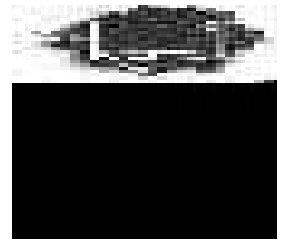


**Department for Culture, Media and Sport**  
Gambling and National Lottery Licensing Division

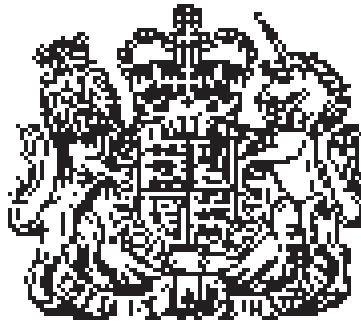


# Modernising Britain's gambling laws

Draft Gambling Bill

July 2003





DEPARTMENT FOR CULTURE, MEDIA AND SPORT

# **MODERNISING BRITAIN'S GAMBLING LAWS**

## **Draft Gambling Bill**

*Presented to Parliament by the  
Secretary of State for Culture, Media and Sport  
by Command of Her Majesty  
July 2003*

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## Foreword: Getting the balance right

### A reputation for integrity

British gambling has a worldwide reputation for integrity. It is a diverse, vibrant and innovative industry and a popular, everyday leisure pursuit for many millions of adults.

Regulation dating from the 1960s has ensured that we have a tightly controlled and well-run industry.

### Modernisation

But the law on gambling is now out of date. It no longer reflects the society in which we live, and has not been able to keep up with developments in technology. The gambling industry suffers from a lot of out-of-date restrictions, like those that stop casinos being built except in a few permitted areas. There are unnecessary restrictions on bingo and British businesses are prevented from offering gaming on the Internet, leaving the market to foreign competitors who may not be regulated properly. The law needs to be modernised.

Properly managed and run, gambling can create wealth and jobs. It can be part of an attractive leisure environment in towns and cities.

But in modernising, we need to strike the right balance between economic gain and social protection. We must make sure crime is kept out of gambling and that gambling is conducted in ways that are fair to the consumer. In particular, we must take the strongest steps to protect children and vulnerable adults from being harmed or exploited by gambling.

These are to be the aims of the draft Gambling Bill.

### The Gambling Commission

The draft clauses published now focus on the establishment of a modern regulator, the Gambling Commission.

The Commission will have wider functions, greater flexibility to act and stronger enforcement powers than the existing Gaming Board for Great Britain that it will replace.

The Commission will ensure best practice across each sector of the gambling industry, using policy statements, codes of practice and guidance to drive progress. Commission codes of practice, in particular, will be an important feature of the new legislation, enabling the Commission to respond to changing circumstances whenever issues of consumer protection arise.

The clauses also outline the principle licensing functions of the Gambling Commission – namely the licensing of various gambling operations and key personnel. The Commission will have flexibility to impose general or individual conditions on classes of licences and, where necessary, on specific operators. It will

also have powers to review licences, for example where it believes conditions have been breached or where it believes the licence holder is no longer suitable. It will also have extensive enforcement powers to tackle illegal gambling.

The Commission will be a strong regulator, but with the flexibility to measure carefully its controls.

### **Scrutiny of our proposals**

Reform of the law on gambling has already been the subject of a number of public consultations, during the work of the independent Gambling Review Body (led by Sir Alan Budd), following its report and when the Government published its response "A safe bet for success" (Cmnd 5397) in March 2002.

I therefore now publish this first package of draft clauses. I will present a complete draft Bill to Parliament in the autumn for pre-legislative scrutiny.

Inevitably, the draft clauses published today are not necessarily in the form they will take when the whole Bill is presented for scrutiny in the autumn. Work will continue on the rest of the Bill, and there will be improvements that necessitate changes to the material published here. But, I have decided to publish this package of draft clauses at this point, since I wish to involve the public and industry at every stage of the process.

There is, I believe, already a wide consensus that modernisation is needed. Pre-legislative scrutiny will improve our proposals. I hope too that it will build parliamentary understanding and public confidence in reform, enabling us to strike the right balance between deregulation and the protection of young and vulnerable people.

A handwritten signature in black ink, appearing to read 'Tessa Jowell'.

TESSA JOWELL



## Policy background

### 1. The need for change

- 1.1 The gambling scene in Great Britain is very diverse. There is a long tradition of fixed odds betting, centred on horse racing but now extending to a wide range of sporting and other events. We have casinos, commercial bingo clubs, machine arcades, lotteries and the National Lottery. Below the threshold of commercially organised gambling there is wide range of what might be called social gambling, including simple low-stake gaming in pubs and clubs.

#### Changes since the 1960s

- 1.2 The laws regulating gambling for the most part date from the 1960s, and include provisions that are much older than that. Over recent years these laws have come under increasing strain. In part this is due to a shift in public attitudes towards gambling. It has become more socially acceptable, with about two out of three people playing the National Lottery regularly. More people have become more willing to see gambling as part of the mainstream of leisure activity, whereas the law treats it as something to be, at best, grudgingly tolerated. Some of the key elements of the current system of regulation have come to be seen as imposing unnecessary restrictions on the ability of business to meet consumers' wishes.
- 1.3 Another driver for change is technology. Gambling legislation was prepared before technology had transformed the way in which information can be processed, visually represented and communicated. One consequence has been that, while people in Great Britain can lawfully go on the Internet to use gaming sites based abroad, there is no provision for British operators to provide well-regulated alternatives. Another is that betting has been able to take new forms and use new media for which the law currently provides inadequate regulation in terms of fairness for participants and protection for the vulnerable.
- 1.4 Other problems with the present law have also become increasingly pressing. It is inflexible, in the sense that much of the regulatory detail is prescribed in statute, and cannot readily be modified to respond to developments in what is a highly innovative and fast-moving industry – even though the industry and the Gaming Board have done a lot of valuable work on codes of practice in a number of areas. In addition, while it has set out minimum ages for participation in gambling the law has not incorporated any kind of systematic protection for the vulnerable or provision to ensure that all businesses providing gambling apply high standards of social responsibility.
- 1.5 Against this background the Government decided in 1999 to appoint an independent committee, chaired by Sir Alan Budd, to review gambling law and regulation. The committee reported in July 2001. It made 176 recommendations. Following public consultation on the report the Government published a White Paper in March 2002 ("A safe bet for success" Cmnd 5397) setting out its conclusions, and confirming its intention to implement the great majority of the recommendations. It has already taken

action on all those that do not require primary legislation and which can be taken forward without upsetting the balance of regulation or distorting competition.

### **Principles of reform**

- 1.6 The Government's aim is to update Britain's gambling law and to ensure that it provides a new, effective and flexible balance of regulation. The Bill is intended to sweep away restrictions, like those that prevent betting on tracks on particular days, that are no longer needed or which reflect assumptions about the way in which gambling has to take place that are no longer valid. At the same time it will strengthen safeguards that are lacking. There will then be in place a regulatory framework that will meet properly the needs of everyone involved in gambling, whether as a provider or a consumer.

## **2. A unified framework of regulation**

- 2.1 The numerous arrangements for licensing gambling clearly do not fit today's market - where operators frequently provide a variety of products with entirely different licensing arrangements. A unified, focused regulator can administer licensing more effectively.

### **Three objectives for a new regulator**

- 2.2 The draft clauses being published will modernise and simplify regulation. They provide for the creation of a single regulatory authority for gambling - the Gambling Commission. The Commission will have three key objectives:
- To prevent gambling from being a source of crime and disorder;
  - To ensure that gambling is conducted in a fair and open way; and
  - To protect children and other vulnerable persons from being harmed or exploited by gambling.
- 2.3 These objectives are central to the scheme of licensing. They explain why we regulate gambling. They are defined precisely in clause 1 of the published clauses.
- 2.4 It is proposed that the Gambling Commission will operate at arms-length from Government and that as far as possible it should be self-funding. It is anticipated that the Commission will accordingly be set up as a non-departmental public body (NDPB).

### **Functions of the Commission**

- 2.5 The Commission will have an overall remit to regulate gambling. It will take over the licensing and regulatory responsibilities of the current Gaming Board for Great Britain (GBGB) in relation to casinos, bingo and certain types of lotteries.

- 2.6 It will also take over from the GBGB the responsibility for regulating the sale, supply and maintenance of gaming machines, and will have additional responsibilities in relation to their manufacture.
- 2.7 In addition, the Commission will assume responsibility for:
- Betting operators; and
  - Pools promoters.
- 2.8 The Commission will, for the first time, license and regulate gaming by means of remote technology. The Commission will issue licences for Internet gambling and all other forms of remote gambling, including interactive television and mobile telephony.
- 2.9 Following the implementation of proposals in the draft clauses, any operator considering a new business will therefore be able to seek permission from the Gambling Commission for licences to provide facilities for the full range of commercial gambling activities. Where granted, operating licences will be subject to compliance with the conditions of the licence and the payment of an annual fee. Application fees and annual fees will be set by the Secretary of State in secondary legislation, and will vary according to the type of gambling conducted pursuant to the licence.
- 2.10 Certain gambling activities, such as permits for lower stake gaming machines, will continue to be regulated entirely by local authorities. Other activities, such as gaming or lotteries at a bazaar or fete, are considered to be of minimal risk to the public and therefore not to require a regulator. There are two areas of gambling that will not be covered by the Commission:
- Spread betting: The Government accepted the Review Body's conclusion that responsibility for spread betting should remain with the Financial Services Authority (FSA) for the time being but this will be kept under review; and
  - The National Lottery: The licensing and regulation of the National Lottery were outside the Review Body's terms of reference. The regulation of the National Lottery has been separately considered in the DCMS consultation document on the Review of Lottery licensing and regulation issued in June 2002. The DCMS decision document issued in July 2003 concluded that because of its responsibility for returns to good causes, the National Lottery should continue to be regulated by the National Lottery Commission (NLC).

## Licensing

- 2.11 The new approach to licensing gambling has three elements: operating, personal and premises licences. The Gambling Commission will issue operating and personal licences. Local authorities will license gambling premises in their area. The draft clauses set the framework within which the Commission will pursue its responsibilities.
- 2.12 The Commission will determine its own policy and procedures for its licensing and regulatory functions. In preparing that policy, the Commission

must first consult a range of interests - including the Secretary of State, local authorities, Chief Officers of Police, the gambling industry, organisations concerned with problem gambling, and, as appropriate, the public.

- 2.13 The Commission will license gambling operators and certain types of gambling industry staff. It will have powers to undertake such enquiries as are necessary in order to reach decisions in connection with individual licence applications. These powers are designed to ensure that only suitable and competent persons are licensed to provide gambling to the public.
- 2.14 The Commission will be able to investigate applicants through interviews, by requiring the production of criminal records certificates and a number of other mechanisms. It will also be able to receive information from enhanced criminal records disclosures and exchange information, using statutory gateways, with law enforcement and regulatory bodies.
- 2.15 The Commission will also issue guidance to local authorities on the principles to be applied in exercising functions under the Act (such as determining applications for premises licences or certain permits).

### **Flexibility**

- 2.16 Flexibility will be one of the key characteristics of the new regime. Much of the detail of existing gambling regulation is set out in primary and secondary legislation. There will, of course, be a continuing need to set out some of the detail in this way in the Bill. Nevertheless, experience has taught us that the evolution of technology and innovation can easily outpace Parliament's capacity to bring about further reform. Nor is legislation always the best way to pursue best practice - legislation can set direct rules, but a code can explain the improved standards that operators should aim to achieve.
- 2.17 Therefore the published draft clauses are very precise in describing what gambling regulation is for - what we as a society need it to protect. They also delineate clearly the powers of the Commission, the rights of individuals and the proper role of Parliament in setting the limits of regulation and burdens on businesses. But within such limits, the draft Bill provides flexibility to cope with changing circumstances and to continually seek to improve standards of performance and social responsibility.
- 2.18 We will be able to respond more effectively to changing circumstances. Rather than putting limits and the details of entitlements in primary legislation, the draft Bill allows for such matters to be amended through secondary legislation.
- 2.19 The Commission's tools in tackling such challenges will be the ability to attach conditions to operating and personal licences, and its ability to issue codes of practice following consultation with industry and other interests. The Commission will have flexibility to attach conditions focussed not just on classes of licence holders, but if it judges necessary, on individual licensees.
- 2.20 Codes of practice will also be a central feature of the new framework. Codes are not, of course, in themselves a new feature of gambling regulation. The industry has long since developed such codes voluntarily, working with the

Government, the Gaming Board and other regulators to improve their approach to a variety of issues. The draft Bill will bring this valuable work within the regulatory framework. Whilst the Commission will no doubt wish to look afresh at each issue, the work already done in a number of areas will inform its views. The Commission will consult with a range of interests before issuing a code. A code of social responsibility is likely to be an early priority. The breach of a relevant code of practice will be able to be admitted as evidence of breach of a licence condition, so it will be in the interests of all to participate in their development.

- 2.21 The Commission will also be able to undertake reviews of operating licences (whether individual licences or classes of licence). Such reviews may result in adjustment to the scope of a licence or the attachment of new conditions. Equally, operators may apply for a variation to their licence to expand the authorised activities or remove conditions, so it will not always be necessary to make an entirely new application.
- 2.22 The draft Bill, when published in full, will also provide for appeals by operators against decisions made by the Gambling Commission in exercise of its various licensing and enforcement functions. There will also be provision for a system of premises licensing by local authorities, also with facility for appeals. These appeals mechanisms and other provisions will ensure that gambling regulation complies fully with human rights legislation

#### **Advice to the Government**

- 2.23 One of the Gambling Commission's key functions will be to provide advice to the Government on the success and social impact of reforming the law on gambling. The Commission will be able to offer its advice whether or not it has been requested to do so by the Government.
- 2.24 The Government views this proposal as a key element of its reforms.
- 2.25 The draft Bill, when published in full, will allow adults some additional opportunities to gamble. Gambling operators will of course want to take advantage of the degree of liberalisation offered by the Bill, and there will very likely be an expansion of facilities available in different parts of Great Britain. But the relaxations proposed are definitely not a 'free for all' – as they have sometimes been wrongly described. There will be important limitations – for example, there will be no expansion of the gambling available in normal social spaces, like hotels, pubs and restaurants. Unlimited prize gaming machines ('casino slots') will be permitted only in casinos, and nowhere else.
- 2.26 So the Government will look to the Gambling Commission to provide it with guidance on the most prudent balance between the greater availability of gambling opportunities and a rigorous protection of children and more vulnerable members of society. In this way, the Commission will have a wider role than a more traditional regulator – with responsibility to measure the social impact of gambling as well as tending to its efficient regulation.

### **3. A new approach to personal licensing**

- 3.1 In line with the recommendations in the Gambling Review Report, "A safe bet for success" confirmed that the Gambling Commission would issue licences for specified persons involved with gambling operations.
- 3.2 The new regime will build on the present certificate of approval system overseen by the Gaming Board. However, that system is based on the personal licensing of very specific groups of employees, such as croupiers in casinos, who are clearly identifiable. In preparing proposals for a new system of personal licensing, the Government has been conscious of the diversity of operations in different parts of the gambling industry. Attempting to license named positions in all of these sectors could end up with an elaborate and expensive system. It would also lead to confusion and uncertainty for potential licence applicants and their employers. Additionally, putting such licence categories in legislation would also run the risk of their becoming obsolete in a relatively short time, as the industry evolved in response to new opportunities. A more flexible regime for personal licensing is necessary.

#### **Who will need a personal licence?**

- 3.3 The published draft clauses focus on the functions performed by individuals rather than the job title attached to a particular post. The clauses allow for the Gambling Commission to specify the type of functions in an operating licensee's business that will need to be performed by the holder of a personal licence. Indeed, the requirements relating to personal licensing will be incorporated into conditions of the relevant operating licence.
- 3.4 The functions fall into two broad categories: management and operational. Management functions will include particular legally defined roles – such as directors and partners of a company. It will be for the Commission to decide which directors or partners need to be licensed. They will also include roles commonly filled by compliance officers and the managers or supervisors of persons handling significant flows of money. An example of operational functions will be posts where the individual has the ability to influence the outcome of gambling.
- 3.5 The Commission will outline its approach to personal licensing in its statement of licensing and regulation policy, but will be able to come to a view about the appropriate level of personal licensing in each operation. In reaching that view the Commission will need to ensure that level of personal licensing in a particular organisation is appropriate to the risk involved.
- 3.6 It will be vital that the Commission has a sufficient understanding of each business and operation that it is involved with so that it can properly identify those roles that require personal licensing. This will call for consultation before any final decisions are reached. It will be in the interests of the Commission and those it is regulating to adopt a collaborative approach to this process.
- 3.7 In some areas, most obviously where an individual is directly involved in the outcome of the gambling event (for instance, croupiers who deal cards), the requirement for personal licensing will be reasonably clear-cut. In other

circumstances the Commission may be required to make more finely judged assessments.

### **Staff in betting offices**

- 3.8 Perhaps the most obvious example of this (and this is an area where the Government did not accept the recommendation of the Gambling Review Body) is the level of personal regulation to be required in the betting industry. The Government has already made it clear that it does not accept that managers (or indeed, counter staff) of betting offices each require personal licences. Staff in betting offices, part of a centrally controlled network of outlets, often have little control over odds or products. In effect they sell gambling products generated elsewhere. The service they provide to customers can raise consumer protection issues, but in the wider scheme of things they pose a lesser regulatory risk to the public. The expectation is that such a risk as there is can be addressed by having personal licensing introduced at a higher level in the organisation with a more senior manager or supervisor effectively taking responsibility. As mentioned previously, such decisions will be for the Commission to make in the light of the particular circumstances that prevail.
- 3.9 Not all operating licensees will require there to be personal licences attached to the gambling operation. Small operators, like racecourse bookmakers with only one or two assistants, are unlikely to require personal licences. Small operators exempt from personal licences will be defined in secondary legislation, and the Commission will be able to advise the Government when it believes that these categories require some amendment. It is anticipated, however, that personal licences will be required to some degree in most licensed gambling operations.

## **4. Keeping standards high: enforcement, sanctions and offences**

- 4.1 The work of the Gambling Commission will help ensure the gambling industry's reputation for excellence and integrity is preserved and enhanced, with consumers in Great Britain and abroad. It will be the public body with the primary responsibility to root out and take action against illegal gambling. Its inspection staff (and those of local authorities) will have statutory powers of entry, search and seizure when exercising their enforcement functions.

### **Enforcement**

- 4.2 The Commission will investigate alleged illegal gambling activities, whether conducted by unlicensed parties or by licensed parties (i.e. those offering gambling of a type not covered by their licences). It will initiate criminal proceedings in connection with these, and other, gambling offences.
- 4.3 The Commission will also monitor and inspect licensed gambling operations. It will review compliance with licence conditions and the law by operators (for operating licences) and staff (for personal licences).

- 4.4 When the draft Bill is published in full, there will be provision for similar powers to be exercised by local authorities in exercising their various licensing functions under the Bill. There will also be comprehensive provision made for appeals against all decisions, whether administrative or criminal.

### **Sanctions**

- 4.5 Where licensees are believed to have committed offences, or are in breach of their licence terms, the Commission will have a range of enforcement powers. In addition to beginning criminal proceedings in relation to offences, the Commission will also have available regulatory powers. Where an operator has breached a licence condition or has otherwise committed an offence and the Commission is satisfied that the facts are such that the matter warrants the imposition of a sanction (having held appropriate hearings), it may:
- Give the holder of the licence a formal warning;
  - Vary the licence conditions or attach an additional condition to the licence;
  - Impose a financial penalty of any amount to be decided by the Commission; and
  - Revoke the licence.
- 4.6 The Bill contains appropriate safeguards on the exercise of the Commission's powers in this respect.
- 4.7 In pursuing its enforcement responsibilities the Commission will co-operate and exchange information with law enforcement authorities, other regulators (including the Financial Services Authority and the National Lottery Commission), and overseas authorities in connection with areas of common interest and the conduct of licensed operators and individuals. The Gaming Board already undertakes such co-operation, and the Commission will take this approach forward.

### **Inspection – powerful and independent**

- 4.8 When the Government publishes the draft Bill in full, it will include detailed proposals on the powers of Gambling Commission inspectors to monitor compliance with licence conditions and to root out illegal gambling. Commission inspectors will have more extensive, freestanding powers than those exercised at present by inspectors of the Gaming Board, and the powers will apply to a greater range of gambling activities.

### **Offences**

- 4.9 So far as general offences are concerned, the draft Bill will make it an offence to provide facilities for gambling without an authorisation under the Bill. One such form of authorisation will be an appropriate operating or personal licence issued by the Commission. This is intended to mean, for example, that the holder of an operating licence, which is limited to the provision of betting, will commit an offence if he operates a gaming business. There will also be offences concerning provision of facilities at premises, for which there



is no premises licence or other authority under the Bill. Full details of the offences will be contained in the full draft Bill to be published in the autumn.

- 4.10 So far as specific offences are concerned, one of the objectives of the draft Bill encapsulated in the statutory licensing objectives is to ensure adequate protection for vulnerable people and children from the effects of harmful gambling. There will be a number of provisions designed to give this intention real teeth. These include:
- Certain age related offences, which are required to ensure that persons below certain age limits (usually eighteen years of age) do not partake in gambling, and are not employed in the gambling activity; and
  - Stricter controls over access by children to places where gambling takes place.

## 5. Next steps for reform

- 5.1 In the autumn, the Government will publish a complete draft Gambling Bill for pre-legislative scrutiny that will comprehensively modernise the law on gambling. The clauses published here are the result of extensive consultation with interested bodies, and careful deliberation in Government. But they are in draft form, and are not necessarily in the final form they will take when the whole Bill is presented for scrutiny. Work will continue in the Department on the remainder of the Bill. As that work continues, further improvements will be made to clauses published here.
- 5.2 Alongside the matters addressed in the clauses published here, the complete draft Gambling Bill will make provision for:
- Funding and supplemental powers for the Gambling Commission;
  - Classes of operating licence, including remote gambling;
  - Licensing of premises by local authorities;
  - A Gambling Appeals Tribunal;
  - Procedures to permit clubs and miners' welfare institutes to offer certain gaming;
  - Comprehensive regulation of machine gambling, including entitlements;
  - Appropriate rules for the conduct of betting, gaming and lotteries;
  - Authorisations for domestic and social gambling;
  - Reserve powers for an industry levy to tackle problem gambling;
  - A new regime for the advertising of gambling;
  - A new offence of cheating;
  - Comprehensive provisions to protect young persons;
  - Provisions on use of alcohol licensed premises for gambling;
  - Rules on the provision of credit in gambling;
  - Enforceability of gambling contracts;
  - Prohibition of chain gifting; and
  - New rules on prize competitions.

- 5.3 At that time, we will also publish a further explanation of the policy underpinning legislative proposals, as well as our assessment of regulatory costs.
- 5.4 Over the coming months, the Department will continue its ongoing discussions with the industry, the Gaming Board, other Government Departments, the devolved administrations, local authorities, consumer groups, charities concerned with problem gambling and all others with an interest. These discussions have been invaluable in developing our policy proposals and we will seek to be as inclusive as possible going forward.
- 5.5 Work on the remainder of our proposals is being tackled vigorously. We publish this first package of draft clauses now to help develop the widest possible understanding of what modernisation seeks to achieve, and to enlist the help of interested parties to ensure that when we publish the complete draft Bill, it achieves a comprehensive reform. At this stage, therefore, it would probably be premature for those reading this to engage in a detailed analysis or a critique of the clauses, and provide a comprehensive view to the Department. Rather, it seems appropriate to publish now so that you can engage in discussion on the principles and structure of our proposals as they relate to the Gambling Commission and its functions. We welcome your views on this.
- 5.6 The complete draft Bill, when published, is to be scrutinised by a joint committee of the House of Commons and the House of Lords. Pre-legislative scrutiny by Parliament will build on the extensive consultations already undertaken on the reform of gambling law. The Department looks forward to this process, and hopes that it will serve as an important means to build further support for the modernisation of gambling law that these proposals represent.
- 5.7 If you would like to offer comments, please write to:

Greig Chalmers  
Gambling Bill Team  
Department for Culture, Media and Sport  
2-4 Cockspur Street  
LONDON SW1Y 5DH

Or email comments to: [gambling@culture.gov.uk](mailto:gambling@culture.gov.uk)

# Draft Gambling Bill: Gambling Commission and Operating Licences

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## ART 1

### INTRODUCTORY

#### 1 The licensing objectives

In this Act a reference to the licensing objectives is a reference to the objectives of—

- (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
- (b) ensuring that gambling is conducted in a fair and open way, and
- (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

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#### 2 Facilities for gambling

- (1) For the purposes of this Act a person provides facilities for gambling if he—
- (a) invites others to gamble in accordance with arrangements made by him,
  - (b) provides, operates or administers arrangements for gambling by others, or
  - (c) participates in the operation or administration of gambling by others.

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- (2) For the purposes of this Act a person provides facilities for gambling if he knowingly facilitates gambling by others in accordance with arrangements made with a person who undertakes, or intends to undertake, any of the activities mentioned in subsection (1)(a) to (c).

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- (3) But a person does not provide facilities for gambling for the purposes of this Act by virtue only of—

- (a) providing an article other than a gaming machine to a person who intends to use it in the course of undertaking any of the activities mentioned in subsection (1)(a) to (c),
- (b) providing, otherwise than in the course of providing, operating or administering arrangements for gambling or participating in the operation or administration of gambling, an article to a person who intends to use it, or may use it, for gambling,
- (c) providing a service to a person who undertakes or intends to undertake any of the activities mentioned in subsection (1)(a) to (c), unless the provision of the service itself constitutes one of those activities, or
- (d) making facilities for electronic communication available for use by—
  - (i) persons undertaking any of those activities, or

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- (ii) persons gambling in response to or in accordance with any of those activities.

### 3 Remote gambling

- (1) In this Act “remote gambling” means gambling in which persons participate by the use of remote communication. 5
- (2) In this Act “remote communication” means communication using—
- (a) the internet,
  - (b) telephone,
  - (c) television,
  - (d) radio, or 10
  - (e) any other kind of electronic or other technology for facilitating communication.
- (3) The Secretary of State may by regulations provide that a specified system or method of communication is or is not to be treated as a form of remote communication for the purposes of this Act (and subsection (2) is subject to any regulations under this subsection). 15

## ART 2

### THE GAMBLING COMMISSION

### 4 Establishment of the Commission

- (1) There shall be a body corporate to be known as the Gambling Commission. 20
- (2) Schedule 1 (which makes provision about the constitution and proceedings of the Commission) shall have effect.

### 5 Gaming Board: transfer to Commission

- (1) Section 10 of and Schedule 1 to the Gaming Act 1968 (c. 65) (Gaming Board for Great Britain) shall cease to have effect. 25
- (2) The functions, rights and liabilities of the Gaming Board for Great Britain shall on commencement become functions, rights and liabilities of the Gambling Commission.
- (3) The persons who immediately before commencement are the members of the Gaming Board for Great Britain shall be treated as if on commencement they were appointed as commissioners of the Gambling Commission under paragraph 1 of Schedule 1 to this Act. 30
- (4) The person who immediately before commencement is the chairman of the Gaming Board for Great Britain shall be treated as if on commencement he were appointed as the chairman of the Gambling Commission under paragraph 1 of Schedule 1 to this Act. 35
- (5) In this section “commencement” means the coming into force of this section.
- (6) Schedule 2 (which makes supplementary provision in relation to the transfer of functions and property from the Gaming Board to the Gambling Commission) shall have effect. 40



## 6 Duty to promote the licensing objectives

In exercising its functions under this Act the Commission shall aim –

- (a) to pursue, and wherever appropriate to have regard to, the licensing objectives, and
- (b) to permit gambling, in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives. 5

## 7 Policy for licensing and regulation

- (1) The Commission shall prepare a statement setting out the principles to be applied by it in exercising its functions under this Act.
- (2) The statement of policy under this section shall, in particular, explain how the principles to be applied are expected to assist the Commission in its pursuit of the licensing objectives. 10
- (3) The Commission shall –
  - (a) review the statement from time to time, and
  - (b) revise the statement when the Commission thinks it appropriate. 15
- (4) The Commission shall as soon as is reasonably practicable publish –
  - (a) the statement, and
  - (b) any revision.
- (5) Before issuing or revising a statement under this section the Commission shall consult – 20
  - (a) the Secretary of State,
  - (b) one or more persons who appear to the Commission to represent local authorities,
  - (c) one or more persons who appear to the Commission to represent chief constables of police forces, 25
  - (d) one or more persons who appear to the Commission to represent the interests of persons carrying on gambling businesses,
  - (e) one or more persons who appear to the Commission to have knowledge about social problems relating to gambling, and
  - (f) in such manner as the Commission thinks appropriate, members of the public. 30

## 8 Codes of practice

- (1) The Commission may issue a code of practice about the manner in which facilities for gambling are provided (whether by the holder of a licence under this Act or by another person). 35
- (2) A code –
  - (a) must state when it comes into force, and
  - (b) may be revised or revoked by the Commission.
- (3) The Commission shall publish a code and any revision in a manner which the Commission thinks likely to bring it to the attention of those whose activities it concerns. 40
- (4) The Commission may make different provision under this section for different cases or circumstances (whether or not by way of separate codes of practice).

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- (5) A failure to comply with a provision of a code shall not of itself make a person liable to criminal or civil proceedings.
- (6) But a code –
- (a) shall be admissible in evidence in criminal or civil proceedings,
  - (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant, and
  - (c) shall be taken into account by the Commission in the exercise of a function under this Act.
- (7) Before issuing or revising a code under this section the Commission shall consult –
- (a) the Secretary of State, and
  - (b) one or more persons who appear to the Commission to have knowledge about social problems relating to gambling.
- (8) Before issuing or revising a code under this section the Commission shall also consult, if and to the extent that the Commission thinks appropriate having regard to the nature of the code or revision –
- (a) one or more persons who appear to the Commission to represent local authorities,
  - (b) one or more persons who appear to the Commission to represent chief constables of police forces,
  - (c) one or more persons who appear to the Commission to represent the interests of persons carrying on gambling businesses, and
  - (d) in such manner as the Commission thinks appropriate, members of the public.
- 9 Guidance to local authorities**
- (1) The Commission shall from time to time issue guidance as to –
- (a) the manner in which local authorities are to exercise their functions under this Act, and
  - (b) in particular, the principles to be applied by local authorities in exercising functions under this Act.
- (2) A local authority shall have regard to guidance issued under subsection (1).
- (3) The Commission shall publish guidance issued under subsection (1).
- (4) Before issuing guidance under subsection (1) the Commission shall consult –
- (a) the Secretary of State,
  - (b) one or more persons who appear to the Commission to represent local authorities, and
  - (c) one or more persons who appear to the Commission to have knowledge about social problems relating to gambling.
- (5) Before issuing guidance under subsection (1) the Commission shall also consult, if and to the extent that the Commission thinks appropriate having regard to the nature of the guidance –
- (a) one or more persons who appear to the Commission to represent chief constables of police forces,
  - (b) one or more persons who appear to the Commission to represent the interests of persons carrying on gambling businesses, and

- (c) in such manner as the Commission thinks appropriate, members of the public.

## 10 Duty to advise Secretary of State

- (1) The Commission shall give advice to the Secretary of State about –
  - (a) the incidence of gambling, 5
  - (b) the manner in which gambling is carried on,
  - (c) the effects of gambling, and
  - (d) the regulation of gambling.
- (2) Advice under this section shall be given –
  - (a) in response to a request from the Secretary of State, and 10
  - (b) on such other occasions as the Commission thinks appropriate.

### ART 3

#### OPERATING LICENCES

##### *Introductory*

## 11 Exception to offence of prohibited gambling 15

- (1) A person who provides facilities for gambling does not commit an offence under section {j500} if –
  - (a) he holds an operating licence under this art authorising the provision of the facilities, and
  - (b) the facilities are provided in accordance with the terms and conditions of the licence. 20
- (2) A person who provides facilities for gambling does not commit an offence under section {j500} if –
  - (a) he provides the facilities in the course of a business carried on by a person who holds an operating licence under this art, and 25
  - (b) the facilities are provided in accordance with the terms and conditions of the licence.

## 12 Nature of licence

- (1) The Commission may, in accordance with the provisions of this art, issue operating licences. 30
- (2) An operating licence is a licence authorising the licensee to do one or more of the things specified in sections {j581} to {j606}.
- (3) Where an operating licence authorises the licensee to do anything on premises (whether or not the premises are specified as a condition of the licence) the issue of the operating licence does not affect the application of section {j552}. 35

## 13 Form of licence

- (1) An operating licence must specify –
  - (a) the person to whom it is issued,

- (b) the period during which it is to have effect, and
  - (c) any condition attached by the Commission under section 19 or 20.
- (2) An operating licence –
- (a) must specify which one or more classes of activity it authorises, and
  - (b) within the specified class or classes of activity, may limit or restrict the authorised activity by means of conditions attached under section 19 or 20. 5
- (3) An operating licence must state whether or not it authorises a class of activity to be carried on –
- (a) in respect of remote gambling, or
  - (b) by means of remote communication. 10
- (4) An operating licence which authorises activity to be carried on in respect of remote gambling or by means of remote communication (in this Act referred to as a “remote operating licence”) may not also authorise the carrying on of activity which is neither in respect of remote gambling nor carried on by means of remote communication. 15
- (5) The Secretary of State may by regulations require the Commission to ensure that an operating licence –
- (a) is issued in such form as the regulations may specify, and
  - (b) contains, in addition to the matters specified in this section, such information as the regulations may specify. 20

### *Issue*

## **14 Application**

- (1) A person may apply to the Gambling Commission for an operating licence to be issued authorising him to provide facilities for gambling. 25
- (2) An application must –
- (a) specify the activities to be authorised by the licence,
  - (b) specify an address in the United Kingdom at which a document issued under this Act may be served on the applicant,
  - (c) be made in such form and manner as the Commission may direct,
  - (d) state whether the applicant has been convicted of a relevant offence,
  - (e) state whether the applicant has been convicted of any other offence,
  - (f) contain or be accompanied by such other information as the Commission may direct, and
  - (g) be accompanied by the prescribed fee. 30 35
- (3) An application may not be made by –
- (a) an individual who is less than 18 years old, or
  - (b) a group that includes an individual who is less than 18 years old.
- (4) The Secretary of State may by regulations –
- (a) require an applicant for an operating licence to notify specified persons within a specified period (which may be wholly or partly before the application is made), and 40

- (b) provide for the consequences of failure to comply with a requirement under paragraph (a) (which may, in particular, include provision for an application to be disregarded or for a licence to lapse).
- (5) In subsection (2)(g) “prescribed” means prescribed by regulations made by the Secretary of State; and the regulations may make different provision for –
  - (a) applications for the authorisation of different classes of activity, or
  - (b) different circumstances.

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## 15 Consideration of application: general principles

- (1) In considering an application under section 14 the Commission shall –
  - (a) have regard to the licensing objectives, and
  - (b) form and have regard to an opinion of the applicant’s suitability to carry on the licensed activities.
- (2) For the purpose of subsection (1)(b) the Commission may, in particular, have regard to –
  - (a) the integrity of the applicant or of a person relevant to the application;
  - (b) the competence of the applicant or of a person relevant to the application to carry on the licensed activities in a manner consistent with pursuit of the licensing objectives;
  - (c) the financial and other circumstances of the applicant or of a person relevant to the application (and, in particular, the resources likely to be available for the purpose of carrying out the licensed activities).
- (3) The statement maintained by the Commission under section 7 must specify the principles to be applied by the Commission in considering applications under section 14.
- (4) In particular, the statement must specify the kind of evidence to which the Commission will have regard when assessing integrity and competence; and that evidence may include –
  - (a) interviews conducted by or on behalf of the Commission;
  - (b) references provided to the Commission at the request of the applicant;
  - (c) information or opinions provided to the Commission (whether or not on request) by other persons;
  - (d) the completion of training (whether provided in accordance with arrangements made by the Commission or otherwise);
  - (e) the possession of qualifications (whether awarded in accordance with arrangements made by the Commission or otherwise).
- (5) For the purposes of this section –
  - (a) in relation to an application, a reference to the licensed activities is a reference to the activities which will be the licensed activities if the application is granted, and
  - (b) a person is relevant to an application if, in particular, he is likely to exercise a function in connection with, or to have an interest in, the licensed activities.

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## 16 Consideration of application: criminal record

- (1) The Commission may refuse an application under section 14 if the applicant or a person relevant to the application –

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- 
- (a) has a conviction for a relevant offence, or
  - (b) has a conviction for any other offence.
- (2) This section does not prejudice the generality of section 15.
- (3) The reference in subsection (1) to a person who is relevant to an application shall be construed in accordance with section 15(5)(b). 5
- 17 Procedure**
- (1) For the purpose of considering an application under section 14 the Commission may –
- (a) require the applicant to provide information;
  - (b) consult, and have regard to information provided by or an opinion stated by, any person. 10
- (2) In subsection (1) “information” and “opinion” mean information or an opinion about –
- (a) the applicant,
  - (b) a person relevant to the application, or 15
  - (c) the licensed activities.
- (3) In particular, the Commission may require the production of an enhanced criminal record certificate under section 115 of the Police Act 1997 (c. 50) relating to –
- (a) the applicant, or 20
  - (b) a person relevant to the application.
- (4) The statement maintained by the Commission under section 7 must specify the practice and procedure to be followed by the Commission in considering applications under section 14.
- (5) In particular, the statement must specify the Commission’s practice in relation to – 25
- (a) the delegation of functions in relation to applications,
  - (b) the holding of oral hearings of applications, and
  - (c) evidence required or accepted in connection with applications.
- (6) The Commission may disregard an irregularity or deficiency in or in relation to an application, other than a failure to pay the fee required by section 14(2)(g). 30
- (7) For the purposes of this section a reference to the licensed activities or to a person relevant to an application shall be construed in accordance with section 15(5).
- 18 Determination of application** 35
- (1) On considering an application under section 14 the Commission shall –
- (a) grant it,
  - (b) reject it, or
  - (c) grant it in respect of one or more of the activities specified in accordance with section 14(2)(a) and reject it in respect of the others. 40
- (2) Where the Commission grants an application in whole or in part it shall as soon as is reasonably practicable –

- (a) notify the applicant of the grant, and
  - (b) issue an operating licence to the applicant.
- (3) Where the Commission rejects an application in whole or in part it shall as soon as is reasonably practicable notify the applicant of –
- (a) the rejection, and
  - (b) the reasons for it.

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### *Conditions*

## **19 General conditions imposed by Commission**

- (1) The statement maintained by the Commission under section 7 may specify conditions to be attached to –
- (a) each operating licence, or
  - (b) each operating licence falling within a specified class.
- (2) For the purposes of subsection (1)(b) a class may be defined wholly or partly by reference to –
- (a) the nature of the licensed activities;
  - (b) the circumstances in which the licensed activities are carried on;
  - (c) the nature or circumstances of the licensee or of another person involved or likely to be involved in the conduct of the licensed activities.
- (3) Where the Commission issues an operating licence it shall attach to the licence any condition specified under subsection (1) as a condition to be attached to operating licences of a class within which the licence falls.
- (4) Where the Commission proposes to revise the statement under section 7 so as to add, amend or remove a condition –
- (a) before making the revision the Commission shall consult one or more persons who in the Commission’s opinion represent the interests of licensees likely to be affected by the revision,
  - (b) at least three months before making the revision the Commission shall give notice of it to the holder of each licence which –
    - (i) has effect at that time, and
    - (ii) is within a class affected by the revision,
  - (c) if the Commission issues, after that time but before the revision is made, an operating licence of a class affected by the revision, the Commission shall give the licensee notice of the proposed revision,
  - (d) on the making of the revision an existing licence shall be treated as if the Commission –
    - (i) had attached to it any condition added by the revision,
    - (ii) had attached to it any condition amended by the revision in its amended form, and
    - (iii) had not attached to it any condition removed by the revision.
- (5) If the Commission thinks it necessary by reason of urgency to revise the statement under section 7 so as to add, amend or remove a condition without giving the notice required by subsection (4)(b) –
- (a) the Commission shall give as much notice as it thinks possible in the circumstances to the persons mentioned in that provision, and

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- (b) subsection (4)(c) shall have effect after the time when notice is given under paragraph (a) above, and
- (c) subsection (4)(d) shall have effect.
- 20 Individual condition imposed by Commission**
- Where the Commission issues an operating licence it may attach a condition to the licence. 5
- 21 Condition imposed by Secretary of State**
- The Secretary of State may by regulations provide for a specified condition to be attached to operating licences falling within a specified class.
- 22 Scope of powers to attach conditions** 10
- (1) Without prejudice to the generality of the powers conferred by sections 19, 20 and 21, a condition attached under any of those sections may, in particular, do any of the things specified in this section.
- (2) A condition may operate wholly or partly by reference to compliance with a provision of a code of practice issued under section 8. 15
- (3) A condition may make provision wholly or partly by reference to—
- (a) the nature of the licensed activities;
- (b) the circumstances in which the licensed activities are carried on;
- (c) the nature or circumstances of the licensee or of another person involved or likely to be involved in the conduct of the licensed activities. 20
- (4) A condition may restrict the licensed activities to the provision of facilities of a specified nature (within the class or classes specified under section 13(2)(a)).
- (5) A condition may limit the amount of the licensed activities; and a limit may operate by reference to— 25
- (a) the number of places at which facilities are provided;
- (b) the facilities provided at each place;
- (c) the number of persons employed in the provision of facilities;
- (d) the financial resources available for particular purposes to the person providing facilities; 30
- (e) any other matter.
- 23 Requirement for personal licence**
- (1) The Commission shall use its powers under sections 19 and 20 to ensure that in respect of each operating licence at least one person—
- (a) occupies a specified management office in or in respect of the licensee or in connection with the licensed activities, and 35
- (b) holds a personal licence under art 4 authorising the performance of the functions of the office.
- (2) A condition under either of those sections may impose requirements which relate to a management office and are in addition to any required by subsection (1). 40



- (3) A condition attached to an operating licence under section 19, 20 or 21 may, in particular, provide that if a specified management office is held in or in respect of the licensee or in connection with a licensed activity (whether or not in pursuance of another condition) –
- (a) it must be held by an individual who holds a personal licence under art 4 authorising the performance of the functions of the office, and 5
  - (b) anything done in the performance of the functions of the office must be done in accordance with the terms and conditions of the personal licence.
- (4) A condition attached to an operating licence under section 19, 20 or 21 may, in particular, provide that if a specified operational function is performed in connection with a licensed activity it must be performed –
- (a) by an individual who holds a personal licence under art 4 authorising performance of the function, and 10
  - (b) in accordance with the terms and conditions of the personal licence. 15
- (5) In this section “management office” in relation to a licensee means –
- (a) if the licensee is a company, the office of director,
  - (b) if the licensee is a partnership (including a limited liability partnership), the office of partner,
  - (c) if the licensee is an unincorporated association, any office in the association, and 20
  - (d) in any case, any position which carries (whether solely or otherwise) responsibility for –
    - (i) the conduct of a person who performs an operational function in connection with a licensed activity, or 25
    - (ii) facilitating or ensuring compliance with terms or conditions of the operating licence.
- (6) In this section “operational function” means –
- (a) any function which enables the person exercising it to influence the outcome of gambling, 30
  - (b) receiving or paying money in connection with gambling, and
  - (c) manufacturing, supplying, installing, maintaining or repairing a gaming machine.
- (7) Provision under subsection (1) may be general or may relate only to specified cases or circumstances. 35
- (8) The Secretary of State may by order amend the definition of “management office” or “operational function” for the purposes of this section.

## 24 Exemption for small-scale operators

- (1) A condition may not be attached to an operating licence under section 19, 20 or 21 requiring possession of a personal licence if the licensee is a small-scale operator. 40
- (2) In this section “small-scale” operator shall have such meaning as the Secretary of State may prescribe by regulations.
- (3) Regulations under subsection (2) may, in particular, make provision by reference to – 45

- (a) the size or value of business carried on, or expected to be carried on, in reliance on an operating licence;
  - (b) the number of persons employed, or expected to be employed, by the licensee.
- (4) A constable or gambling inspector may under section 31(1) require a small-scale operator to produce his operating licence – 5
- (a) within a specified period, or
  - (b) while the operator is carrying on a licensed activity, immediately.

### *Maintenance*

- 25 Annual fee** 10
- (1) The holder of an operating licence shall pay the annual fee to the Commission within such period after the issue of the licence as may be prescribed.
  - (2) In addition to the payment required by subsection (1) the holder of an operating licence shall pay the annual fee to the Commission before each anniversary of the issue of the licence. 15
  - (3) In this section –
    - “the annual fee” means such fee as may be prescribed, and
    - “prescribed” means prescribed by the Secretary of State by regulations.
  - (4) Regulations under this section may make different provision for – 20
    - (a) operating licences authorising different classes of activity, or
    - (b) different circumstances.
  - (5) Subsection (2) does not apply in relation to an anniversary of the issue of a licence on or immediately before which the licence ceases to have effect in accordance with section 37.
- 26 Change of circumstance** 25
- (1) The Secretary of State may make regulations requiring the holder of an operating licence –
    - (a) to notify the Commission of any change of circumstance of a prescribed kind in relation to him or to a licensed activity, and
    - (b) to give the Commission prescribed details of the change. 30
  - (2) In this section “prescribed” means prescribed by regulations under this section.
  - (3) A person commits an offence if he fails without reasonable excuse to comply with regulations under this section.
  - (4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale. 35
  - (5) This section does not prevent the imposition of a requirement to notify the Commission of a specified change of circumstance by way of the attachment of a condition to an operating licence.

## 27 Application to vary licence

- (1) The holder of an operating licence may apply to the Commission to vary the licence by –
  - (a) adding, amending or removing an authorised activity,
  - (b) amending another detail of the licence, or
  - (c) adding, amending or removing a condition attached to the licence under section 20.5
- (2) A licence may not be varied under this section so as to authorise anyone other than the person to whom it was issued to provide facilities for gambling.
- (3) The provisions of this art shall apply in relation to an application for variation as they apply in relation to an application for a licence –
  - (a) subject to the provisions of this section, and
  - (b) with any other necessary modifications.10
- (4) A direction or regulations under this art which relate to an application for an operating licence may make –
  - (a) provision which applies only in the case of an application for variation;
  - (b) provision which does not apply in the case of an application for variation;
  - (c) different provision in relation to an application for variation from that made in relation to an application for an operating licence;
  - (d) different provision in relation to applications for variations of different kinds.15  
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- (5) An application for variation must (in addition to anything required by section 14) be accompanied by –
  - (a) a statement of the variation sought, and
  - (b) either –
    - (i) the licence to be varied, or
    - (ii) a statement explaining why it is not reasonably practicable to produce the licence.25
- (6) In granting an application for variation the Commission may make transitional provision. 30

## 28 Amendment

- (1) The Commission may require the holder of an operating licence to submit it to the Commission for the purpose of amendment to reflect –
  - (a) the grant of an application for renewal under section 41,
  - (b) the grant of an application for variation under section 27,
  - (c) a general variation of conditions under section 19,
  - (d) a change notified under section 26,
  - (e) the attachment of an additional condition, or the amendment of a condition, under section 34,
  - (f) [result of appeal], or
  - (g) anything done in relation to a personal licence under art 4.35  
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- (2) A licensee shall comply with a requirement under subsection (1) within the period of 14 days beginning with the day on which he receives notice of the requirement. 45

- (3) A person commits an offence if he fails without reasonable excuse to comply with a requirement imposed under subsection (1).
- (4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) Subsection (1)(c) is without prejudice to section 19(4)(d). 5

## 29 Register of operating licences

- (1) The Commission shall –
- (a) maintain a register of operating licences containing such details of and relating to each licence as the Commission thinks appropriate,
  - (b) make the register available for inspection by the public at all reasonable times, and 10
  - (c) make arrangements for the provision of a copy of an entry in the register to a member of the public on request.
- (2) The Commission may refuse to provide access to the register or to provide a copy of an entry unless the person seeking access or a copy pays a fee specified by the Commission. 15
- (3) The Commission may not specify a fee under subsection (2) which exceeds the reasonable cost of providing the service sought (but in calculating the cost of providing a service to a person the Commission may include a reasonable share of expenditure which is referable only indirectly to the provision of that service). 20

## 30 Copy of licence

- (1) The Commission may make arrangements to issue to a licensee on request a copy of an operating licence which has been lost, stolen or damaged.
- (2) The arrangements may, in particular, include a requirement – 25
- (a) for the payment of a fee not exceeding such sum as may be prescribed for the purposes of this subsection by the Secretary of State by regulations;
  - (b) in the case of a licence being lost or stolen, that the licensee has complied with specified arrangements for reporting the loss or theft to the police. 30
- (3) A copy issued under this section shall be treated as if it were the licence.

## 31 Production of licence

- (1) A constable or gambling inspector may require the holder of an operating licence to produce the licence to the constable or gambling inspector within a specified period. 35
- (2) A licensee commits an offence if he fails without reasonable excuse to comply with a requirement under subsection (1).
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale. 40
- (4) Section {j591} defines “gambling inspector” for the purposes of this Act.

## 32 Conviction

- (1) If the holder of an operating licence is convicted of an offence by or before a court in Great Britain he shall as soon as is reasonably practicable notify the Commission of –
  - (a) his conviction, and 5
  - (b) any sentence passed in respect of it.
- (2) If the holder of an operating licence is convicted of a relevant offence by or before a court in Great Britain he shall immediately inform the court that he is the holder of an operating licence
- (3) If the holder of an operating licence is convicted of a relevant offence by or before a court outside Great Britain he shall as soon as is reasonably practicable notify the Commission of –
  - (a) his conviction, and 10
  - (b) any sentence passed in respect of it.
- (4) A person commits an offence if he fails without reasonable excuse to comply with any of subsections (1) to (3). 15
- (5) A person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### *Regulation*

## 33 Review

- (1) The Commission may in relation to operating licences of a particular class review –
  - (a) the manner in which licensees carry on licensed activities, and
  - (b) in particular, arrangements made by licensees to ensure compliance with conditions attached under section 19, 20 or 21. 25
- (2) The Commission may review any matter connected with the provision of facilities for gambling as authorised by an operating licence if the Commission –
  - (a) has reason to suspect that activities may have been carried on in purported reliance on the licence but not in accordance with a condition of the licence, 30
  - (b) believes that the licensee, or a person who exercises a function in connection with or is interested in the licensed activities, has acquired a conviction of a kind mentioned in section 16(1), or
  - (c) for any reason (which may relate to the receipt of a complaint about the licensee's activities) – 35
    - (i) suspects that the licensee may be unsuitable to carry on the licensed activities, or
    - (ii) thinks that a review would be appropriate.
- (3) Before commencing a review of an operating licence under subsection (2) the Commission shall – 40
  - (a) notify the licensee, and
  - (b) inform him of the procedure to be followed in the conduct of the review.

- (4) In conducting a review of an operating licence under subsection (2) the Commission –
- (a) shall give the licensee an opportunity to make representations, and
  - (b) may give other persons an opportunity to make representations.

### 34 Regulatory powers 5

- (1) Following a review in respect of an operating licence under section 33(1) the Commission may –
- (a) give the licensee a warning;
  - (b) attach an additional condition to the licence;
  - (c) amend a condition attached to the licence under section 20; 10
  - (d) exercise the power under section 35 to revoke the licence;
  - (e) exercise the power under section 36 to impose a penalty.
- (2) Where the Commission determines to take action under subsection (1) in respect of a licence it shall as soon as is reasonably practicable notify the licensee of – 15
- (a) the action, and
  - (b) the Commission’s reasons.
- (3) In determining what action to take under subsection (1) following a review the Commission may have regard to a warning given to the licensee under that subsection following an earlier review (whether or not of that licence). 20

### 35 Revocation

- (1) The Commission may revoke an operating licence if following a review under section 33(1) the Commission thinks that –
- (a) a licensed activity is being or has been carried on in a manner which is inconsistent with the licensing objectives, 25
  - (b) a condition of the licence has been breached,
  - (c) the licensee has failed to – 30
    - (i) comply with a requirement of regulations under section 26,
    - (ii) cooperate with a review under section 33(1) or (2), or
    - (iii) submit the licence to the Commission for amendment in accordance with section 28, or
  - (d) the licensee is unsuitable to carry on the licensed activities.
- (2) In considering the licensee’s suitability for the purpose of subsection (1)(d) the Commission may, in particular, have regard to – 35
- (a) the integrity of the licensee or of any person who exercises a function in connection with or is interested in the licensed activities;
  - (b) the competence of the licensee to carry on the licensed activities in a manner consistent with pursuit of the licensing objectives;
  - (c) the financial and other circumstances of the licensee or of any person who exercises a function in connection with or is interested in the licensed activities (and, in particular, the resources available for the purpose of carrying out the licensed activities). 40
- (3) The Commission shall revoke an operating licence if the licensee fails to pay the annual fee in accordance with section 25; but the Commission may disapply

this subsection if it thinks that a failure to pay is attributable to administrative error.

### 36 Financial penalty

- (1) The Commission may require the holder of an operating licence to pay a penalty if the Commission thinks that a condition of the licence has been breached. 5
- (2) Before imposing a requirement on a licensee to pay a penalty under this section the Commission must notify him –
  - (a) that the Commission proposes to require him to pay a penalty,
  - (b) of the amount of the proposed penalty, 10
  - (c) of the Commission’s reasons, and
  - (d) of a period within which he may make representations to the Commission.
- (3) The Commission may not give a notice under subsection (2) in respect of the breach of a condition after the end of the period of two years beginning with –
  - (a) the day on which the breach occurred or began to occur, or
  - (b) if later, the day on which the breach came to the knowledge of the Commission. 15
- (4) After the end of the period specified under subsection (2)(d) the Commission may give the licensee a notice requiring him to pay a penalty under this section. 20
- (5) A penalty imposed by notice under subsection (4) –
  - (a) shall be payable by the licensee to the Commission,
  - (b) may be enforced as if it were a debt owed by the licensee to the Commission, and
  - (c) on receipt by the Commission shall be paid into the Consolidated Fund after deduction of a sum which represents the direct costs to the Commission of, and a reasonable share of expenditure by the Commission which is indirectly referable to –
    - (i) the investigation by the Commission of the matter in respect of which the penalty is imposed (whether by review under section 33 or otherwise), and 30
    - (ii) the imposition and enforcement of the penalty.
- (6) The Commission shall –
  - (a) prepare a statement setting out the principles to be applied by the Commission in exercising the powers under this section, 35
  - (b) review the statement from time to time,
  - (c) revise the statement when the Commission thinks it necessary, and
  - (d) as soon as is reasonably practicable –
    - (i) send the statement and any revision to the Secretary of State, and 40
    - (ii) publish the statement and any revision, and
  - (e) have regard to the statement when exercising a power under this section.
- (7) The statement maintained under subsection (6) must, in particular, require the Commission in considering the imposition of a penalty under this section or the amount of a penalty to have regard, in particular, to – 45

- (a) the seriousness of the breach of condition in respect of which the penalty is proposed,
  - (b) whether or not the licensee knew or ought to have known of the breach, and
  - (c) the nature of the licensee (including, in particular, his financial resources). 5
- (8) Before preparing or revising a statement under subsection (6) the Commission shall consult –
- (a) the Secretary of State, and
  - (b) such other persons as the Commission thinks appropriate. 10

### *Duration*

#### **37 Initial duration**

- (1) The Commission shall determine the period during which operating licences are, subject to the provisions of this art, to have effect.
- (2) The period must, in relation to each operating licence – 15
  - (a) begin with the date on which it is issued, and
  - (b) end with a date not more than ten years after the date on which it is issued.
- (3) The Commission –
  - (a) may determine different periods under subsection (1) for operating licences authorising different classes of activity (but may not otherwise determine different periods for different licences), and 20
  - (b) may alter a determination under subsection (1) (but not in relation to licences already issued).
- (4) The Commission shall publish any determination under subsection (1) as part of the statement prepared under section 7. 25
- (5) The Secretary of State may by order –
  - (a) amend subsection (2)(b);
  - (b) prescribe a period during which operating licences, or operating licences authorising a specified class of activity, are to have effect (subject to the provisions of this art). 30
- (6) Subsection (1) is subject to subsection (5).
- (7) Revision made under subsection (5) shall have no effect in relation to an operating licence issued before the provision is made.

#### **38 Surrender** 35

- An operating licence shall cease to have effect if the licensee –
- (a) notifies the Commission of his intention to surrender the licence, and
  - (b) gives the Commission either –
    - (i) the licence, or
    - (ii) a written statement explaining why it is not reasonably practicable to produce the licence. 40



### 39 Lapse

- (1) In the case of an operating licence issued to an individual, the licence shall lapse if the licensee –
  - (a) dies,
  - (b) becomes, in the opinion of the Commission as notified to the licensee, incapable of carrying out the licensed activities by reason of mental or physical incapacity, or 5
  - (c) becomes bankrupt (within the meaning of section 381 of the Insolvency Act 1986 (c. 45)).
- (2) In any other case an operating licence shall lapse if the licensee – 10
  - (a) ceases to exist, or
  - (b) goes into liquidation (within the meaning of section 247(2) of that Act).

### 40 Forfeiture

- (1) Where the holder of an operating licence is convicted of a relevant offence by or before a court in Great Britain the court may order forfeiture of the licence. 15
- (2) Forfeiture under this section shall be on such terms (which may include terms as to suspension) as may be specified by –
  - (a) the court which orders forfeiture,
  - (b) a court to which an appeal against the conviction, or against any order made on the conviction, has been or could be made, or 20
  - (c) the High Court, if hearing proceedings relating to the conviction.
- (3) Subject to any express provision made under subsection (2), an operating licence shall cease to have effect on the making of a forfeiture order under subsection (1).
- (4) The terms on which a forfeiture order is made under this section shall, in particular, include a requirement that the licensee deliver to the Commission, within such time as the order may specify – 25
  - (a) the licence, or
  - (b) a statement explaining why it is not reasonably practicable to produce the licence. 30
- (5) As soon as is reasonably practicable after making or suspending an order for forfeiture under this section the court shall notify the Commission.

### 41 Renewal of licence

- (1) The holder of an operating licence may apply to the Commission for its renewal. 35
- (2) The provisions of this art shall apply in relation to an application for renewal as they apply in relation to an application for a licence –
  - (a) subject to the provisions of this section, and
  - (b) with any other necessary modifications.
- (3) An application for renewal of an operating licence may be made only during the period which – 40
  - (a) begins three months before the date on which the licence would otherwise expire in accordance with section 37, and

- (b) ends one month before the date on which the licence would otherwise expire in accordance with that section.
- (4) Where an application for renewal of an operating licence is awaiting determination on the date when it would expire in accordance with section 37, the licence shall continue to have effect by virtue of this subsection until the application is determined, unless it ceases to have effect by virtue of a provision of this art other than that section. 5
- (5) A direction or regulations under this art which relate to an application for an operating licence may make – 10
- (a) provision which applies only in the case of an application for renewal;
  - (b) provision which does not apply in the case of an application for renewal;
  - (c) different provision in relation to an application for renewal from that made in relation to an application for an operating licence.
- (6) An application for renewal must (in addition to anything required by section 14) be accompanied by – 15
- (a) the licence to be renewed, or
  - (b) a statement explaining why it is not reasonably practicable to submit the licence to be renewed.
- (7) The Commission shall determine the period during which a renewed operating licence is, subject to the provisions of this art, to have effect; and section 37(2) to (6) shall have effect in relation to this subsection (as if a reference to the issue of a licence were a reference to renewal). 20
- (8) The Secretary of State may by order amend subsection (3) so as to substitute a different time for a time specified. 25

#### *General*

#### **42 Directions and requirements**

Where the Commission has power under this art to give a direction or impose a requirement it may give different directions or impose different requirements in relation to different cases or circumstances. 30

#### **43 Relevant offence: disapplication of rehabilitation**

Section 4 of the Rehabilitation of Offenders Act 1974 (c. 53) (effect of rehabilitation) shall not apply for the purposes of or in connection with –

- (a) section 14(2)(d), or
- (b) section 16(1)(a). 35

#### **44 Interpretation**

- (1) In this art –
- “conviction” –
- (a) has the meaning given by section 1(4) of the Rehabilitation of Offenders Act 1974 (c. 53), and
  - (b) includes a spent conviction within the meaning of that Act, 40

- “holder”, in relation to an operating licence, means the person to whom the licence was issued,  
“the licensed activities” in relation to an operating licence means the activities which it authorises, and  
“licensee”, in relation to an operating licence, means the person to whom the licence was issued. 5
- (2) In this art “relevant offence” means –  
(a) an offence listed in Schedule {j510}, and  
(b) an offence under the law of a country or territory outside the United Kingdom (a “foreign offence”) which prohibits a kind of activity prohibited by an offence listed in that Schedule (a “domestic offence”). 10
- (3) For the purpose of subsection (2)(b) it is immaterial –  
(a) whether or not the foreign offence prohibits all the kinds of activity prohibited by the domestic offence, and  
(b) whether or not the foreign offence prohibits kinds of activity not prohibited by the domestic offence. 15

#### ART 4

#### PERSONAL LICENCES

#### 45 Nature of personal licence

- For the purposes of this Act a “personal licence” is a licence which authorises an individual to perform a specified function in connection with – 20  
(a) the provision of facilities for gambling, or  
(b) a person who provides facilities for gambling.

#### 46 Application of provisions of art 3

- (1) The provisions of art 3 shall apply to a personal licence as they apply to an operating licence, with – 25  
(a) the modifications and exclusions specified in this art, and  
(b) any other necessary modifications.
- (2) Regulations under a provision of art 3 –  
(a) may make different provision for purposes of this art and for purposes of that art, and 30  
(b) in making provision for purposes of this art, may make different provision in relation to personal licences authorising –  
(i) the performance of different kinds of function, or  
(ii) the performance of functions in different circumstances. 35

#### 47 Application

- (1) A direction under section 14(2)(c) or (f) (as applied by section 46) may, in particular, require that an application –  
(a) be signed by the applicant’s employer;  
(b) contain information provided by the applicant’s employer or relating to his employment. 40

- 
- (2) The Commission may under section 17(1)(a) (as applied by section 46) require an applicant to obtain information from his employer.
- (3) For the purposes of this section a reference to an applicant’s employer is a reference to any person for whom the applicant, in the course of a business (but whether or not under a contract of employment) – 5
- (a) provides services,
  - (b) has provided services, or
  - (c) intends to provide services.
- (4) Neither this section nor any other provision of this Act shall be treated as preventing a person who is not employed from applying for a personal licence. 10
- 48 Initial duration**
- (1) A personal licence shall, subject to sections 38 to 41 (as applied by section 46), have effect for the period of ten years beginning with the date on which it is issued.
- (2) The Secretary of State may by order amend subsection (1). 15
- (3) An amendment made under subsection (2) shall have no effect in relation to a personal licence issued before the amendment is made.
- 49 No annual fee**
- Section 25 shall not have effect in relation to personal licences.
- 50 Multiple licences** 20
- (1) The Commission may not issue a personal licence to an individual who already holds one.
- (2) But a personal licence may authorise the performance of more than one function.
- 51 reduction of licence** 25
- A constable or gambling inspector may under section 31 (as applied by section 46) require the individual who holds a personal licence to produce the licence –
- (a) within a specified period,
  - (b) while the individual is carrying on a licensed activity, immediately, or 30
  - (c) while the individual is on licensed premises (within the meaning of...), immediately.
- 52 Review**
- Section 33(1) shall not apply in relation to personal licences.
- 53 Renewal** 35
- (1) A renewed personal licence shall, subject to sections 38 to 40 (as applied by section 46), have effect for the period of ten years beginning with the date on which it is renewed.

- (2) The Secretary of State may by order amend subsection (1).
- (3) An amendment made under subsection (2) shall have no effect in relation to a personal licence renewed before the amendment is made.

#### 54 Disqualification

- (1) A court which may order the forfeiture of an individual's personal licence under section 40 (as applied by section 46) may, whether or not it makes an order for forfeiture, make an order disqualifying the individual from holding a personal licence for a specified period, not exceeding ten years, starting with the date of the order. 5
- (2) The Commission shall not issue a personal licence to a person while a disqualification order under this section has effect in respect of him. 10
- (3) Subsections (2) to (5) of section 40 shall have effect in relation to an order under this section (and in relation to the licence forfeited) as they have effect in relation to an order under that section (and in relation to a licence held by the person disqualified). 15

#### 55 Notification of operating licensee

- (1) This section applies where the Commission –
  - (a) revokes a personal licence under section 35 (as applied by section 46),
  - (b) is informed by a court of the making of a forfeiture order in respect of a personal licence under section 40 (as applied by section 46), or 20
  - (c) is informed by a court of the making of a disqualification order under section 54.
- (2) If the Commission believes that the holder of the personal licence, or the subject of the disqualification order, is providing services to the holder of an operating licence in connection with the licensed activities, the Commission shall as soon as is reasonably practicable notify the holder of the operating licence of the matter specified in subsection (1). 25

#### 56 Conviction

- (1) This section applies if the holder of a personal licence is convicted of a relevant offence by or before a court (whether inside or outside Great Britain). 30
- (2) The holder of any relevant operating licence shall notify the Commission of the conviction, and of any sentence passed in respect of it, as soon as is reasonably practicable after becoming aware of it.
- (3) A person commits an offence if he fails without reasonable excuse to comply with subsection (2). 35
- (4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) For the purposes of subsection (2) an operating licence is relevant if the holder of the personal licence acts in connection with activities authorised by the operating licence. 40
- (6) The duty under subsection (2) is in addition to any duty of the holder of the personal licence under section 32 (as applied by section 46).



## SCHEDULE 1

### SCHEDULE 1

Section 4

#### THE GAMBLING COMMISSION

##### *Constitution*

- 1 The Gambling Commission shall consist of a chairman and other commissioners appointed by the Secretary of State. 5

##### *Tenure*

- 2 (1) A commissioner shall hold and vacate office in accordance with the terms of his appointment (subject to this paragraph).  
(2) A commissioner may resign by notice in writing to the Secretary of State. 10  
(3) If the Secretary of State thinks that a commissioner is unable, unfit or unwilling to perform his functions, the Secretary of State may dismiss the commissioner.
- 3 The chairman –  
(a) shall hold and vacate office in accordance with the terms of his appointment (subject to this paragraph), 15  
(b) may resign by notice in writing to the Secretary of State, and  
(c) shall cease to be chairman if he ceases to be a commissioner.

##### *Staff*

- 4 (1) The Commission may appoint a chief executive. 20  
(2) A person may hold appointment both as the chief executive and as a commissioner.
- 5 The Commission may appoint other staff with the Secretary of State's approval as to terms and conditions of employment.

##### *Proceedings* 25

- 6 The Commission shall –  
(a) determine arrangements for the conduct of its proceedings (which may, in particular, include arrangements for a quorum), and  
(b) publish those arrangements.
- 7 (1) The Commission may delegate a function to – 30  
(a) a commissioner,  
(b) a committee consisting of commissioners, or  
(c) an employee of the Commission.

- (2) Sub-paragraph (1) applies to any function of the Commission including, in particular –
- (a) a discretionary function;
  - (b) the function of conducting a review;
  - (c) the function of determining whether to revoke a licence or whether to impose a requirement to pay a penalty. 5

*Money*

- 8 The Commission may pay to or in respect of a commissioner or employee sums by way of or in respect of –
- (a) remuneration; 10
  - (b) allowance;
  - (c) expenses;
  - (d) pension;
  - (e) gratuity.
- 9 The Commission shall keep accounts in such form as the Secretary of State may direct. 15
- 10 (1) The Commission shall prepare a statement of accounts for each financial year in such form as the Secretary of State may direct.
- (2) The Commission shall send a copy of a statement of accounts under sub-paragraph (1) to – 20
- (a) the Secretary of State, and
  - (b) the Comptroller and Auditor General.
- (3) The Commission must comply with sub-paragraph (2) within such period, beginning with the end of the financial year to which the accounts relate, as the Secretary of State may specify. 25
- (4) The Comptroller and Auditor General shall –
- (a) examine a statement sent to him under sub-paragraph (2),.
  - (b) report on it, and
  - (c) lay a copy of his report before Parliament.
- 11 The financial year of the Commission shall be the period of twelve months ending with 31st March. 30

*Annual report*

- 12 (1) As soon as is reasonably practicable after the end of each financial year the Commission shall send to the Secretary of State a report about the activities of the Commission during the year. 35
- (2) Where the Secretary of State receives a report under sub-paragraph (1) –
- (a) he shall lay a copy before Parliament, and
  - (b) he may arrange for the report to be published.

*Status*

- 13 (1) The Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown. 40



- (2) Property of the Commission shall not be regarded as property of or held on behalf of the Crown.
- (3) Membership of or employment by the Commission is not employment in the civil service of the State.

## SCHEDULE 2

Section 5

5

### TRANSFER FROM GAMING BOARD TO GAMBLING COMMISSION: SUPPLEMENTARY PROVISION

- 1 In this Schedule –
  - “the Board” means the Gaming Board for Great Britain,
  - “commencement” means the coming into force of section 5, and
  - “the Commission” means the Gambling Commission.10
- 2 Anything done by or in relation to the Board which has effect immediately before commencement shall, so far as necessary for continuing its effect after commencement, have effect as if done by or in relation to the Commission.
- 3 Anything (including any legal proceedings) which immediately before commencement is in the process of being done by or in relation to the Board may be continued by or in relation to the Commission. 15
- 4 So far as necessary or appropriate in consequence of section 5, on and after commencement a reference to the Board in an enactment, instrument or other document shall be treated as a reference to the Commission. 20
- 5 (1) Section 5(2) shall operate in relation to rights and liabilities –
  - (a) whether or not they would otherwise be capable of being transferred by the Board, and
  - (b) without any instrument or other formality being required.(2) In so far as section 5(2) transfers to the Commission liabilities under contracts of employment nothing in that section or this Schedule shall affect the operation of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794). 25



# **GAMBLING BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to certain clauses of the draft Gambling Bill, published by the Government on 15<sup>th</sup> July 2003 as part of the process of pre-legislative scrutiny that will commence formally in the autumn. They have been prepared by the Department for Culture, Media and Sport in order to assist the reader of these clauses and to help inform debate on them. These notes do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the published clauses. They are not, and are not meant to be, a comprehensive description of the clauses. So where a clause or a part of a clause does not seem to require any explanation or comment, none is given. Equally, as the clauses published on 15<sup>th</sup> July, to which these notes relate, do not represent the whole Bill but merely certain parts of it, these notes provide background information on clauses of the Bill yet to be published, where that is appropriate.

3. These explanatory notes do not provide any commentary on the compatibility of the published clauses with the European Convention on Human Rights, since to do so would be premature. Explanatory notes to accompany the publication of the full draft Gambling Bill will address this issue.

4. These explanatory notes do not address the financial effects of the draft Bill, the effects of the draft Bill on public service manpower, or the regulatory appraisal for the draft Bill. These matters will be addressed in the notes which accompany the draft Bill when it is published in its entirety. A regulatory impact assessment has been published separately, to accompany the draft clauses.

### **BACKGROUND**

5. The draft Gambling Bill will give effect to the Government's proposals for the reform of the law on gambling. The draft Bill will be published, in full, in the autumn of 2003. At that time a scrutiny committee made up of members of the House of Commons and the House of Lords will be convened to give formal, pre-legislative consideration to the draft Bill.

6. The Secretary of State for Culture, Media and Sport is publishing the draft clauses to which these notes relate in advance of publishing the full Bill. The policy proposals were set out in the Government White Paper “A Safe Bet for Success” (Cmnd 5397) published in March 2002. The White Paper was the Government’s response to the report of the Gambling Review Body (Cmnd 5206) published in July 2001.

7. The present legislation on gambling is contained, primarily, in three statutes: the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.

## **SUMMARY OF THE BILL**

### **Overview of the proposals**

8. The draft Bill will produce a new regulatory regime for gambling in Great Britain which is modern, flexible and comprehensive. The draft Bill will introduce, for the first time, a unified regulator for gambling, the Gambling Commission (“the Commission”). The Commission will have a remit for overseeing gambling operations in Great Britain, but it will not regulate spread betting, which is currently the preserve of the Financial Services Authority at least for the time being, or the National Lottery, which is regulated by the National Lottery Commission.

9. The draft Bill promotes better regulation in the gambling industry through the introduction of a new scheme of licences and licence conditions (to be granted by the Commission for gambling operators and gambling personnel, and by local authorities for gambling premises). The draft Bill removes from licensing justices their existing responsibility for granting certain betting and gaming permissions. Instead, the Commission and local authorities will share between them responsibility for those matters previously regulated by licensing justices.

10. The Commission will take over the responsibilities of the Gaming Board for Great Britain. The Commission will be responsible for granting operating and personal licences for commercial gambling operators and staff working in the industry. It will also regulate certain lottery promoters. It will issue codes of practice and guidance to ensure best practice in the industry.

11. Local authorities will have new powers to license gambling premises within their area, as well as undertaking functions in relation to lower stake gaming machines and clubs and miners’ welfare institutes. These matters will all form part of the draft Bill when it is published in full.

12. To ensure that gambling remains a safe, well-conducted and crime-free activity in Great Britain, three licensing objectives will underpin the licensing functions which the Commission and local authorities will perform. These objectives

are central to the new regulatory regime created by the draft Bill. They are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

13. The draft Bill will also authorise certain types of social and domestic gambling that can take place without need for express regulation by any regulatory authority.

14. The draft Bill will provide appropriate rules for the lawful conduct of betting, gaming and lotteries. This will be effected through provisions in the draft Bill itself, regulations to be set out in secondary legislation, and matters which will be dealt with through licence conditions, statutory guidance and codes of practice.

15. The draft Bill accommodates the significant technological changes that have taken place in the last 30 years by enabling gambling regulation to encompass the provision of gambling where the player is not present on the premises. For example, new provisions relating to remote gambling will allow operators based in Great Britain to obtain licences that authorise the provision of gambling over the Internet. The new licensing system has been designed to keep pace with future technological developments, so that gambling delivered by any number of new remote means will be capable of being subject to appropriate regulation.

16. The draft Bill will repeal many provisions in the existing legislation which fetter the consumer's freedom to gamble. For example it will no longer be a requirement that casinos can only be situated in certain "permitted" areas of Great Britain; commercial bingo halls and casinos will no longer have to operate as clubs with a 24 hour membership rule (making them places to which the public will now have access), and bookmaking will now be able to take place on tracks on Good Friday or Christmas day.

17. The draft Bill will provide protection for children and vulnerable adults from the effects of harmful gambling. It will do this through a number of targeted offences that will prevent young persons from being given access to inappropriate or harmful gambling opportunities. The Commission will promote socially responsible gambling through licence conditions and codes of practice directed at those providing facilities for gambling.

### **Summary of Published Clauses**

18. These explanatory notes only concern certain clauses of the draft Bill,

published in advance of the whole draft Bill. The matters covered in these clauses are:

- The creation of a new body, the Gambling Commission, its core functions and powers (Part 2 and Schedules 1 and 2);
- The licensing objectives and certain key definitions (Part 1);
- The licensing regime for gambling operations, administered by the Gambling Commission (Part 3); and
- The licensing regime for personnel undertaking specified functions in a gambling operation, also administered by the Gambling Commission (Part 4).

19. The published clauses will have effect in England, Wales and Scotland.

### **Summary of Draft Bill**

20. The full draft Bill will cover a wide range of matters which are required to achieve comprehensive reform of gambling law. These will be additional to the clauses to which these notes relate, and will provide for:

- a) Supplemental provisions relating to the funding, enforcement powers and inspection rights of the Gambling Commission;
- b) Classification of the various classes of operating licence;
- c) A licensing regime for gambling premises to be conducted by local authorities, to include provision for premises to be temporarily licensed in certain circumstances;
- d) Appeals mechanisms for persons subject to decisions of a local authority or the Commission, including a gambling appeals tribunal;
- e) Rules for the lawful conduct of betting, gaming and lotteries;
- f) Regulatory provisions for gambling by machine, including classification of a machine and entitlements;
- g) Provision for clubs and miners' welfare institutes to be authorised to conduct certain gaming;
- h) Provisions for gambling on premises with an alcohol licence;
- i) Provisions authorising certain social and domestic gambling;
- j) Arrangements for travelling showmen's pleasure fairs;
- k) Provisions on the enforceability of gambling contracts;
- l) Rules on the lawful provision of credit in gambling;
- m) Provisions for regulating prize competitions;
- n) Provisions on the advertising of gambling;
- o) Reserve powers for an industry levy on gambling operations; and
- p) Offences, including a revised offence of cheating and a new offence of chain gifting.

21. This list is not exhaustive or reflective of the order that the draft Bill will take

when published in full. It does cover the major subject areas for the draft Bill.

22. The draft Bill will provide necessary definitions, and there will be transitional provisions for transfer from the existing regulatory system to the new regime under the Bill. The draft Bill will provide for consequential amendments to be made to other legislation and will also cover the repeals necessary to effect the new regulatory regime.

## COMMENTARY ON CLAUSES

### Part 1

#### *Introduction*

23. Part 1 of the draft Bill will set out the key definitions for the Bill, and certain key concepts. The published clauses cover three such definitions together with the licensing objectives.

#### **Clause 1: The licensing objectives**

24. The published clauses set out licensing functions to be exercised by the Commission in relation to operating and personal licences, and will set out the functions to be performed by local authorities undertaking the licensing of premises. In exercising these functions, regard must be had by the Commission and local authorities respectively to the licensing objectives. These are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

25. Clause 6 describes the Commission's duty to promote the licensing objectives.

#### **Clause 2: Facilities for gambling**

26. There are a number of ways in which individuals and organisations can offer or partake in gambling activities, whether commercially or in a domestic setting. Clause 2 provides a key definition by describing the types of conduct which, for the purposes of the draft Bill, will amount to the provision of facilities for gambling. This is a key definition because the scheme of regulation and licensing that the draft Bill will provide is primarily directed to persons who provide facilities for gambling. As a result some of the offences that the Bill will contain will be addressed to persons providing facilities for gambling.

27. Under subsections (1) and (2) a person will be taken to provide facilities for

gambling where he:

- a) Invites others to gamble in accordance with arrangements made by him;
- b) Provides, operates or administers arrangements for gambling by others,
- c) Participates in the operation or administration of gambling by others; or
- d) Knowingly facilitates gambling in accordance with arrangements made with a person who undertakes or intends to undertake (a), (b) or (c).

28. However, there are circumstances where a person may be providing facilities for gambling within the meaning of this clause, but where their conduct does not require regulation under the Bill. Therefore, subsection (3) provides a number of circumstances where a person will not be deemed to be providing facilities for gambling. These are intended to cover:

- The supply of goods (other than a gaming machine) to a person who intends to use them to provide facilities for gambling (subsection (3) paragraph (a)) e.g. the supplier of a roulette wheel to a casino;
- The supply of goods (other than a gaming machine) to a person who may use them for gambling, but does not intend to use them to provide facilities for gambling (subsection (3) paragraph (b)) e.g. a retailer supplying a pack of playing cards to a person for domestic use;
- The provision of services to persons providing facilities for gambling where the services themselves have nothing to do with the provision of gambling facilities (subsection (3) paragraph (c)) e.g. an accountant providing professional services to a betting business; and
- Electronic communications providers who do nothing more than act as a carrier of information for persons providing facilities for gambling or consumers partaking in gambling e.g. an internet service provider or mobile telephone operator (subsection (3) paragraph (d)).

### **Clause 3: Remote gambling**

29. One of the key aims of the draft Bill is to regulate effectively the various technological means by which gambling activities can now be conducted. The Bill uses the concept of “remote gambling” to cover gambling which is not premises based, i.e. where all the people partaking in the gambling are not in the same place.

30. Clause 3 defines “remote gambling” by referring to the types of remote communication by which the gambling is being conducted. These are:



- a) The Internet;
- b) Telephone;
- c) Television;
- d) Radio; or
- e) Any other kind of electronic or other technology for facilitating communication.

31. This list is broad enough to encompass modern means of communication such as interactive television and mobile telephony, and ensures that the definition can keep pace with future developments in this field. However, in order to provide certainty as well as flexibility for the industry, the Commission and the courts, the Secretary of State may specify in regulations that a specified system or method of communication is or is not to be treated as a form of remote communication for the purpose of the definition.

32. Part 3 of the draft Bill, on operating licences, when it is in its final form, will provide for operating licences which authorise remote gambling.

## **PART 2: THE GAMBLING COMMISSION**

### **Clause 4: Establishment of the Commission**

33. This clause establishes a new Gambling Commission which will be the central regulatory body for gambling in Great Britain. Schedule 1, discussed below, provides for the detailed constitution of the Commission and its proceedings, the appointment of Commissioners and staff, and its financial and reporting arrangements.

34. The Commission will take over the responsibilities of the Gaming Board for Great Britain, which currently regulates gaming and certain forms of lotteries (see clause 5).

35. Parts 3 and 4 of the draft Bill provide for two new licensing regimes to be operated by the Commission. Under these licensing regimes the Commission will assume responsibility for:

- a) the licensing of bookmakers currently undertaken by licensing justices (and local licensing boards in Scotland);
- b) the licensing of commercial gaming operators e.g. casino operators;
- c) the licensing of pools promoters;
- d) the licensing of certain lottery operators and managers;
- e) the licensing of gaming machine manufacturers and suppliers; and
- f) the licensing of operators providing remote gambling.

36. Details of all these matters will be contained in the full draft Bill.

## **SCHEDULE 1: THE GAMBLING COMMISSION**

### **Paragraphs 1 to 3: Constitution and tenure**

37. The Gambling Commission will consist of a chairman and other commissioners. The Secretary of State will appoint all of these. The Secretary of State will have power to dismiss a commissioner whom she believes to be unable, unfit or unwilling to perform his functions, and a commissioner may resign his appointment.

### **Paragraphs 4-5: Staff**

38. The Commission may appoint a chief executive of the Commission if it wishes, and the chief executive may also hold a position as a commissioner. No approval from the Secretary of State is required for the appointment of a chief executive. The Commission may also appoint other staff with the approval of the Secretary of State as to their terms and conditions of employment.

### **Paragraphs 6-7: Proceedings**

39. The Commission may determine its own proceedings, and is to publish details of the arrangements it makes. In so doing, the Commission may delegate a function under the draft Bill to: a commissioner, a commissioners' committee, or an employee of the Commission. Such delegation may include any discretionary function, a review function (for which see clause 33 (Review)) or the exercise of a regulatory power (see clause 34 (Regulatory powers)).

### **Paragraphs 8-11: Money**

40. Paragraph 8 authorises the Commission to make payments by way of remuneration, allowances, expenses, pensions and gratuities to commissioners and Commission staff. Paragraphs 9 to 11 describe the accounting requirements for the Commission, which include a requirement for the Commission's annual statement of accounts to be examined, and reported on to Parliament, by the Comptroller and Auditor General. Clauses concerning the funding of the Commission will be contained in the full draft Bill.

### **Paragraph 12: Annual report**

41. This paragraph provides that after the end of each financial year the Commission will send a report of its year's activities to the Secretary of State. The Secretary of State will lay a copy before Parliament and may publish the report.

### **Clause 5: Gaming Board: transfer to Commission**

42. The functions, rights and liabilities, which include the property, of the Gaming Board for Great Britain (established pursuant to section 10 of the Gaming Act 1968) are to be transferred to the Gambling Commission on a date to be decided (the commencement date). Schedule 2, described below, sets out detailed provisions to effect the transfer once the provision is commenced. At the point of transfer, the

chairman and the commissioners of the Gaming Board will become the first chairman and commissioners of the Gambling Commission.

## **SCHEDULE 2: TRANSFER FROM GAMING BOARD TO GAMBLING COMMISSION: SUPPLEMENTARY PROVISION**

43. Paragraphs 1 to 5 of Schedule 2 make a number of technical provisions to achieve the smooth and certain transfer from the Gaming Board to the Commission. It allows the Commission to step into the shoes of the Board, without prejudicing any action, decision or pending proceeding of the Board. Upon commencement, references to the Board in any legislation or document will be construed as a reference to the Commission.

### **Clause 6: Duty to promote the licensing objectives**

44. In carrying out its functions under the Act, the Commission will have the statutory aim of pursuing, and wherever appropriate having regard to, the licensing objectives (as set out at clause 1) and permitting gambling in so far as it thinks such permission is reasonably consistent with pursuit of the licensing objectives. Therefore, in carrying out its licensing functions under Parts 3 and 4 of the draft Bill or in issuing guidance and codes of practice or advising the Secretary of State in accordance with Part 2, the Commission will have regard to this statutory aim.

### **Clause 7: Policy for licensing and regulation**

45. The Commission will be responsible for licensing gambling operators and personnel working in the gambling industry under the provisions of Part 3 (operating licences) and Part 4 (personal licences) of the draft Bill. This will be the primary licensing activity of the Commission, although the Bill will also provide it with other regulatory and advisory functions concerned with the proper conduct and control of gambling in Great Britain. The Commission will have enforcement and prosecution powers.

46. Clause 7 requires the Gambling Commission to prepare, publish, and keep under review, a statement which sets out the principles which will govern the exercise of its functions, and, in particular, explain how such principles will assist the Commission in its pursuit of the licensing objectives. This statement will underpin the work of the Commission. Examples of specific matters which will be contained in the statement are:

- a) The principles, practice and procedure which the Commission will apply in considering applications for operating and personal licences (see clause 15 (Consideration of application: general principles) and clause 46 (Application of provisions of Part 3) and the accompanying explanatory notes);
- b) The general conditions which the Commission will impose on all

operating or personal licences; or on specified classes of operating or personal licence (see clause 19 (General conditions imposed by Commission) and clause 46 (Application of provisions of Part 3) and the accompanying explanatory notes); and

- c) The determination of the periods for which operating licences, or classes of operating licences, will be granted, within the maximum ten-year duration (see clause 37 (Initial duration) and the accompanying explanatory note).

47. The Commission will prepare a separate policy statement on its use of financial penalties in its enforcement role, for which see clause 36(6) (Financial penalty).

48. Before issuing or revising a statement, clause 7(5) provides that the Commission must consult the following:

- The Secretary of State;
- Representatives of local authorities;
- Representatives of police forces;
- Representatives of gambling businesses;
- Persons with knowledge of social problems that may be associated with gambling; and
- As appropriate, members of the public.

49. The Statement may be published in parts, and any revisions shall be published.

**Clause 8: Codes of practice**

50. As part of the Commission's regulatory oversight of gambling it may publish codes of practice about the manner in which facilities for gambling are provided, which are directed at the holders of operating or personal licences, or any other person. Clause 8 makes provision to this effect.

51. The Commission will publish its codes of practice, and all revisions, in a manner that will ensure those to whom it is addressed are made aware of them, and the codes are required to state clearly when they, or any revisions to them, come into force.

52. By virtue of clause 22(2) (Scope of power to attach conditions) codes of practice can have relevance to the conditions which the Commission attaches to

licences pursuant to clauses 19 (General conditions imposed by the Commission), 20 (Individual conditions imposed by the Commission) and 21 (Condition imposed by Secretary of State). Thus, any of these three types of condition may operate wholly or partly by reference to compliance with a code of practice.

53. A failure to comply with a code will not, of itself, render a person liable to prosecution or a civil action. However, the codes will be admissible in evidence for criminal or civil proceedings; are to be taken into account by a court or tribunal in any case where it appears to be relevant; and are to be taken into account by the Commission in exercising any of its functions. For example, where a licence holder has his operating licence reviewed by the Gambling Commission for potential breach of a licence condition, pursuant to clause 33 (Review), the Commission will refer to a code of practice, where it is relevant.

54. Before issuing or revising a code of practice, subsection (7) provides that the Gambling Commission must consult:

- The Secretary of State; and
- People with knowledge of social problems that may be associated with gambling.

55. Depending on the nature of code or any revision, subsection (8) provides that the Commission shall also consult:

- Representatives of local authorities;
- Representatives of police forces;
- Representatives of gambling businesses; and
- Members of the public (in such manner as the Commission thinks fit),

where the Commission thinks it appropriate to do so.

#### **Clause 9: Guidance to local authorities**

56. Under the draft Bill, local authorities will undertake licensing functions in relation to a number of gambling activities. They will be responsible for the licensing of premises for gaming and betting; they will regulate members' clubs and miners' welfare institutes who wish to undertake certain gaming activities; they will grant permission for certain lower stake gaming machines; and they will register societies' lotteries below certain prescribed thresholds. Subsequent clauses of the draft Bill, to be published, will set out all of these matters in full, with accompanying explanatory notes.

57. In order to assist local authorities to perform these various regulatory and licensing functions, clause 9 enables the Gambling Commission to issue and publish guidance about:

- The manner in which local authorities are to exercise their functions under the Bill; and
- In particular, the principles to be applied by local authorities in exercising functions under the Bill.

58. Local authorities are placed under a duty, by subsection (2), to have regard to such guidance.

59. Before issuing guidance to local authorities, subsection (4) provides that the Gambling Commission shall consult:

- The Secretary of State;
- Representatives of local authorities; and
- Persons with knowledge of social problems that may be associated with gambling.

60. Depending on the nature of the code or any revision, subsection (5) provides that the Commission shall also consult:

- Representatives of police forces;
- Representatives of gambling businesses; and
- Members of the public (in such manner as the Commission thinks fit),

where the Commission thinks it appropriate to do so.

#### **Clause 10: Duty to Advise Secretary of State**

61. One of the functions of the Gambling Commission will be to provide advice to the Secretary of State on the regulation and control of gambling. Accordingly, this clause provides for the Gambling Commission to make recommendations about gambling (about its incidence, the manner in which it is carried on, the effects of gambling and its regulation) to the Secretary of State either in response to a request from the Secretary of State or on its own initiative.

### **PART 3 – OPERATING LICENCES**

62. Part 3 of the draft clauses describes the new regime of licences for the operation of gambling to be administered by the Commission. Operating licences will be the main form of permission for the operation of commercial gambling. They will also be required for certain limited forms of non-commercial gambling.

63. Operating licences will be required for the operation of gambling which takes place both on premises and remotely (e.g. on the Internet or via television – see clause 3), as well as for other forms of gambling which are neither premises based nor remote (e.g. operating certain types of lotteries). Licences will also be required in relation to the manufacture, sale and maintenance of certain forms of equipment used for gambling. This part of this package of draft clauses does not set out the detail of the different types of gambling activities that will require an operating licence. This will be set out in full in the complete draft Bill.

64. An applicant for an operating licence can be an individual, a business or an association of persons. To obtain an operating licence the applicant and its business will be required to undergo a rigorous process of scrutiny conducted by the Commission. In addition to rules deriving from the legislation, licensees will be regulated through various types of licence conditions that may be attached to the licence by the Commission, or by the Secretary of State through regulations.

#### **Clause 11: Exception to offence of prohibited gambling**

65. When the complete draft Bill is published, it will contain a clause concerning the general offences relating to gambling, referred to here as clause j500. It will be an offence for any person to provide facilities for gambling as defined in clause 2, unless authorised under the Bill. Operating licences are one such authorisation, and any legal person may provide facilities for gambling legally where they hold an operating licence for the relevant type of gambling, or where they provide the facilities in the service of another person who holds such a licence. In each case, licence holders and those working for them will avoid committing the offence as long as the facilities have been provided in accordance with any licence conditions.

#### **Clause 12: Nature of licence**

66. This clause is the basis for the operating licence system, and enables the Commission to issue operating licences for the provision of facilities for gambling. The clause makes reference to clauses j581 - 606 which are absent in this draft but will be included in the complete draft Bill. These clauses will outline the different classes of gambling activity which will be licensable under clause 12. Broadly, these will cover casinos, bingo, betting, certain lotteries, certain gaming machine facilities, and the manufacture, supply, maintenance and repair of gaming machines. However, within these broad activities there will be various subcategories of activity, such as e.g. betting intermediaries. Providers of facilities for gambling will be exempt from the requirement to hold a licence in certain circumstances, e.g. social domestic gambling. These exemptions will be set out in full in the complete draft Bill. There

will be no limit on the number of licences that the Commission may issue for each of these activities, and it may grant a licence covering some or all of these activities to a single applicant.

67. Subsection (3) refers to clause j552 which will be included in the complete draft Bill. The effect of subsection (3) is that where an operating licence specifies that the holder may carry out his business on premises, he will still require a separate premises licence issued by the local authority, in order to carry out his business lawfully. The clauses relating to premises licences will be included in the complete draft Bill.

### **Clause 13: Form of licence**

68. Subsection (1) provides for certain information which must be specified on the operating licence, including any general or individual condition attached to the licence by the Commission (see the notes on clauses 19 – 20). It will not however be necessary for any conditions set by the Secretary of State by statutory instrument to be specified on the licence (see the notes on clause 21). Under subsection (2) the licence must state the classes of activity it authorises, which may be more than one.

69. Subsection (3) provides that the licence must state whether it is for gambling conducted by remote means, such as television or the Internet (see clause 3). Subsection (4) provides that it is necessary to have separate operating licences for remote and non-remote activities. It is, however, intended that the licensing of gambling by remote technology will be further developed in the complete draft Bill.

70. The form of the licence is not prescribed under the Bill. Instead, subsection (5) gives the Secretary of State a power to make regulations specifying the form in which licences are to be issued and additional information the licence must specify.

### **Clauses 14-18: Applications for operating licences**

71. Clause 14 gives the procedure for applying to the Commission for an operating licence, and states the matters which must be specified in the application. Rather than have forms prescribed in legislation, the Commission will have flexibility to specify the form of applications. Applications will be required to contain the information set out in subsection (2) and be accompanied by the correct fee. Fees will be set by the Secretary of State in regulations under subsection (5) and may vary according to the type of activity and the size of the proposed activity.

72. In particular, subsection (2) provides that applicants will be required to give information concerning any criminal offence for which they have been convicted. The Commission will be able to consider these convictions when assessing the applicant's suitability to hold an operating licence. In the current draft, a distinction is drawn between 'relevant' offences, which will be those that are thought sufficiently serious and significant, and other criminal offences. It is envisaged that the Commission will be required to place a different emphasis on these offences in their decision making, and that different provisions will apply in relation to whether the convictions are



‘spent’ under the Rehabilitation of Offenders Act 1974 (see clause 43 – relevant offence - disapplication of rehabilitation). This formulation, and the detail as to the offences falling within the category of ‘relevant offences’, will be set out in full in the complete draft Bill.

73. Subsection (3) sets a minimum age limit of 18 for an individual to make an application. This provision also prevents an applicant which is a group from making an application where any individual in the group is under 18.

74. Subsection (4) gives the Secretary of State power to make regulations requiring applicants to notify specified persons of their application. The Secretary of State may consider it necessary to oblige applicants to notify bodies such as the police or Customs and Excise of the application, who may wish to advise the Commission about the suitability of the applicants. Even without this power being used, the Commission will still be able to take into account the opinion of others. Regulations will also be able to specify the consequences of failure to comply.

75. Clause 15 provides for the general principles directing the Commission’s decision making in relation to operating licence applications. In considering whether or not to grant an application, the Commission must have regard to the licensing objectives. It must also have regard to its opinion of the suitability of the applicant to carry out the activities it wishes to be licensed to conduct. The latter part of this test draws upon the ‘fit and proper’ test for certificates of approval under the Gaming Act 1968. Subsection (2) sets out the factors which can be taken into account when assessing suitability: integrity, competence to carry out the licensed activities consistently with the licensing objectives, and financial and other circumstances. These factors can relate to either the applicant, or another person relevant to the application.

76. Subsection (3) requires the Commission to specify in the statement issued under clause 7 the principles which it will apply when considering applications. Under subsection (4) the statement is to include the kind of evidence to which the Commission is to have regard when assessing integrity and competence. The evidence may include interviews, references, information or opinions from others, training and qualifications. The Commission may consult any other person or organisation it wishes. It may, for example, wish to consult a foreign police force in a country where an applicant has some presence. The assessment of suitability will therefore focus not just on integrity, but also on the very practical aspects of delivering the gambling. So, for example, a betting operator may be invited to explain how he intends to ensure that debts are settled and from what source he is able to get pre-race data.

77. Clause 16 allows the Commission to refuse an application if the applicant or a person relevant to the application has criminal convictions for certain criminal offences. The ‘relevant offences’ are distinguished here for the purposes of the

application of the Rehabilitation of Offenders Act 1974.

78. Clause 17 sets out the information the Commission may require the applicant to provide in order to consider his application. It also allows the Commission a wide power to consult and to have regard to information or opinions in its decision-making. In particular, subsection (3) allows the Commission to require an enhanced criminal record certificate under section 115 of the Police Act 1997 in relation to either the applicant or a person relevant to the application. Such a certificate will state all criminal convictions including those that are ‘spent’ and also may include additional information from local police force records; the Police National Computer and government department lists where appropriate. Subsections (4) and (5) oblige the Commission to specify in the clause 7 statement the practice and procedure for their decision making in relation to applications. Subsection (6) gives the Commission discretion to disregard imperfections in the drafting of applications, apart from where the application fee has not been paid. This means that where there is a minor error in the application, the Commission is not obliged to reject it automatically.

79. Under clause 18, following consideration, the Commission may grant or refuse applications in full or in part. Where it approves applications, it is to issue the licence and notify the applicant as soon as reasonably practicable. Where it refuses an application, in whole or in part, it should notify the applicant and explain the reasons for refusal. The draft Bill, when published in full, will make provision for an appeal mechanism that can be employed by applicants who have had their application (or a part of it) refused.

#### **Clauses 19-22: Licence conditions**

80. In the current legislation, detailed rules are prescribed in primary and secondary legislation as to how licensees may conduct their businesses. One of the new features of regulation proposed by the draft Bill are the powers of the Commission directly to regulate the licensed operators by imposing conditions on operating licences. There will be two types of Commission condition: general conditions and individual conditions, under clauses 19 and 20 respectively. Under clause 21, the Secretary of State will also be able to impose conditions on licences through regulations.

81. Clause 19 gives the Commission a power to impose general conditions on operating licences. The Commission will use its general statement of licensing policy issued under clause 7 to specify what these general conditions will be. A prospective operator, therefore, will be able to consult the licensing policy when considering whether to make an application. General conditions can be attached either to all operating licences, or a certain class of operating licences, delineated by various factors, e.g. the nature of the licensed activities. So, for example, if the Commission grants a licence to a casino operator, it will have to place on each casino operating licence all the conditions which apply generally to all casino operators, as described in its clause 7 licensing policy statement.

82. Subsection (4) sets out the procedure to be followed where the Commission wishes to revise the conditions described in its licensing policy. It might, for example, want to prohibit a new form of gaming in casinos whose rules it believes are insufficiently transparent. It will first be required consult persons who represent relevant licensees. Following consultation, a change to the licensing policy must be notified to relevant licence holders no less than three months before is to come into effect. If the Commission issues a relevant licence during the period of notice, it must ensure that the new licensee is made aware of the change intended. Where a change comes into effect it applies to all relevant licences immediately. There is also power for the Commission to make more urgent changes to licence conditions, with a shorter period of notice than three months.

83. Under clause 20, the Commission will also have power to impose conditions on individual operating licenses. Hypothetically, it may take the view that a particular applicant for an operating licence to provide betting office facilities does not have the necessary competence or financial support to offer gambling in more than a certain number of premises, and may impose a condition on an individual operating licence restricting the number of betting offices permitted under the licence to fifty. The applicant will, however, have the right of appeal against this. This will be provided for in full in the complete draft Bill.

84. In addition to the above, all three types of condition may do the things set out in clause 22. In particular, subsection (2) enables the Commission or the Secretary of State to set a condition requiring compliance with a code of practice. So, for example, operators of internet gambling may be required to comply with a provision of a code of practice describing ways in which they should offer users the ability to ‘self-exclude’ themselves from further activity on the website. Subsection (4) provides that conditions may restrict the licensed activities to a particular type of activity or class of licence.

#### **Clause 23 - 24: Requirement for personal licence**

85. In a gambling operation, in addition to the operating licence holder, the Commission will also require certain persons involved in the provision of facilities for gambling to hold a personal licence. These personal licences will be similar to the certificates of approval currently issued by the Gaming Board under section 19 and Schedule 5 to the Gaming Act 1968. The Commission, in conditions attached to the operating licence, will set the requirement for a licensed operator to have certain posts filled by a personal licence holder. The Commission will attach either a general or an individual licence condition to each operating licence, making it a requirement that there is at least one person in a gambling operation who occupies a ‘specified management office’ and holds a personal licence under Part 4 authorising their functions under the office.

86. Under subsection (3) a condition may dictate that where such an office is held, it must be by a person holding a personal licence and they must pursue the functions of their office in accordance with the conditions of the personal licence. Management

offices can include directors and partners, and officers in an unincorporated association or a post that involves a supervisory role in relation to gambling activities.

87. Under subsection (4), it may be specified by condition that if certain ‘operational functions’ are to be performed in relation to the licensed activity, they must be performed by a personal licence holder in accordance with the personal licence. Operational functions may include any function that enables the person to influence the outcome of gambling, the receiving of stakes and payment of winnings, and activities in relation to making gaming machines available. The Secretary of State will have a power to amend these definitions through secondary legislation.

88. Clause 24 provides that certain small-scale operators will be exempt from the requirement to have a person with a personal licence occupying a specified management office. The Secretary of State will be able to define the meaning of ‘small scale operator’ in particular by reference to the size and value of the business, and the number of employees. Subsection (4) requires that where the operator is carrying on a licensed activity, they may be required by a police constable or a Commission inspector to produce their licence immediately, in contrast to other operating licence holders, who are only required to produce theirs within a specified period. This is because where a licensed operator is not a small scale operator, it will be obliged to have a personal licence holder in a specified management office who will be obliged to produce the licence on demand in these circumstances.

**Clause 25: Annual fee**

89. By virtue of this clause, each operating licence holder is obliged to pay an annual fee to the Commission following the grant of the licence. The Secretary of State will have a power to set, by regulations, different fees in respect of different classes of activity or circumstances. Subsection (5) gives an exemption from the requirement to pay the annual fee where the licence falls due immediately prior to its ceasing to have effect. Under clause 35(3) failure to pay the annual fee will result in the licence being revoked.

**Clause 26: Change of circumstances**

90. This clause provides the Secretary of State with a power to make regulations requiring operating licence holders to notify the Commission of changes of circumstance to be prescribed in the regulations. Hypothetically, regulations could prescribe that notification would be required if the applicant’s principal financial backer changed during the period of the operating licence. Failure to notify the Commission of any such changes would be an additional offence. Subsection (5) makes it clear that the Commission may also set requirements under their condition making powers for operators to notify the Commission of other changes not included in regulations.

**Clause 27: Application to vary licence**

91. This clause gives provisions relating to the variation procedure for operating licences. The licence holder will have the right to apply to the Commission to have its

licence varied if, for example, it wishes to make adjustments in the gambling activities possible under the licence without going through the procedures involved in making a new application. The licence holder can apply to the Commission to add, remove or change an individual condition or an authorised activity on the licence, or to amend any other detail of the licence.

**92.** Subsection (2) makes it clear that this clause does not enable the use of the variation procedure to transfer the licence to another licence holder. When the complete Bill is published, it is intended that it will contain a mechanism, however, enabling the Commission to approve a change of control of a licence holder where it is a company limited by shares.

**Clause 28: Amendment**

**93.** Clause 28 enables the Commission to require the licence holder to send them the physical licence, so that they can make amendments to it where changes have been made to the licence following procedures under this part. The licensee will have 14 days to comply with a requirement to submit the physical licence for amendment, and will commit an offence if he does not submit it. Subsection (5) makes it clear that the changes to the Commission's general conditions as a result of these procedures will nevertheless have automatic effect, whether or not the physical licence itself is amended.

**Clause 29: Register of operating licences**

**94.** Clause 29 obliges the Commission to maintain a register of operating licences, which it must allow the public to have access to, and must provide copies of entries to the public on request. The Commission will be able to charge a reasonable fee for these services. The Commission will have a discretion as to the information the register is to contain.

**Clause 30: Copy of licence**

**95.** Clause 30 enables the Commission to make arrangements to provide duplicate copies of operating licences, to be treated as though they were the original licence, in circumstances where the original has been lost, stolen or damaged. This includes circumstances where the original has been damaged to the extent that it has been totally destroyed. The Commission may charge a fee, set in regulations made by the Secretary of State, and may insist that the licence holder reports any loss or theft to the police.

**Clause 31: Production of licence**

**96.** Clause 31 provides for the right of a police constable or a Commission inspector to require a licence holder to produce his licence, within a specified period of time. This means that the licence holder is not obliged to carry his licence on his person at all times, as long as he is able to produce it within a given time period, unless he is a small scale operator as defined in clause 24 above. If he fails to produce the licence within the specified period without reasonable excuse, however, this is to be an offence. Production of the licence will enable the constable or inspector to

check whether the licensee is acting in accordance with his licence and its conditions. The status and powers of Commission inspectors will be established further in the complete draft Bill.

**Clause 32: Conviction**

97. Clause 32 obliges the licence holder to notify the Commission where he is convicted of criminal offences, and on conviction for certain offences, to notify the court that he holds an operating licence. This is to ensure that the Commission is kept aware of all information regarding the suitability of the person to conduct gambling, and the court is aware of the existence of the licence in order that it is able to use its power to forfeit the licence under clause 40 where appropriate. The specific details as to the offences we are concerned with here will be set out in full in the complete draft Bill.

**Clause 33: Review**

98. Under clause 33, the Commission has a vital power to review operating licences. Subsection (1) gives a power of review over operating licences of a particular class in respect of the licence holders' conduct of the licensed activities, and their compliance with the licence conditions. This is a power rather than a duty, so if the Commission does not think that a particular class of licence requires a review, it need not conduct one.

99. Subsection (2) gives the Commission a power of review over particular operating licences in certain circumstances, where, for example, it believes that the licence holder is carrying on the activity in breach of a licence condition, or has been convicted of a criminal offence. Where the Commission wishes to review an individual licence, subsection (3) obliges the Commission to give the licence holder notice, to inform him of the procedure for the review. Subsection (4) requires the Commission to give the licence holder and other persons an opportunity to make representations concerning the review.

**Clauses 34 – 35: Commission's powers on review**

100. Clause 34 provides the regulatory powers which the Commission may exercise following a review under clause 33 (1). It may issue a warning to the licence holder, add or change the condition of the licence, revoke the licence or impose a financial penalty. Any action under this power must be notified to the licensee as soon as possible, along with reasons.

101. The power to review licences need not only be a punitive process. Hypothetically, the Commission may have issued a class of licence and restricted by general condition the range of gambling products that licensees were permitted to offer. Subsequently however, it may conduct a review of the class of licence and decide to revise conditions under clause 19.

102. Following a review under clause 33 (1), clause 35 gives the Commission power to revoke an operating licence in certain circumstances, namely where the

licensed activity has been conducted inconsistently with the licensing objectives; breach of a licence condition; failure to notify the Commission of a change in circumstances, to cooperate with a review, or to submit the physical licence to the Commission for amendment; or where the licence holder has become unsuitable. Subsection (3) gives the Commission the right to revoke the licence for non payment of the annual fee, although this is not mandatory in circumstances where the Commission believes it is as a result of an administrative error.

103. Clause 36 gives the Commission power to impose a financial penalty on the licence holder as a regulatory sanction for breach of a licence condition. Under subsection (2), the Commission is obliged to notify the licence holder before imposing such a penalty, alerting him to the amount of the penalty and reasons for it, and inviting him to make representations. Subsection (3) imposes a limitation period on the Commission's right to take action to impose such a penalty. Under subsection (4), the Commission will only be able to issue a notice imposing a requirement to pay the penalty, once the period in which the licence holder may make representations has expired. Subsection (5) enables the Commission to enforce the penalty in the manner of any other civil debt. Subsection (6) requires the Commission to publish a statement of principle setting out how its powers under this clause will be carried out. This is separate from the clause 7 statement. There is to be no limit to the level of fine allowed, but in setting a penalty, the Commission will have to have regard to certain factors including the seriousness of the breach, and the state of knowledge of the licence holder at the time of the offence.

#### **Clause 37: Initial duration**

104. The Commission will be given the power to set the length of operating licences up to a maximum duration of ten years. The Commission may specify different periods for operating licences catering for different classes of gambling activity. However, the Commission may not set different lengths for individual licence holders, so that, for example, if two people hold an operating licence entitling them to run a bingo operation, the length of both licences must be the same. As part of the statement, which the Commission is to publish under clause 7, it will publish its policy on the duration of operating licences. The duration of licences may be altered by the Commission, but only as far as this affects licences after the date of the alteration. The Secretary of State will be able to override the Commission's power, having a reserve power to fix the durations for operating licences or particular categories of operating licence, and will be able to amend the ten year maximum duration. The Regulations may not be retrospective.

#### **Clause 38 - 39: Surrender and lapse**

105. If the holder of an operating licence no longer wishes to retain the licence, for example because he has ceased running his business, or is proposing to sell his business, he may give it up voluntarily by surrendering it to the Commission under the provisions of clause 38. He may not transfer the licence.

106. Clause 39 provides for the operating licence to lapse where the licence holder

is no longer able to conduct gambling. This can be for various reasons. Where the licence holder is an individual, the licence will lapse if the licensee dies, becomes incapable as a consequence of mental or physical incapacity, or becomes bankrupt. Where the licence holder is a company or other association, this clause also provides for lapse where the licence holder ceases to exist or becomes insolvent.

**Clause 40: Forfeiture**

107. Clause 40 gives a power to a court to forfeit an operating licence where the licence holder is convicted of certain, more serious and significant criminal offences. These offences will be specified in full in the complete draft Bill. Such action may be taken directly by the convicting court, an appeal court, or the High Court where relevant. The court may also suspend the licence. Where the court forfeits the licence, it must notify the Commission of its decision and the licensee must deliver the licence to the Commission, or explain why it cannot be provided.

**Clause 41: Renewal of licence**

108. Licensees will be able to apply for renewal during the period between three months and one month before the licence is due to expire. Where the Commission is still considering an application for renewal on the date when the licence is due to expire, then the licence will still have effect until the application is determined.

109. The procedures for making an application for renewal may be the same as those for the original application, but, equally, different arrangements may also be made. The application for renewal must, however, be accompanied by the licence or a statement must be provided explaining why it is not possible to do so.

**Clause 43: Relevant offence: disapplication of rehabilitation**

110. The Rehabilitation of Offenders Act 1974 allows for criminal convictions to become 'spent' after a period of time following conviction and the payment of any fine or the serving of any period of imprisonment. It is intended that where the criminal convictions of a licence holder or a person relevant to the application may be taken into account by the Commission, certain convictions of a certain type will be able to be taken into account even if the conviction is 'spent'. These offences will be set out in full in the complete draft Bill.

**PART 4: PERSONAL LICENCES**

111. This part of the Bill deals with the personal licences that certain individuals working in the gambling industry will be required to obtain. Personal licences will be similar to the certificates of approval currently issued by the Gaming Board under section 19 and Schedule 5 to the Gaming Act 1968. The requirement for operating licence holders to retain personnel who hold a personal licence is set out in Part 3 of the Bill. Unless the operator is a small-scale operator under clause 24, clause 23 provides that the Commission is to use its condition making powers to ensure that for each operating licence, at least one person occupies a specified management office



and holds a personal licence authorising them to perform the functions of the office.

112. The provisions of this part of the Bill will provide a consistent approach across the gambling industry and enable the Commission to identify which posts will call for the holder to be personally licensed. Under clause 23, the requirement for a specified management office to be held or a specified operational function to be performed by the holder of a personal licence will be attached to an operating licence by general or individual condition of the Commission, or by condition of the Secretary of State.

**Clause 45: Nature of personal licence**

113. A personal licence will authorise holders to perform certain specified functions in relation to gambling. The clause is wide enough to cover both those in the position of directly providing the facilities for gambling, such as a croupier, and those who perform certain functions in a gambling operation but do not actually themselves provide the facilities, such as a compliance officer.

**Clause 46: Application of provisions of Part 3**

114. Clause 46 provides that the regime for personal licensing under Part 4 is not intended to be a regime in its own right, but instead builds upon the regime for operating licensing in Part 3. Part 4 is therefore to be read as incorporating all the requirements for operating licences under Part 3, unless Part 3 is amended or added to by specific provisions in this part or regulations under them, and any other necessary modifications. Where regulations under this part depart from the operating licence regime, they may make different provisions in relation to different types of function and different circumstances.

**Clause 47: Application**

115. Subsection (1) of clause 47 adds particularity to the list of matters which must be specified on a licence application under clause 14 subsection (2) for the purposes of personal licence applications. Paragraph (c) and (f) of subsection (2) state that the form and manner of the application must be as the Commission direct, and that any additional information as the Commission may direct must be included in it. Subsection (1) of clause 47 provides that in relation to personal licences, a direction may particularly require the application to be signed by the applicant's employer and contain information provided by the employer or about the applicant's employment.

116. Subsection (1)(a) of clause 17 gives the Commission a power to require the applicant to provide information in order for it to consider the application. Subsection (2) of clause 47 adds particularity to this for the purpose of personal licence applications, providing that in the context of this power, the Commission may particularly require the applicant for a personal licence to obtain information from his employer.

117. Subsection (3) provides that for the purposes of this clause, the definition of 'employer' is wide enough to cover contractors as well as those under a contract of employment. Notwithstanding the above, subsection (4) provides that a person does

not have to be employed in order to apply for a personal licence. A person may acquire a licence prior to seeking employment in order, for example, to improve his chances of finding work.

**Clause 48: Initial duration**

118. Clause 48 provides that subject to the provisions in Part 3 relating to surrender, lapse, forfeiture and renewal of the licence, personal licences will be valid for ten years. The Secretary of State will be able, by order, to replace this with a different length of time. Any such order will not, however, affect licences already issued.

**Clause 49: No annual fee**

119. In contrast to operating licences, there is to be no an annual fee for personal licences.

**Clause 50: Multiple licences**

120. An individual will not be allowed to hold more than one personal licence. Personal licences may, however, cover a number of management or operational functions, allowing one individual to conduct a number of functions under one licence.

**Clause 51: Production of licence**

121. Clause 51 gives police constables and Commission inspectors power to require a personal licensee to produce their licence within a specified period. If the individual is carrying on a licensed activity or is on licensed premises, then the licence must be produced immediately. This means that a personal licence holder will be required to keep the licence on their person when carrying on a licensed activity or when they are on licensed premises. This is in contrast to the operating licence holder, who, unless they are a 'small scale operator' can only be required to produce the licence within a specified period.

**Clause 52: Review**

122. There will be no mechanism to review personal licences in the way that operating licences can be reviewed. This does not affect the Commission's ability to review (and alter) the conditions of an operating licence which relate to personal licences.

**Clause 53: Renewal**

123. Clause 53 provides that subject to the provisions in Part 3 relating to surrender, lapse and forfeiture, a renewed personal licence is to be valid for ten years. The Secretary of State may revise this duration by regulations, but regulations will not have any effect on licences renewed prior to the point that regulations are made.

**Clause 54 - 55: Disqualification and forfeiture**

124. In addition to the procedure for forfeiture of a personal licence available to the courts under clause 40, clause 54 allows a court which is entitled to make a forfeiture

order to order that the person be disqualified from holding a personal licence for a period of up to ten years. This can be instead of, or in addition to, an order for forfeiture. During this period, the Commission may not issue the person with a personal licence. Clause 55 obliges the Commission to notify any operating licence holder whom it believes is receiving services from a disqualified personal licence holder, or one whose licence has been revoked, or made the subject of a forfeiture order.

**Clause 56: Conviction**

125. Clause 56 requires the holder of an operating licence to notify the Commission on becoming aware that the holder of a personal licence who acts for him in connection with the licensed activities has been convicted of a relevant offence by a court. It will be an offence not to comply with this requirement. The requirement to notify will allow the Commission to reconsider the licence holder's suitability to hold a personal licence if they are convicted of a relevant offence, and, potentially, to revoke the licence.



## Annex B: Regulatory impact assessment

### 1. Introduction

- 1.1 This regulatory impact assessment (RIA) assesses the impact of measures covered in the publication of certain parts of the draft Gambling Bill in July 2003.
- 1.2 The Government set up an independent review of gambling law under the chairmanship of Sir Alan Budd in 1999 to consider how gambling should be regulated. The Review's report, "The Gambling Review Report", made 176 recommendations for changes to the current system of control. The report was published on 17 July 2001 and the Department invited comments. Around 270 formal submissions were received, together with more than 4700 letters about individual recommendations. A number of meetings were also held with industry representatives and other stakeholders, including representatives of faiths and charitable organisations.
- 1.3 The Government published its response to the report in "A safe bet for success" in March 2002. Of the 176 recommendations made by the Review Body, the Government announced that it was minded to implement, either in full or part, 157, rejecting only 9, with a further 10 subject to further consideration and consultation.
- 1.4 The proposals in this publication focus on the establishment of a new regulator, the Gambling Commission, which will have wider functions, greater flexibility to act and stronger enforcement powers than the existing Gaming Board for Great Britain. They outline the principal function of the Gambling Commission - the licensing of gambling operations and key personnel. The Commission will have flexibility to impose licence conditions on categories of licences and, where necessary, on specific operators. It will also have powers to review licences where it believes conditions have been breached or where there is some other threat to the objectives of regulation. The draft clauses also outline the ways in which the Commission will be able to use codes of practice to pursue best practice across each sector of the gambling industry.
- 1.5 The Government intends to publish the full draft Gambling Bill in the autumn. This draft Bill will be subject to thorough pre-legislative scrutiny by Parliament. Future proposals will give local authorities responsibility for the licensing of gambling premises and outline the new licensing regime for each sector of the gambling industry. A detailed RIA for the full draft Gambling Bill will be published with these further proposals.

### 2. Purpose and intended effect of measure

#### (i) The objective

- 2.1 The Government intends to modernise gambling law and ensure that it provides a new, effective and flexible balance of regulation. The Gambling Bill is intended to sweep away restrictions that are no longer needed or which

reflect assumptions about the way in which gambling has to take place that are no longer valid. More people have become more willing to see gambling as a mainstream leisure activity. Some of the key elements of the current system of regulation have come to be seen as imposing unnecessary restrictions on the ability of business to meet consumers' wishes. One consequence has been that, while people in Great Britain can lawfully go on the Internet to use gaming sites based abroad, there is no provision for British operators to provide well-regulated alternatives. The present law is also inflexible, in the sense that much of the regulatory detail is prescribed in statute, and cannot readily be modified to respond to developments in what is a highly innovative and fast-moving industry. At the same time, the law currently provides inadequate regulation in terms of fairness for participants and protection for the vulnerable.

- 2.2 On the basis of these aims, the licensing objectives of the Gambling Bill and the Gambling Commission are that:
- Gambling should be crime-free, honest and conducted in accordance with regulation;
  - Players should know what to expect and be confident that they will get it and not be exploited; and
  - There should be adequate protection for vulnerable persons, and protection for children from the effects of harmful gambling.
- 2.3 To deliver these objectives, the Government will:
- Simplify regulation and ensure that it can respond flexibly to future technological and market developments;
  - Replace three Acts of Parliament governing the conduct of gambling in Great Britain: the Betting Gaming and Lotteries Act 1963; the Gaming Act 1968; the Lotteries and Amusements Act 1976 and consolidate them into one Act. It will also include consequential amendments to a number of other Acts including the Gaming Act 1845 and the Gaming Bingo Act 1985;
  - Set up a new regulator, the Gambling Commission;
  - Extend choice for adult gamblers; and
  - Recognise the special nature of the National Lottery, with no side betting to be allowed on National Lottery results.

## **(ii) The background**

- 2.4 The commercial gambling industry currently has a wide range of regulating and licensing authorities. The Gaming Board of Great Britain, licensing magistrates, local authorities, the Horserace Betting Levy Board and the Horserace Totalisator Board exercise different regulatory functions which do not fit today's market where operators frequently provide a variety of products with entirely different licensing arrangements. Licences issued are valid for different periods, and subject to a wide variety of fees.

### Gaming Board for Great Britain

- 2.5 The Gaming Board is a non-departmental body, funded by grant-in-aid. It currently regulates gaming and certain forms of lotteries under the Gaming

Act 1968 and the Lotteries and Amusements Act 1976 respectively. In particular, it:

- Issues certificates of consent for the operation of casino and bingo clubs;
- Gives prior approval to certain personnel, such as croupiers, connected with gaming in gaming clubs, which are licensed under the 1968 Act;
- Issues certificates and permits to persons who sell, supply or maintain gaming machines; and
- Registers lotteries above certain thresholds; and certifies external lottery managers.

#### Licensing justices

- 2.6 Licensing justices issue bookmakers' permits, the main source of permission for the provision of betting, under the terms of the Betting, Gaming and Lotteries Act 1963. Licensing justices also issue premises licences to those holding a certificate of consent from the Gaming Board. The Licensing Board (constituted under the Licensing (Scotland) Act 1976) undertakes these functions in Scotland.

#### Local authorities

- 2.7 Local authorities license pools promoters and register society lotteries whose total tickets fall below the threshold requiring registration with the Gaming Board, as well as tracks for betting, arcades, family entertainment centres and other non-liquor licence premises.

#### **(iii) Risk assessment**

- 2.8 There are potential risks associated in implementing the Government's proposals to modernise the law on gambling:
- 2.9 Social issues: the main issue identified in extending choice and availability of gambling is that it could lead to an increase in problem gambling. It is estimated that there are between 275,000 and 370,000 problem gamblers in the UK. The Gambling Review Body recognised that some individuals become obsessed by gambling to the point at which they cease to function as normal members of society and may do great harm not only to themselves and also to their families and possibly the general public. They also recognised that their proposals would generally increase the gambling opportunities for adults, and concluded that children are a vulnerable part of the community for whom it is right to prescribe special rules. They were also concerned about the broader effect on communities through an increase in the number and size of gambling enterprises.
- 2.10 Crime: relaxing gambling regulations could potentially increase the risk of criminal infiltration and money laundering.

### **3. Options**

- 3.1 There would appear to be three options regarding the regulation of the gambling industry and operating and personal licensing. These are:

**Option 1** – leave the legislation unchanged with the Gaming Board continuing its current role (i.e. retain the status quo).

3.2 The current regulation and licensing of the gambling industry would continue as set out in paras 2.4-2.7.

**Option 2** – establish a new Gambling Commission with the responsibilities proposed in "A safe bet for success".

3.3 Under this option, the Commission would take over the licensing and regulatory responsibilities of the current Gaming Board for Great Britain in relation to casinos, bingo and society lotteries. In addition, it would assume responsibility for:

- The relevant licensing, certification, registration and the associated regulatory responsibilities for bookmakers' permits, currently undertaken by licensing justices (and, in Scotland, by Local Licensing Boards);
- Licensing of pools promoters and society lotteries, currently undertaken by local authorities;
- Licensing of the manufacture, sale, supply, maintenance or repair of gaming machines; and
- Licensing of external lottery managers.

3.4 The Commission would also license and regulate gaming by means of remote technology for the first time. It would be able to issue licences for Internet gambling and all other forms of remote gambling, including interactive television and mobile telephony. The Commission would not be responsible for spread betting which is subject to regulation separately by the Financial Services Authority, nor the National Lottery which will continue to be regulated by the National Lottery Commission.

3.5 The Commission would license gambling operations and specified categories of gambling industry staff. It would have powers to undertake such enquiries as are necessary in order to reach decisions in connection with individual licence applications. It would be able to:

- Interview applicants for operating and personal licences in order to determine whether they meet the necessary requirements;
- Require the production of criminal records certificates from applicants for personal and operating licences;
- Receive information from enhanced criminal records disclosures;
- Exchange information, using statutory gateways, with law enforcement and regulatory bodies, including those in overseas jurisdictions;
- Following consultation with the industry, consumer groups and others, develop and disseminate statutory codes of practice. Such codes may cover subjects issues such as social responsibility;
- When granting licences, attach conditions to licences and issue relevant codes of practice in respect of the conduct of particular types of gambling, or the conduct of licensed operators or persons, or the operation of particular types of gambling;



- Undertake reviews of operating licences (whether individual licences or classes of licence) where some change may be necessary to ensure that the licensing objectives are protected. Such changes may involve an adjustment to the scope of a licence or the attachment of new conditions. It may equally involve the removal of conditions that are judged to have become unnecessary; and
- Issue guidance to local authorities on minimum standards and mandatory requirements for individual categories of gambling premises, which local authorities should be required to take into account in determining applications for gambling licences or permits.

3.6 A key aspect of this new framework would be the Commission's ability to attach conditions to operating and personal licences, and to issue codes of practice following consultation with industry and other interests. Licence conditions would be related to the statutory licensing objectives but, within this, the Commission would have flexibility to attach conditions focused not just on classes of licence holders, but if it judges necessary, on individual licensees.

**Option 3** – establish a new Gambling Commission with the full range of responsibilities proposed in the "Gambling Review Report".

3.7 This option would establish a new regulator, the Gambling Commission, with the main responsibilities set out under Option 2, with two exceptions:

- On the issue of personal licences, betting shop managers would need to be licensed by the Gambling Commission; and
- All larger society lotteries and their promoters would need to register with the Commission.

## 4. Benefits

### Option 1

4.1 The current system of regulation has worked reasonably well but is increasingly unable to cope with innovations such as Internet gaming.

### Option 2

4.2 This option would modernise and simplify regulation of the gambling industry. It would create a single regulatory authority for all commercial gambling, with the exception of spread betting and the National Lottery, so any operator considering a new business would be able to seek permission for any combination of gambling activities from the Gambling Commission. The establishment of a single regulator would allow entry and compliance controls to be applied consistently and proportionately across all sectors of the industry.

4.3 The Commission would be able to operate independently of Government, and will have the powers and the flexibility to respond effectively to changing regulatory concerns and to continually seek to improve standards of performance and social responsibility. The Commission would be able to

use codes of practice to ensure best practice across each sector of the industry.

- 4.4 There would be better regulation of operators and key personnel as the Commission would have the flexibility to impose licence conditions on categories of licences and, where necessary, on specific operators. It would also have the power to review licences where it believes conditions have been breached or where there is some other threat to the three key objectives of regulation.
- 4.5 This option accepts the need for additional personal licensing than at present, but does not agree that betting shop manager is the right level. The Commission would issue personal licences on the basis of an assessment of honesty and competence and this option envisages that licences would be required by betting operators, directors and senior managers of corporate operators. This would ensure that the key objectives of the Bill are met in so far as the integrity of betting would be maintained, that customers are treated fairly and that children are protected.

### **Option 3**

- 4.6 The benefits are essentially the same as in option 2 but with increased costs and regulatory burden for the additional personal licences that would be issued to betting shop managers but without corresponding regulatory gains, since personal licences would be issued to those holding key operational and management functions in betting businesses. There would also be an increased burden on society lotteries that would otherwise not have been required to register with the Commission.

### **Business sectors affected**

- 4.7 The business sectors affected will be those connected with commercial gambling with the exception of spread betting and the National Lottery – casinos, bingo clubs, gaming machine arcades, family entertainment centres, travelling showman’s fairs, gaming machine suppliers and manufacturers, other premises that have gaming machines (including pubs), bookmakers, racecourses, greyhound racing, lotteries and those conducting prize competitions and promotional draws including premium rate operators, propriety and members’ clubs, remote gaming operators and specialists, and the tourist industry. Charities and voluntary organisations will also, potentially, be affected by the recommendations relating to society lotteries.

### **Issues of equity and fairness**

- 4.8 On the proposals regarding operating and personal licensing, each gambling sector would be self funded and licence fees would include a charge to cover administration and enforcement of the system, the investigation and prosecution of, for example, unlicensed trader and the cost of appeals. The proposals would enable the Commission to set fees more flexibly and fairly than at present.

## 5. Costs

- 5.1 The compliance costs have been reviewed since the publication of "A safe bet for success". These will be further revised as the operational procedures for the Gambling Commission, local authorities and appeals are developed and will be included in the RIA for the full draft Gambling Bill.
- 5.2 The costs outlined for the three options below also include the proposed new costs relating to appeals and the role of local authorities in premises licensing for ease of comparison between the current and proposed regulatory and licensing regimes.

### Option 1 : £7.1m p.a.

- 5.3 Current regulatory costs are summarised on an annual basis in the following table:

	Number	Annual Cost (£m)
Gaming Board Costs <sup>1</sup>		4.7
Gaming machine arcades	2000	0.17
Gaming machines in pubs	60,000 pubs	0.64
Gaming machines in other locations with an on-licence	2,000 premises	0.02
Lotteries (registration fees)	40,000	1.0
Bookmakers permit and betting office licences <sup>2</sup>	1013 applications	0.05
	1403 renewals	0.009
Football Pools <sup>3</sup>	3	0.007
Tracks (greyhound and others)	180	0.44
Tracks (horse) <sup>4</sup>	60	0.06
<b>Total</b>		<b>7.1</b>

### Option 2 : £11.5 – 17.9m p.a.

- 5.4 Under option 2, the Gambling Commission would regulate a far wider sector of the gambling industry than the current Gaming Board and it will have far wider powers. Although costs are higher than at present, they would be directly proportionate to the work undertaken by the Commission in regulating the industry which is anticipated to be much larger and diverse than at present. It will be important for the Commission to be adequately resourced to fulfil its regulatory functions to provide the confidence that the industry and public expect in the new laws.

<sup>1</sup> Annual figure based on the estimate of the number of licences for 2003/04. Gaming Board costs include certificates of consent issued by the Board to bingo clubs and National Game, casinos, certificates to specified staff employed in casinos and bingo halls, and to those who sell, supply or maintain gaming machines, lottery managers, and registration of certain societies' lotteries. Costs include work undertaken by licensing justices in issuing premises licences and permits to bingo clubs, casinos and members clubs.

<sup>2</sup> Home Office Statistical Bulletin: Betting licensing June 1999 – May 2000

<sup>3</sup> Fees set by local authorities not to exceed £464. Figures includes costs of local authority accountancy services to the operator

<sup>4</sup> Includes estimated costs of Levy Board certificate of approval system.

5.5 The Gambling Review Report recommended that there should be a formal duty on gambling operators to ensure that appropriate checks are made on employees who are involved in the gambling industry (including bookmaking employees) but are not otherwise regulated by the Gambling Commission. How this would work in practice will be a matter for further consultation with the industry, but it could, for example, include a requirement for criminal records checks every five years on employees who have remained in the same position, or who have been promoted to a position below manager in the same company and who would not otherwise need to be re-licensed by the Commission. The Criminal Record Bureau (CRB) will carry out criminal records checks for individuals, on application for a fee. Basic, standard and enhanced disclosure fees cost £29.

5.6 Estimated annual regulatory costs for option 2 are summarised on an annual basis in the table below:

<b>Estimated Regulatory costs for the Bill</b>	<b>(£m)</b>
Gambling Commission	10 – 13
Local Authorities	1-4
Employers/employees costs for CRB checks	0.4
Appeals	0.1 – 0.5
<b>Total</b>	<b>11.5 – 17.9</b>
<b>Net increase over current regulatory costs</b>	<b>4.4 – 10.8</b>

### **Option 3 : £13 – 19.4m p.a.**

5.7 Compliance costs are very similar to option 2 except costs for the Gambling Commission would be increased as all betting shop managers would need to obtain personal licences.

5.8 Estimated annual regulatory costs for option 3 are summarised on an annual basis in the table below:

<b>Estimated Regulatory costs for the Bill</b>	<b>(£m)</b>
Gambling Commission	11.5 – 14.5
Local Authorities	1-4
Employers/employees costs for CRB checks	0.4
Appeals	0.1 – 0.5
<b>Total</b>	<b>13 – 19.4</b>
<b>Net increase over current regulatory costs</b>	<b>5.9 – 12.3</b>

## **6. Consultation with small business**

6.1 The Small Business Service has been involved in the consultation process. Trade organisations that have both large and small operators as members have been consulted in preparing the policy for the Bill. The Government's objectives, within the overall framework for effective regulation, will be to minimise any disproportionate impact on small business, and a number of the specific recommendations in the "Gambling Review Report" have been modified or rejected.

## **7. Competition assessment**

- 7.1 The Office of Fair Trading has been consulted about the proposed changes in the Gambling Bill. It is expected that implementation of the Gambling Bill will generally have a positive effect on competition within the sectors that comprise the gambling industry. This view is made on the basis that the Bill will remove many restrictions and statutory requirements for businesses that may currently act as barriers to entry. Although the Bill will also create some additional compliance costs, these are not expected to be sufficient to have a significant impact on competition in any of the gambling sectors.

## **8. Enforcement and sanctions**

- 8.1 The Gambling Commission will ensure compliance and there will be an enforcement role for local authorities. Implementation of the Bill will facilitate better cross-agency working and sharing of information between law enforcement bodies such as Customs and Excise, the Financial Services Authority, the National Lottery Commission and others, which will help to combat crime.
- 8.2 The Bill will contain a wide-ranging list of specific criminal offences and sanctions that will enable effective action to be taken against those who break the law. Operator and personal licences will be supported as an alternative to criminal proceedings, by a flexible range of sanctions ranging from cautions and licence endorsements to financial penalties and withdrawal of licences.

## **9. Monitoring and review**

- 9.1 The Gambling Commission will keep the operation of the new legislation under review and will monitor the social and economic impact of gambling, adjust regulations as necessary and advise the Government on the need for legislative changes. It will liaise and consult with stakeholder interests. An annual report of its activities will be published.

## **10. Consultation**

### **(i) Within government**

Office of the Deputy Prime Minister	Local Authority Co-ordinators of Regulatory Services
HM Customs and Excise	Local Government Association
Home Office	National Criminal Intelligence Service
HM Treasury	National Lottery Commission
Scotland Office	Gaming Board for Great Britain
Department of Health	
Department for Education and Science	
Cabinet Office	
Department of Constitutional	

Affairs  
 The Court Service  
 Department of Trade and Industry  
 Office of Fair Trading  
 Scottish Executive

**(ii) Stakeholders & the public**

10.1 Meetings have been held with industry representatives and other stakeholders, including representatives of faiths and charitable organisations.

**11. Summary and recommendations**

Option	Total cost per annum	Total benefit per annum
Option 1	£7.1m	No additional benefits
Option 2	£11.5 - 17.9m	Better regulation Reduced costs for the Gambling Commission
Option 3	£13 – 19.4m	Better regulation

11.1 It is recommended that **option 2** is pursued. This would deliver the establishment of a new regulator, the Gambling Commission, which will have the wider functions, greater flexibility to act and stronger enforcement powers than the existing Gaming Board that would continue to exist under option 1. It would also result in a more proportionate and efficient system of personal licensing than that envisaged for option 3.

**Declaration**

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances described.

Rt Hon Lord McIntosh of Haringey  
 Minister for Media and Heritage  
 Department for Culture, Media and Sport  
 July 2003

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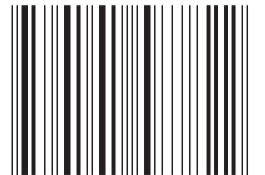
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