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**ARTICLE FOR CASINO INTERNATIONAL (January 2005)**

**UK GAMBLING BILL – GOVERNMENT DEALS A NEW HAND**

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**Government Policy – Casino Gaming**

The Bill contains much that is new and much that is good; although some sectors of the industry would argue that that which is new is not good and that which is good is not new. For the first time online gaming will be regulated, social responsibility will be properly addressed and some sectors of the industry such as betting, will for the first time be subject to a cohesive regulatory system.

In most areas of gambling, the underlying policy – from the Gambling Review Report in 2001 onwards – has been consistent, without major changes. It has been possible to follow the progress of the policy through numerous and extensive consultations, to understand the rationale underlying any deviations and to put forward sensible predictions in relation to possible future developments.

The same cannot, however, be said about casino gaming, and it is that area in which the Government has lost its nerve and its direction. There have been radical departures from well established Government policy, without any consultation. This is not to take sides – merely to state the facts.

On 14 June of this year, the Government announced, much to the consternation and anger of the existing British industry, that category A gaming machines, with their unlimited stakes and prizes, were to be limited to regional casinos. Prospective regional casino operators, consisting mainly of international operators from the US, South Africa and elsewhere, were disappointed by the introduction of a cap of 1,250 individual category A gaming machines.

On 16 November of this year, Richard Caborn, the Minister responsible for steering the Bill through the House of Commons, told the Gambling Bill Standing Committee, much to the consternation and anger of prospective regional casino operators, that as part of the Government's modernisation of the gambling laws, the initial number of the regional casinos would be restricted to eight. As recently as June, evidence was given to the Joint Scrutiny Committee by the Government that it did not have an optimum number of casinos in mind and that this should be left to the market to determine, an approach which was entirely consistent with the recommendations of the Gambling Review Body. The Gambling Review Body had concluded that its proposals made "resort casinos" – as regional casinos were then called – a legal possibility but the development of such casinos, whether in Blackpool or elsewhere, was a matter of commercial judgement.

Ominously, in his announcement in November, Richard Caborn said that the Government was also considering "any consequential changes relating to the other categories of casino". Sure enough, on 16 December of this year, the Government issued a statement confirming widespread rumours that the number of small and large casinos would also be limited to eight. In outlining the new system for deciding the location and licensing regime for new casinos, the Government also went further than expected and imposed limits on existing casinos during the first phase, most notably in relation to their gaming machine

entitlement. We address the implications of the Government's statement in more detail below.

The result of this u-turn on casino numbers, or as the Secretary of State Tessa Jowell put it "a more cautious, incremental approach" is that Government policy in relation to casinos is, we regret to say, a shambles. This formulation of policy, on the hoof, in response to hysterical press speculation and ill-informed and politically motivated criticism, has upset the delicate dynamic within the Bill relating to new casinos.

### **Cap on Regional Casinos**

Why did the Government introduce a cap on the number of regional casinos? Richard Caborn told the Gambling Bill Standing Committee that:-

*"We have taken careful note of concerns raised during the Bill's second reading debate about the casino proposals. There was a large measure of support for the view that the licensing controls proposed in the Bill, working alongside the planning system, would not on their own be strong enough to guard against the proliferation of a kind of gambling facility hitherto untested in this country, or the location of regional casinos in unsuitable areas.*

*The Government regards the regional casino framework, which was much strengthened by pre-legislation scrutiny as robust and comprehensive. However, we are happy to provide additional reassurance to those who would prefer a more cautious approach".*

Whether more regional casinos are allowed in the future will depend on evaluation of the impact of the first eight regional casinos. Relevant factors will include any increase in problem gambling and the extent of the regeneration and other economic effects in the relevant areas.

The Government's sentiments are admirable, but the problem is that most of the concerns which were raised in the newspapers and in the House of Commons was not based on fact, but on misinterpretation and fantasy, especially as to the number of likely regional casinos. The newspapers were speculating that there would be "super" or "mega" casinos in every town and city in the country when the reality, and general consensus within the industry, was that if it was left to market forces to determine, there would be somewhere between 20 and 40 regional casinos. Regional casinos require a substantial investment in excess of £100m and the fiercely competitive gambling market in the UK is finite. You do not have to be an economic guru to recognise that many of the newspaper headlines were nonsense.

Nevertheless, the Government was clearly taken by surprise by the level of opposition to the Gambling Bill and the last minute political solution, in the run up to a General Election, has upset the balance of the Gambling Bill which was 5 years in the making.

### **Why eight?**

There are many theories and rumours as to how the Government settled on the figure of eight. Tony Banks, MP for West Ham, captured this theme during the recent debate on the Gambling Bill in the Standing Committee when he made the following comments:-

*“I may have discovered where eight came from: officials and ministers have taken the scientific approach, because, as we all know, eight is the atomic number of oxygen: it is the second magic number in physics; it is considered a lucky number in Chinese because it sounds like the word “prosper” – pnew, I believe is the right pronunciation. Eight babies delivered in one birth are called octuplets: the first surviving set of eight babies, the Louis – Chukwu octuplets, were born in 1998, so when the new clause is drafted, perhaps it will be called the Louis – Chukwu clause”.*

Perhaps the most obvious indicator that the figure of eight is a political solution, rather than based on sound principles, is that there are nine regions in England. If we assume, as appears likely to us, that Scotland and Wales will each have one regional casino and that London will have at least two, this leaves four regional casino licences to be divided amongst eight regions.

For the reasons which we have explained, if the Government really had no alternative but to impose a limit, we would have thought that a limit of 20 would have been more appropriate. This would have reassured many opponents of the Bill that there would not be a “super” casino in every city and town and would have kept all the regions happy.

### **Small and Large Casinos**

Once the Government had imposed a limit on the number of regional casinos, a limit on the number of small and large casinos was almost inevitable. The Government was plainly concerned about the risk of proliferation of casinos, but the limit on regionals would

have led to an increase in the number of large casinos. Similarly, a limit on large casinos would have led to an increase in the number of small casinos.

### **Competition for Small, Large and Regional Casino Licences**

The Government will appoint an independent Panel to advise on suitable locations for the 24 new casinos. The Panel is to produce a list of eight recommended areas for each category of casino. In identifying these areas, the Panel will take into account the need to test the impact of the new casinos in a range of different locations, including seaside towns and cities. It is therefore likely, for example that the Panel will recommend that at least one regional casino be located in a seaside town such as Blackpool or Brighton. The Panel will also look to provide a good geographical spread and will take into account the Regional Spatial Strategies which are being prepared by Regional Planning Bodies.

The Secretary of State will then consider the Panel's recommendations and, after consulting the Scottish Executive and the Welsh Assembly, will then decide which locations to designate. It would be surprising if the Secretary of State were to ignore any of the Panel's recommendations.

Local Authorities in the designated areas will then invite casino premises licence applications. Where there are more applications for premises than the authority is permitted to grant, as inevitably there will be, the Local Authority will run a competition. The Government will consult the local Government Association as to how the competition should be conducted. All we know at this stage is that the competition may be judged on issues such as employment, regeneration potential, design, financial commitment to local projects, location, range of facilities and other such factors.

## **Timing**

The Government envisages that the Panel will produce its list of recommended areas towards the end of 2006. The first of the new casino licences are therefore likely to be granted in 2007 at the very earliest. No more than 24 casinos will be allowed unless the Gambling Commission advises on whether their introduction has led to an increase in problem gambling and Parliament votes to allow an increase. This assessment will take place no sooner than three years after the award of the first casino premises licence under the new regime. This will be 2010 at the very earliest, but realistically much later and who knows when Government will have the appetite to bring the issue of casino numbers before Parliament again.

## **Existing Casinos**

Existing casinos may continue to operate and may compete for the new licences. If therefore any of the new casino licences are granted to existing casinos, there will be less than 24 new casinos. Certain restrictions will be lifted in that existing casinos will be able to advertise and will not be subject to size requirements or the 24 hour rule. Critically, however, they will be at a significant commercial disadvantage to the new casinos in that they will not enjoy the benefit of the new gaming machine entitlements and will be restricted to 10 gaming machines up to category B (proposed maximum stake of £1 and maximum prize of £2,000) and will not be allowed to provide bingo or betting. Realistically, therefore, existing casinos will be competing against the new breeds of casino for the first three years of their existence, and probably much longer.

## **Conclusion**

In conclusion, the demand criterion in the Gaming Act has been replaced with an even more restrictive barrier to entry. Even if there is a demand for a ninth small, large or regional casino, no licence may be granted until the limit has been increased by Parliament. The Government has not merely executed a u-turn, but has come full circle and upset every sector of the existing and prospective gaming industry in the process.

We have had five years of seemingly endless consultation and reports in relation to the Gambling Bill. As it is on the cusp of being enacted, however, we still have uncertainty in relation to the award of new casino licences, not to mention planning and taxation. It is impossible for prospective operators to plan effectively for the new regime whilst this uncertainty continues and, worse still, some prospective operators have been wasting their

time on projects in the belief, not unreasonably, that the legislation was heading in a particular direction. Disappointingly, this Bill seems destined to leave the House of Commons in a worst state than when it entered. It remains to be seen whether our unelected representatives in the House of Lords can repair some of the damage.

**Julian Harris**

**John Hagan**