

# POLITICS, PREJUDICE AND THE PRESS: GAMBLING REGULATION IN HISTORICAL PERSPECTIVE

BY JULIAN HARRIS

From the time that the process of the reform started with the appointment of the Budd Committee in 1999, and the publication of its report in 2001, up to the reporting of the Parliamentary Joint Scrutiny Committee – a knowledgeable and All-Party body – Government policy was consistent, and without major policy changes. But by 7th April 2005, when the Gambling Bill obtained Royal Assent, some five and a half years after the announcement of the gambling review, Government policy, at least in relation to casinos, lay in tatters, there was vociferous opposition to the idea of gambling reform, and in many significant respects the regulatory regime was to become more restrictive than ever.



**E**vents, dear boy events", was former Prime Minister Harold Macmillan's response when asked what his biggest problem was. In *CGI* Issue 4, 2006 I looked at the history of gambling regulations in Great Britain running up to the Government's proposals for reform which led to the publication of the draft Gambling Bill in November 2003.

From the time that the process of the reform started with the appointment of the Budd Committee in 1999, and the publication of its report in 2001, up to the reporting of the Parliamentary Joint Scrutiny Committee – a knowledgeable and All-Party body – Government policy was consistent, and without major policy changes. But by 7th April 2005, when the Gambling Bill obtained Royal Assent, some five and a half years after the announcement of the gambling review, Government policy, at least in relation to casinos, lay in tatters, there was vociferous opposition to the idea of gambling reform, and in many significant respects the regulatory regime was to become more restrictive than ever.

For five years Government, politicians of all parties and experts had carefully deliberated and refined the proposals through the gambling review report, the Government response, the publication of the draft Bill, two joint scrutiny committee reports and government responses to each. Through all of this, maintaining the policy of creating a market approach to gambling, but with strict social responsibility requirements, had been adhered to. Within a matter of a few months that policy was swept aside.

## ONE STEP FORWARD, TWO STEPS BACK

As originally drafted, the Gambling Bill reflected the free market approach, by placing no limitation on the number of casinos and by introducing for the first time machines for

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casinos which would have unlimited stakes and prizes. In effect, however, the numbers would be limited by the space requirements; in other words, the size of gaming areas would be linked to the required provision of substantial non-gaming areas and other facilities. To maintain the balance of this additional freedom, the legislation was planned to contain three fundamental objectives which would guide all decisions taken under the Act, and all decisions of those regulating the industry. The objectives are:-

- To keep crime out of gambling;
- To ensure that gambling is conducted fairly and openly; and
- To protect children and the vulnerable.

There were some discussions about the size of non-gaming areas, and various recommendations made by the Joint Parliamentary Scrutiny Committee about size and location of casinos, but no substantial policy changes.

Then on 14th June 2004, much to the consternation and anger of the existing British industry, Government announced that Category A gaming machines, with unlimited stakes and prizes, were to be limited to regional casinos only. Some prospective operators, mainly international operators from the US, South Africa and elsewhere, were disappointed by the introduction of a cap of 1,250 such machines per regional casino.

Then on 30th November 2004 after an unprecedented two week adjournment of the Committee stage to rewrite the Bill, in a panic response to a tabloid media campaign, Richard Caborn, the Minister responsible for steering the Bill through the House of Commons, presented a revised Gambling Bill to the Committee in which the additional number of regional casinos would be restricted to eight. Not only were these important changes made very late in the day - in fact after the

Bill had passed its most important Parliamentary stages - they were made without consultation. Moreover, as recently as June 2004, evidence had been given to the Joint Scrutiny Committee by the Government (Lord McIntosh of Haringey) that it did not have any optimum number of casinos in mind, and that this should be left to the market to determine.

The Government's approach had been entirely consistent with the recommendations of the Gambling Review Body, who concluded that their proposals made resort casinos – as they were then called - a legal possibility, and that the development of such casinos was a matter of commercial judgment. It was also consistent with the Government response, "a safe bet for success", which stated:-

*"The creation of resort casinos was 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 tourists or regional economic development, are properly taken into account."*

It was also consistent with the Joint Committee's recommendations:-

*"We believe that in creating 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".*

# ONLINE GAMING

At the time, Gala forecasted 30-50 regional casinos, and the BCA gave evidence that foreign operators were forecasting 20-40 regional casinos. Given the amount of investment required, leaving aside complex running restrictions, these numbers are almost certainly higher than would in practice finally have resulted, though it is fair to say that there had been something of a scrabble to secure the co-operation of interested local authorities.

The imposition of a limited number was plainly a political decision, but the question is why such a dramatic u-turn was made at such a late stage, and without any prior consultation, bearing in mind that it related to key policy. The explanation given by Richard Caborn to the Gambling Bill's Committee was that he had:-

*"taken careful note of concerns raised during the Bill's second reading debate about the casino proposals. Therefore, the large measure of support for the view that the licensing controls proposed for the Bill, working alongside the planning system, will not on their own be strong enough to guard against the proliferation of the 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-legislative scrutiny as robust and comprehensive. However, we are happy to provide additional reassurance to those who would prefer a more cautious approach."*

What the Minister was referring to was an hysterical and ill-informed press campaign, started by the *Daily Mail* who wanted to "kill the bill". That campaign, relying as it did on well-rehearsed myths about casinos, and ignorance, outraged the sensitivities of "Middle England", encouraged opposition by fringe religious groups, and frightened Labour MPs in the run up to a General Election.

On 16th 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 eight each. The rationale was stated to be 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 this can increase problem gambling will be reduced if a limit is imposed on the number of casinos. We have therefore decided to settle an initial limit on the number of regional, large and small casinos of eight each."*

The reality can be more simply stated: the Government was running scared. At a stroke it had thrown its entire policy out of the window in the face of uninformed opposition. When executing u-turns, Governments often claim that they are merely listening to the public, and therefore acting honourably. The reality, however, as they knew, was that such opposition as there was had very little basis in fact, but rather on deliberate misinterpretation and prejudice. The questions raised and the points made in Parliamentary debates at this time are difficult to read without losing faith in the British Parliamentary system. Had these concerns been justified, one can't help wondering why the experts who sat on the Budd Committee, or the Parliamentarians who heard so much



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evidence on the Joint Parliamentary Scrutiny Committee had made the recommendations they did.

Moreover, there was no logical explanation for the number eight. No explanation has ever been forthcoming, and given that there are nine regions in England, plus Scotland and Wales to consider, the number does not easily divide on that basis.

### RETREAT TO ROUT

Sadly that was not to be the end of the story. In April 2005 the Government decided to call a General Election, with the Gambling Bill still in the Parliamentary process. In these circumstances the Government has a difficult choice: either the Bill is lost in its entirety and the Government, if it wants to proceed, has to start again in the new Parliament.

Alternatively, it can negotiate a quick passage for a Bill with opposition parties. Not to their credit, the Conservative Party, who hitherto had been generally supportive of the Bill, and one of whose members had ably chaired the Parliamentary Scrutiny Committee, decided out of political motives to seek to win votes from *Daily Mail* readers by refusing to allow the Bill through, unless the number of regional casinos was reduced to a ludicrous one. Ludicrous because, on any view, one cannot properly have a pilot scheme adequately to test the effects of such a casino, if there is to be only one. There may not have been much logic in the Government's reduction to eight, but at least it would have enabled the regional casinos to be tested in a variety of types of area and types of location.

Following the Election, there was much discussion about the possibility that the Government would seek to increase the number of regional casino licences. As early as 7th April, before the Election, the Secretary of State (Tessa Jowell) had said:-

*"The opposition had previously supported eight such casinos then reduced the number to four and now insist on one. On the basis of the Government's original proposition agreed in Committee, some seven local authorities will miss out on the potential benefits of the regeneration in the first stage.*

*We believe that regional casinos should be tested, primarily for any impact they might have because of the different nature of the regime, on problem gambling, and also for their power to regenerate run-down towns and cities. As the Honourable Member for Maldon and East Chelmsford is aware, we reserve the right to ask Parliament again what number of regional casinos is necessary to test their impact."*

Don Foster for the Liberal Democrats expressed the 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 will be any such moves."*

The Secretary of State's response to this short pre-Election debate on this matter suggested that this was precisely 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 eight to one the number of regional casinos in the first stage*

*means probably the loss of £600 million 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."*

This would have been a logical step; there had been no change in policy. Government had only agreed to the reduction as a result of political pressure immediately before a General Election, and it was open to the new Parliament to reconsider the matter. Moreover, after the Election, the Liberal Democrats said that they would not oppose a move to increase the number again, perhaps to four. By this time, however, the Government appeared entirely to have lost its nerve, and indicated that it would only raise the number with all-Party support, safe in the knowledge that this was never going to be forthcoming.

As soon as a limit was placed on casino numbers, some way had to be found of selecting first of all the areas in which they would be located, and then to whom the licences would be granted. The Government appointed an advisory panel to advise on appropriate locations, originally expected to report in December, but now delayed until January. It should be noted that these are recommendations only, and it will be for the Secretary of State to make a final decision, before laying an order before Parliament. The selection is to be 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.

So far as regional casinos are concerned, this is of course impossible, given that the number is one. But in the fact of selection, one can see that the original idea of opening up casino gaming to a free market had entirely been subverted.

Far from a free market, we now have a competition process to look forward to, in line not with the free market approach, but with the selective approach adopted in many other jurisdictions, where a specific number of licences are to be allowed. Under the new regime, casino premises licences will be granted by the local licensing authority, as always intended, but local authorities will only be able to award casino premises licences if such a licence has been identified for its area.

This is to 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 of the Act. The second will be triggered where there are more applications for casino premises licences with the local licensing authorities permitted to grant. This will be a competition held by the local authority, based on rules which have still not been finalised. It is envisaged that the local authority will set out its priorities and concerns in a set of objective key considerations, and will then invite operators to submit entries to the competition.

### THE OTHER SIDE OF THE COIN

We have seen that the original plan for reform was to comprise, on the one hand, a free market for all forms of

# MOBILE GAMING

gaming, including casino licences, combined with, on the other hand, if not as strict a regulatory system, then an increase in the powers of enforcement and much greater protection for children and other vulnerable persons. The Commission has said that it will adopt a risk based approach, and place much greater emphasis on ensuring that operators have their own internal systems designed to ensure compliance, rather than regulated by means of constant inspection and monitoring. A result is likely to be a more "front-loaded" regulatory system, with the Commission requiring much more detailed information and imposing more detailed conditions on operators and their compliance and regulatory systems in order to obtain licences.

This policy is coupled with the much more draconian powers of enforcement available to the Commission, than ever were granted to the Gaming Board for Great Britain. For the first time, the Regulator will have power itself to impose penalties on operators without recourse to other authorities. It will also itself have the power to initiate prosecutions. This is a logical extension of the powers previously available to the Regulator, but operators have had to be vigilant during the consultation process to seek to curb an apparent wish on the part of the Commission to over-burden operators with strict liability requirements and attendant risks of penalty. To be fair, the Commission has argued that it will exercise its powers reasonably, but this is small comfort to operators faced with the possibility of losing their business without some element of fault on their part.

## RESPONSIBLE GAMING

Nevertheless, the biggest change to the way in which the 2005 Act regards gambling lies in the policies to ensure social responsibility in its decision, summarised in the third of the three licensing objectives: the protection of children and the vulnerable. This has been a consistent theme throughout the reform process. Upon the publication of the Budd Report in July 2001, Tessa Jowell said:-

*"Our present gambling laws are badly in need of reform and updating. But reform must go hand in hand with tough practical measures to protect young and vulnerable people. There is no doubt that our current laws, as well as being too complex and out of date, failed to reflect the extent to which gambling has become an everyday part of the way in which millions of people choose to spend their leisure. But parents have a right to expect that their children will be protected by the law. So now I want to hear from the public: how do we get the balance right?"*

The language is noteworthy: tough practical measures to protect young and vulnerable people: parents have the right to expect that their children will be protected by the law.

The licensing objectives pervade every aspect of the Act:-

- Sections 45 to 64 set out the Offences in the Act which are designed to protect children and young persons. It is an offence to invite, cause or permit a child or young person to gamble. It is an offence to invite or permit a child or young person to enter casino premises, betting shops or adult gaming centres, although it is a defence to prove that the operator took all reasonable steps to determine the individual's age and he reasonably believed that the individual was not a child.



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- Section 70 requires the Gambling Commission to have regard to the licensing objectives when considering applications for operating licences.
- Pursuant to section 153, a licensing authority shall aim to permit the use of premises for gambling insofar as the authority thinks it reasonably consistent with the licensing objectives.
- In preparing the regulations relating to the crucial area of the advertising of gambling, the Secretary of State is expressly required by section 328 to have regard to the need to protect children and vulnerable persons.
- Section 82 is a critical section. This stipulates that operating licences shall be subject to the condition that the licensee ensures compliance with any relevant social responsibility provision of a code of practice issued under section 24. Accordingly, if an operator fails to comply with a social responsibility provision of a code of practice, it will be committing a criminal offence and I will return to this issue again when I consider the code of practice which was issued by the Gambling Commission last week.
- Pursuant to section 83 an operating licence is subject to the condition that if the licensee becomes aware that a child or young person is using its gambling facilities, the licensee must return any stakes as soon as is reasonably practicable and may not give a prize to the child or young person. Be in no doubt that the first major operator to take bets from children under the new regime faces a huge amount of negative publicity.

Towards the end of 2006 the Gambling Commission issued its "licensing conditions and codes of practice". I have set out the general conditions to be attached to operating licences and personal licences pursuant to section 75 and the principal code of practice pursuant to section 24. Under the general conditions imposed on personal licence holders, they must take all reasonable steps to ensure that the way in which they discharge their responsibilities in relation to licensed premises does not place the holder of the operating or any relevant premises licence in breach of their licence conditions. A personal licence holder should therefore be familiar with the operators' social responsibility obligations, insofar as they

are relevant to their office or operational function. Breach of the social responsibility provisions will be breach of the licence provision and may therefore involve criminal prosecution.

Specifically, licensees must put into effect policies and procedures intended to promote socially responsible gambling, and in effect will be required to support financially the responsibility in gambling trust. They must also put into effect policies and procedures designed to prevent under-age gambling, and monitor their effectiveness. A number of measures are specifically designed for remote gambling licensees, such as:-

- Warning potential customers that under-age gambling is an offence;
- Requiring customers to affirm that they are of legal age.
- Using the best publicly available information for age verification purposes from country of residence.
- Additional age verification procedures where credit card not used.

Further measures include the requirement of the licensees to make information available to customers on how to gamble responsibly, and how to access information about obtaining help in respect of problem gambling. Licensees must also implement policies and procedures for customer interaction where they have concerns about a customer's behaviour, and must introduce procedures for sole exclusion.

Whilst it is true the 1968 Act contained a similar objective, to protect children and the vulnerable, there were no specific requirements as to how this would be done, such as those written into the 2005 Act, and into licence conditions and codes of practice. Nevertheless, this aspect of the legislation can be regarded as a natural progression, recognising that gambling is now very much more a part of every day leisure activity than it was in the 1960s.

## DÉJÀ VU

In the space of time available, I have been able only to look at casino gaming, but it is in that area that the development and subsequent rejection of policy is at its most stark. Whilst the 2005 Act does contain much which is admirably new, such as

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the welcome licensing of remote gaming, these areas do not effect the overall policy, or the approach taken in policy terms to the regulation of gambling.

However, the approach to remote gambling has been consistent, largely because, oddly, it did not form part of the attack upon the Bill which focused primarily on casinos. In the approach taken to remote gambling, we see a recognition of new developments and of the change in social attitudes towards gambling.

Placing the 2005 Act in its historical perspective, the recognition, initially by the Budd Committee, that social attitudes to gambling had changed since the 1960s from a vice to be tolerated to a perfectly proper adult leisure activity was to have been recognised in the policy of a free market approach, coupled with a requirement that gambling businesses operate legally, fairly and in a socially responsible manner.

The combination of irresponsible opposition and Government weakness has detracted from what might have been regarded as a natural development, leaving us with the additional controls necessary to regulate a free market, but without the free market originally intended. Instead, we now have an even greater barrier to entry to the casino market than the old "demand" test imposed in the 1968 Act, at least for the first few years of the 2005 Act, when no one will be able to obtain a casino licence once the original 17 have been allocated. It is perhaps ironic that the result has been a flood of applications for new casino licences under the 1968 Act, which may result in a substantial increase in the number of casinos. **CGI**

## JULIAN HARRIS



Recognised as a leading expert in national and international gambling and licensing law, Julian Harris is highly regarded by both operators and regulators throughout the world. He and John Hagan are the founder partners of Harris Hagan, the first UK law firm specialising in legal services to the gambling and leisure industries. He, John and other members of the firm have been at the forefront of those advising UK and international operators alike on the opportunities presented by the UK Government's major reform of gambling law.

With over 20 years experience of gambling law Julian has advised some of the world's largest gaming and entertainment industry corporations. He and his team have also advised trade associations, including the British Casino Association and the Casino Operators' Association of the UK. Julian came to specialise in this area representing the Gaming Board for Great Britain (the UK regulator) for five years early in his career.

Julian is an experienced advocate, a respected and sought after conference speaker and the author of numerous articles and papers for gaming and legal publications and in the national press. He is recommended in all sides to the legal profession, and has been described by Chambers Guide as "astute" and "never misses a trick". Julian is a Trustee of the International Association of Gaming Attorneys.



Stand 5510

London: +44 (0)20 7894 7000

Las Vegas: +1 (702) 677 3800

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