list'¹⁵⁵ based.¹⁵⁶

The crucial issue for inward investors is the taxation regime applicable to remote gambling based in Britain.¹⁵⁷ Tax rates will have to be competitive enough to weigh in the balance of advantages between domestic and offshore jurisdictions. For despite the Government holding up the Act's new regime as an attractive option, especially in light of the prohibitionist stance being adopted in the United States,¹⁵⁸ remote operators are looking for a tax rate for online gambling that is 'competitive internationally' before they will consider coming onshore, thought to be around 2 to 3 percent.¹⁵⁹ The March 2007 budget failed to deliver any such concessions, raising rather than reducing gambling duties and setting a 15 per cent tax level for on-line gambling operators.

PROBLEM GAMBLING

Inducement to gamble

Deregulation has enhanced the gambling industry's efforts to make gambling environments more attractive and to remodel gambling closer to other less controversial leisure activities.¹⁶⁰ Developing technology has allowed more sophisticated forms of gambling to emerge as well as providing remote gambling facilities. The continuing deregulatory nature of the new regime greatly assists the industry's marketing ambitions. Griffiths and Parke describe the 'environmental psychology of gambling' in which 'situational characteristics' attract people into the gambling environment and 'structural characteristics' induce someone to gamble or to continue gambling.¹⁶¹ Possibly crucial in attracting more and bigger spending gamblers, situational determinants are grouped by Griffiths and Parke into 'familiarity in gambling environments, sensory factors (e.g. sound/noise effects, light/color effects), money access (e.g. lack of change facilities or arcades with cash dispensers), physical comfort determinants (e.g. heating or seating), and proximity to other activities'.¹⁶² Griffiths argues that for gaming machines factors such as pay out interval, multiplier potential, sound effects and naming 'have the potential to induce excessive gambling'.¹⁶³ And, not surprisingly,

155 A list drawn up by the Government of places that will be able to advertise in Britain as if they were licensed in Britain.

156 Peter Wilson, 'Remote Gambling and the 2005 Act – is a UK licence worth the trouble?', CLT Gambling Conference, London, 27 September 2006.

157 There are currently six different duty regimes covering general betting, pool betting, bingo, casino gaming, machines and the National Lottery.

158 Which knocked £4 billion off the online sector's London Stock Market valuation in October 2006, 'US gambling', *Guardian* 3 October 2006, p 22.

159 'Blow for Jowell's gambling strategy', *Guardian*, 1 November 2006, p 29.

160 A visit to <http://www.harrahs.com> or www.bellagio.com illustrates enticements to gamble.

161 M. Griffiths & J. Parke, 'The Environmental Psychology of Gambling' in G. Reith (ed) *Gambling: who wins? Who loses?* (New York: Prometheus Books, 2003).

162 *ibid*, p 278.

163 M. Griffiths, 'Fruit machine gambling: The importance of structural characteristics' (1993) 9 *Journal of Gambling Studies* 101.

technological components which affect gambling levels are thought to impact too on problem gambling – ‘the most important of these factors appear to be accessibility of the activity and event frequency’.¹⁶⁴ More empirical work is needed further to test the role of situational and structural characteristics in the generation of increased problem gambling; especially as deregulation and the Act have presented the gambling trade with extensive opportunity to develop these incentives to gamble.

Protection of children and the vulnerable

While the first two licensing objectives present a familiar regulatory challenge, the third, the protection of children and the vulnerable, adds a new dimension to the regulatory system. While the Gaming Board informally encouraged this objective ‘it takes the Gambling Commission into new territory’.¹⁶⁵ According to the Gaming Board ‘there is no significant body of scientific research into what causes people to gamble, what causes people to become problem gamblers and – most importantly – what preventative and remedial measures are effective’.¹⁶⁶ The Government and Gaming Board seem to have overlooked the substantial literature available both in this country and overseas. A good starting point is the Government’s own scoping study published in 1977 which after pointing out that ‘the amount and quality of information available is, with certain exceptions poor’ went on to list some 270 references.¹⁶⁷ The Government may have been interested to read, for example, that excessive machine gambling ‘is probably a reflection of the lack of restrictions on the numbers and types of machines permitted in general, and allowed to operate in single settings, such as casinos’.¹⁶⁸ Although relatively new to academic study, there is a substantial literature on gambling and as a recent citation trend study put it: ‘[t]he most prevalent topics explored within gambling studies citations have been pathology, risk taking, decision-making and addiction’.¹⁶⁹ Could the Government’s ignorance of this work be due to the fact that its reforms, for example, relaxation of advertising, scrapping of the demand criterion, increased availability of mixed gambling opportunities and promotion of remote gambling, are precisely the converse of the measures suggested in the literature as necessary to address problem gambling?¹⁷⁰

Two matters generally are agreed. First, gambling ‘brings with it inherent risks of personal and social harm’.¹⁷¹ The British Gambling Prevalence Study conducted in 1999 put the figure for those aged 16 or over with a ‘gambling addiction’

164 M. Griffiths, ‘Gambling Technologies: Prospects for Problem Gambling’ (1999) 15 *Journal of Gambling Studies* 265, 280.

165 *Report of the Gaming Board for Great Britain 2004–05 HC227* (London: the Stationery Office) 5.

166 *ibid.*

167 D.B. Cornish, *Gambling: a review of the literature and its implications for policy and research* (London: HMSO, 1977) ix.

168 *ibid.*, p 64.

169 H. J. Shaffer M. V. Stanton and S. E. Nelson, ‘Trends in Gambling Studies Research: Quantifying, Categorising, and Describing Citations’ (2006) 22 *Journal of Gambling Studies* 427, 427.

170 See, for example, n 167 above, 281.

171 n 5 above, para 4.5.

at 0.6 to 0.8 per cent of the population which is some 275,000 to 370,000.¹⁷² It is further accepted that since 1999 the increase in gambling activity has led to an increase in problem gambling.¹⁷³ Secondly, as the *Gambling Review Report* and subsequent government documents accept, expansion of the gambling industry in the way recommended will see an increase in problem gamblers, even if only as a consequence of the increased number of participants.¹⁷⁴ A recent report for the Department for Trade and Industry predicted that the relaxation of gambling regulation and increased availability will produce long-term social harm, ranking with the problems posed by drug addiction by 2026.¹⁷⁵

So what of the new strategies and measures introduced by the Act to address problem gambling? Casinos are thought to require special attention due to their ability to offer unlimited stakes and high stake gambling machines. Thus 'casino gambling requires very careful, and occasionally intensive, regulation if adults are to enjoy informed choice and an effective level of protection'.¹⁷⁶ The Government's position, in order to allow expansion while safeguarding against increased problem gambling is to specify a minimum size for casinos – as a 'proliferation of small casinos . . . with ready access from a wide range of high street premises' would be hard to regulate and risk increasing problem gambling.¹⁷⁷ So all that is offered is that 'bigger will be better' as they will be easier to regulate and presumably be regarded as more responsible. While this view receives support from Collins in his evaluation of the "many-small" versus "few-big" debate,¹⁷⁸ it will be interesting to see an analysis of the social risks associated with a Las Vegas style super casino and a small high street operation. Indeed, evidence from the alcohol field is to the contrary, for in recent test purchase operations large supermarkets were less successful than smaller independent stores in avoiding underage sales of alcohol.¹⁷⁹ The Government's strategy has, in any event, been somewhat stymied by the cap which it was forced to put on its new-style casinos and the increase in the number of 1968 Act casinos.

High prize money gaming machines, linked particularly to problem gambling, will continue to be subject to 'tough controls'¹⁸⁰ and children will only be allowed to use the lowest category of machine, as described above. From August 2006 machines are being phased out of unlicensed premises such as take away food shops, minicab and taxi offices and other non-arcade and unlicensed premises. This measure is designed to safeguard children and the vulnerable as machines in these locations are largely unregulated and unsupervised.¹⁸¹ Yet aside from this there is nothing to suggest that the Act will have any beneficial effect for the

¹⁷² n 118 above.

¹⁷³ *Problem Gambling* (London: Gambling Commission, March 2006) para 6.

¹⁷⁴ As well as increased spend.

¹⁷⁵ J. Orford, *Problem Gambling and Other Behavioural Addictions* (London: DTI, 2005).

¹⁷⁶ n 5 above, para 4.5.

¹⁷⁷ Office of the Deputy Prime Minister/DCMS Joint Press Release, *Future Set Out For UK Casinos* (92/03, 7 August 2003) para 7.

¹⁷⁸ P. Collins, *Gambling and the Public Interest* (London: Praeger, 2003) 187.

¹⁷⁹ DCMS, Press Release, *Alcohol Industry Must do More to Tackle Underage Sales* (12 October 2006).

¹⁸⁰ DCMS, Press Release, *Tough Controls on High Prize Slot Machines to Stay- Jowell* (22 September 2004).

¹⁸¹ DCMS, Fact Sheet 2, *Fruit machines to be phased out of take away food shops and other non-arcade premises* (July 2006).

42 per cent of first time callers to the GAMCARE national help line with patterns of problem gambling related to the use of gaming machines, including fixed odds betting terminal.¹⁸² Indeed the proliferation of gaming machines and the introduction of no limit stake and prize machines is likely to have the opposite effect.

The Government seems to have based its entire strategy for combating problem gambling on the Commission's responsibility to ensure that measures are taken to protect the vulnerable. The advantage of such an approach is that in the event of problems occurring fault can be attributed to the Commission rather than the Government. The Commission is required to publish a social responsibility code for operators to ensure that gambling is conducted in a fair and open way; that children and other vulnerable persons are protected from harm or exploitation; and that help is available to those who are, or may be, affected by problems relating to gambling.¹⁸³ The Commission published a draft consultation paper in March 2006 which specified that operators should, for example, provide information to customers on how to gamble responsibly and obtain information on problem gambling; while operator policies should be designed to allow staff to recognise and take appropriate action with potential problem gamblers.¹⁸⁴ Operating licences will be subject to the condition that the licensee ensures compliance with the code¹⁸⁵ and operators must 'publish policies and procedures for promoting socially responsible gambling. These must include details of the ways in which they will contribute to research and education on the risks of gambling and the treatment of problem gamblers'.¹⁸⁶ Specific arrangements may cover matters such as 'age and identity verification, disclosure and information, self-exclusion, continuous and repetitive play, credit and participation in responsible gambling initiatives'.¹⁸⁷ Much of what is suggested should already be in operation, although its effectiveness is still to be tested and there are huge compliance and enforcement issues that have not been addressed.

The Commission, responsible for advising the Government on the success or otherwise of the new regime, has commissioned a series of gambling prevalence surveys.¹⁸⁸ The results are due to be published in summer 2007. Six other research projects are being funded jointly by the Economic and Social Science Research Council and the gambling industry's Responsibility in Gambling Trust (RIGT).¹⁸⁹ The RIGT, established in 2002, aims 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 help'.¹⁹⁰ While a majority of trustees come from outside the

182 n 5 above, para 1.67.

183 s 24(2).

184 *Licence Conditions and Codes of Practice (Draft)* (London: Gambling Commission, March 2006) chap 5.

185 s 81.

186 DCMS, Press Release, *Gambling Commission Board Strengthened by Social Responsibility Experts* (086/06, 20 June 2006).

187 n 184 above, chap 6.

188 n 118 above, paras 2.9–2.10.

189 ESRC, Press Release, *Responsibility in Gambling?* (8 April 2006).

190 Responsibility in Gambling Trust, 'About the Trust' at <http://www.rigt.org.uk> (last visited 18 February 2007).

gambling industry ‘it needs to be recognised that the RiGT is a body (previously known as the Gambling Industry Charitable Trust) set up and still funded by the gambling industry. Moreover, many of the RiGT trustees are senior executives of gambling trade organisations’.¹⁹¹

Young people are singled out for special measures – based on age restrictions, codes of practice and new offences.¹⁹² The minimum age for gambling in Britain is 18, but 16 for lottery products and football pools and there is no age restriction for lower value machines sited outside restricted premises. The Act creates a number of offences designed to exclude children and young persons from gambling opportunities. For example, it will be an offence to invite or permit a child or young person to gamble contrary to the provisions of the Act.¹⁹³ Licence conditions are also being devised to impose minimum standards on how age restrictions are enforced.¹⁹⁴ These match those for alcohol under the 2003 Act – which have proved less than fully effective in recent test purchase operations. Research from other jurisdictions shows that ‘access to casinos is easily attained [and] that the risk of exposure once gambling is minimal’.¹⁹⁵ With the availability of gaming machines in locations to which children have access and the particular difficulties presented by remote gambling it is clear that the risk of young people’s exposure to gambling is high. The ubiquity of the National Lottery, the increase in ‘fun casinos’ at parties and the like, the explosion in television coverage and popularity of poker, the media debates on the Act and the glamorising of gambling in popular culture all add to the allure of gambling for young people.¹⁹⁶ Further, it is difficult to see how some of the provisions of the draft code of practice will work. For example, products should not be specifically attractive to children – how should a gaming machine be designed so that it is not attractive to a 17 year old but is to an adult? And how will operators approach the suggestion in the Code that they should consider making contact with a young person’s parents and working with them to overcome a gambling problem?

CONCLUSION

The five year reform process was largely uneventful, but the Bill, when published, met a vociferous media campaign. A number of amendments were conceded and the Opposition took the opportunity to force further concessions in the ‘white-knuckle finale before parliament was prorogued’.¹⁹⁷ The Government was forced to draw back from some of the *Gambling Review Report’s* recommenda-

191 The Royal College of Psychiatrists, ‘Submission to the Gambling Commission Consultation regarding the “Statement of Principles on Licensing and Regulation” at <http://www.rcpsych.ac.uk/pressparliament/collegeresponses/gamblingcommission06> (last visited 6 November 2006).

192 n 184 above, paras 5.2.6–5.2.7.

193 Part 4.

194 n 184 above, paras 5.2.6–5.2.27.

195 D. Giacomassi, B. G. Stitt and M. Nichols, ‘Motives and Methods of Under-Age Casino Gamblers’ (2006) 22 *Journal of Gambling Studies* 413, 413.

196 For an account with case studies of young people and fruit machine gambling, and insight into how the industry introduces young people to gambling, see M. Griffiths, *Adolescent Gambling* (London: Routledge, 1995).

197 P. Dean, Chairman, Gambling Commission, speech to the Bingo Association AGM, 9 June 2005.

tions but much of the substance of the report was enacted. However, further difficulties were later to surface. The Department for Media Culture and Sport's ambitions to bring online gambling onshore appear to have been thwarted by the Chancellor and, at least in the short term, the 17 new casinos have put on hold by the defeat in the House of Lords. However, it may be that a second or even third regional casino will be added to resolve the resistance to Manchester as the site of the single regional casino.

The Act provides a widely drawn framework for the new regime leaving much of the detail to secondary legislation and to materials to be produced by the Commission and local authorities. The new regime is complex and the volume of secondary material, together with the arcane nature of some of the Act's provisions, leaves much scope for interpretation and confusion. Many pitfalls await practitioners.

The large number of consultation papers and their short time-scales are not conducive to fully articulated responses and the timetable too is slipping. The DCMS issued a flurry of publications in October 2006 'in an attempt to get back on track for the planned launch of the new legislation next September'.¹⁹⁸

Transfer of alcohol and entertainment licensing to local authorities under the 2003 Act, particularly transition, caused considerable difficulties for the industry and local authorities. It was hoped that the 2005 Act transition would be handled more efficiently, but problems for local authorities, practitioners and the industry caused by the last minute production of crucial secondary legislation from the DCMS looks likely to be repeated. Additionally, the tight timescale will bring problems for training staff, preparing materials and administrative planning. 'Chaos and confusion' have been forecast by LACORS unless the process is delayed.¹⁹⁹ The situation has been eased slightly by the Government's decision to move the 'appointed day' for acceptance of advanced applications for premises licences back first by three months to 30 April 2007 and then by a further three weeks to 21 May 2007. Both the Commission and the DCMS have produced materials to assist licensing authorities with their new responsibilities.²⁰⁰ The Government has also made funding available through the Revenue Support Grant for start-up costs such as training and recruitment.

The new system is claimed by the Government to give local people a say in the nature and extent of gambling facilities in their locality. Yet it is vague and uncertain about who is an 'interested party' entitled to make representations in respect of applications for a premises licence. Unlike the 2003 Act, avoiding public nuisance is not one of the licensing objectives. So noise and other nuisance will not be something the licensing authority can consider. There may be grounds for representation on the basis of crime and disorder, but it is unlikely that gambling premises will cause problems of crime and disorder of a public nature other than alcohol-related which will then be more relevant to any alcohol licence. Local

198 'Consultation log-jam threatens dates' (2006) *Licensing Review*, October, 12.

199 Institute of Licensing, 'Call to delay gambling laws' at <http://www.instituteoflicensing.org> (last visited 18 February 2007).

200 *The Gambling Act 2005: Training materials for licensing authorities* (London: DCMS, July 2006); *Gambling Commission Guidance to Licensing Authorities* (Birmingham: Gambling Commission, April 2006).

residents will probably have little knowledge of whether the gambling will be conducted in a fair and open way; and how should the 'protection of children and the vulnerable' licensing objective be approached? Will a representation from a local resident that the proposed premises are near to a school or hostel or that there are many disadvantaged people living in the area amount to a relevant representation under this objective? Will such a representation only be given weight if there are also representations from the school or hostel? Representations may also be made by 'responsible authorities', such as the police and planning authority, but what of problem gambling? A consultation document on whether to prescribe a body responsible for advising a licensing authority about the protection of vulnerable people concluded that 'after carefully considering the options and the issues, (the Government) does not propose to make regulations to prescribe' such a body.²⁰¹ In any event it is difficult to see how such a body could be established for each licensing area.

The Government is 'confident that the Gambling Commission will be seen as a model for gambling regulation around the world'.²⁰² This may well be the case in terms of probity, transparency and efficiency, but will the Commission be able to get the balance right between the interests of the Government, the trade and those who fall casualty to gambling? The strength of the controls are very much dependent on the approach taken by the Commission, particularly the terms of the codes of conduct and guidance issued, and the standard and specific conditions attached to operating licences. The Gaming Board enjoyed a good relationship with the industry which the Commission will seek to continue; however, the Commission's new powers, particularly its enforcement role, may strain that relationship.

For the Government, the industry represents a source of substantial revenue and employment, both of which it is keen to encourage: 'the proposed changes will move gambling conclusively into the mainstream of the leisure industry . . . Reform will create new jobs and generate significant inward investment, boosting tourism and regeneration programmes in key areas'.²⁰³ There is 'mixed evidence' on the potential for economic regeneration²⁰⁴ and there are fears of adverse social effects in the immediate area of regional casinos,²⁰⁵ but '[w]hile the figures vary all predict that the gambling industry will increase significantly as a result of the Government's proposals, with ensuing benefits to the Exchequer'.²⁰⁶ Despite this, the Government has dismissed as a 'myth' the claim that the reforms are 'driven by a desire to raise tax . . . taxation is matter for the Treasury'.²⁰⁷ And indeed it is, as we see from the recent reform of general betting duty

201 DCMS, 'Gambling Act 2005: Responsible Authority for Vulnerable Adults Consultation' (London: DCMS, 2006) para 28.

202 Gambling Commission, Press Release, *New gambling watchdog launched* (29 September 2005).

203 DCMS, Press Release, *New Rules Would Ensure Children and Gambling Don't Mix, says Jowell* (132/03, 19 November 2003).

204 n 29 above Joint Committee First Report, para 644.

205 'Supercasino at Dome "may trigger more crime"', *Daily Mail* (14 October 2006) 30.

206 Possibly an extra £3bn in tax revenue. n 29 above, First Report, paras 640, 642.

207 n 31 above.

which was 'designed to stimulate growth within the UK industry in response to developments in offshore betting'.²⁰⁸

While the Government cites freedom of choice, along with employment and regeneration opportunities as the main drivers for its deregulatory free-market policy, opponents are concerned at the social and environmental problems that increased gambling will bring. Orford has noted that no study has been conducted in Britain to assess this cost-benefit approach to gambling. However he cites studies from other jurisdictions which demonstrate that, while there were mixed findings on whether economic improvement and environmental/social problems were created, expanded opportunity for gambling led to an increase in both fears of and an actual increase in problem gambling.²⁰⁹

Myers argues that gambling regulation traditionally rested on two assumptions. First, that 'gambling is a socially endemic activity which, if unregulated, creates undesirable social costs'. To counter such costs the Act extends the Government's regulatory reach to cover, for example, remote gambling and further to regulate betting – so this imperative to control continues. Secondly, Myers contends that 'while it is not the function of government to prevent individuals from gambling, neither is its function to facilitate them to do so'.²¹⁰ The Act represents a dramatic shift away from this contention as regulatory control of the supply of gambling facilities and the principle of unstimulated demand largely have been abandoned. Beyond this, relaxation on restrictions which permit the gambling industry greater variety and freedom to increase the attractiveness of their offerings also allows the market 'to facilitate' individuals to gamble.

Liberalisation, in addition to increasing choice, has stimulated demand for gambling. Yet despite the efforts of the Government and industry to convince us otherwise, '[g]ambling is not just an industry like any other. What can be a harmless pastime for the majority may become a terrible addiction for a few'.²¹¹ The Government accepts that people 'need protection against exploitation or becoming addicted',²¹² but has dismissed as a 'myth' the claim that 'problem gambling will double after the Bill' asking what research evidence exists to support such a claim. The Government chose to ignore the extensive available literature linking volume of gambling with the incidence of problem gambling.²¹³

The Government defines problem gambling as 'any gambling that is not responsible gambling and so causes harm to the person concerned and others. Responsible gambling by a person means that on most occasions the person will gamble within his or her means as regards both money and time'.²¹⁴ But how does a croupier in a casino know when a customer exceeds their time or money limit?

208 *Department of Customs and Excise Annual Report 2004–2005 Cm 6691* (2005) note to Table L2.

209 n 148 above, p 49.

210 n 7 above, p 329.

211 *Responsible Gambling* (London: DCMS, undated).

212 n 31 above.

213 See The Henley Centre, *Economic and Social Impact Study of the Proposed Gambling Bill: A Henley Centre report commissioned by BACTA* (London: The Henley Centre, February 2004). But see also L.Farrell, *Review of the Henley Centre Report "Economic and Social Impact Study of the Proposed Gambling Bill: A Henley Centre report commissioned by BACTA"*, Technical Paper No 8 (London: DCMS, September 2004).

214 n 173 above, para 9.

How does a regional casino with its 1250 unlimited jackpot machines identify players who have gone beyond their time or money limit? Further, problem gambling is a more insidious form of social malaise than problem drinking as it does not manifest itself in public displays of disorder – problems arise ‘in the arena of private life, behind curtains rather than out on the street’.²¹⁵

The Government proposes that problem gambling should be addressed by ‘treatment, research and education’.²¹⁶ Limited support is available for people with gambling problems – for those who can afford it there are private clinics, for the rest mainly only charitable organisations, such as Gamblers Anonymous, GamCare and Gordon House.²¹⁷ There are almost no treatment services for problem gamblers available on the NHS.²¹⁸ The Government will need to commit considerable funds for treatment, while it should be wary of investment in education as ‘educating the public about gambling may have the reverse desired effect and increase awareness’.²¹⁹ A research programme is underway. It will be interesting to see whether the Government will act on the findings should they conflict with government policy or require a reversal of consents.

The Secretary of State’s claim, that ‘this is a Bill about new protections rather than new casinos’²²⁰ became ever more threadbare as the legislative process unfolded and the actions of the Government were revealed. As with the Licensing Act 2003, the Government appears to be driven by a commercial imperative masquerading as a desire to allow greater freedom for the ‘sensible majority’. No evidence has been produced of any pressure from the public for the liberalisation of gambling. The new regime is a compact between the Government and the industry, each of which stands to benefit considerably from an expanded gambling market. Finally, as the Secretary of State put it when addressing the industry in 2003: ‘If reform is handled well by all of us and the incidence of problem gambling does not increase *markedly*, then there may well be scope for some further managed deregulation’.²²¹

215 R. Room, N.E. Turner and A. Ialomiteanu, ‘Community effects of the opening of the Niagara Casino’ (1999) 94 *Addiction* 1449, 1465, quoted in n 148 above, p 41.

216 n 173 above.

217 See further <http://www.gamblersanonymous.org.uk>; <http://www.gamcare.org.uk>; <http://www.gordonhouse.org.uk> (last visited 27 November 2006).

218 BMA, *Gambling addiction and its treatment within the NHS: a guide for healthcare professionals* (London: BMA Science and Education, January 2007) 16.

219 n 163 above, 281.

220 DCMS, *Government Publishes Gambling Bill: New protections against new risks – Jowell* (London: DCMS, 19 October 2004) 2.

221 Secretary of State, Business in Sport and Leisure Conference 19 November 2003. (italics added)