

GUIDE TO THE GAMBLING ACT 2005

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A. EXECUTIVE SUMMARY

Introduction

- The Gaming Act received Royal Assent on 7 April 2005.
- Consolidates and modernises legislation for all sectors of gambling, except National Lottery.
- The Act introduces a unified regulator (The Gambling Commission) and the new licensing regime to be conducted by the Commission or by licensing authorities.

The Gambling Commission

- The Commission will regulate all commercial gambling, except the National Lottery and spreadbetting.
- The Commission will take over from the Gaming Board in Autumn 2005.
- The Commission has published an Introductory Guide (see www.gamblingcommission.org.uk).
- Main functions:
 - Issuing operating licences.
 - Issuing personal licences.
 - Specifying licence conditions.
 - Issuing Codes of Practice.
 - Investigating illegal gambling.
 - Issuing guidance to local authorities.
 - Advising the Secretary of State on the incidence of gambling, its effects and regulation.

Casinos

- Secretary of State may determine how casinos to be classified as regional, large or small.
- Numbers presently fixed at 1 regional, 8 large and 8 small.
- Secretary of State may by order substitute new maximum numbers in each category.
- Any change in numbers to follow prevalence study three years after award of first licence.
- Secretary of State to make regulations defining classes of gaming machines.
- Currently, only regional casinos will be allowed category A, and all other casinos category B1.
- Changes to numbers, stakes and prizes for existing casinos and abolition of 24 hour rule likely to be effective in October 2005.
- Terminals linked to live table games and terminals for playing real games of chance exempted from the definition of gaming machine.
- Existing casinos will be allowed 40 automated terminals for table games (i.e. not linked to the live table).
- Government may increase number of regional casinos, perhaps to 4 — original 8 less likely.

- Advisory Panel to advise on location of 17 new licences on following criteria:
 - Range of types of areas.
 - Geographical scale of areas.
 - Areas needing economic development/regeneration.

Remote Gambling

- Remote gambling will include all forms of electronic communication, but the secretary of State may specify that a particular system or method is or is not remote communication.
- Remote gambling equipment used by the operator must be located in Great Britain though Commission may allow specified equipment to be offshore.
- It would be an offence to advertise non European economic area gambling, though the Secretary of State may specify other countries to be treated as though they were EEA States.
- The Secretary of State may designate a jurisdiction as a prohibited territory, preventing participation of that jurisdiction in remote gambling: unlikely to include the USA or European jurisdictions.

Bingo

- Abolition of membership and 24 hour rule.
- Some additional competition from regional and large casinos.
- Removal of limitations on rollovers and prizes, though the Secretary of State may make future regulations.
- Bingo premises to have 4 B3 machines, and unlimited numbers of category C and D machines.
- Section 21 machines will fall within the definition of a gaming machine and will therefore form part of bingo premises, category B/C/D gaming machine entitlement and the limits on numbers, stakes and prizes.

Betting

- Defined as making, accepting or negotiating a bet on:
 - The outcome of a race, competition or event;
 - The likelihood of anything occurring or not occurring; or
 - Whether something is true or not.
- Spread bets to remain regulated by the Financial Services and Markets Act 2000.
- Betting to be regulated by the Gambling Commission.
- Operators to be subject to suitability and competence test.
- Specified categories of employees will require personal licences — to be determined by Commission following consultation.
- Commission to draft Codes of Practice for the industry.
- 4 fixed odds betting terminals for each premises, or 4 category C or D machines.

- FOBTs at risk if prevalence study unfavourable.
- Machines for making or accepting bets excluded from definition of gaming machines, and currently no restriction on numbers.

Tax

- No announcements as yet.
- Possible competitive rate of 2-3% for remote gambling operators.
- Announcements not expected until November 2005 or March 2006.

B. INTRODUCTION

1. On 7 April 2005, the Gambling Bill obtained Royal Assent. This finally completed a long running process that began in 1999 with the announcement of the Gambling Review. Since then, we have had the Gambling Review Report — The Budd Report , the Government s Response — A Safe Bet for Success , the publication of a draft Gambling Bill, two Joint Scrutiny Committee Reports, two Government Responses to those Reports, numerous other Government Policy Statements, a Daily Mail campaign to Kill the Bill , several Government u-turns and the tortuous passage of the Bill through the Houses of Parliament culminating in some last minute concessions to the existing British casino industry.
2. The process has been tortuous, frustrating, and particularly in the latter stages, infuriating. Everyone involved, including the lawyers, have wasted enormous quantities of time and money getting to grips with policy, only to find that it has been reversed in another political u-turn. It has been frustrating to watch as many of our elected representatives have debated the Gambling Bill in the House of Commons without any proper understanding of the key issues, as Government has shifted policy without any consultation with the industry and as regional or super casinos have been kicked around as a political football.
3. No criticism however attaches to the Parliamentary Joint Scrutiny Committee; on the contrary they deserve a special mention for their non political, sensible, pragmatic and erudite work. Indeed, had the Government adopted the Committee s recommendations wholesale, it might have enabled them to avoid many of the subsequent difficulties and the inconsistency in policy.
4. Nevertheless, the Act is in many ways a sound piece of legislation, and is well drafted, incorporating as it does a generally sound framework for the regulation of gambling, with sensibly built in flexibility for future changes.
5. The Act repeals the legislation which hitherto has governed most forms of gambling in the UK, namely the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. It is the first attempt to modernise and consolidate gambling legislation in over 40 years. On any view, that is a significant step.
6. Gambling in Great Britain will be unlawful, unless permitted by:
 - The measures contained in the Gambling Act; or
 - Measures contained in the National Lottery Act 1993 (in the case of the National Lottery), or pursuant to the Financial Services and Markets Act 2000 (in the case of spread betting).
7. For the first time, the Act introduces a unified regulator for gambling in Great Britain, the Gambling Commission, and a new licensing regime for commercial gambling, to be conducted by the Commission or by licensing authorities, depending upon the matter being licensed.

8. We published a guide to the provisions of the Gambling Bill in November 2004, which followed the format of the Bill, and looked in some detail at the provisions for obtaining licences. In this guide our aim has been to summarise the provisions applicable to each type of gambling business and to offer guidance on the implications for each and on the proposed timetable. Much of this is governed by one of the most important developments, the establishment of the Gambling Commission and we have included a lengthy chapter on the new regulatory authority, with the help of the Commission's own introductory guide.
9. We have not repeated the analysis of the Act contained in our November Guide, which remains available on our website. We have highlighted important changes made subsequently.

C. THE GAMBLING COMMISSION

10. The starting point for any consideration of the Gambling Act 2005 must be the provision made by the Act for the Gambling Commission, which will regulate all commercial gambling in Great Britain, with the exceptions of the National Lottery and spread betting, both of which will be separately regulated. The Commission will take over the functions of the Gaming Board for Great Britain, which currently regulates gaming and certain lotteries, and will assume responsibility for the regulation of betting and remote gambling, as well as for advising the Secretary of State on the regulation of gambling generally.
11. The Commission is therefore responsible for the regulation of all of the areas covered by this Guide. Moreover, before any part of the Act can be brought into force, and therefore before any of these areas of gambling can operate under the new regime, rather than under the legislation of which it replaces, the Commission must be established and must then design much of the regulatory system for which the Act only provides a framework.
12. For some time, the Gaming Board for Great Britain has been preparing for transition, though any formal steps would not be taken until the Act obtained Royal Assent. That work has now begun in earnest. In May 2005 the Chairman, Peter Dean, and his fellow Commissioner designate, published an Introductory Guide to the Gambling Commission, the main points of which are summarised in this Guide, but which can be found in full on the Commission's new website.¹

Functions of the Gambling Commission

13. The Commission has an overriding obligation to pursue the objectives of the Gambling Act and only to permit gambling insofar as the Commission believes it reasonably consistent with pursuit of the licensing objectives. Those objectives are:
 - To keep crime out of gambling;
 - To ensure that gambling is conducted fairly and openly; and
 - To protect children and the vulnerable.

¹ www.gamblingcommission.org.uk

14. In pursuing these objectives and in exercising its functions, the Commission has said that it will be guided by the following principles:

- It will regulate gambling in the public interest and it will do so vigorously;
- It will regulate in a transparent, accountable, proportionate, consistent and targeted manner;
- Its approach to regulation will be risk-based;
- Its assessment of risk will be led by the evidence and best regulatory practice internationally; where there is no evidence, it will take a cautious approach;
- It will consult widely; and
- It will use resources effectively.

15. The Gambling Commission's main functions under the Act are to:-

- Issue operating licences to authorise the licensee to provide facilities for gambling;
- Issue personal licences to authorise the licensee to perform the functions of a specified management office or a specified operational function;
- Specify general licence conditions for each type of licence, and any individual license conditions it considers appropriate;
- Issue codes of practice about how facilities for gambling are provided;
- Monitor licence holders;
- Investigate and prosecute illegal gambling and other offences under the Gambling Act;
- Issue guidance to local authorities on their role under the Gambling Act and the principles to be applied by them; and

- Advise the Secretary of State on the incidence of gambling and how it is carried out, on the effects of gambling, and on its regulation, partly by carrying out regular prevalence studies.

Timetables

16. The provisional timetable for the launch of the new Commission and commencement of its functions is as follows:-

Date	Activity
<i>Autumn 2005</i>	The provisions of the Gambling Act relating to the establishment of the Commission and the abolition of the Gaming Board will be brought into effect. The Commission will take over the Board's existing responsibilities. At this stage, formal consultation can begin, e.g. on codes of practice.
<i>Late 2005 onwards</i>	The Commission will undertake formal consultation on e.g. licence conditions, codes of practice and technical standards and will start recruiting staff in Birmingham.
<i>Early 2006</i>	The Commission will take up premises in Birmingham and will begin transfer.
<i>From late 2006</i>	The Commission will begin to invite applications for operating and personal licences under the new Act. Licensing may be introduced in stages to allow the Commission, the industry and others to plan ahead.
<i>By third quarter 2007</i>	The Commission will be fully operational.

Consultation

17. The Board is required to consult with interested parties, such as the gambling industry, gamblers and, quite properly, those who suffer from and seek to address problem gambling. The Commission will of course take into account all of the views which it receives, but we would earnestly express the hope that they — unlike the Government — will give proper weight to the views of those actually involved in the industry, in gambling and in problem gambling, and less weight to the anti gambling lobby.
18. There will be five phases of consultation, as follows:-

Phase 1 <i>2004 - 2005</i>	For some time the Commission has been gathering information on issues interested parties would like the Commission to consider. It has also been reviewing existing codes of practice and working practices around the world.
Phase 2 <i>May 2005</i>	The publication of the Commission's Guide setting out the principles that the Commission will apply in carrying out its functions.
Phase 3 <i>During 2005</i>	The Commission will hold meetings and workshops on local authority guidance, licence conditions and codes of practice interested parties, fortunately including the relevant industry sectors and those with an interest in problem gambling. Again, in our

	view, the last category should include only those who are affected by it, who address it or who have professional expert knowledge on it.
Phase 4 <i>Autumn 2005 to late 2006</i>	Launch of the Gambling Commission. A full draft of the Statement of Policy on Licensing and Regulation will be issued and formal consultation will begin. The Commission will aim to offer 12 weeks for written consultation.
Phase 5 <i>2006/2007 and thereafter</i>	After each consultation, the Commission will publish a summary explaining what it has done and will publish written responses unless respondents have requested that their views are kept confidential.

Licences and Licensing Conditions

19. The Commission will issue two categories of licences: operating licences and personal licences. For each operating licence, at least one person must hold a personal licence for a specified management office. The Commission will also specify those whom must hold a licence if they are to carry out a particular function. Small operators will be exempt from these requirements.
20. Operating licences will fall into the following categories:-
- Casino operating licence (remote or non remote);
 - Bingo operating licence (remote or non remote);
 - General betting operating licence (remote or non remote);
 - Pool betting operating licence (remote or non remote);
 - Betting intermediary operating licence (remote or non remote);
 - Gaming machine general operating licence (for both family entertainment centres and adult gaming centres);
 - Gaming machine technical operating licence;
 - Gambling software operating licence; and
 - Lottery operating licence (remote or non remote).
21. Personal licences will fall into two main categories:-

(i) Those holding management offices. The Commission may require some or all of the following to hold a licence:

- The director of a company;
- A partner of a partnership;
- Any person who holds an office in an unincorporated association; and
- Any individual required to take or share responsibility for those carrying out an operational function or for complying with the conditions of an operating licence.

(ii) Those carrying out operational functions. The Commission may require some or all of the following to hold a licence:

- Anyone who could influence the outcome of gambling;
- Those who receive or pay money in connection with gambling (the Gambling Commission will consider how this requirement should be interpreted in each sector: not all those who handle money will need to be licensed); and
- Those who manufacture, supply, install, maintain or repair a gaming machine.

22. In small operations, the operating licence will achieve the same purposes as a personal licence, which will not therefore be required. An example of the term small scale operator might be an independent on-course betting operator, employing only one or two people.

Conditions on Operating Licences

23. The Commission has broad powers to specify conditions on all operating licences. These include conditions relating to the following:

- Restrictions on the nature of gambling activities, the circumstances in which they are carried out, or their extent;

- The facilities which may or must be provided, or the number of staff or financial resources available to the licensee;
 - Requirements for reserve funds;
 - The particular types of remote communication methods permitted under a remote gambling licence;
 - The number of and specification of pieces of equipment used for gambling;
 - The provision of information to the Commission or others;
 - How facilities for gambling are advertised or described;
 - The provision of assistance to people who are or may be affected by problems relating to gambling; and
 - Establishing, verifying and recording the identity of users of gambling facilities.
24. Breach of a licence condition will constitute a criminal offence which the Commission will have power to prosecute. Alternatively, the Commission may apply administrative sanctions, such as a fine or revocation of a licence.

Codes of Practice

25. These are a new feature in gambling regulation. Non-compliance will not constitute an offence, but codes will have more weight than guidance, as they carry evidential status. This means that a Commission code of practice may be taken into account by a Court or Tribunal when determining whether legal requirements have been met. Flexibility is achieved by the fact that codes may specify more than one method by which compliance can be achieved. Alternatively, they may offer advice on the standard to be achieved, leaving operators to select the most appropriate way of doing so.
26. An early indication has been given of the codes which the Commission may introduce, in the following categories:

<i>Broad categories of codes of practice</i>	<i>Summary of scope</i>
<i>Lotteries</i>	This code will relate to the promotion of lotteries (other than the National Lottery and

Broad categories of codes of practice	Summary of scope
	small society lotteries).
<i>Bingo</i>	Targeted specifically at non-remote bingo operators.
<i>Casinos</i>	Targeted specifically at non-remote casino operators.
<i>Access to casino premises for children and young persons</i>	In line with section 176 of the Gambling Act 2005.
<i>Gaming machines - operation</i>	To include the use of machines in all categories of premises - including adult gaming centres and family entertainment centres.
<i>Gaming machines - manufacture, supply and maintenance</i>	This will relate to the manufacture, supply and maintenance of gaming machines and will include reference to technical standards.
<i>Remote gambling</i>	Covering all platforms for remote gambling - TV, internet, mobile phones etc.
<i>Pool betting</i>	Codes on the Tote and other forms of pool betting.
<i>Betting</i>	Including requirements for general betting operators and for betting intermediaries.
<i>Additional codes that apply across sectors</i>	This could include, for example, a code on advertising.

27. The Commission has invited comments on the broad headings for codes of practice topics, which are as follows:

Code of practice topics
Technical standards:
<ul style="list-style-type: none"> • equipment • facilities
Finances:
<ul style="list-style-type: none"> • financial systems and propriety • reserves • money-laundering, cash-handling
Administration:
<ul style="list-style-type: none"> • staff training, probity • access, monitoring
Gambling activities:
<ul style="list-style-type: none"> • restrictions on the use of facilities and equipment • inducements and incentives
Social responsibility:
<ul style="list-style-type: none"> • age and identity verification • disclosure and information • self-exclusion • continuous and repetitive play • credit • participation in responsible gambling initiatives
Information:
<ul style="list-style-type: none"> • to Commission • to licensing authorities • to others • access to premises for investigation and enforcement
Advertising, promotions, etc

Additional topics specific to the type of code

28. The Commission plan to hold workshops and informal meetings about the structure and content of draft codes from autumn 2005, with a view to drafts being issued for formal consultation in early 2006 and codes being brought into effect in the third quarter of 2007. Progress on development and drafts will be available on the Commission website. The Commission has published a form² to enable those wishing to receive updates or take part in a consultation exercise to register their interests.

Guidance to Local Authorities

29. Under the Gambling Act, licensing authorities will:
- License premises for gambling activities (and temporary use);
 - Regulate gaming and gaming machines in clubs and miners' welfare institutes;
 - Grant permits to family entertainment centres for the use of certain lower stake gaming machines;
 - Regulate gaming and gaming machines on alcohol licensed premises, such as pubs;
 - Grant permits for prize gaming; and
 - Register small society lotteries.
30. For premises licences in Scotland, conditions will be set by the Scottish Executive along with local licensing boards. Scottish Executive will also set premises licence fees for the premises in Scotland.
31. Commission guidance to local authorities will include details on the following:
- fundamental principles - these principles will assist licensing authorities in setting policies and procedures for their functions under the Act;
 - premises licensing considerations, processes and appeals;

² See the Introductory Guide to the Gambling Commission

- the administration of small society lotteries;
- temporary use of premises;
- compliance, investigation and enforcement - the division of responsibilities between the Gambling Commission and local authorities;
- exchange of information and registers;
- transitional matters; and
- Interaction with the Gambling Commission and other bodies.

Commission Advice

32. The Commission will give advice to the Secretary of State on:
- The incidence of gambling;
 - The manner in which gambling is carried on;
 - The effects of gambling; and
 - The regulation of gambling.
33. In order to advise, the Commission will need evidence and research. It will therefore carry out regular prevalence studies (probably every three years), building on the study published in June 2000³.
34. The Commission intend to carry out work for their first prevalence study during mid 2006, and to publish the full report in mid 2007. The aims of the study will be to:
- measure the prevalence of participation in all forms of commercial and private gambling (including estimates of expenditure and information on venue);
 - estimate the prevalence of "problem gambling" and look at which activities have the highest prevalence of "problem gamblers";
 - investigate the socio-demographic factors associated with gambling and with "problem gambling"; and
 - explore attitudes towards gambling
35. Progress will be recorded on the Commission website.

³ Sproston, Erens and Orford, Gambling Behaviour in Britain: Results from the British Gambling Prevalence Survey, National Centre for Social Research 2000

Appeals

36. As with the Gaming Board, the Commission will be subject to investigation by the Parliamentary Ombudsman.
37. What is new however is that there will be an appeal process from Commission decisions, as there has never been from Gaming Board decisions. A new independent Tribunal (The Gambling Appeals Tribunal) will be set up by the Department for Constitutional Affairs, and will hear appeals on Commission decisions, including:
 - Refusal to grant (or renew) an operating or personal licence;
 - Attachment of an individual condition to a licence;
 - Determinations following a licensing review, including suspension and revocation of licences; and
 - Voiding a bet.
38. The Commission will also introduce procedures for internal review of decisions for handling complaints, and of considering what those procedures should be.

D. CASINO GAMING

39. The Gambling Act makes fundamental changes to the regulation of casinos. It removes some out model restrictions, such as the concept of permitted areas and creates a more flexible and, in some respects, less onerous system of regulation. Having said that, there will be an arbitrary numbers of new casinos, at least for the first three years of the new regime. This is a poor replacement for the demand test, and it remains to be seen how the transfer of responsibility for casino premises licences to local authorities works in practice.
40. For the first time there is now a statutory definition of a casino . It is said to be an arrangement (whether on premises or by remote communication, such as the internet) where people can participate in casino games. These are defined as games which are not equal chance games, so that any games involving playing or staking against a bank, or where the chances are not equally favourable to all players, will be casino games.

Regional, Large and Small Casinos

Size Limits

41. Section 7 of the Gambling Act 2005 requires the Secretary of State to make regulations by reference to which any casino may be classified as regional, large or small. She may define those casinos by reference to the number of gaming tables, the floor area for table gaming or indeed any other matter at her discretion. The Government's present policy, and it is important to remember that it does not appear in the Act, is that the requirements for each of regional, large and small casinos are as follows:-

Category	Min table gaming area	Min additional gambling area	Min non gambling area	Min total customer area	Min no of gaming tables	Category of gaming machines permitted	Machine: table ratio
Small	500 m ²	0	250 m ²	750 m ²	1	B,C,D	2:1 (max 80)
Large	1000 m ²	0	500 m ²	1500 m ²	1	B,C,D	5:1 (max 150)
Regional	1000 m ²	2500 m ²	1500 m ²	5000 m ²	40	A,B,C,D	25:1 (max 1,250)

42. Small casinos must have a minimum table gaming area of 500 m² and a minimum non gambling area of 250m². Large casinos must have a minimum table gaming area of 1000 m² and a minimum non gambling area of 500 m². Regional casinos must also have a minimum table gaming area of 1,000 m², a minimum additional gambling area (e.g. bingo, betting and gaming machines) of 2,500 m² and a minimum non gambling area of 1,500 m². This means that the minimum customer area for a small casino will be 750 m², 1,500 m² for a large casino and 5,000 m² for a regional casino.
43. The purpose of the non gambling area requirement for regional casinos is regulatory. It provides consumers with an easily accessible area where they can take breaks from gambling, and consider whether they wish to resume playing.
44. Taking into account back of house areas, even small casinos will require a substantial investment, and will be larger than most of the casinos licensed under the Gaming Act 1968.

Limits on Numbers

45. Section 175 of the Gambling Act states that no more than 1 casino premises licence may have effect at any time in respect of regional casinos, 8 in respect of large casinos and 8 in respect of small casinos.
46. Critically, however, the Secretary of State may by order substitute a new maximum number of casino premises licences. Pursuant to section 355 (6), such an order shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament (see below for further explanation).
47. The Government said in a policy statement issued in December 2004 that no earlier than three years after the award of the first premises licence, the Government will ask the Gambling Commission whether the introduction of the new types of casinos has led to an increase in problem gambling or is increasing that risk. The Government will also want to assess what the regeneration and other economic outcomes have been. If the Government then decides to propose that more casinos may be licensed then the order will need to be approved by Parliament.

Gaming Machine Entitlements

48. Section 236 of the Gambling Act 2005 requires the Secretary of State to make regulations defining the four classes of gaming machines — which will be known as categories A to D — by reference to criteria such as maximum stakes and prizes.
49. The Government's current intentions regarding the categorisation of classes, and again none of this appears in the Act, are as follows:

Category	Maximum stake	Maximum prize	Location(s)	Maximum number per premises
A	Unlimited	Unlimited	Regional casinos	1,250
B1	£2	£4,000	All casinos	20 in 1968 Act casinos; 80 in small casinos; 150 in large casinos
B2	£100 per game; £15 per chip	£500	As above plus premises licensed for betting	4
B3	£1	£500	As above plus Bingo clubs and adult gaming centres	4
B4	£1	£250	As above plus Registered clubs and miners welfare institutes	3
C	50p	£25	As above plus premises licensed for alcohol	2, but may apply for more to local authority
D	10p (30p when non-exchangeable prizes)	£5 (cash or non-cash)	As above plus family entertainment centres and travelling fairs.	

50. Category A gaming machines will have unlimited stakes and prizes and will be limited to regional casinos. Regional casinos will be allowed 25 category A gaming machines for every gaming table which is available for use up to a maximum of 1,250. If therefore a regional casino has 50 tables, it will be entitled to 1,250 category A gaming machines.
51. Category B1 gaming machines will have a maximum stake of £2 and a maximum prize of £4,000. They may be installed in all casinos. Small casinos will be entitled to 2 for every gaming table that is available for use up to a maximum number of 80. Large casinos will be entitled to 5 for every gaming table that is available for use up to a maximum number of 150.
52. The rationale underlying the Government's policy in respect of category A gaming machines is that such machines are new to Great Britain and there is no reliable evidence as to the impact of these machines. Government believes that there are risks and that it is right to proceed cautiously with effective and rigorous monitoring of their impact. The Government is minded

to await the results of at least two prevalence studies (six years), after the implementation of the new regime, before considering significant alteration to the gaming machine entitlements of all types of casino.

53. The Government decision to limit category A machines to regional casinos was a controversial one, and was as popular with prospective regional casino operators as it was unpopular with prospective small and large casino operators. The result is that regional casinos will enjoy a significant competitive advantage over large, small and existing casinos. Most people would prefer to go to a regional casino where they can play a gaming machine and win a £1m jackpot than go to a large casino and play a gaming machine and win £4,000 jackpot.
54. That is not to say that all gaming machines within a regional casino will have unlimited stakes and prizes. This is a common misconception. The reality is that regional casinos will have a mix of machines with a range of stake and prize levels to suit customer taste.
55. In most circumstances, if an operator is going to make the considerable investment required to open a small casino, it would be sensible as well to open a large casino and take advantage of the greater gaming machine entitlement. The revenue which is generated from gaming machines should not be underestimated. They account for a significant proportion of a casino's profits. A small casino will have to have 40 tables available for use, with the attendant staffing costs, to secure a gaming machine entitlement of 80. A large casino will only have to have 30 gaming tables available for use to secure gaming machine entitlement of 150.

Comparison with Existing Casinos

56. A regional casino will, obviously, be a very different animal to existing casinos not least because of their size. But how will large and small casinos compare with the existing casinos? Following last minute concessions won by the existing casino industry in the wash-up session before the General Election, the differences will not be as great as was previously envisaged.
 - Existing casinos are almost exclusively smaller than the new large and small casinos. Of the 137 existing casinos in Great Britain, only eleven have table gaming areas of over 500 m². However, there will be no size restrictions on existing casinos and Government has indicated⁴ that existing casinos will be able to be transferred to new owners and new premises if their current premises for some reason become unavailable, so long as they remain within their existing licensing area.
 - The abolition of the 24 hour rule and the lifting of the ban on advertising will apply equally to new and existing casinos. Existing casinos will therefore be able to attract greater numbers of customers than presently, thereby creating a demand for larger premises. The

⁴ (Casinos: Statement of National Policy dated 16 December 2004)

restriction on live entertainment has already been lifted, but most existing casinos will require greater space to exploit this new freedom.

- One of the late concessions was that the gaming machine entitlement for existing casinos would be increased as would the maximum stake and prize limits. Existing casinos will be entitled to have 20 (currently 10) gaming machines with a maximum stake of £2 (currently 50p) and a maximum prize of £4,000 (currently £2,000), compared to small casinos and large casinos which may have up to 80 and 150 such gaming machines respectively. According to the then Parliamentary Under-Secretary of State for the Department of Culture, Media and Sport, Lord McIntosh of Haringey, speaking in the House of Lords on 6 April, these changes will be implemented as soon as practicable after Royal Assent, and certainly this year. Indeed, he went on to give a pledge that the Government would implement these and other changes as soon as possible. We understand that DCMS intend the requisite order to be a day before the House before the summer recess begins at the end of July.
- At first glance, therefore, small casinos will have a far greater number of gaming machines than existing casinos. However, a small casino will only be entitled to 80 gaming machines if it has 40 gaming tables available for use. It remains to be seen whether operators of small casinos will be prepared to make 40 gaming tables available for use, with the attendant staff costs, to order to secure that entitlement. The reality may be that few small casinos will have the full entitlement. We believe that many may have closer to 20 or 30 gaming tables and 40-60 gaming machines. The difference between existing casinos and small casinos may therefore be less stark than it first appears.
- But that is not the end of the story. When is a gaming machine not a gaming machine? According to Sections 235 (h) and (i) of the Gambling Act, terminals which are linked to live table games in a casino and terminals for playing real games of chance, for example where there is a mechanised roulette wheel, will not fall within the definition of a gaming machine. In the case of the former terminals, we are not aware of any proposed limits on numbers and, in the case of real games of chance linked to a mechanised wheel, it seems that the limit will be 40, given the statement by Lord McIntosh in the House of Lords on 6 April that existing Casinos should be entitled to install 40 automated terminals for casino table games. This limit will be imposed pursuant to Section 174.
- Existing casinos will not be able to offer betting, whereas small casinos will be able to offer betting, and large casinos will be able to offer both bingo and betting (Section 174). We do not believe that this offers the new small casinos a major competitive advantage over existing casinos particularly as Lord McIntosh has confirmed that existing casinos will be able to install FOBTs as part of their gaming machine entitlement if they so wish (with the same stakes and prizes as in licensed betting offices), as long as they otherwise comply with

the requirements of the Gaming Act 1968 relating to gaming machines.

57. All in all, therefore, the difference between existing and, certainly small casinos, will not be as great as the existing casino industry feared as recently as December 2004.

Regional Casino Uncertainty

58. The Gambling Act may now be on the statute book, but it remains to be seen whether the Government seeks to raise the number of regional casinos from the single regional which it agreed to as the price of getting the Act passed before the General Election. For the reasons set out below, it appears that there is at least the possibility that this number will be raised before the locations for the new casinos are set. Given its importance, it is worth exploring this issue in some detail.

History of Legislation

59. The history of the legislation suggests that the Government has never been in favour of a limit on the number of regional casinos, never mind a limit of 1. The Gambling Act was the product of a lengthy and exhaustive consultation process and enjoyed cross party support on most of the issues for most of the time. It was not until very late in the day, without consultation and in response to political pressures that any limit was imposed.
60. On 16 November 2004, 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 regional casinos would be restricted to 8. As recently as June 2004, evidence had been 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 (Lord McIntosh of Haringey).
61. This approach was entirely consistent with the recommendations of the Gambling Review Body. The Gambling Review Body concluded that its proposals made resort casinos - as they were then called — a legal possibility, and that the development of such casinos, whether in Blackpool or elsewhere, was a matter of commercial judgement.
62. It was consistent with A Safe Bet for Success :-

“The creation of resort casinos is not a specific policy objective of these changes. The extent to which schemes of this kind are promoted and taken forward will be primarily a matter for the private sector subject to local authority approval. The Government will naturally be watching any such developments with interest, and will wish to ensure that any wider public policy

considerations, for example, in relation to tourism or regional economic development, are properly taken into account. But we see no case for granting preferred or pilot status to any particular developer or area”.

63. It was consistent with the Joint Committee s recommendations:-

“We believe that increasing the minimum total size for a [regional casino] will increase the size of the investment required to create such a facility, which in turn may limit the likely number of [regional casinos] to somewhere around 20-25. We believe that it is appropriate to have fewer [regional casinos] than has been suggested by some of the evidence we have received”.

64. At the time, Gala were forecasting 30-50 regional casinos and the BCA gave evidence that foreign operators were forecasting 20-40 regional casinos.

65. The imposition of a limit of 8 was plainly a political decision, taken primarily in response to hysterical and ill-informed press speculation and opposition from back bench labour MPs in the run up to a General Election. The explanation given by Richard Caborn to the Gambling Bill Standing Committee was 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”.

66. Once a limit on the number of regionals had been imposed, a limit on the number of large and small casinos was inevitable. On 16 December 2004, the Government issued a statement of national policy relating to casinos imposing a limit on the number of regional, large and small casinos of 8 each. The rationale was as follows:-

The Government recognises, however, that the casino proposals in the Bill represent a significant change and we needed to take a cautious approach in order to assess whether their introduction leads to an increase in problem gambling. The Government has taken the view that the risk of an increase in problem gambling will be reduced if a limit is imposed on the number of casinos. We have therefore decided to set an initial

limit on the number of regional, large and small casinos of 8 each.”

67. Then in April 2005, the Government ran out of time to get the Gambling Bill through and the opposition parties were in a strong position. A further compromise was negotiated and the limit on the number of regional casinos was reduced to 1.

Secretary of State's comments in the House of Commons

68. It is evident from the comments made by the Secretary of State, Tessa Jowell, in the House of Commons on 7 April that the Government is seriously considering an increase in the number of regional casino licences.

69. At column 1624 of Hansard, the Secretary of State (Tessa Jowell) said:

“The opposition had previously supported 8 such casinos, though reduced the number to 4, and now insist on 1. On the basis of the Government's original proposition agreed in Committee, some seven local authorities will miss out on the potential benefits for regeneration in the first stage.

We believe that regional casinos should be tested, primarily for any impact that they might have, because of the different nature of the regime, on problem gambling, but also for their power to regenerate rundown towns and cities. As the Honourable Member for Malden and East Chelmsford (Mr Whittingdale) is aware, we reserve the right to ask Parliament again what number of regional casinos is necessary to test their impact.”

70. At column 1625, Mr Don Foster for the Liberal Democrats responded:

“We, too, sought to persuade the Government to reduce the number of super casinos and to introduce a pilot period to test two things: first, whether it would add to regeneration in the area in which it is located, as the Government claim would happen; and secondly, to be assured that it did not lead to any increase in problem gambling. We were keen for the number to be reduced, and were given an assurance. Now, following further deliberations, another is being proposed. We are more than happy to support the trial of just one super casino. The Secretary of State said that the Government reserved the right to increase the number later. I hope that the Secretary of State will reassure us that it is not a hint that as soon as we return after the election there would be any such moves”.

71. In addressing this issue, the Secretary of State's response suggested that this was exactly what she had in mind:

“It is important that the industry remains supportive of this Bill and has confidence in it. The decision to reduce from 8 to 1 the

number of regional casinos in the first stage means probably the loss of £600m of inward investment to some of those parts of the country where that inward investment is most needed, and the loss of probably in excess of 40,000 jobs. No Government can bind the next Parliament but it will be for the next Parliament to decide whether, in the light of demand and consistent with the precautionary principle, that number should be increased”.

72. Most recently Richard Caborn, the Minister for gambling, has confirmed the Government view that more than 1 regional casino will be necessary in order properly to assess their impact. He said:-

“We do not rule out the possibility of asking Parliament at some future point to consider changing the numbers. To be honest, I must say that before the general Election, we were pushed into the position of accepting the idea of 1 regional casino.

Many people argue that to achieve the type of project involved with 1 regional casino, there ought to be more than 1 of them. We shall implement the Act on the basis of there being one, but I believe that at some stage we need more than 1, to allow the impact right across the United Kingdom to be reasonably assessed”.

73. Former Shadow Minister for Gambling, Julie Kirkbride, sought reassurance that the first regional casino would be up and running before the Government returned to Parliament to ask for a greater allocation, but no such reassurance was given.
74. One pilot regional casino is probably not sufficient satisfactorily to assess the impact in the range of areas and types of location that might be suitable for regional casinos.
75. If there is one pilot regional casino in a City centre location in Manchester, how will that enable the Government to assess the potential impact on problem gambling of a regional casino in Torbay? If there is one pilot regional casino in Blackpool, how will that enable the Government to assess the potential for economic development and regeneration if a regional casino licence is granted in Greenwich?
76. If there is only one regional casino, it follows that a regional casino licence is most unlikely to be granted in two out of England, Scotland and Wales until 2010 at the very earliest. This seems grossly unfair and unlikely to happen for all sorts of political reasons.
77. Plainly, a good case can be made for granting the first regional casino licence to Blackpool. It is not, however, the foregone conclusion which many newspapers and MPs would have us believe, far from it. Blackpool will face fierce competition from, to name but a few, Greenwich, East Manchester, Glasgow, Coventry, Birmingham and Newcastle. As this becomes clear to many MPs, and as pressure rises in their own constituencies for the

regeneration and tourism benefits flowing from regional casinos, and from local authorities, they may become more amenable to an increase in the limit.

78. As the Secretary of State commented in the House of Commons, the decision to reduce from 8 to 1 the number of regional casinos means probably the loss of 600m of inward investment to some of those parts of the country where that inward investment is most needed, and the loss of probably in excess of 40,000 jobs .

The Advisory Panel on new casino locations

79. The Secretary of State will appoint an independent Advisory Panel to advise her on the areas in which the new casinos should be located. We understand that the Panel will collectively have knowledge and expertise in a range of matters including planning, securing regeneration, tourism and addressing the social impacts of gambling. The Panel members must be able to demonstrate independence from any potential interested parties and must have an appreciation of the need for impartiality.

80. The Advisory Panel will be asked to identify areas for the new casinos based on the following criteria:-

- A good range of types of areas.
- A good geographical spread of areas across Britain.
- Areas in need of economic development and regeneration and likely to benefit in regeneration terms from a casino.

81. These criteria are designed to ensure that the subsequent assessment of the impact of the new casinos will be on the basis of a broad range of information and experience.

82. Applications are now invited for membership of the panel.

83. The Advisory Panel will, no doubt, receive a deluge of submissions and representations from the great number of local authorities which would like to be in a position to issue one of the new licences, from regional planning bodies in England and also from the authorities in Scotland and Wales.

84. The Advisory Panel will recommend up to 8 areas for large and small casinos and one area for a regional casino. The Secretary of State will then consider the Panel s recommendations and, after consulting the Scottish Executive and the Welsh Assembly Government, decide which areas are to be designated. Government do not expect the Advisory Panel to complete its work before the end of 2006.

85. So where will the maximum of 17 casinos be located? We are not going to attempt to list where all 17 casinos may be located. We can however offer the following thoughts:-

1. London, Scotland and Wales will be granted at least 2 casino licences each.
2. Each of the regions in England will be granted at least 1 casino licence.
3. Blackpool will be granted at least 1 casino licence, probably large or regional.
4. New casinos will be located in urban centres in several major cities and at least two seaside resorts.
5. Some new casinos, most likely small casinos, will be located outside existing permitted areas. Potential candidates include Peterborough, Norwich, Guildford, York, East London, Harrogate and Milton Keynes and several locations within the M25.

Competition for New Premises Licences

86. Under the new regime, casino premises licences will be granted by the local licensing authority, or in Scotland the local licensing board. A local licensing authority will, however, only be able to award a casino premises licence if one has been identified for its area. Realistically, therefore, no new casino premises licences will be granted before 2007.
87. It will be a two stage process. The first stage will be a regulatory test to ensure that all casino proposals satisfy the regulatory premises licensing requirements in the Act. The second stage will be triggered where there are more applications for casino premises licences than the local licensing authority is permitted to grant. We believe that there will almost certainly be a second stage competition in the case of all 17 licences.
88. The second stage of the process will be a competition held by the local authority. We do not yet know the rules of the competition, as DCMS have not yet consulted with the local Government Association. It is envisaged that the local authority will set out its priorities and concerns in a set of objective key considerations and it will then invite operators to submit entries to the competition. A casino operating licence will also be required.
89. The eventual winner of the competition will be eligible for a full premises licence once he has obtained planning permission and the casino has been built. Success in the competition will not guarantee planning permission. He will also need a casino operating licence.
90. Based on section 159 of the Gambling Act, it seems that an application for a new premises licence may only be made by a person who holds a casino operating licence or has made an application for a casino operating licence, which has not yet been determined. It would therefore be sensible for a prospective competitor for one of the new casino licences to apply for a casino operating licence at the earliest opportunity, if he is not already licensed under the existing regime.

91. The fact that an operator holds a casino operating licence can only assist his chances of success in the competition. We know that the Gambling Commission will be awarding operating licences to companies on the basis of the usual licensing criteria, but incorporating an additionally stringent test of social responsibility to reflect the fact that regional, large and small casinos will present hitherto untested risks of social harm.
92. It would be invidious to speculate on the identity of the successful applicants for licences. We would expect, however, existing casino operators to apply for all of the small and large casino licences and possibly the regional casino licence, and competition will be fierce. Existing casino operators will be well placed to make these applications as they have considerable experience of operating in this market, may already have identified suitable premises, or own existing casinos which may be converted into small or large casinos and, of course, they are already licensed. We would expect a number of the licences to go to new entrants to the market offering a new style product and, possibly, with a strong connection to the local area.

The Gaming Act 1968

93. The new Act will be brought into effect in stages, to be decided by the Secretary of State in due course. So far as casinos are concerned, the new licensing regime is still some way in the future and will follow the establishment of the new Gambling Commission. For the time being, the licensing regime of the 1968 Gaming Act remains in force, enabling further applications for new licences to be made or for expansion of existing premises.
94. Considering the uncertainty as to where the new casino licences will be located, the fact that the issue of those licences will not be before 2007 and the ferocity of competition which there will be for the initial 17 gaming licences, it makes sense to apply for new gaming licences under the existing regime and that is what operators and prospective operators are doing. We understand from the Gaming Board that they have an unprecedented number of applications for Certificates of Consent. However, recent speculation in the press that there are a hundred such applications is nonsense. The reality is a fraction of that number, and it may be that the press are looking, not at the number of consent applications, but at speculative applications for outline planning permission by those who wish to prepare for competitions for new licences. Nevertheless, the fact remains that there has never been a better time to make an application for a gaming licence, despite the continued existence of the demand test. It is interesting to note that in the past two years every application for a new licence has succeeded, if not before the Licensing Committee, then on appeal.
95. There is a further important point: if the pilot phase of the new casino licences is a success and that the increased number of gaming machines in small and large casinos has not had any significant impact on problem gambling, it will be very difficult, if not impossible, for the Government to resist the conversion of existing casino licences, which meet the other criteria for a small or large casino, from converting their licences to small or large casino licences. Is not the reality therefore that the small and large casinos of the

future are already in development? They are the existing casinos and casinos which are granted licences in the period between now and the introduction of the new regime. It may be that, even if the pilot phase is a success, the market may be saturated and the only remaining customer demand for new small and large casinos will be outside existing permitted areas.

96. Government is, of course, aware that a substantial number of applications are being made and must be keeping the position under review. The demand criterion will, to a certain extent, ensure that the number of successful new applications does not get out of control. There is, however, no central system for regulating the number of licences which are granted under the existing system. Also, it would be most unsatisfactory to have a long period of time between the two regimes where no gaming licences could be granted. Nevertheless, the time will come when Government will prevent any further applications under the old legislation. That time could be as early as October, when the new Gambling Commission formally begins operation, and the guillotine may be on any certificate of consent applications that have not already been presented to the Gaming Board. The clear message to prospective operators is therefore to make any intended application as a matter of urgency.

E. REMOTE GAMBLING

Definitions

97. Section 4 uses the term remote gambling to mean gambling where people participate by means of remote communication . The term is specified to include the internet, telephone, television and radio, but also any other kind of electronic or other technology for facilitating communication. In this way, the Act ensures that the definition will keep pace with future developments in technology. As an additional safeguard, the Secretary of State may specify in regulations that a particular system or method of communication is, or is not, to be treated as a form of remote communication for the purpose of the definition.
98. Section 5 contains a definition of facilities for gambling . The provision of such facilities is a fundamental concept in the Act because it underpins the offences in Parts 3 and 4 and the requirements for licensing in Parts 5, 6 and 8. The section defines the activities subject to regulation under the Act. In short, any person who offers the opportunity for people to gamble will be regarded as inviting people to gamble in accordance with arrangements made by them.
99. This section has important implications for those linked to, but not directly providing, remote gambling, though there is an exception for electronic communications providers who simply act as a carrier of information for others who provide facilities for gambling, or consumers who participate in it; for example, an internet service provider or mobile telephone operator would not be caught by the section, but a computer in an internet caf with a home page menu dedicated to providing links to gambling websites would be.
100. Fortunately, the Act contains new powers for the Secretary of State to clarify those cases where facilities for remote communication can or cannot reasonably be expected to be used for purposes other than gambling, or where facilities are to be taken as being intended, or not intended, to be used wholly or mainly for gambling.

The Licensing Regime

101. Part 5 of the Act provides for the Commission to issue operating licences for every type of gambling. For existing casino, bingo and betting operators, these are the equivalent to Certificates of Consent and Bookmakers Permits. Before being able to use premises for providing gambling facilities, the operating licence holder will also need a premises licence, issued by the local authority.
102. For every class of operating licence, there will be two types: remote and non-remote. An operating licence cannot combine authorisation for both remote

and non-remote provision of facilities for gambling. Moreover, the Commission is empowered to limit the particular forms of remote communication by which gambling is to be offered under a remote licence. It will not automatically confer entitlement to use all forms of remote communication, and instead conditions can limit provision to one, or any combination of the different forms of remote communication. For example, an operator may be licensed to accept bets on the telephone but not on the internet.

103. In considering an application for an operating licence, the Commission must have regard to a number of factors, and in the case of remote licences, it must have regard to matters additional to those specified for non-remote licences. They are:-

- The protection of vulnerable persons from being harmed or exploited by gambling, and
- The availability of assistance to persons who are or may be affected by problems relating to gambling.

104. The Commission is further empowered to classify particular equipment or machines to be suitable, in accordance either with standards or tests that it has established, or that it has asked others to establish for it. This will enable the Commission not only to carry out its own testing of remote gambling equipment, but also to certify independent testing houses to do so.

105. Section 89 contains specific rules applicable to a remote operating licence. Most importantly, it contains the presumption that remote gambling equipment used by the operator must be located in Great Britain.

106. Section 89(2) includes a new power (not present in the Gambling Bill) to depart from this general principle, and to allow an operator to site particular pieces of specified equipment offshore, provided that the Commission is satisfied that to do so would be consistent with the licensing objectives. This gives some way towards addressing a major concern of those providing Poker games, who wish to link to sites located in other jurisdictions.

Advertising

107. Ironically, at present, section 42 of the Gaming Act 1968 places very severe restrictions on the advertising of licensed UK terrestrial casinos, but unwittingly fails to prevent overseas internet casinos from advertising irrespective of the jurisdiction from which they operate.

108. Section 331 deals with foreign gambling, and makes it an offence to advertise non European Economic Area gambling. The foreign gambling is that which either physically takes place in a non EEA state, or gambling by remote means which is not regulated by the gambling law of any EEA State.
109. An EEA State is a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992. However, it will be open to the Secretary of State to make regulations specifying countries or places which are to be treated as though they were EEA States for the purposes of the section, and our understanding is that Alderney will be covered by such a regulation, although technically it does not fall within the EEA.

Provision of gaming overseas

110. There has been much discussion about the way in which the UK Government would deal with overseas jurisdictions who do not want their citizens, for whatever reason, to indulge in internet gaming.
111. Section 44 gives the Secretary of State power to designate a jurisdiction as a prohibited territory , making it an offence for a person to invite or enable someone in such a territory to participate in remote gambling. This will apply to operators (i.e. those making the invitation or enabling the activity).
112. It is not yet known which, if any, jurisdictions will be designated as prohibited territories, though it was thought that they are likely to include only those jurisdictions where there is specific law against internet gambling by that jurisdiction s citizens, and not those which have simply expressed a dislike for internet gambling (for example the Netherlands), perhaps in order to protect that national monopolies, or where the law is uncertain (for example the United States).
113. In its explanatory notes, the Government has said that the position by the Secretary of State whether or not to exercise the power could depend on matters such as:
 - The development of the global gambling market;

- The laws which a country has established to permit, constrain or prohibit the use of remote gambling;
- Practical measures employed by those countries to secure compliance with such laws; and
- The extent to which it is possible to reach international agreements about the possible use of the internet for gambling.

F. BINGO

New Regime

114. Because it has always been regarded as a softer form of gambling, bingo has never been subject to quite as many restrictions as casino gaming. Nevertheless, the Gambling Act makes important changes to the way in which bingo will be regulated in the future. As with casinos, commercial bingo premises will no longer have to operate as clubs, with a 24 hour membership rule, and the regime for the grant of operating premises licences will be similar to that applicable to casinos under the new Act. So far so good.

115. The new bingo regime does not suffer from the complexities applicable to the new casino regime, because there is no need to sub-divide the industry into categories. Nor has it been thought necessary to seek to curb proliferation, so there is no proposed limit on the number of new bingo clubs: this is left to market forces. In considering new applications, the local authority is not permitted to have regard to the expected demand for bingo facilities. However, Gambling Commission guidance to local authorities will be designed so as to prevent undue proliferation.

Rollover and Prizes

116. Where bingo may regard itself as disadvantaged under the new legislation is not so much in what has been given to bingo, but what has been given to casinos. Neither the Secretary of State nor the Commission can attach any condition relating to the rollover of prizes, so that unlimited amounts can be added to stakes and to rollover prizes. This means that linked and multiple games of bingo will be more attractive once the limits on these games are removed. Although there is power for the Secretary of State to make regulations attaching conditions to bingo operating licences limiting stakes, charges and prizes for bingo, the Commission has no power to set conditions on these matters, and it is not anticipated that the Secretary of State will make any regulations in the foreseeable future, in the absence of adverse evidence in any prevalence studies, which is thought to be unlikely.

Bingo in Casinos

117. Initially, the proposal was that bingo would be permitted on all casino licensed premises. This was a major fear for the bingo industry though some of the larger operators were exploring the possibility of converting their premises into casinos. It is probably unlikely that existing casinos, or new small casinos would have taken advantage of this opportunity. However, that does not arise, because bingo will only be allowed in the 1 regional and 8 large casinos. We see little prospect of this changing in the foreseeable future, and indeed change is only likely in the future if there is a clamour for change from small casinos, which we believe to be unlikely.

Remote Licences

118. The introduction of remote operating licences and the power to impose requirements on multi-site games replace the provisions in the Gaming Act relating to multi and link bingo. Remote operating licences will be required by those wishing to provide bingo by means of remote communication, even where that bingo is played partly on premises licensed for bingo.

Machine Entitlement

119. Under the new Act, section 172(7), a bingo premises licence will authorise the holder to have four category B machines, together with an unlimited number of category C and D gaming machines. Within category B, bingo clubs will be restricted to category B3 or B4 machines. In particular, it will almost certainly be category B3, which have higher stakes and prizes (£1/£500 compared to £1/£250). The maximum stakes and prizes for categories C and D are 50p/£25 and 10p/£5 respectively. The likely consequence of these provisions is that bingo clubs will have much greater freedom to introduce larger numbers of low stake, low prize machines, which tend to be popular with their customers.
120. There is more good news in that machines for playing bingo are excluded from the definition of gaming machine (section 243(2)(e)). Mechanised cash bingo equipment will therefore fall outside a bingo club's gaming machine entitlement, though it will need to comply with Commission conditions which will ensure that the exemption is construed narrowly and will not apply to any machine on which a virtual bingo game could be played. Fully electronic bingo terminals would not, for example, be exempt.
121. There is however great concern over Section 21 machines. These will be covered by the definition of gaming machine, as they are machines which are designed or adapted for use by individuals to gamble and do not fall within any of the exemptions to this wide definition. They may therefore only be installed as part of the gaming machine entitlement set out above.

122. These machines generate substantial revenue for operators. They were originally included to allow small scale gaming between sessions, and it was not envisaged that this would be conducted by machines. Their advantage is that they are subject to different limits on stakes and prizes from gaming machines and are not subject to such strict limits on numbers and locations.

123. The Secretary of State has power to redefine the classes for gaming machine applicable to any sector of the industry, and to make regulations governing stakes and prizes. Unfortunately for the bingo industry, the normal triennial review, which generally resulted in an increase in stakes and prizes on AWP machines, has not taken place, despite a recommendation from the Gaming Board. The hope is that the new Gambling Commission will take a similar view, in which case increases may be incorporated into the first regulations.

124. It is also disappointing for the bingo industry that betting shops will be permitted to have fixed odds betting terminals, whereas bingo premises will not.

G. BETTING

125. Although, ironically, less is said specifically about betting, in all its various forms, in the Gambling Act, it is probably in relation to betting that the most fundamental change is made.
126. For the first time, betting is defined for the purposes of the Act. Broadly, betting is legally the placing of a wager on the outcome of a future event, and this can be either by way of fixed odds, by means of a spread or by way of pool betting.
127. Section 9 of the Gambling Act now defines betting as being the making, accepting or negotiating of a bet in relation to one of:
- The outcome of any race, competition or event;
 - The likelihood of anything occurring or not occurring ; or
 - Whether something is true or not.
128. The meaning is extended to include bets from races, competitions or other events that have occurred in the past.
129. Despite much discussion during the course of the Gambling Bill's progress through Parliament, it was decided that spread bets would continue to be regulated under Section 22 of the Financial Services and Markets Act 2000, and would be excluded from the definition of betting in the Gambling Act. However, if a class of bets ceases to be subject to regulation under the Financial Services and Markets Act, it automatically becomes subject to regulation under the Gambling Act, and transitional provisions can be made to deal with that change.
130. Unlike the other major areas of gambling — casino gaming, bingo and lotteries — betting has not until now had a national regulator. Local authorities have regulated pools competitions, the TOTE has exclusively operated pool betting on horseracing and bookmakers permits and betting office licences have been issued by Betting Licensing Committees at Magistrates Court which determine, on advice from the Police, whether the applicant is a fit and proper person to hold a permit and whether premises are suitable and there is a demand for them.

131. The fundamental change to the way in which betting is regulated, is that all forms of betting will under the Gambling Act be regulated by the Gambling Commission, with the same regulatory framework as applies to casinos and bingo. Therefore the provisions of the Act relating to operating licences and premises licences will apply to the betting industry, and these were dealt with in some detail in our Guide to the Gambling Bill published in November 2004.
132. Although the betting industry may feel that an unnecessary and an undue burden is being placed upon it, it is difficult to argue against the Government argument that current arrangements whereby different regulatory responsibilities are exercised by Licensing Magistrates, local authorities, the Horserace Betting Levy Board and the TOTE, with the regulation of other gaming products by the Gaming Board, are out of tune with the modern gambling market, where operators are providing a wide range of gambling services and products across various sectors.
133. Moreover, it must be in the public interest to have a single regulator, one of whose roles will be to ensure that consumers are made properly aware of the terms under which bets are accepted and settled, and that they have adequate redress in the event of a dispute. For the first time, bets will be legally enforceable contracts.
134. Operators will be subject to a suitability and competence test, and specified categories of employee will, in addition, require personal licences. This will be determined by the Commission following consultation. The Commission will also draft Codes of Practice for the industry.

Machines

135. Given the enormous success betting shops have enjoyed since the introduction of fixed odds betting terminals, there will be relief in the industry that these will continue to be permitted. Betting premises will be allowed to have up to 4 gaming machines of category B, C or D, similar to their current entitlement. It is important however to bear in mind that this entitlement is not enshrined in the Act, and that the Secretary of State has power to amend this entitlement in secondary legislation. If, for example, prevalence studies to be conducted by the Gambling Commission were to provide evidence of machines in betting shops causing a substantial increase in the incidence of problem gambling, then it is possible that the entitlement would be reduced, that stakes and prizes would be revised or that regulations relating to speed of play may be tightened. In view of the very substantial numbers of FOBTs in betting shops and their commercial importance to bookmakers, however, we find it difficult to envisage their removal altogether.
136. However, conditions may be imposed on betting premises licences and casino premises licences relating to the number of machines on the premises used for making or accepting bets, the nature of those machines and the

circumstances of their use. This provision relates to those machines used for making or accepting bets on real events, and not to category B, C or D machines. Machines for making or accepting bets on real events are excluded from the definition of gaming machines in Part 10 of the Act. However, restrictions can be imposed on such machines, if thought necessary.

H. TAX

137. Unfortunately, we can only repeat what we have said in all of the Guides we have prepared during the course of the process leading to the new Act: tax remains the greater uncertainty. We are as much in the dark as everyone else, including DCMS, who can do no more than state that this is a matter for HM Treasury, whilst maintaining radio silence.
138. Following the change in the method of calculating betting duty, and the switch to a gross profit formula, the system for the payment of bingo duty was changed by HM Treasury on 27 October 2003. Before that date, customers incurred a 10% duty deduction from their stake money, and commercial operators paid VAT at 17.5% on their retained income fees. The new system abolished the deduction of duty from stakes; instead operators now pay 15% duty on retaining, any deduction of VAT and any added prize money. Bingo duty is therefore also now based on a gross profit tax, and at the same level as betting duty.
139. It might logically follow from these changes to bingo and betting duty that gaming duty would also become a gross profit tax, payable at 15%. This however we regard as unlikely. Whilst it would certainly appeal to those operators paying tax at the top end (40%) of the current scale, it would be regarded as unfair by the less profitable casinos, and it may be that a tax of more than one rate might be introduced. If there is a single rate, we believe it unlikely that it will be at less than 20%.
140. So far as remote gambling is concerned, it is widely thought that this will be set at a lower rate, perhaps as low as 2-3%, in an effort to make the UK competitive in comparison with other jurisdictions, such as Alderney, Gibraltar and Malta.
141. Nor is there yet any indication as to when any announcements will be made. It was thought that there might be something in the March 2005 Budget, but the subject was not mentioned. We would expect an announcement either in the November Statement by the Chancellor of the Exchequer, or alternatively in the March 2006 Budget.

Harris Hagan

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