
UK GAMING – A HAPPY 2006?

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Overseas observers could be forgiven for thinking that the passing of new gambling legislation, the Gambling Act 2005, was, in the end, more trouble than it was worth. For the past several years — and some would say too many years — the prospects for gambling reform promised much but, for overseas operators keen to enter the UK market, in the end delivered little. In particular, the development of destination casinos, called regional casinos in the legislation, with the apparent opportunity to develop Las Vegas style resorts, attracted enormous interest from many of the world's most successful operators, who expended much time, effort and money gearing up to take advantage of the new opportunities. Their interest was welcomed and to a large extent encouraged, by the UK Government, who in turn saw the enormous opportunities for inward investment, regeneration and employment that such developments would bring.

It was unfortunate indeed that the passage of the Bill coincided with a General Election, when opposition parties, fuelled by the anti-gambling lobby whipped up by certain sectors of the press, saw an opportunity to give the Government a bloody nose, with the now well known result that the number of new casinos allowed during at least the first three years of the Act would be limited to 17, with only 1 of those being a regional casino. Not surprisingly, the opportunities elsewhere around the globe, but particularly in Macau and Singapore, seemed more attractive.

So those of us advising operators, particularly those from overseas, admit to feeling more than a little embarrassed by the view of Britain this has shown to the world. It is perhaps extraordinary that the decisive approach taken in respect of online gambling, namely to permit an unlimited number of licences subject of course to strict regulation, has not been shown in relation to bricks and mortar casinos, which have been part of the UK culture for more than 40 years.

Against that background and given that the 2005 Act will not come fully into force until September 2007, it may be thought that the year ends on a note of anticlimax, and that the prospects for 2006 are bleak. The reality however is different. It will be no exaggeration to say that 2005 has seen frenetic industry activity, and the outlook for 2006 is reminiscent of the standard British weather forecast, namely for sunny spells and showers.

2005: No Change and All Change

A year of contrast indeed. Although the 2005 Act was passed in April, at least a year will be taken to set up the machinery for the grant of new licences, so that the new regime for the issue of licences and the regulation of the industry will not come into effect until 2007. Nevertheless, the delay between enactment and implementation of the 2005 Act, the introduction of some intermediate reforms and perhaps the momentum of the legislative process itself has, perhaps inadvertently, created a boom in gaming and an excellent opportunity for new licence applications and the development of new casinos.

For the moment, the Gaming Act 1968 remains in force. Therefore new casino licences can only be granted subject to applicants establishing that there is demand for the facilities which they will provide. This has always been a substantial barrier to entry, so that 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, but 2 of those were granted in October and November. Since May 2002, there have been 26 successful applications in the UK as a whole, and this does not include relocations or enlargements of existing premises. At the last count, there were 161 casino gaming licences in force, and a significant number of new applications are pending. Prior to applying for a licence, an operator must hold a Certificate of Consent for the application, which must be obtained from the Gambling Commission. The Government have recently announced that the window for such applications will close in April 2006, so that there will then be a run off period for new licence applications, probably in to 2007.

There are good reasons for this flurry of activity. There have been important changes in advance of the implementation of the 2005 Act, which have had the effect of substantially lowering the barriers to entry. In summary, the most important of these are:

- The removal of the ban on live entertainment in casinos. Although the industry has not hitherto taken full advantage of this change, many of the new applications are based partly on offering additional facilities to create an overall entertainment experience. Celine Dion may not yet have brought a one way ticket to the UK, but Licensing Committees, who grant licences, have clearly been favourably influenced by the additional entertainment proposed by applicants;
- The ability of casinos now to serve alcoholic refreshments on the gaming floor;
- The development of electronic versions of casino games, particularly electronic Roulette, which has proved to be enormously successful and attractive to new players in particular;
- The doubling in the number of gaming machines (casino slots) permitted from 10 to 20;
- The doubling of the stakes and prizes permitted for gaming machines;
- The abolition of the 24 hour rule, which previously prevented people from going into a casino and playing immediately; and
- A more relaxed approach by the Gambling Commission to the demand criterion on new applications. The Commission's predecessor, the Gaming Board, used to object on demand almost as a matter of course, but the Commission will now only object where it has regulatory concerns about the level of demand, and has not done so recently

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. For example, in our recent application on behalf of clients for the Ladbroke Casino at the Hilton Hotel, Paddington in London, demand was proved to the satisfaction of the Licensing Justices, who were particularly influenced by the enormous commercial and residential redevelopment of the area. In contrast, London Clubs' application for a new licence at the Empire premises in Leicester Square, in the

heart of London's entertainment area, which we opposed on behalf of clients, sufficient demand for the new gaming facilities was not shown to the satisfaction of the Licensing Justices, who nevertheless decided to exercise their discretion and grant the licence, on the basis that the new facilities, including restaurants, bars and live entertainment, would be an asset to the area. So far from a quiet year while everyone waits for the new dawn when the 2005 Act comes into force, there has been a flood of new applications, and business is booming for existing casinos. As an example of this, following the abolition of the 24 hour rule on 1 October, the industry press has reported that casinos have seen a rise in attendances of up to 8% in the first five weeks, equating to approximately 100,000 new visits. Additional income from more machines and the attractiveness of electronic gaming is producing a surge in business and therefore in casino share prices. Inevitably, the increase in business demonstrates additional demand, and adds to the ability of new applicants to demonstrate demand.

Meanwhile, progress has been made in preparation for the implementation of the 2005 Act. The Independent Casino Advisory Panel was appointed by the Government on 30 September to advise the Government on the areas in which the 17 new casinos would be located. The Panel will make recommendations to the Secretary of State for Culture, Media and Sport, who will in turn decide which areas are to be designated, following consultation with the Scottish Executive and the Welsh Assembly. The 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 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 will specify the areas for the 17 new casinos in a Parliamentary Order at the beginning of 2007. It would be surprising for the Secretary of State to depart from the Panel's recommendations, but not inconceivable. The Order will then require the approval of Parliament.

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 allows the Commission to undertake preparatory work for carrying out its licensing functions and becoming fully operational from September 2007.

On 17 October 2005, the Gambling Commission launched a major consultation on the licensing and regulation of gambling.

2006: The Eye of the Storm?

To quote Mr. Rumsfeld, there are known knowns, known unknowns and unknown unknowns.

What we can be certain about is that the Commission will continue to prepare for the implementation of the new regime, and will consult extensively with the industry as it develops the Codes of Practice (for example, in relation to advertising), guidance and technical standards (such as those relating to gaming machines) and will begin fieldwork for its first prevalence study into problem gambling, which is due to 2007. In addition, the Commission will invite applications for operating and personal licences in late 2006.

The Commission has already started consultation on its guidance to local authorities, who will have responsibility for granting gaming permits and premises licences under the 2005 Act. The draft guidance was published on 16 December.

The most important known unknown relates to gaming tax. The Government has recently announced some changes in gaming tax. In its pre-Budget Report of 5 December, the Chancellor announced that he will maintain the current regimes for betting, betting exchanges, lottery and bingo, and will retain the current system of amusement machine licence duty, rather than move to a gross profits tax. The Government also announced that, following the Gambling Act's provision for remote gaming licences to be offered in the UK, remote gaming will be brought within the scope of taxation (no surprises there). What we do not yet know is what that new rate of taxation will be, and this will not be announced until Budget 2006 in late March.

So far as the existing regime is concerned, it is clear that there will be a number of new licence applications, many of which have already been made, if not yet determined.

As to other developments in 2006, we enter uncharted waters, and I therefore turn to the crystal ball.

The big issue relates to regional casinos. The history of the legislation demonstrates that the Government was never in favour of a limit, but compromised in order to get the Bill through, firstly by introducing a limit of 8, but then reducing this to 1.

As Tessa Jowell, the Secretary of State put it:

"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."

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 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.

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. The Panel will make its recommendations to the Secretary of State by the end of 2006.

I also believe it is likely that in London we will see at least half a dozen further casino applications within the next 12 months, most, if not all, of which will be fiercely contested.

At a business level, 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.

Poker clubs will attract significant publicity, whether as a result of 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.

There will be a transfer of a number of existing casinos into larger and better premises.

Vacation Time?

In my view, it does not take a crystal ball to determine that the current period of frenetic activity in the casino sector will continue right up to implementation of the 2005 Act, as the major operators and new entrants to the market jockey for position and seek to expand and improve their casino estates. This period of activity will continue through to at least the end of 2006, by which time competition for the new style casino licences will begin. Any idea that the industry or its advisers would have a period of rest and relaxation between the death of the 1968 Act and the 2005 Act would be wrong and there is much to do for all those who want to remain in or enter the game.

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