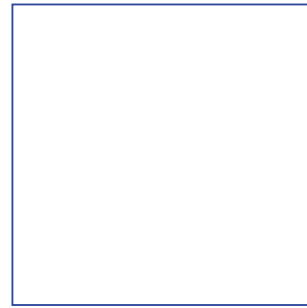
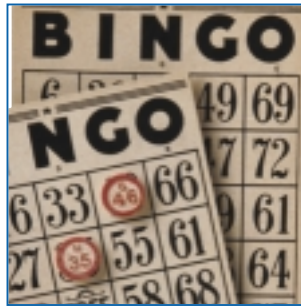


part two

background



chapter four

Legislation on Gambling

Historical background

- 4.1 The current gambling legislation in Great Britain in the main dates back to the 1960s. While the criminal law did not seek to interfere with private gambling between individuals, it did seek to place strict controls on, or to prohibit altogether, gambling for commercial gain. It was thought that if such activities were unregulated they would give rise to crime, or cause social problems to gamblers and their families.

Gaming

- 4.2 As with betting, commercial gaming was similarly suppressed prior to 1960 either by prohibiting altogether the playing of certain games or otherwise outlawing gaming houses and gaming in public places. The Betting and Gaming Act 1960 sought to liberalise the law on gaming so as to allow those persons who wanted to game to do so, whilst at the same time continuing to prohibit commercial exploitation. To achieve its desired objective the Act imposed three conditions: no charges were to be made for gaming, no levies were to be taken from the stakes and, if the games were not of equal chance, then the chances were to be equalised by the method of play (for example, by rotating the bank between players). Despite these restrictions, commercial gaming was able to obtain a foothold because of what was thought to be a minor concession which allowed clubs to impose a charge to recover the costs of the gaming facilities they provided. There was no requirement that the amount of such a charge should be limited to the true cost of providing such facilities. Nor was the concession limited to genuine members' clubs and as a result a great number of commercially operated clubs emerged.
- 4.3 By the mid-sixties, the development of commercial gaming was out of control. There were around 1000 casinos operating in the UK. Unscrupulous operators were taking advantage of customers, and criminal involvement in gambling was rife. The profits to be made from slot machines were being exploited by criminals who used strong-arm tactics to enforce "sharing agreements". "It was impossible for the police and the courts to stem the tide without radical reform of the law."¹ The Gaming Act 1968 was passed to restore order. The Act recognised that commercial gaming could no longer be suppressed, but instead sought to bring it under strict controls. The Rothschild Commission² replicated the Home Office's "Introduction to the Gaming Act" produced in 1968:

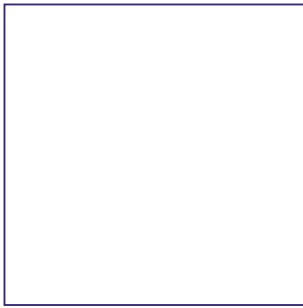
The main purpose of the Act is to curb all forms of gaming which are liable to be commercially exploited and abused. It recognises that commercial gaming cannot now be suppressed, but seeks to bring it under strict controls. The principle on which it proceeds is that no one can claim a right to provide commercial gaming: it is a privilege to be conceded subject to the most searching scrutiny, and only in response to public demand.

The controls have as their common object to purge this activity of its criminal elements, to cut out excessive profits, and to ensure that gaming is honestly conducted in decent surroundings. Beyond that the intention underlying the Act is to reduce drastically the number of commercial clubs providing games other than bingo; to restrict bingo to a neighbourly form of gaming for modest prizes; and to check the proliferation of gaming machines and machines used for amusement with prizes.

- 4.4 It is generally acknowledged that the Gaming Act 1968 has achieved its main purpose; although there have been examples dating from the 1970s and up to as recently as 1991 of casinos breaking the law.³

Betting

- 4.5 Professional bookmakers began to make their appearance in the late eighteenth century. In 1845, the Gaming Act made wagering contracts unenforceable in law, thus preventing bookmakers from recovering forfeited stakes in cases where the betting had been conducted on credit terms. As a result, bookmakers insisted on receiving cash in advance and there followed a rapid growth in betting houses to meet the demand for cash betting. This was regarded as an unwelcome development and a Betting Act was passed in 1853 to suppress betting houses. The effect of the 1853 Act was simply that bookmakers operated on the streets. Consequently a further Act of 1906 made betting in the streets and other public places unlawful.
- 4.6 Betting continued to be conducted lawfully on-course and credit betting remained lawful off-course provided the bets were placed by post or telephone. The 1853 and 1906 Acts could not, however, suppress the demand for off-course cash betting, which consequently continued unlawfully. The Betting and Gaming Act 1960 swept away the 1853 Act and made it lawful for a bookmaker to run a cash betting office provided both he and his office were licensed.



Lotteries

- 4.7 An Act of 1698 laid down the principle, which is still operative, that all lotteries not expressly authorised by statute were unlawful. After 1698, state lotteries continued to be authorised by Acts of Parliament until 1826 when the practice was stopped, principally because lotteries were no longer an efficient means of raising Government revenue and because of the abuses associated with the lottery system. The 1698 Act remained in force until the Betting and Lotteries' Act 1934 legalised private lotteries and small public lotteries incidental to an entertainment, such as a bazaar or sale of work. The Small Lotteries and Gaming Act 1956 introduced societies' lotteries, that is small public lotteries conducted by societies established for charitable or sporting purposes, but not for commercial gain. Finally, the Lotteries Act 1975 made provision for local authorities to promote lotteries on the same footing as societies. The law on lotteries was consolidated in the Lotteries and Amusements Act 1976.
- 4.8 The National Lottery Act 1993 introduced the National Lottery.

The Statutory Provisions

Impact of Devolution

- 4.9 Legislative responsibility for betting, gaming and lotteries is reserved. The Home Secretary determines the policy on gambling and, in doing so, consults the Scottish Executive.
- 4.10 Some powers to make secondary legislation have been devolved to the Scottish Parliament. The Scottish Parliament has responsibility for such matters as betting and gaming fees, gaming hours and casino permitted areas in Scotland.

Gaming Board

- 4.11 The Gaming Board regulates gaming and larger societies' lotteries in Scotland. The Board has a regional office in Glasgow and one of the Board members has particular responsibility for gaming and lotteries in Scotland. The Board has a regional office in Bristol, from which its responsibilities in Wales are carried out.

Application of the current law

- 4.12 Differences between the legal systems in England and Wales and in Scotland mean that there are some differences in procedures between the jurisdictions. For example, in Scotland the Local Authority Licensing Board carries out the functions of the Licensing Justices in England and Wales. As set out in chapter 2, we have written this report from the perspective of

law and practice in England and Wales, and we have not sought to highlight the consequences of our recommendations in Scottish law.

Gaming

- 4.13 The principal statute on gaming is the Gaming Act 1968. Gaming is defined as playing a game of chance for winnings in money or money's worth. With the exception of gaming machines, commercial gaming is confined to clubs and is subject to a mixture of local and national controls.

Casino gaming

- 4.14 Casino gaming is confined to licensed premises, which are required to operate as members' clubs. Before an applicant can apply for a gaming licence from the licensing justices, he must first obtain a certificate of consent from the Gaming Board for Great Britain. Certificates are only granted if the applicant is a fit and proper person and would be capable and diligent in ensuring compliance with the Act. An application for a gaming licence may be refused on the grounds that there is insufficient demand for the gaming facilities. In addition, casinos are permitted only in certain designated areas of the country, known as permitted areas. Only certain games can be played and a maximum of ten jackpot machines is permitted.

Bingo

- 4.15 Bingo is a game of chance, determined by a random selection of numbers, which are not chosen by the player. Small amounts of stake are accumulated from large numbers of people to create a main prize.
- 4.16 Commercial bingo is allowed in bingo clubs licensed under the 1968 Act. Unlicensed bingo is played in places such as working men's clubs. Clubs not registered under the Gaming Act 1968 may offer games of equal chance, such as bingo, and impose small charges sufficient to recover the costs of gaming. Stakes and prizes are unlimited and all stakes must be returned in prizes.

Gaming machines

- 4.17 The 1968 Act made provision for two types of gaming machine: jackpot machines and amusement-with-prizes (AWP) machines:
- Jackpot machines are confined to clubs licensed (i.e. casinos and bingo clubs) or registered (e.g. working men's clubs) under the 1968 Act.



The maximum stake is currently 50p and the maximum payout £1000 in casinos, £500 in bingo clubs and £250 in registered clubs.

- AWP machines need permits from the local authority to be located in places to which the public has access, e.g. arcades and cafés. Permits are required from the liquor licensing justices for machines in pubs. The maximum stake for an AWP machine is 30 pence, and the maximum prize is limited to either £5 in cash or £8 in tokens. In addition, since June 1996 all-cash AWP machines which pay out a maximum of £15 cash have been permitted in liquor licensed premises, adult arcades, bingo clubs and, for the first time, in betting offices. Under 18s may not be admitted to an area in an arcade in which all-cash machines are located. (Many arcades operate as adult arcades and exclude under 18s completely.)

4.18 The sale, supply and maintenance of machines is controlled separately through a scheme of certification run by the Gaming Board.

Betting

4.19 The law on betting is to be found in the Betting, Gaming and Lotteries Act 1963. Betting is not defined by statute, but is generally regarded as entering into a contract by which each party undertakes to forfeit to the other, money or money's worth, if an issue in doubt at the time of the contract is determined in accordance with that other party's forecast. Unlike a lottery, a bet may involve skill or judgement.

Bookmaking

4.20 No person may act as a bookmaker without the authority of a permit issued (in England and Wales) by the licensing justices. The essential test applied by the licensing justices in considering an application, is whether or not the applicant is a fit and proper person. A bookmaker operating from a betting office requires a licence for the premises issued by the licensing justices.

On-course betting

4.21 Horserace courses must be approved by the Horserace Betting Levy Board. Greyhound tracks require a local authority licence. Pool betting can only be operated by the Horserace Totalisator Board (for horseracing) and by the track management (for greyhound racing).

The Horserace Betting Levy Board and the Horserace Totalisator Board

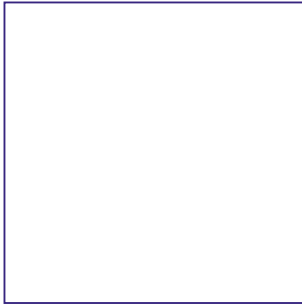
4.22 The Horserace Betting Levy Board was established, by the Betting Levy Act 1961, to assess and collect a levy on bets on horse races and distribute it for purposes conducive to the improvement of breeds of horses, the advancement or encouragement of veterinary science and education, and the improvement of horseracing.

4.23 The Horserace Totalisator Board was first established, as the Racecourse Betting Control Board, by the Racecourse Betting Act 1928. It was given its present official name in 1961, but has always been known as the Tote. It was founded to enable racegoers to bet by means of a totalisator (ie pool betting), and to raise money for racing.

4.24 In March 2000 the Home Secretary announced that the Government had decided to abolish the horserace betting levy and the Horserace Betting Levy Board. The Government had also decided that the Horserace Totalisator Board (the Tote) should be sold to a consortium of racing interests. The aim was to bring to an end the Government's direct involvement in the administration and financing of racing, so enabling racing to take responsibility for its own affairs and finances.

4.25 Detailed proposals for addressing the practical implications of abolishing the Horserace Betting Levy Board and selling the Tote were published by the Home Office in November 2000. Its "Consultation Paper on the Proposed Abolition of the Horserace Betting Levy Board and the Licensing of Racecourse Betting and Pool Betting on Horseracing" put forward some key proposals relevant to this Gambling Review:

- horseracing's governing body, the British Horseracing Board (BHB), would succeed the Levy Board as the central funding body for racing
- a new statutory regulator should be established with responsibility for approving and monitoring all racecourse betting operations – including the Tote
- the Tote itself would continue to enjoy an exclusive, but time-limited licence to conduct horserace pool betting
- the Tote would be expected to provide a pool betting service at all meetings, and would also be required to make its products available to third parties (e.g. bookmakers).



Greyhound Racing

- 4.26 The law governing betting on greyhound tracks is contained in the Betting, Gaming and Lotteries Act 1963. There is no statutory body for greyhound racing. The industry body, the National Greyhound Racing Club (NGRC), controls the conduct of racing. Unlike horseracing, track owners are allowed to operate their own totes for private gain. There is no statutory levy on greyhound bets but bookmakers are encouraged to contribute 0.4% of bets on greyhound racing to the independent British Greyhound Racing Fund.
- 4.27 In January 1996, the law was relaxed to allow inter-track tote betting and to remove certain other restrictions.

Pool Competitions (including football pools)

- 4.28 Pool competitions are also governed by the 1963 Act. The promoter must be registered with the local authority, which appoints an accountant to supervise his operations. The promoter has to submit to the accountant detailed information about each competition, showing, among other things, the stakes, the proportion paid in winnings and the expenses apportioned to each competition.

Lotteries

- 4.29 All lotteries except the National Lottery are regulated under the Lotteries and Amusement Act 1976 and the Lotteries Regulations 1993. The 1976 Act contains no definition of a lottery, but case law holds that the essential ingredients are that there is a distribution of prizes by lot or chance and that the chances should be secured by some payment or contribution by those who take part. Regulation of lotteries is essential to combat fraud, since the player has no independent means of knowing either the total amount paid in or that the promised prizes have been paid out. The 1976 Act makes all lotteries (including foreign lottery operations here) unlawful except those provided for by the Act.
- 4.30 An important aim of the 1976 Act is to ensure that lotteries contribute to good causes rather than operate solely as gambling operations. The lotteries that are permitted are:
- small lotteries incidental to certain entertainments
 - private lotteries
 - society lotteries and
 - local authority lotteries.

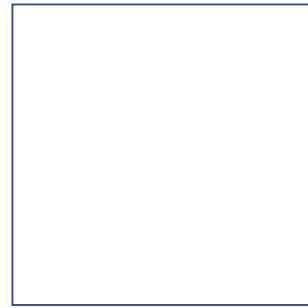
The National Lottery

- 4.31 The 1976 Act made no provision for major lotteries conducted on a national scale. In 1978, the Rothschild Commission recommended that there should be a single national lottery for good causes. But it was not until 1993 that Parliament passed the National Lottery Act.
- 4.32 28% of proceeds go to the National Lottery Distribution Fund to be allocated to good causes.
- 4.33 Under section 18 of the Act, betting on the outcome of the National Lottery is prohibited.

The Regulators

The Gaming Board for Great Britain

- 4.34 The Gaming Board was created by the Gaming Act 1968. The Board's main purpose is to keep criminal elements out of commercial gaming and to help ensure that where commercial gaming takes place it is properly managed and conducted fairly and in accordance with the law.
- 4.35 In particular, the Board:
- investigates the trustworthiness of all applicants for licences for casinos and bingo clubs and issues to them certificates of consent
 - issues certificates of approval to casino gaming managers, supervisors and operatives, and managers in bingo clubs
 - issues certificates to people selling or supplying gaming machines
 - advises the Secretary of State on all regulations made under the Act
 - advises the justices on the demand for gaming, the suitability of premises and any restrictions to appear on licences
 - appears before the justices to object to the grant or renewal of licences or to move for their cancellation, in appropriate cases
 - assists the police in the enforcement of the Act through the Gaming Board Inspectorate.
- 4.36 The Gaming Board also agrees codes of conduct with the industry, which set out principles of good practice where the law is insufficiently clear or is silent.



Financial Services Authority

- 4.37 The Financial Services Authority (FSA) regulates spread betting under the Financial Services Act 1986. Spread betting traders are authorised as principal traders. The FSA must establish that the firm and its key staff are fit and proper, that there is enough capital and that controls are adequate. Firms are subject to the Securities and Futures Authority (SFA) prudential and conduct of business rules. These cover the financial resources needed, the fitness and propriety of the management, and set standards to protect customers.

National Joint Pitch Council

- 4.38 The Levy Board issues Certificates of Approval to racecourses, including point-to-points. These are effectively licences that, subject to certain conditions, allow betting to take place on the course. Using this authority the Levy Board determines where betting (excluding Tote pool betting) is allowed and has issued a set of rules which govern how the betting ring is run. The National Joint Pitch Council (NJPC) was established to enforce those rules and administer the betting ring. The NJPC is a limited company whose board is made up of Levy Board appointees and representatives of the racecourses and bookmakers.
- 4.39 The NJPC's role is to administer, promote and regulate activities in the betting ring. It is self-funding, through charges to bookmakers.

National Lottery Commission

- 4.40 Part I of the National Lottery Act provides for the Lottery to be regulated by the National Lottery Commission. The Act places a duty on the Secretary of State for Culture, Media and Sports and the Commission to ensure that the Lottery is run with all due propriety, that the interests of participants are protected, and, subject only to these, to maximise the revenue to good causes.

Magistrates

- 4.41 In England and Wales, the authority for the grant of bookmakers' permits, betting agency permits, betting office licences, bingo licences and casino licences is a committee of not less than five nor more than fifteen of the justices acting for each petty sessions area (the licensing justices).
- 4.42 The licensing justices also register members' clubs and miners' welfare institutes for the use of jackpot machines and issue permits for Amusement with Prizes machines in pubs.

Local Authorities

- 4.43 In England and Wales, District councils or London boroughs:
- issue licences for greyhound tracks
 - register pool promoters
 - register societies that are promoting small society lotteries
 - issue permits for AWP machines in locations other than premises with a liquor licence.

Police

- 4.44 Enforcing gambling legislation is a responsibility of the police, though currently it comes low down on the list of police priorities. Nationally, the police do not claim to have very much expertise in dealing with gambling offences, although there are pockets of expertise, such as in the Metropolitan Police Clubs and Vice Unit.