

DRAFT GAMBLING BILL

SUPPLEMENTARY POLICY MEMORANDA

DEPARTMENT FOR CULTURE, MEDIA AND SPORT

FEBRUARY 2004

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DRAFT GAMBLING BILL: POLICY NOTE 1 GAMBLING IN ALCOHOL LICENSED PREMISES

Background: policy

1. Present law (the Gaming Act 1968) allows public houses and other alcohol-licensed premises to provide gaming to their customers in three ways. First, the pub can have gaming machines, for which it needs a permit from the licensing authority. The 1968 Act also allows customers to play dominoes and cribbage (which, when played for money, count as gaming within the meaning of the law). No permit or licence is needed for that.
2. The final way in which the law allows pubs to offer gaming is under an authorisation allowing games other than dominoes and cribbage, as long as these do not take place for high stakes and are not the main reason for customers to visit the premises. The authorisation must come from the pub's licensing authority. Most pubs that have it use it to lay on games of bingo.
3. The relevant licensing authority in each case is the body that issued the pub's liquor licence (in England and Wales, the Magistrates, and in Scotland the local licensing board).

Gaming machines

4. There are over 80,000 gaming machines in the approximately 60,000 pubs around Great Britain. These machines are of the 'amusement-with-prizes' (AWP) type, and have maximum stakes and prizes set by law at 30p and £25 respectively. There is no specific prohibition on their use by children, but to discourage child use the law requires that the machines be located in a bar.
5. The licensing authority has discretion in the number of machines that are allowed in a pub. The guidance to which Magistrates in England and Wales have generally worked suggests that two should be the usual maximum. But allowance can be made for a pub to have more than two machines.
6. Gaming machine permits must last for at least 3 years. Although each permit must have an end date, the law sets no maximum duration.

The Gambling Review

7. The Gambling Review recommended that commercial gambling should generally be confined to premises that are specifically licensed for the purpose, such as betting shops and bingo clubs. But it recognised that a strict application of this principle would lead to banning gaming machines from pubs, and concluded that this would be disproportionate and harsh.
8. The Review noted that the law does not prevent people under 18 from playing adults-only 'all-cash' gaming machines in pubs, and recommended that it should. It also said that pub bingo should be subject to control by the Gambling Commission where it exceeded a level of £1,000 a week.

Policy objectives

9. The Government broadly accepted the Review's proposals about pubs. Under the Licensing Act 2003, local authorities will approve the alcohol licenses for pubs in England and Wales, and the Gambling Bill provides for them to authorise pub gaming also. In Scotland, local licensing boards will continue to be responsible for both alcohol and gaming licensing in pubs.

Means to achieve objectives

10. The draft Bill makes provision for gaming in pubs in two ways. All pubs will be entitled as of right to two gaming machines of Category C or D, corresponding to the £25 top prize 'all-cash AWP' gaming machines that they can have under the current law. This entitlement will flow from the pub's alcohol licence. A pub that wants more machines will be able to apply to the licensing authority to have them. Please refer to memorandum 7 with respect to the position of pubs with more than two machines at present.

11. Second, pubs will be entitled as of right to allow customers to take part in 'soft gaming' provided that under 18s are not allowed to play and that the games played:

- Are of equal chance and do not consist of "bankers games" such as roulette or blackjack;
- Involve no charges (apart from stakes) for taking part and no money is taken out of stakes or winnings (levies); and
- Are not linked between pubs.

12. The draft Bill allows the Secretary of State to specify the maximum stakes and prizes in gaming of this sort. The intention is:

- To provide an up-to-date analogy to the provisions of the Gaming Act 1968 which allow low stakes crib and dominoes in pubs, and other gaming for low stakes under an authorisation from the Magistrates; but
- With greater latitude in terms of the games which can be played; and
- With no need for a specific permit.

High turnover bingo in pubs

13. The draft Bill makes specific provision for bingo in pubs. Where a pub does not have the Gambling Commission's bingo operating licence, it must notify the Commission if the stakes or prizes in bingo games exceed £1,000 in any period of seven days ('high turnover bingo').

14. If the pub plays another £1,000 worth of bingo over a seven-day period in the following twelve months without the Commission's operating licence, there will be an offence. These proposals follow the Gambling Review's recommendation on this issue. A pub will be able to apply for the Gambling Commission's bingo operating licence at any time, whether or not it actually has played £1,000 worth of bingo in a seven-day period.

Removal of pub gaming permissions

15. Pub gaming permissions under the draft Bill are 'as of right' but it is possible for the licensing authority to remove them if:

- It is not reasonably consistent with the licensing objectives for the pub to have them; or
- Gaming has taken place on the premises in breach of a condition; or
- The premises are mainly used or to be used for gaming.

16. The conditions include requirements that children and young persons are excluded from gaming, and that gaming machines can only be made available for use in accordance with a Gambling Commission code of practice.

Inspection

17. The draft Bill does not currently include provisions for the inspection of premises licensed for the supply of alcohol. Provision for this will be made in due course.

Department for Culture, Media and Sport
February 2004

DRAFT GAMBLING BILL: POLICY NOTE 2 GAMBLING IN CLUBS AND MINERS' WELFARE INSTITUTES

Policy Background

1. There is a great variety of clubs which offer gaming to their members and guests. Under current law, they must be:

- Members' clubs established for social, recreational purposes or other purposes that are not concerned solely with the provision of facilities for gambling; or
- Miners' welfare institutes established for social or recreational purposes established for the benefit of persons employed in connection with coalmines; or
- Commercial clubs such as snooker clubs.

The Gambling Review and clubs

2. The Gambling Review was content to allow gaming of the kind currently allowed in these clubs to continue without the need for operators to be licensed by the Gaming Commission or the premises to be licensed by the local authority. But it was concerned that the Commission should have power to inspect clubs where gaming was being carried out. The Bill includes this provision.

3. The Review suggested that the gaming machines allowed in clubs should be restricted to the type – with a £25 top prize – allowed in pubs. The Government rejected that recommendation, and under the Bill clubs and institutes will be able to have, as now, up to three gaming machines with a maximum prize of £250 (Category B).

Policy objectives

4. The Bill will retain and update the existing regime under the Gaming Act 1968, which allows clubs to offer both 'live' gaming such as bingo and gaming via gaming machines. A major principle behind the 1968 Act is that club or institute must be established for purposes other than gaming, and this principle will remain in the draft Bill. So will the requirements that clubs must have at least 25 members, and that it is only members, and genuine guests, who can take part in the gaming (whether this is machine gaming or 'live').

5. The draft Bill draws a distinction – as the current legislation does – between commercial clubs and non-commercial clubs. The current legislation allows both commercial and non-commercial clubs and institutes to offer gaming machines and 'live' gaming at low money levels.

6. But only non-commercial clubs and institutes are entitled to apply for registration under Part II of the Gaming Act, which allows them to offer 'live' gaming at higher money levels. The draft Bill makes similar arrangements, with the registration process being replaced by a club gaming permit.

7. Under the Bill, the licensing authority for clubs in England and Wales will be the local authority. The Scottish Executive is considering, at present, which body they would prefer to exercise this function in Scotland.

Club gaming without a permit

8. Section 40 of the 1968 Act allows clubs and institutes to offer limited types of gaming without any form of permit. The Bill provides an analogy for that. Under the Bill, only club members and their guests may take part in the gaming. The gaming may not involve a 'bank', and each participant must have an equal chance of winning. The club can charge a fee for taking part, but it may not deduct any money from stakes or winnings. Games must not be 'linked' across different clubs or different club premises.

9. The draft Bill gives the Secretary of State a power to limit the stakes and prizes in club gaming of this kind, and any fee the club may charge for taking part. Under the current legislation, the usual maximum fee is 60p per day, and the intention is to use this power to ensure that non-permit club gaming under the draft Bill remains on a similarly small scale.

The club gaming permit

10. The draft Bill makes provision for clubs and institutes – but not commercial clubs – to apply to the licensing authority for a gaming permit. This permit will do two things. First, it will authorise the club to have three gaming machines of category B, C or D.

11. Second, subject to the permit will authorise the club to operate equal chance, non-bank 'live' gaming and games of chance. Only members and guests will be able to take part in these, and children and the public must be excluded from the area where the gaming is taking place. The games may not involve participation fees and levies on stakes and winnings other than in accordance with regulations made by the Secretary of State.

The club machine permit

12. Commercial clubs, and also non-commercial clubs and institutes that do not wish to operate this live gaming under a gaming permit, will be able to apply for the club machine permit. This will allow the premises to site three gaming machines of category B, C or D.

High turnover bingo in clubs

13. As with pubs, the draft Bill contains specific provision about club bingo. The provision is the same as that set out for pubs above. A club will be able to apply for the Commission's bingo operating licence at any time. Clubs will be able to run bingo games either with a club gaming permit or under the provisions for low money level gaming.

14. In either case, any seven-day period in which the total stakes or prizes in this bingo exceed £1,000 will bring the club within the 'high turnover bingo' regime. They will have to notify the Gambling Commission. Any further seven-day period of

bingo over the next twelve months will be an offence, unless the club has obtained the Commission's bingo operating licence.

Refusal and removal of club gaming permissions

15. The licensing authority will be required to grant an application for a club gaming or machine permit unless it has reason to believe that the club is frequented wholly or mainly by people under 18, or for reasons to do with the conduct of the club or Gambling Commission or police objections to it.

16. The draft Bill provides similar grounds for the cancellation of a club gaming or machine permit. There is an appeal process for both refusal and revocation.

Inspection

17. The draft Bill does not currently include provisions for the inspection of clubs. Provision for this will be made in due course.

Department for Culture, Media and Sport
February 2004

DRAFT GAMBLING BILL: POLICY NOTE 3
GAMBLING COMMISSION: INVESTIGATION AND ENFORCEMENT POWERS

Background: policy

1. The Budd report recommended that the Gambling Commission have powers to commence prosecutions, with access directly to the Crown Prosecution Service. The exact wording of the recommendation was as follows:

“We recommend that the Gambling Commission should have powers to commence a prosecution – that is, to apply for a summons at the magistrates court or charge, if the police had arrested the offender, and to prepare a prosecution file – before passing the case on to the CPS to conduct the prosecution.” (Report 33.19; Page 180)

The Government accepted the recommendation.

2. The recommendation evolved out of evidence given to the Review Body by the Gaming Board and the police. Both bodies reported effective working relationships, but also acknowledged some difficulties in tackling illegal gambling due a lack of police time and / or expertise to pursue gambling offences as rigorously as the Board would have wished. The Government accepted the recommendation on the basis that it was important for the proposed new regulator to have a comprehensive suite of powers available to tackle illegal gambling and other offences under the Bill.

Background: Legislation

3. The Gaming Act 1968 (“the 1968 Act”) does not provide the Gaming Board with any specific statutory powers to commence prosecutions. Instead, the Board is able to initiate criminal proceedings under section 1 of the Magistrates’ Courts Act 1981, as a private prosecution, should it wish to commence proceedings itself. The police can also do so under their own powers. Section 43 of the 1968 Act gives the Board powers to appoint inspectors. It gives these inspectors certain powers to enter and inspect licensed gaming premises and take copies of documents and other data. The Board may also require licence holders or registered clubs or institutes to produce documents for inspection or furnish the Board with information, upon notice. Section 43 further gives constables power (having first gained a warrant from a magistrate) to enter any premises, if necessary by force, search them, seize and remove items and search persons, where there are reasonable grounds for suspecting that an offence under the Act is being, has been, or is about to be committed. Inspectors may accompany the police acting pursuant to a warrant, but these powers are to be exercised by the police themselves. These provisions are the totality of the Board’s investigation powers.

4. In England and Wales, the Crown Prosecution Service (CPS) is responsible for conducting criminal prosecutions for most matters where the police have commenced proceedings by way of charge. The CPS is established under the Prosecution of Offences Act 1985 (‘the 1985 Act’) and is headed by the Director of Public Prosecutions (DPP). Under section 3 (2) (a) of the 1985 Act, the DPP has a duty to “take over the conduct of all criminal proceedings, other than specified proceedings, instituted on behalf of a police force”. The CPS may also conduct prosecutions on behalf of other bodies.

5. The functions of the CPS will be subject to change following the passage of the Criminal Justice Act 2003 (c.44). It is intended that the CPS will become involved in the prosecution process at an earlier stage. CPS officers will be able to become involved in charging decisions, possibly being co-located at police stations and providing pre-charge advice to custody sergeants on individual cases.

6. In Scotland, the Crown Office and Procurator Fiscal Service provides an independent public prosecution service. It is a Department of the Scottish Executive and is headed by the Lord Advocate, whose position is protected under the Scotland Act 1998.

Policy objective

7. As stated above, the policy objective is for the Gambling Commission to have full and effective powers to regulate licence holders, to investigate possible offences under the Bill, and to initiate criminal proceedings. In doing so a balance needs to be struck between allowing the Commission to operate independently of the police (so as not to engage unnecessarily police time and resources) and ensuring that the Commission functions properly within the criminal justice system, and does not have a surfeit of powers.

Means to achieve policy objective

8. The Government wishes the Commission to have direct access to the Crown Prosecution Service, so that the CPS can charge (using its new powers from the CJA 2003) and/or continue prosecutions of offences under the Gambling Bill, on the basis of investigations carried out by the Gambling Commission. Work is continuing to establish which offences it would be proper for the CPS to handle, and which should remain with the Gambling Commission. For example, it is likely that offences involving licensing matters under the Bill would remain for the Commission to prosecute. Amendments to the 1985 Act will be necessary to achieve direct access for the Commission to the CPS.

9. Where the Commission retains responsibility for the prosecution of matters under the Bill, it will continue to rely upon section 1 of the Magistrates' Courts Act 1981, as the Board does now. In order to ensure that this is an effective tool for the Commission, Part 14 of the draft Bill (version dated February 2004) contains clauses giving Commission inspectors enhanced entry and inspection powers to those contained in the 1968 Act.

10. As part of the work on direct access to the CPS, the Department is assessing the Commission's enhanced powers in Part 14 of the Bill to ascertain whether they will be sufficient in all circumstances for the purposes of preparing a prosecution file. The Department is pursuing all these matters with the CPS and other interested Departments.

Scotland

11. Criminal justice is a function devolved to the Scottish Ministers. The Department is therefore considering, with the Scottish Executive, how offences under the proposed Act are to be tackled in the context of Scottish arrangements. It is unclear at this point whether legislative changes will be required to achieve

similarly effective arrangements in Scotland, but it is open to the Department and the Scottish Executive to pursue any changes required through the draft Bill. Arrangements are already in place in Scotland for the Gaming Board to report directly to the Procurator Fiscal. Gaming Board staffs have already received guidance on the preparation and submission of reports.

Department for Culture, Media and Sport
February 2004

DRAFT GAMBLING BILL: POLICY NOTE 4
GAMBLING COMMISSION: STATUTORY INFORMATION GATEWAYS

Background: policy

1. The Budd report recommended that the Gambling Commission should be authorised to exchange information with law enforcement and regulatory bodies, both in the United Kingdom and overseas (recommendations 4, 9, 160 and 161). The report emphasised the need for this power to cover relevant intelligence as well as factual information. The Government accepted all four recommendations.

2. The Commission will have the ability, in collaboration with the police and other law enforcement agencies, to investigate and bring proceedings to combat illegal gambling. To do this effectively and to carry out its core functions in relation to operating and personal licence applications, the Commission will need to be able to have access to and share information about the companies and individuals whom it regulates with other law enforcement and regulatory bodies. The arrangements for the exchange of information are often referred to as 'gateways' and, in many cases, they are set out in statute, to enable information gathered by a statutory body for a particular purpose to be passed to another body that may use it for a different purpose.

Background: Existing statutory provisions and exchanges

3. The Gaming Board of Great Britain (GBGB), the organisation that will form the foundation of the Gambling Commission, has few statutory information gateways at present. Much of what GBGB and the government are seeking to achieve is entirely new, rather than formalising existing practices, although the broad intention is similar. Moreover, the Commission will have much wider responsibilities than the GBGB, including in relation to illegal gambling, and their powers of prosecution will be more extensive. The Government therefore views it as imperative that the Commission is able to gain access to the information it requires to fulfil these objectives. In addition, it is important that the Commission is in a position to assist other regulatory bodies in the exercise of their functions.

4. Some information gateways have been established. Paragraph 14 of Schedule 1 to the Finance Act 1997 allows the GBGB to disclose information to HM Customs and Excise (HMCE) in order to assist HMCE to carry out their functions relating to gaming duty. GBGB use this gateway to alert HMCE to the location of gaming machines, allowing HMCE to seize the cashbox and remove the machine if there is unpaid duty on the machine. Paragraph 14 also allows HMCE to disclose information to GBGB in order to discharge their functions under the Gaming Act 1968. Section 37 of the Finance Act 1993 allows a similar two-way transfer of information relating to lottery duty. The Government intends to widen the existing gateways to HMCE to enable the Commission to carry out effectively its extra responsibilities under the Gambling Bill.

5. Another statutory provision of relevance is section 2(3) of the Police Act 1997. This allows the National Criminal Intelligence Service (NCIS) to provide criminal intelligence to "law enforcement agencies". Currently, GBGB have an informal memorandum of understanding with NCIS and a dedicated NCIS liaison officer. The information they obtain is a check against NCIS records on applicants seeking to enter the gaming industry at senior management/director/owner level

and on corporate applications, including shareholders at 3% and above. On major probity enquiries into the suitability of applicants for licences, GBGB co-opt officers from NCIS to accompany an investigation team. In the future, it is proposed that the Commission will have a formal route to information held by NCIS.

6. GBGB are also associate members of the Financial Fraud Information Network (FFIN) although they have no formal gateways with the other members and in particular are not listed under the Financial Services and Markets Act 2000 (FSMA). Thus despite having good links with the Financial Services Authority (FSA), GBGB have no formal right to obtain information from them. The lack of formal gateways with the other FFIN members, and most importantly with the FSA means that GBGB cannot circulate referrals (which might alert other regulators to issues within their own areas as well as constituting a request for information on current investigations). Any gateway between the Gambling Commission and the FSA or other financial regulators will need to take account of the provisions of the European directives on financial services governing the disclosure of information.

7. The GBGB and the National Lottery Commission (NLC) have regular meetings but currently do not exchange information about individuals. The draft Bill provides for the NLC and the Commission to work closely with one another. An information gateway between the NLC and the Gambling Commission is therefore essential.

8. The Gaming Board has also entered into Memoranda of Understanding with a number of bodies in the UK and overseas which contain provisions about the exchange of information.

Policy objective

9. The policy objective is to provide gateways that will allow for the exchange of information between the Gambling Commission and a number of other law enforcement and regulatory bodies, including those to which the GBGB currently disclose information. The purpose of such gateways is to enable the Commission to pursue its functions effectively and, in particular, to be able to take vigorous action in pursuit of the licensing objectives. Information provided by the Commission may also assist other bodies in the pursuit of their functions.

10. The Commission will require information from organisations for three primary reasons:

- For the application process.
- For monitoring existing licensees.
- For issues relating to enforcement and criminal/prosecution matters.

11. For application checks, the Commission will be investigating whether an applicant is regarded as suitable and competent to provide gambling facilities. The Commission will need to verify information given on the applicant's form with other agencies and will also have the authority to undertake criminal records checks. It is envisaged that organisations such as the Immigration and Nationality Directorate of the Home Office (in relation to nationality/immigration issues), NCIS (to check whether applicant is involved in organised crime) and the Department of Trade and Industry (in relation to company investigations), as well as numerous other agencies, will need to be contacted at the application stage.

12. In relation to monitoring existing licensees, the Gambling Commission will need to be able to liaise freely with a variety of regulatory bodies who may supervise licence holders in other areas or have information about licence holders. A free exchange of information after an applicant/company has been granted a personal or operating licence will be important to enable the Gambling Commission to perform its regulatory functions properly.

13. Information exchanges will also be important in relation to enforcement and the investigation into criminal activities, in particular illegal gambling. For this function to be effective, the Commission needs to be able to exchange information and intelligence with other law enforcement agencies.

Means to achieve policy objective

14. Information gateways will be established through the Gambling Bill, which will make changes to other existing legislation. The disclosure provisions will specify the bodies to whom and from whom information may be passed or received and the purposes for which information may be exchanged. It is intended that the list of bodies with which the Commission may exchange information, and the purposes for which information may be obtained, should be capable of being amended by secondary legislation. The Gambling Commission will have power to disclose information subject to conditions. The Department is at present considering in detail with other regulatory bodies what information gateways are required and how those gateways can best be established.

15. It is also proposed that bodies other than the Gambling Commission that have functions under the Gambling Bill, such as licensing authorities, will similarly be able to exchange information where this will assist them or others in the performance of their functions.

Department for Culture, Media and Sport
February 2004

**DRAFT GAMBLING BILL: POLICY NOTE 5
GAMBLING COMMISSION: POWER TO VOID UNFAIR BETS**

Background: policy objective

1. Chapter 4 of the policy document published alongside the draft Bill in November 2003 described (at sections 4.29-4.33) the Government's proposals for the Gambling Commission to be able to freeze and void bets that it has reason to suspect had been substantially unfair because of a failure to supply information, as a result of cheating or because of some other inappropriate conduct. Such powers were proposed by the Government as a means by which the Commission could take focussed action to protect consumers from being exploited by unfairness. They are also intended to be a tool that the Commission can use to support the efforts of sports' regulators in upholding the integrity of events upon which bets are taken.

Means to achieve policy objective – change from November 2003 policy document

2. Part 15 of the draft Bill published in February 2004 therefore makes provision for the voiding powers described previously at sections 4.29-4.33 of the policy document. In the period since November, however, the Department has given further thought to how its proposals might best work.

3. At section 4.32 of the policy document it was noted that the power proposed might only be usable in relation to those bets that are not settled immediately, and as a consequence would not be usable in relation to bets placed at betting offices and through racecourse bookmakers.

4. In the clauses published in February 2004, however, it is proposed that the Commission have power to void bets even after they have been settled, in circumstances where the Commission is satisfied that the relevant bet was substantially unfair. The draft clauses also make provision for an interim moratorium (the 'freezing' power envisaged in the November 2003 proposals). But, it is proposed that the power to void bets be available even if the Commission was not able, or decided not to, impose an interim moratorium immediately following the event. In this way, evidence of improper conduct that comes to light some time after the event can be acted upon. The provisions relating to the moratorium mean that if information is available immediately it too can be acted upon and the monies involved in the bet can be frozen pending an investigation of the facts. In this way, the draft clauses published give the Commission more flexibility to protect the consumer's interest and also aid the integrity of sports.

5. The draft clauses published on 5 February also make provision for a time limit on the voiding power. The power, if it to be used, must be exercised no more than 6 months after the result of the event to which the bet relates has been determined. This applies other than in cases where there has been a conviction for cheating, where there is no time limit.

Questions raised by the Joint Committee

6. During evidence session on 18th December 2003, two specific questions were asked about the licensing of betting exchanges and their users. Answers to these questions are offered overleaf.

Q. Will there be anything in the Horserace Betting & Olympic Lottery Bill to prevent the private sector Tote from operating a betting exchange?

A. There is nothing in the Bill that would prevent the Tote's successor from diversifying in this way. One of the reasons for moving the Tote from the public sector is to allow it greater commercial freedom of this kind.

Q. Should there be more direct restrictions on exchange users, especially bookmakers?

A. This is an issue that we have considered at great length, but our conclusion has been that restrictions on exchange users, additional to those imposed on the operator, are not necessary to achieve the regulatory objectives. The Department believe that the comprehensive regulation of betting intermediaries is sufficient. Operators will be responsible for the behaviour of their customers' use of the exchanges, for monitoring that behaviour, and taking any remedial steps that they or the Gambling Commission feel are necessary.

As long as bookmakers are not using the exchanges for tax avoidance purposes there is no reason why additional restrictions should be placed on them. However, it has been suggested that ordinary exchange customers should know if they are betting with a bookmaker. In the interests of transparency we have explored the possibility of flagging certain types of exchange user. It remains to be seen whether this would have any practical benefit, but it is an example of the sort of initiative the Gambling Commission could adopt as a licence condition if it chose to do so.

7. The Department noted with interest the vigorous debate during recent oral evidence sessions held by the Joint Committee on the subject of betting exchanges. We look forward with interest to reading the committee's consideration of this complex issue.

Department for Culture, Media and Sport
February 2004

DRAFT GAMBLING BILL: POLICY NOTE 6 ADVERTISING OF GAMBLING

Background: policy and legislation

1. The present law includes a number of specific provisions that relate to the advertising or promotion of gambling. They do not follow any obvious consistent pattern.
2. The main provisions on betting include:
 - A prohibition on the advertising of licensed betting offices, other than advertising in material form, or advertising in non-material form within the office;
 - A prohibition on sending betting circulars to children and young persons, and;
 - A prohibition on advertising 'off-shore' betting.
3. The main provision on gaming is a prohibition on the advertising of casinos except in foreign publications or in very limited form in British publications.
4. The main provision on lotteries is a prohibition on advertising unlawful lotteries.
5. In addition advertisements and promotions are subject to statutory and non-statutory regulation by the Advertising Standards Authority, OFCOM, and the independent Committee for the Supervision of Standards of Telephone Information Services.

Policy objectives

6. The broad policy objective is to replace the piecemeal provisions in current gambling legislation with new provisions which reflect the changed status of gambling as an acceptable leisure activity albeit one giving rise to specific risks of harm. In general, therefore, the Government believes that legitimate gambling businesses should be allowed to advertise in the same way as other businesses, and subject to the same general requirements as other businesses in terms of compliance with ASA, OFCOM and other relevant codes, except in so far as specific additional controls are needed to deal with those risks.

Means to achieve policy objective

7. The Bill will repeal the statutes containing most of the current provisions concerning the advertising of gambling: the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968, and the Lotteries and Amusements Act 1976. There is one additional provision relating to the advertising of betting, contained in the Betting and Gaming Duties Act 1981, which is the responsibility of HM Customs and Excise, with whom we are in discussion. These provisions will be replaced by:
 - An offence of advertising illegal gambling;
 - Rules for the content and conduct of advertisements for legal gambling; and

- A reserve power to prohibit the advertising of gambling from particular jurisdictions.

The offence of advertising illegal gambling

8. It will be an offence to advertise illegal gambling. Any person who advertises gambling which is itself illegal in Great Britain would commit an offence. It would not be an offence under this provision to advertise here gambling services provided abroad, since they would not be illegal within Great Britain.

9. The definition of "advertisement" should include the concepts of promotion, market branding and direct marketing. The offence should cover both broadcast and non-broadcast media, as well as advertisements using the Internet and other electronic communications. It should apply (with specified exceptions) to all persons who are involved in the advertising or promotional process, from those who commission an advertisement or a promotional campaign, to those who sell the end product as well as parties to a promotional agreement. To fall within the scope of the offence an advertisement or promotion should have to have the purpose of inviting or encouraging persons to gamble; of informing them about gambling or facilities for gambling (including facilities where a person will gamble on their behalf with their money or money's worth); or promoting a gambling product, service, or facilities.

10. The offence should not apply to persons who lack knowledge as to the intended purpose of an advertisement or promotion (who may, for example, include those involved in printing it) or reasonably believed that the gambling being advertised is lawful; and there should be a specific defence for those who only sell or distribute it without knowing or having reason to suspect that their actions would otherwise constitute an offence. There should also be a parallel specific defence for electronic communications service providers in the same position.

11. The offence cannot, as a result of EU law, apply, so far as advertising on television or information society services (for example, the internet, or interactive television) is concerned, to material originating within the European Economic Area. However, in certain limited circumstances, and after following certain procedure, it is possible to derogate from the relevant Directives on a case-by-case basis. We will ask Parliamentary Counsel to ensure that the Bill is drafted in a way that allows us the opportunity to take advantage of these rights, should the need arise in the future.

Rules for the content and conduct of advertisements for legal gambling

12. Where the gambling is lawful, and provided by the holders of Gambling Commission operating licences, the Commission should be able to set and enforce requirements as to the manner and content of advertising of that gambling through operating licence conditions. It follows that these conditions must relate to the general licensing objectives set out in Clause 1 of the draft Bill.

13. In relation to the holders of operating licences, requirements can be incorporated as conditions of the licence. But it is necessary to apply equivalent safeguards to gambling which is not carried out under Commission operating licence (for example, in family entertainment centres or in clubs with a gaming permit), and

to those involved in advertising but who are not themselves gambling operators (including advertising agencies and newspapers).

14. The policy is that the Bill will contain a power for the Secretary of State to make regulations in relation to the advertisement and promotion of any form of legal gambling. Such regulations should be able to specify rules concerning the form and content of an advertisement, its appearance, the location, manner, timing and means of its publication and the types of media used. Requirements may relate to words, phrases, images or pictures. It should be possible to require mandatory wording (in the form, for example, of a warning about the risks of excessive gambling or information about the probability of winning or losing on the activity concerned) to be included in advertisements for gambling. It should be possible for different requirements to be imposed, if necessary, in relation to the type of gambling being advertised; the type of gambling facilities being advertised; the advertising medium; and the place from which the advertising originates.

15. The policy is that regulations will not apply to broadcast advertising, which can effectively be regulated by OFCOM under the Communications Act 2003. OFCOM would be expected to consult the Gambling Commission in preparing or amending its codes insofar as they relate to gambling, and to have a duty to reflect the general effect of the Commission's requirements on its own licensed operators; and if it proved necessary to ensure proper consistency across advertising media the Secretary of State has power to give OFCOM directions in this area.

The reserve power to prohibit the advertising of gambling from particular jurisdictions

16. In relation to remote gambling the draft Bill seeks to regulate, and therefore provides for the licensing of, operations based in Great Britain. Licensed operators will be able to advertise their gambling as a result, subject to licence conditions as outlined above. Where remote gambling originates from outside Great Britain, it is proposed that advertising of it here should be an offence where it is accessible from Great Britain, is of a type designated in regulations by the Secretary of State and originates from a jurisdiction prescribed in regulations by the Secretary of State. It is intended to hold such power in reserve.

17. We are examining with the Home Office the scope of such a power - i.e. whether it can be used to make liable persons in the foreign jurisdiction who originate the advertising, or only their agents in Great Britain. It should be noted that the regulation-making power, if used, will need to be exercised in a way which is compatible with the UK's obligations under EU law, so that it would not, for example, be possible to prescribe an EEA country.

18. The reason for seeking power to prescribe countries on a case-by-case basis, rather than apply the offence generally to non-EEA countries, is that this would avoid penalising countries which both provided acceptable standards of regulation and allowed British-based remote operators fair access to their own markets. Indeed the power could assist international discussions aimed at achieving consistent standards of regulation and fair access rules. But where these conditions are not met it would be reasonable to prevent the advertising here of services which offered not just unfair competition to licensed British providers but risks to British consumers.

Co-regulation

19. In exercising its powers to regulate the conduct and content of permitted advertisements, it is proposed that the Gambling Commission should be required to consult relevant bodies such as the ASA. One of the purposes would be to avoid overlap or inconsistency, and to ensure so far as possible that those responsible for advertising were not subject to duplication of regulation. If, for example, as a result of such consultations it were possible for existing regulators to amend their own codes in a way which fully met the Commission's requirements, as to substance and clarity of definition, it would not be necessary for the Commission to impose licence conditions beyond one requiring operators to observe those codes. Such a condition would be needed to ensure that the Commission itself had an enforceable sanction against its licensees if enforcement action by other regulators under their codes were not sufficient, as breach would constitute an offence. It is also possible, however, that the Commission might decide to reserve the content of advertising which is more technical in nature (such as statements in advertising about relative odds) and where other regulators could not be expected to have an expertise. Such an outcome would put the Commission in a similar position to that now occupied by the Financial Services Authority. But it is proposed that the Bill should provide flexibility for the degree of co-regulation to depend on the outcome of the Commission's consultations.

Department for Culture, Media and Sport
February 2004

DRAFT GAMBLING BILL: POLICY NOTE 7 TRANSITION TO THE NEW REGIME AND 'GRANDFATHER' RIGHTS

1. It is envisaged that the Bill will be implemented in a number of stages.
2. The first stage would involve the formal establishment of the Gambling Commission, replacing the Gaming Board, and the designation of local authorities as premises licensing authorities. But at this stage neither the Commission nor authorities would exercise licensing powers under the Bill: the Commission would take on the current powers and duties of the Gaming Board; and it and licensing authorities would have the authority to take forward practical preparations for the exercise of those powers.
3. At a second stage operators and prospective operators would be able to apply to the Commission or licensing authorities for licences or permits under the Bill.
4. The final stage of implementation would involve the coming into force of new licences and permits. At that point old licences and permits would cease to have effect, but they would all remain valid up to that point. At this final point, the provisions of the Bill that make the provision of gambling facilities, or the use of premises for gambling, without authorisation an offence would come into force. There may be intermediate stages between the second and final stages; but they will not affect the background against which the arrangements for existing gambling businesses need to be considered.

Applications for new operating licences

5. It is proposed that, where the Bill will require an operating licence after the final implementation stage, those now operating gambling businesses will be required to obtain a licence from the Commission in the same way as prospective new entrants to the market. This requirement takes account of the fact that the Commission will need to be satisfied that all licensed operators will comply with all the conditions of those licences, including those relating to the protection of children and the vulnerable, where some requirements will be new. In considering applications, however, the Commission will wish to take full account of the extent to which previous performance under Gaming Board or other regulation provides evidence that operators will have the necessary resources and systems in place within their businesses.
6. The requirement for a new operating licence will not apply to society or local lotteries registered in accordance with sections 5 or 6 of the Lotteries and Amusements Act 1976. To the extent that they require an operating licence under the Bill their registration will be deemed to be one for 10 years.

Personal licences

7. It would be unnecessarily burdensome for all concerned, including the Commission, to require all individuals already certified as fit and proper by the Gaming Board to apply for personal licences in the same way as operators for operating licences. Instead it is proposed that certificates under section 19 of the Gaming Act 1968 should be deemed to be personal licences for a prescribed period, currently envisaged to last three years; and that personal licence requirements in

relation to employees of betting companies which hold a bookmaker's permit should not apply for a prescribed period.

Premises licences

8. So far as premises licences are concerned, it is proposed that, where the holders of the following licences or approvals under the current law apply to the relevant licensing authority before the final stage, the authority will be required to grant the application:

A betting office licence (under Schedule 1 to the Betting, Gaming and Lotteries Act 1963);

A track betting licence (under Schedule 3 to the 1963 Act);

An approval issued in respect of a racecourse under Schedule 4 to the Horserace Betting and Olympic Lottery Bill;

A gaming or bingo licence (including casinos) under Part 2 of the 1968 Act, and;

A machine premises permit under Schedule 9 to the 1968 Act (for what will under the Bill be an adult gaming centre or licensed family entertainment centre).

9. These new premises licences would have no fixed term, in the same way as all premises licences under the Gambling Bill. They would be subject to mandatory and default conditions under Part 8 of the draft Bill, with the proviso that a licensing authority would have power, through excluding a default condition, only to increase and not reduce what is permitted under a current licence. So that, for example, if the default conditions included opening hours, the licensing authority would be able to extend the hours but not restrict them below that set out in the default condition.

10. A casino operating licence holder operating a casino licensed under the 1968 Act, which was below the minimum prescribed size for a small casino licence, would nevertheless be entitled to obtain a casino premises licence in order to allow the casino to stay in business.

11. Because established gambling businesses will need, under the proposals in paragraph 3 above, to obtain operating licences from the Commission, they should not be subject to the general requirement in clause 130(3) of the draft Bill that an application for a premises licence may be made only where an operating licence is already held: otherwise there would be a risk of requiring them to suspend trading activity while their operating licence application was being considered or unduly prolonging the implementation process. It is accordingly proposed that licensing authorities may deal with applications for a premises licence on a contingent basis where an application for an operating licence has been made.

Permits

12. So far as premises requiring not a premises licence but a **permit** are concerned, it is proposed that clubs and miners' welfare institutes already registered under Schedules 3 and 7 to the 1968 Act would be entitled to be granted a club gaming and club machine permit under clauses 229 and 231 of the Bill. The operators of family entertainment centres under Schedule 9 to the 1968 Act would be entitled to a Category D gaming machine permit under clause 205 of the draft Bill.

13. Premises licensed for the consumption of alcohol under the Licensing Act 2003 should be entitled to continue to operate as many Category C or D gaming machines as are already authorised under those licences, as an additional entitlement to clause 239(1) of the draft Bill. If they wish to apply for more then they may do so under clause 239(2).

Department for Culture, Media and Sport
February 2004

**DRAFT GAMBLING BILL: POLICY NOTE 8
CHANGES TO NATIONAL LOTTERY LICENSING AND REGULATION**

Policy background

1. Our National Lottery is one of the most successful lotteries in the world. It rapidly caught people's imagination and, since 1994, has raised more than £15 billion for good causes. Private sector expertise was delivered within a framework of careful regulation that ensures propriety and protects players. Competition to operate the National Lottery lies at its heart.

2. The Lottery is governed by the National Lottery etc. Act 1993 and the National Lottery etc. Act 1998. The 1993 Act authorises lotteries to be promoted as part of a National Lottery. It sets out the framework within which those lotteries are to operate. It also establishes the National Lottery Commission ("NLC") as the statutory body tasked with licensing and regulating the bodies that run and promote such lotteries.

3. This framework recognises four key parties:

- The Secretary of State, whose overriding duty is to ensure that the Lottery is operated properly and that players' interests are protected and subject to that, to maximise the income for good causes. The Secretary of State has the power to give directions to the NLC about how the Lottery is to be licensed, and to make regulations about how it is run.
- The NLC whose duties mirror those of the Secretary of State. The key function of the NLC is to issue and enforce licences for the operation of the Lottery. There are two kinds of licence: a single licence under section 5 of the 1993 Act, which is granted to a body corporate to operate the National Lottery; and one or more licences under section 6 of that Act, granted to bodies corporate to promote lotteries as part of the Lottery.
- The section 5 licensee: currently Camelot. The present law allows for only one section 5 licence to be issued. It is the responsibility of this licensee to provide the technical, retailing and marketing infrastructure within which section 6 licensees can operate, and to ensure that payments to prizewinners, the National Lottery Distribution Fund, and the Exchequer are made.
- The section 6 licensee(s), responsible for the games. At present Camelot holds all section 6 licences.

4. The authorisation and regulation of the National Lottery is set out in Part 1 of the 1993 Act. The Act does not prescribe the design or detail of lotteries forming part of the National Lottery but instead sets out the control framework that must be complied with in order for a lottery to be regarded as part of the National Lottery. Section 1 of the Act defines the "National Lottery" as all the lotteries that form part of the National Lottery, taken as a whole, and provides that in order for a lottery to form part of it, sets out conditions that must be satisfied.

5. The 1993 Act therefore divides the operation of the National Lottery into two, separating the functions of 'running' the National Lottery from 'promoting'

lotteries as part of it. Section 5 of the Act allows the NLC to license a body corporate to 'run' the National Lottery. Section 5(2) provides that only one body may be licensed under that section at any one time. What is involved in 'running' the Lottery is not specified in legislation. Although the Secretary of State gives broad direction to the NLC under section 11 about how it exercises its functions - including matters to take into account in granting licences - the details of the conditions with which the licensee must comply are set out by the NLC in the licence itself.

6. Section 6 of the 1993 Act allows the NLC to license a body corporate to "promote" lotteries as part of the National Lottery. Section 6 licensees are responsible for the design, promotion and conduct of the games but this is subject to a requirement (included in each section 6 licence) that each is consistent with the overall structure and systems established by the section 5 licensee.

7. The section 6 licences relate to the actual games played, as part of the National Lottery and so for every type of game there must be a licence that authorises it. Although each game must be licensed, the statute does not require a licence per game.

8. All section 6 licences are granted for a finite period - shorter than the length of the section 5 licence. There is no restriction on the number of bodies that can hold such licences - although if the section 6 licensee is not also the section 5 licensee, a licence can only be granted with the agreement of the section 5 licensee (section 1(3)).

9. The length of the section 5 and section 6 licence is not specified in statute but must be set out in the licence issued by the NLC (section 7(1)). The NLC has the power to include conditions in the licence (section 7(2)) and to vary those conditions (subject to the licensee's consent in certain circumstances (section 8)). A fee is payable on the grant of a licence (section 7(5)).

10. Details of the NLC are set out in Schedule 2A of the Act. Paragraph 2(1) states that the Commission shall consist of five members, all of whom are appointed by the Secretary of State. Members hold and vacate office in accordance with their terms of appointment subject to the provisions contained in paragraph 3(2)-(5) relating to length of appointment, ability to resign, eligibility for re-appointment and removal by the Secretary of State.

11. Provisions relating to the chairman are contained in Paragraph 4. The members of the Commission select one of their number to be chairman and such appointment is to be for no longer than 12 months.

Policy objectives and summary of proposals

12. After ten years and two licensing rounds, however, we cannot assume that current arrangements, successful though they are, will continue to give the best possible outcome for good causes. That is why, in 2002, the Government published a consultation document¹ to:

- Consider whether there might be scope to reinvigorate competition to operate the Lottery;

¹ "Review of Lottery Licensing and Regulation: consultation document" June 2002

- Allow more companies to participate in it; and
- See whether there was scope for streamlining regulation of the Lottery without sacrificing essential safeguards.

13. Last year, the Government published a Decision Document², which concluded that we need a radical new approach to licensing the Lottery - to inject significantly greater competition into the licensing process. Without legislation the NLC, as regulator, could only make limited improvements to the arrangements for selecting a National Lottery operator next time. Such changes, for example a two-stage bidding process, may not be enough to ensure that there is effective competition at the end of the current licence period in 2009.

14. To ensure that there is effective competition at the end of the current licence period, the Government proposes a radical new approach to licensing the Lottery. This:

- Moves away from a requirement for a single major licence competition, typically every seven years;
- Provides the NLC with the ability to offer for competition a range of licences to operate different parts of the Lottery; and
- Allows for those licences to be of different duration.
- The Government also proposes that the NLC be retained as regulator but to change the way the NLC is organised to strengthen its position. The changes include:
 - Offering greater flexibility in the number of Commissioners;
 - Ending the requirement that the chairman rotates at least annually. Instead, the draft Bill will provide for the Secretary of State to appoint a chairman for a fixed period; and
 - Provision for the Chief Executive of the NLC and one other executive to be appointed as Commissioners. This is in line with general business practice.

Detail of proposals

Licensing changes

15. The draft Bill will provide for a move away from a single major licence competition (typically every seven years). It will propose that the NLC should have the ability to offer for competition a range of licences to operate different parts of the Lottery. There could be, for example, not only a competition to operate the main Lotto game but also separate licence competitions for scratch cards and internet-based products. This will offer licensees greater scope to deliver exciting

² "National Lottery Licensing and Regulation: decision document" July 2003

new ideas to attract players. The draft Bill would also allow for the various licences to be of different duration, to take account of technological change and the different periods required for licensees to make a return on their investment. The NLC would decide the scope of the competitions and the duration of each of the licences before the end of the current licence, held by Camelot plc. The NLC would exercise its independent judgement in making these decisions, taking account of developments in technology and market conditions.

16. To give effect to these changes, the present arrangement whereby a single entity can run the National Lottery (under authority of the section 5 licence) and separate licences are granted to promote the lotteries played as part of the National Lottery (section 6) would be abolished. Instead, the NLC would have power to issue one or more new style licences, based on the existing section 6 licences, but which, in relation to each type of game, incorporate not only the current section 6 duties, but also those duties previously carried out by the section 5 licensee.

17. So, in broad terms, a person granted a licence under the new regime would become responsible not only for the design, promotion and conduct of the game(s) licensed, but also for providing the technical, retailing and marketing infrastructure for the game. Importantly, the licensee will also take on the responsibility of ensuring that payments to prizewinners, the National Lottery Distribution Fund and the Exchequer are made. This would not preclude the NLC requiring licensees to work together or to provide information and/or services to each other if the NLC considered this appropriate.

18. The draft Bill will allow the NLC to retain control over the rules of any lottery that may be authorised by the licence. Beyond that, the detail of these licences – in particular in terms of the type of licence the NLC proposes to offer for competition – would be for the NLC to determine at the relevant time, having regard to its statutory duties. This would not rule out the possibility that the NLC decides the best outcome is to run a competition to award one licence to operate all the lotteries forming part of the National Lottery – or that it should run separate competitions for each category of licence but with the possible end result that one competitor is granted all licences. Accordingly, there should be no limit on the number of licences a body holds.

19. The discretion afforded to the NLC would, however, remain subject to any directions given to it by the Secretary of State under section 11 of the 1993 Act. In particular, the NLC would be under a duty to consult publicly on the type of licence(s) it proposes to issue. And, the NLC will be required to advertise openly for applicants for licences.

20. Alongside the changes described above to introduce greater competition into the licensing process, we propose to allow a wider range of bodies or persons to operate lotteries forming part of the National Lottery. At present, only a body corporate can be granted a licence under the Act. For the future, there would be no restriction on the type of body or person capable of holding a licence issued in connection with any part of the National Lottery.

21. The decision document recognised the importance of maintaining the unity of the National Lottery. Therefore, all holders of licences relating to lotteries forming part of the National Lottery would be required to share information with other licensees throughout the period of the licence in circumstances to be specified

in the licence. They could also be required to make provision of services (especially retailer network, communications and IT) accessible to each other and to any third party as directed by the NLC in the competition. The NLC would also have power to require licensees to maintain common branding. If a new competition for a licence were advertised, licensees would be required to make available information (as specified by the NLC in the licence) to third parties for the purpose of enabling licence bids to be made. This is likely to be achieved through conditions in the licences.

22. The draft Bill includes powers for the Government to bring into being (via secondary legislation) a statutory levy on all licensed gambling operators. The Government would be required to consult with the Gambling Commission prior to the introduction of a levy. To allow the National Lottery to be put in a similar position, the draft Bill will provide that should a statutory levy be introduced for gambling operators regulated by the Gambling Commission, a statutory levy should be considered for holders of new style National Lottery operating licences. The Government would be required to consult with the NLC prior to the introduction of any levy. Any scheme applicable to holders of new style National Lottery operating licences would be enforceable by the NLC rather than the Gambling Commission.

Machinery of regulation changes

23. The draft Bill will provide that the NLC be retained as regulator of the National Lottery. Nevertheless, the changes to the licensing of the National Lottery operators outlined above will have a very significant impact on the work of the NLC. Instead of undertaking one very large competition (typically every seven years), it would be likely to have a more regular programme of competitions. This would increase its need to maintain a continuous review of the market and worldwide developments in lotteries. The Government has confidence in the ability of the NLC to take on its new responsibilities; but the draft Bill will introduce changes to the way the NLC is organised to strengthen its position.

24. The draft Bill will therefore provide that the set number of Commissioners (see Paragraph 2(1), Schedule 2A of the 1993 Act) be removed. Instead, membership of the Commission is to consist of a Chairman and not less than 4 other members.

25. It would no longer be for the Commission members to appoint one of their number as Chairman – instead, the Secretary of State is to have power to appoint a non-executive member as Chairman. The draft Bill will also provide for the Secretary of State to have power to appoint the Chief Executive of the Commission as one of its members if she so decides. The draft Bill will also provide for the Secretary of State to appoint one other employee of the NLC to be a member of the Commission, but only where the Commission makes a recommendation to her.

26. Although the National Lottery will be separately regulated, the NLC will be expected to work closely with the Gambling Commission on areas of common interest, especially the protection of children and the vulnerable, and, beyond that, operate broadly in line with the proposals for the regulation of other types of gambling. For example, if each is considering the conditions applicable to a licence that is to cover interactive games, the Government will expect both bodies to work together to reach a consensus on the general approach that should apply. The Government proposes to facilitate this by enabling both Commissions to consult each other about matters of common interest, and the approach to be adopted, in

matters such as licence conditions etc., which are relevant to the exercise of functions by both bodies. Clause 20 of the draft Bill published in November 2003 provides a mechanism for the Gambling Commission to consult the NLC and the National Lottery clauses will contain a similar provision in respect of the NLC consulting the Gambling Commission.

27. The changes proposed to the licensing and regulation of the National Lottery will meet the Government's intention to introduce greater competition into the operation of the Lottery by allowing a wider range of operators to participate. It will also offer the opportunity for operators of varying sizes and with different specialisations, including not-for-profit companies, to participate - although the most important consideration will remain to maximise the overall amount the operators are able to raise for good causes.

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