
THE GAMBLING ACT 2005
THE BRITISH CASINO – PLAY YOUR CARDS RIGHT
JOHN HAGAN, PARTNER – HARRIS HAGAN

INTRODUCTION

These are exciting and formative times for the British casino industry.

It is a period of transition but, strange though it may seem, the Gambling Act 2005 brings with it a greater degree of certainty than the industry has had for many years. We no longer have to speculate whether there will be an Act and, if so, what it will say. We no longer have to speculate on the outcome of tough political negotiations in smoke filled Parliamentary lobbies and we no longer have to speculate on how the industry is going to find enough customers to fill the 30-50 regional casinos which were being forecast at one time.

True, we still do not know the rate of taxation for casinos, the location of the 17 new casinos or the nature of Gambling Commission (Commission) guidance to local authorities on the issuance of those new licences. But these are more manageable uncertainties.

It is also fair to say that the British casino industry won some valuable last minute concessions in the Parliamentary process and, overall, has every reason to be satisfied with the final outcome of the legislation — unlike some other sectors of the gambling industry. It is a time for optimism, reflected in the performance of gaming shares over the last couple of years, and a time of opportunity for existing operators and new entrants to the industry alike.

The Gambling Act 2005 does, of course, create opportunities for the industry following its full implementation, scheduled for the third quarter of 2007, most obviously the opportunity to acquire one or more of the 17 new style casino licences. Perhaps inadvertently, however, the delay between enactment and implementation of the 2005 Act, the introduction of secondary legislation and the legislative process itself, has created an excellent climate in which to make an application for a casino licence under the existing legislation in advance of the new regime. This particular window of opportunity will, however, be closed after April 2006 for reasons which I will explain.

Against this background, in this presentation I will:-

1. Briefly outline the existing and future licensing regimes for casinos, to place my subsequent observations in context;
2. Summarise the developments which there have been since the Gambling Act received Royal Assent on 7 April 2005;
3. Comment on the last days of the Gaming Act 1968, a piece of legislation which has served us well over the last 37 years, and in particular on the surge of applications across the country; and
4. Outline the next stages of the gambling reform process. Given that the Act received Royal Assent in Spring 2005 and should be implemented in Autumn 2007, what is happening in 2006? I will tell you what will be happening and also offer a few predictions as to what might happen.

At the outset, I must stress that these are the views of Harris Hagan and do not necessarily represent the views of our clients.

EXISTING AND FUTURE CASINO LICENSING REGIMES

(i) Existing Casino Licensing Regime

Gaming in casinos is currently highly regulated. To obtain a new gaming licence is difficult and expensive.

Before an application for the grant of a licence is made, an intending applicant must first ensure that the place in which the proposed casino is to be sited is an area designated for gaming — a permitted area. These are limited to 58 towns, cities and seaside resorts, decided in the early 1970 s against strict population criteria. The result is that a number of major towns and cities where casinos might be expected to be found are not permitted to have them (for example York, Guildford, Peterborough, Milton Keynes, Norwich and Ipswich). In London, for example, the permitted areas include only the City of Westminster, the Royal Borough of Kensington and Chelsea and part of the borough of Camden.

Before applying for a new licence, an applicant must obtain a Certificate of Consent from the Commission, without which no application can be made to the Gaming Licensing Committee for a gaming licence. In essence, the applicant must establish that it is fit and proper to operate a casino. The Commission will consider, in particular, the applicant s integrity, competence and financial circumstances. The Certificate of Consent is particular to the premises, and a new Certificate must be applied for every time an operator seeks a new licence. Our experience is that even straightforward Certificate of

Thursday 8 December 2005

Consent applications are taking 3 to 6 months and applications from overseas operators are taking much longer.

Once the Certificate of Consent is obtained, application for the gaming licence must be made to the Gaming Licensing Committee, made up of local Magistrates with licensing experience. Hearings take place on appointed days four times each year (in January, April, July and October). Those entitled to be heard or represented at the hearing are the applicant, any objector (which more often than not includes at least one of the existing casinos in the area), the Commission and the other authorities on whom copies of the application have been served (these must include Customs & Excise, the Police, the local authority and the local fire and civil defence authority).

The 1968 Act provides a number of grounds on which the Justices either may or must refuse the application. The most important provision in most cases relates to demand. If an applicant cannot show that there is currently unsatisfied substantial demand for facilities of the type proposed to be provided then the authority is given the power to refuse the application. It is generally on this basis that competing casinos in the area will object.

This is the major barrier to entry into the market, and explains why, until relatively recently, the number of casinos in Great Britain has remained reasonably static. For example, only 5 new gaming licences have been granted in London in the last 7 years, 2 of those in the last 2 months, the Ritz Casino, the Hard Rock Casino, the Gala Tottenham Court Road Casino, the Ladbroke Casino (not yet operating) and the Empire Casino (not yet operating).

Other significant barriers to entry include the difficulty of locating suitable premises and securing planning permission, the development costs, the costs of the application, the knowledge and expertise required to operate a casino and the level of funding required to satisfy the Commission.

(ii) Future Casino Licensing Regime

Size Limits

Section 7 of the 2005 Act 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 a number of gaming tables, the floor area for table gaming, or indeed any other matter at her discretion. This is important to bear in mind, because the Government's present policy on these requirements does not appear in the 2005 Act, and could therefore be changed at any time.

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)

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.

Gaming Machine Entitlements

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.

The Government's current intentions regarding the categorisation of classes, and again none of this appears in the Act, are as follows:

IBC – THE GAMBLING ACT 2005

Thursday 8 December 2005

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.	

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.

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.

In brief summary, the new style casinos will be bigger. Only a dozen or so of the existing casinos have table gaming areas of over 500m². They will have significantly more gaming machines. They will offer betting and the large and regional casinos will have bingo.

Limits on Numbers

Section 175 of the 2005 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. It is important to remember, however, that this may change. The Government has indicated that it will not increase these numbers until there have been at least two prevalence studies, which in effect means that this number should not increase before 2010 at the earliest (subject to my comments on regional casinos below).

Location

Thursday 8 December 2005

The location of the 17 new casinos currently proposed will be determined by an independent casino advisory panel.

The Casino Advisory Panel will decide on the basis of the following criteria:

- A good range of types of area.
- 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.

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.

The advisory panel will make recommendations to the Secretary of State, who will decide which areas are to be designated, following consultation with the Scottish Executive and the Welsh Assembly.

Application Process

Thereafter, there will be a two stage process for the issue of licences. The first will be a regulatory test to ensure that all proposals satisfy the regulatory premises licensing requirements in the 2005 Act — similar to the fit and proper test under the existing regime. The second will be triggered where there are more applications for premises licences than a local authority is permitted to grant. In our view, there will inevitably be a second stage in the case of all 17 licences.

Thursday 8 December 2005

The second stage will be a competition held by the local authority. The rules have yet to be set, following consultation by DCMS with the Local Government Association. However, it is envisaged that the local authority will set out its priorities and concerns and a set of objective key considerations, and will then invite operators to submit entries. These priorities and concerns are likely to reflect local issues such as employment and regeneration potential, the design of the proposed development, financial commitments by the developer to local projects and the range of facilities which will be available.

The eventual winner of the competition will be eligible for a full premises licence, once planning permission has been obtained and the casino built.

It is my understanding, based on section 159 of the Gambling Act, 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.

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.

RECENT DEVELOPMENTS

Since the Gambling Act received Royal Assent on 7 April 2005, there have been the following important developments:-

1. The Independent Casino Advisory Panel to advise the Government on the areas in which the new types of casino will be located was appointed by the Government on 30 September 2005. The Panel will be chaired by Professor Stephen Crow, CB, formerly Chief Planning Inspector with the Planning Inspectorate. Professor Crow will be supported by four other members; Christopher Collison (an independent planning and regeneration adviser), James Froomberg (a former commercial director at British Waterways), Neil Mundy (a chartered public finance accountant) and Deep Sagar (director of Glasgow Employer Coalition). The Panel members had to demonstrate independence from any potential interested parties and must have an appreciation of the need for impartiality. In this regard, none of the appointees has undertaken any significant political activity in the last five years. It is clear from the make up of the Panel that considerations of planning and regeneration will be at the fore.

The Panel started work on 3 October 2005 and is due to report by the end of 2006. Based on the Panel's advice, the Secretary of State for Culture, Media and Sport will specify the areas for the 17 new casinos in a Parliamentary Order at the beginning of 2007. The Order will require the approval of Parliament.

The Panel is inviting expressions of interest from local authorities. The Government has maintained throughout the legislative process that if local authorities do not want the new style of casinos in their area, those areas will not be considered.

"I know there has already been a great deal of speculation over the location of the new regional casino. This isn't surprising given the regeneration benefits it will bring. The appointment of this Panel

Thursday 8 December 2005

shows there are no favourites or front runners. The slate has been wiped clean and every local authority will have the chance to make its case”.

Richard Caborn, Minister for Sport and Gambling

2. On 1 October, the Gambling Commission was formally established. It is now the central regulatory body for gambling in Great Britain. It has taken over the licensing and regulatory responsibilities of the Gaming Board for Great Britain in relation to casinos. The Chairman and other members of the Gaming Board were appointed as the Chairman and members of the Commission. This will allow the Commission to undertake preparatory work for carrying out its licensing functions and becoming fully operational from September 2007.
3. The 24 hour rule was abolished on 1 October. This does not, however, remove the membership requirement. The relevant provisions of the 2005 Act will, upon implementation in 2007, abolish the membership requirement, although it is likely to be retained in some casinos.

In the Coinslot edition for 25 November to 1 December 2005, it was reported that, according to the British Casino Association, casinos were reporting a rise in attendances of up to 8% in the first five weeks, equating to approximately 100,000 new visits. It was also reported that analysts are predicting that this could result in 250,000 new casino customers within a year.

4. With effect from 1 October 2005, the gaming machine entitlement for existing casinos was increased from 10 to 20 and, with effect from the end of October, the maximum stakes and prizes were increased to £2 (previously 50p) and £4,000 (previously £2,000) respectively.

Thursday 8 December 2005

Existing casinos will, therefore, have the same stakes and prizes on their jackpot machines as the new style large and small casinos, subject to review by the Secretary of State.

5. On 17 October 2005, the Gambling Commission launched a major consultation on the licensing and regulation of gambling.
6. In November 2005, it was announced that Victoria Square House in Birmingham is to be the new Head Office for the Gambling Commission.
7. On 10 November 2005, the Secretary of State for Culture, Media and Sport, Tessa Jowell, told the British Casino Association AGM that:-

“Subject to consultation no further applications for Certificates of Consent for new casino licences should be allowed after April 2006. We have made it clear throughout this process that we want to avoid proliferation in the number of smaller casinos”.

In other words, April is the deadline for casino applications under the 1968 Act. After April, you will have to apply for one of the new casino licences.

It is not clear whether after April means that the deadline for applications is 31 March 2006 or 30 April 2006. The prudent advice to clients is to proceed on the basis that an application submitted after 31 March 2006 will be out of time.

It is important to note that this is the deadline for applications for Certificates of Consent, and as a complex application for a large international company may take anywhere between six months and a year to determine, it is not inconceivable that the last applications pursuant to the Gaming Act 1968 will be heard in 2007.

THE GAMING ACT 1968

As anyone in the casino industry will tell you, the gambling law reform process has been tortuous and slow. But reforms have been happening in advance of the implementation of the 2005 Act, partly by way of secondary legislation. In recent years, we have seen the following developments:-

- (i) The advent of live entertainment in casinos;
- (ii) The lifting of the restriction on alcohol on the gaming floor;
- (iii) The introduction of electronic gaming, specifically electronic roulette, which has proved to be a phenomenal success;
- (iv) Increases in stakes and prizes for jackpot machines;
- (v) The amendment of the 48 hour rule to the 24 hour rule and its subsequent abolition;
- (vi) A more relaxed approach by the Gambling Commission to new casino licence applications, namely the introduction of a policy of only objecting where it has regulatory concerns; and
- (vii) Increases in the number of gaming machines from 10 to 20.

These developments coincide with a substantial increase in the number of casino licence applications throughout the country. Since May 2002, there have been 26 successful applications and this does not include relocations or enlargements of existing casinos.

Thursday 8 December 2005

Blackpool, London, Bristol and Newcastle have all seen two successful applications during this time. Interestingly, I understand that every application in the last two years has been successful, whether at first instance or on appeal.

We now have, I believe, 161 casino gaming licences in the country and I understand that at least 30 applications for new Certificates of Consent are pending, or have recently been granted. Following the announcement by Tessa Jowell of the April deadline, it seems reasonable to assume that there will be a further flurry of activity in the next four months.

There is very good reason for making applications now, if there is even a reasonable chance of success. Until the relevant parts of the 2005 Act come into force, there is no restriction on the number of licences, subject of course to the demand criterion. Further, competition for the new licences will be fierce and expensive. A sensible strategy is therefore to apply for licences for casinos under the existing regime which may at some time in the medium to long term future be converted to new small or large casinos, assuming the pilot phase is a success.

To take London as an example, my firm has been involved in both applications to be heard in London in recent months. In October, an application was granted for a casino in the Hilton London Paddington hotel and in November a licence was granted for the Empire in Leicester Square.

Plainly, as each new casino licence is granted, it will become more difficult to persuade Licensing Justices that there is still unsatisfied demand for a further casino, although each case will always depend on its own facts which will involve detailed consideration of the target market, the Gambling Commission's demand statistics, the nature of the proposed facilities, market research undertaken by the applicant and any other evidence of demand.

Thursday 8 December 2005

So what can we expect in 2006:-

1. The Commission will move to Birmingham;
2. The Commission will consult extensively with the industry as it develops the important codes of practice (for example, in relation to advertising), guidance and technical standards (such as those relating to gaming machines);
3. The Commission will begin fieldwork for its first prevalence study which is due to be published in 2007. The prevalence study will, in particular, explore attitudes to gambling and estimate the prevalence of problem gambling;
4. A prediction — we will see an increase in the number of regional casinos, from 1 to possibly 4. I say this for a number of reasons. First, the history of the legislation shows that the Government has never been in favour of a limit on the number of regional casinos. It was clearly a political compromise to get the Bill through.

“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.”

Tessa Jowell, Secretary of State for Culture, Media and Sport

One pilot regional casino is not, in my view, sufficient properly to assess the impact in the range of areas and types of location that might be suitable for regional

Thursday 8 December 2005

casinos. 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?

Thirdly, 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.

Fourthly, the decision to reduce from 8 to 1 the number of regional casinos means the loss of very substantial investment to some parts of the country where that inward investment is most needed.

It remains to be seen whether there is the political will to bring the issue back before Parliament.

“We are not prepared to go back to Parliament unless there is an indication from political parties that they want a move from one to eight”.

Richard Caborn, Minister for Sport and Gambling

But I believe the case for an increase is too compelling, particularly if the Casino Advisory Panel reports that it is having difficulty in selecting a single location for a regional casino, to miss out on this opportunity.

Thursday 8 December 2005

5. In late 2006, the Commission will invite applications for operating and personal licences.
6. By the end of 2006, the Casino Advisory Panel will make its recommendations to the Secretary of State.
7. Another prediction — we will see at least half a dozen further casino applications in London within the next 12 months and they will all be fiercely contested.
8. Speculation is rife in the industry that we will see consolidation amongst the major players, but at the very least there will be considerable investment as companies raise the finance to fund their development.
9. Poker clubs will attract significant publicity, whether as a result of the hearing of the prosecution of the Gunshot Club or as a result of an application to operate a poker club pursuant to a gaming licence.
10. Transfer of existing casinos into larger and better premises.

CONCLUSION

In conclusion, we are in the midst of a period of frenetic activity in the casino sector as the major operators and new entrants to the market jockey for position in the run up to implementation of the Gambling Act 2005. We are seeing a large number of new casino licence applications across the country but not, in my view, a proliferation. This period of activity will continue through to at least the end of 2006, whereupon the fierce competition for the new style casino licences will begin.

IBC – THE GAMBLING ACT 2005

Thursday 8 December 2005

As I said at the beginning, it is an exciting and formative time for the industry. In the same way that many who are in the industry remember the introduction of the Gaming Act 1968, so those of us involved today will remember the introduction of the Gambling Act 2005.

In preparing for the new regime, for once the advice to existing operators and potential new operators is the same and simple — get your applications in before April.

8 December 2005

Harris Hagan