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Insights - Prospects for England's Gambling Bill

The British Parliament's joint scrutiny committee charged with studying the draft Gambling Bill published its findings two weeks ago. The report, which is the thorough analysis of a group of lawmakers who examined the proposed clauses of the bill and then took oral and written evidence from a vast number and variety of interested parties, clearly marks another important stage in England's effort to modernize its gaming and betting laws. Ideally, such a report, being an informed synopsis of a proposed policy's flaws and accomplishments, should serve as a roadmap for editing and correcting the initial rough draft of the bill. Yet, ideals in government are often displaced or nonexistent due to an incalculable number of factors.

The committee has suggested many changes to bill, but has stated that overall the bill is not fundamentally flawed and should be introduced into the legislative process as soon as possible.

What happens now that the committee has formally made its recommendations? We asked the experts:

How much of an effect are the joint scrutiny committee's suggestions likely have on the draft Gambling Bill? What processes remain before the bill can be implemented, and how soon should we expect the bill to become law?

Clive Hawkswood: The committee's report was generally supportive of the bill and certainly of the principles behind it. It will, therefore, not change the fundamental thrust of what is intended. Ministers have yet to reach decisions on the individual recommendations, but they are strongly in favor of the pre-legislative scrutiny process and can be expected to attach a good deal of weight to what has been proposed.

With regard to remote gambling, the committee's comments were very encouraging, and it is fair to say they were an endorsement of the government's policies. A prime example of this was the committee's clear stance on the issue of cross-border gambling where it considered, but did not accept, representations from the Nordic bloc of countries who are opposed to Britain's more free-market approach.

The next stage is for the government to consider the recommendations fully and produce a response. This should be done within two months of the report's publication.

In parallel with this, work will be done to undertake any necessary amendments to the draft bill and to fill any gaps in what has already been published.

There is no reason why a final bill would not then be ready for introduction to Parliament later this year.

[How soon the bill will become law] is obviously the key question, but unfortunately is not one that anybody can give a categorical answer to.

It is entirely dependent on when the bill is introduced. However, if the bill gets into the Parliamentary timetable this autumn, it would be expected to become law in the Summer of 2005.

That does not necessarily mean that all of its provisions will come into effect then, and transitional measures are being considered for each of the gambling sectors as they move from the current regime to a new one under the control of the Gambling Commission.

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Clive Hawkswood is head of the Betting & Racing Branch at the Department for Culture, Media & Sport (DCMS). This is the Government department that, from June 2001, has had responsibility for the British gambling laws and policies. Prior to that the Home Office had held these responsibilities and while there Clive had spent time in both the Gambling Section and the Horseracing Policy Team. Earlier in his career he also spent several years working in the bookmaking industry. He is closely involved with the review of Britain's current gambling laws and has taken the lead on all related betting and remote gambling issues.

John Hagan: The joint committee's suggestions are likely to have a significant effect. It was, after all, the government's decision to submit the draft Gambling Bill to pre-legislative scrutiny and it may be politically damaging if it were not to be seen to endorse the bulk of the joint committee's conclusions and recommendations. At the very least, it would jeopardize the smooth passage of the draft bill through Parliament, one of the main objectives of pre-legislative scrutiny.

This should not present a problem for the government, as the joint committee concluded that the overall framework of the draft bill is "about right." That is not to say that I believe that all of the recommendations will be incorporated in the draft bill, whether as envisaged by the joint committee or at all. I would mention two important examples to give a flavor of the government's likely approach.

First, the joint committee recommends that there should be a statutory maximum number of machines for resort casinos in the range of 1,000 to 1,250, which is on the low side for U.S. operators. I believe that the government will acknowledge the joint committee's good arguments for such a requirement, but will impose a higher limit so as not to endanger the potential regeneration benefits of U.S.-style resort casinos. Second, the government will be pleased with the recommendation that FOBTs may only be located in casinos and licensed betting shops. The government has previously expressed concerns in relation to the possible proliferation of FOBTs and this recommendation, from an independent committee, will give the government further ammunition to resist lobbying from adult gaming centers and bingo clubs.

The next stage will be for DCMS to respond to the joint committee's report and amend the draft bill as they consider appropriate. After that, the draft bill may be introduced to Parliament as soon as parliamentary time is available. The joint committee has, however, recommended that it be reappointed to consider, amongst other things, the threshold at which casino developments are considered by regional planning bodies and are obliged to contribute to regeneration. A decision is due to be made on this by DCMS and ODPM "before the summer," and the joint committee would be reconvened shortly thereafter.

I am not convinced that such a reappointment is necessary, particularly as it will inevitably delay the introduction of the draft bill to Parliament. This draft bill has already been the subject of an extensive consultation process over several years, and it is absolutely critical that it is introduced before the next general election if that effort is not to be wasted. Whilst the joint committee is right that a number of key questions are yet to be answered by government, this is mainly attributable to the late arrival on the scene of ODPM, and these issues should be capable of resolution between DCMS and ODPM without any assistance from the joint committee.

[How soon the bill will become law] is the \$64,000 question. My best estimate is that the draft gambling bill will become law before the summer of 2005. The question is, to a certain extent, an academic one. If you are seriously interested in taking commercial advantage of the new regime in the United Kingdom, your business planning should already have commenced. Importantly, the joint committee has stated that there is no reason why the draft bill should not be introduced before the end of this session of Parliament and has urged the government not to drop this bill because it perceives it to be difficult.

John Hagan is an associate in the Gaming & Licensing Group of Pinsents in London. Hagan and other members of the team offer legal services on all aspects of gambling law and in the commercial areas tailored to the needs of casino, lottery, and betting companies. Hagan advises clients worldwide on gambling in the United Kingdom and in all European jurisdictions. He also has extensive experience advising businesses on prize competitions and fantasy sports competitions. The Gaming & Licensing

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Group advises a number of the world's biggest gaming corporations on their gaming and other leisure interests. In recent years, the group has become internationally known for its expertise on Internet gambling. John has advised operators internationally on issues relating to online gambling, including establishing operations in the United Kingdom and in offshore jurisdictions and advising on advertising issues. John is a regular conference speaker and contributor of articles to gambling publications.

Tony Coles: The public statement from the U.K. government over the last couple of weeks has been, "Yes it's all very interesting and we're looking into it," but we don't know definitively how much notice the U.K. government is going to take of the committee.

I think the issues are several. If the government really wants to put this reform onto the statute book here in the U.K. by next summer, then it's going to have to take notice of at least some of the recommendations. Otherwise it won't receive the easy passage of the legislation through Parliament that it would need to make sure that it keeps that timetable. And I don't think that the government is going to plan to take the legislation through Parliament in anything other than an agreed way with all but a very few opponents. So I think that if the government wants that to happen then it has got to take notice of the report. How much notice it takes, and in what detail, remains to be seen.

Now, of course, the press comment that was quite significant over here at least was centered on the committee's observations regarding slot machines in large casinos, but that is only one out of a mass of comments in the committee's report. There was also a lot of criticism in the committee's report that a lot of the detail in some important areas of the bill are still missing, for example: The government hasn't published some of the detail, the government hasn't put in place any machinery for any sort of shadow gambling commission to begin work on putting in place even consultation papers on the regulations codes and practices that would need to flesh out a lot of principal that would be in the main legislation itself. So that needs to be addressed.

The committee says that it invites its reestablishment to produce a second report once some of that detail is available. Whether that will happen I don't think anybody--certainly nobody outside government--knows.

The other major issue that is still not addressed publicly is tax. The committee says a few things about that, but of course tax is not meant to be dealt with in the Gambling Bill. It has to be dealt with in fiscal legislation side by side with the Gambling Bill. And the way in which expansion of the industry is going to happen in the United Kingdom--Internet gaming, Internet betting, terrestrial large casinos--is going to be largely effected by a tax regime, and we don't know what that is going to be yet.

I think that if the government says, "*We note all you say, but we are not very interested in changing our plans, we've thought them through carefully. We appreciate that we're going to have more of a struggle through parliament, but we don't mind because we will adjust our timetable and perhaps deal with that after an election next year rather than before that election.*," then I could see the government taking not too much notice. On the other hand, if it wants to keep to its timetable, it regards some of the committee's observation as sensible, then I could see a significant number of the suggestions being taken on board.

In addition to a thriving mainstream commercial law practice, Jeffrey Green Russell's senior partner Tony Coles is renowned in the leisure industry for his specialist knowledge of gaming and betting law. Tony regularly lectures to an international audience on gaming issues and is a frequent contributor to gaming law periodicals and journals. He is a member of International Masters of Gaming Law, the Society for the Study of Gambling, the Interactive International Gambling, Gaming and Betting Association, the European Association for the Study of Gambling and the International Association of Gaming Attorneys. He is a respected authority on gaming issues and is the author of the UK section of the Internet Gaming Report and "Lotteries in Great Britain", published in Gaming Law Review. Tony Coles enjoys an international reputation for the strength of his practice. Clients span a range of sizes and sectors and include a number of international household names in the leisure industry. Tony Coles can be contacted in London on +44 207 339 7000 or arc@jgrrlaw.co.uk.

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