



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

DRAFT GAMBLING BILL

Government Response to
the First Report of the Joint Committee on
the Draft Gambling Bill;
Session 2003-2004

*Presented to Parliament by the
Secretary of State for Culture, Media and Sport
by Command of Her Majesty
June 2004*

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Foreword by the Secretary of State for Culture, Media and Sport

I thank the Joint Committee for their work. Their report is a thorough examination of all the issues surrounding the reform of gambling law in Britain. We have considered each of their recommendations very carefully, and in this response we accept 121 of their 139 conclusions and recommendations.

I am pleased that the Scrutiny Committee accepts that new controls are needed to keep up with changes in technology if we are to keep gambling crime free, and protect children from new and old temptations.

There is a national ambivalence about gambling, even though (when you include the National Lottery) 71% of us say we have gambled in the previous year. Yet the public image of the gambling industry is less straightforward. It is as if the fact that gambling plays such a large part in our lives is a collective guilty secret. It was, after all, only in the 1990s that bookmakers were no longer required to have blacked out windows. Times change, and the law must change with them.

So gambling is a massive global industry, and is entitled to a regulatory framework that ensures continued growth. But it is not an industry like any other: its social consequences reach well beyond the wallet of the individual gambler.

Great Britain has one of the lowest rates of problem gambling in the developed world. I intend to keep it that way. So the new powers and protections in this Bill, some recommended by the Scrutiny Committee and some going further than they suggested, all have that one aim.

We don't know if more people will choose to gamble after our legislation is passed. But the point is that they will be better protected than they are now. We know of no country that will have a more effective system of regulation than ours will be under the Bill.

We only propose additional consumer choice where we can also protect children and vulnerable players. And before implementation of the new regime, we will carry out a national study of participation in gambling and the prevalence of problem gambling. The new national regulator will then conduct further studies every three years.

If the evidence tells us that we need to be tougher to protect the public, then we will be. If there is sustained evidence that reform has gone well, then we can consider allowing further choice. But we will be cautious for now.

Gambling in Great Britain will continue to be highly regulated. And in the future we will continue to put the interests of children and vulnerable players first, second and third.



TESSA JOWELL

INTRODUCTION

Our priority – new protections for the public

It has been evident for some time that 1960s legislation on gambling needs to be improved. The rise of the internet and new technology has put the law under increasing strain.

Take the example of ‘fixed odds betting terminals’ (FOBTs) in betting offices. These machines offer rapid play high prize gambling. They are a clear example of a new product emerging even though the current law certainly never envisaged it. So there is no satisfactory provision for consumer protection.

Where there has been concern about new products, the Government has urged trade associations and individual companies to make them available in a way that provides protections for the public. The response from the industry has been largely positive.

But we cannot rely only upon good will. The public must be confident in the rigour and effectiveness of protections. So the Government re-affirms its commitment to a new Gambling Act that provides comprehensive and flexible protections for the public.

The new Act will give Parliament and the regulators the powers they need now and, by being flexible, will ensure that those protections can be adapted swiftly to counter the risks that further developments in technology will bring.

A cautious approach to new gambling choices

The Committee recommend that the Government proceed cautiously in allowing adults new opportunities to gamble. We accept this advice because we want to be sure that new choices do not harm vulnerable players.

Our guiding principle is that opportunities to gamble should only be permitted where Parliament and the public can be confident that protective measures can be put in place to deal effectively with the risks. We believe that such measures are possible and practicable in relation to all of the products that might be offered under the Bill.

Because of this we do not accept the Joint Committee’s conclusion that the legislation will increase the number of people in Great Britain with a gambling problem. The Bill will impose new controls on existing and new products. So, for example, for the first time, people playing on Internet casinos can do so in a regulated environment where they can be sure they will be treated fairly. These protections are not available now. The Government therefore contests the view that an increase in gambling provision following the passage of the Bill is bound to increase the level of problem gambling. That view fails to take into account the effect of new controls on all gambling, and not just any increase in provision.

But the Government does not underestimate the legitimate anxiety that exists about the greater availability of gambling, and the potential for negative social impact. It is evident that, while most people are content to let others make their own leisure choices, there is no general appetite for an unchecked expansion of gambling facilities and premises.

Our responses to key recommendations

The Government agrees with the Committee's general approach. In our response, we accept a number of key recommendations made by the Committee in arguing for a cautious approach to reform.

- No casino should be permitted an unlimited number of gaming machines (recommendation 76).
- Bingo should not be permitted in small casinos (recommendation 94).
- We agree that there should be a national survey of gambling participation and problem gambling prior to the implementation of the Bill and that further surveys should take place regularly thereafter (recommendation 41). But we propose that surveys take place every three years, rather than the five years recommended by the Joint Committee.
- Gaming machines will be removed from unlicensed premises like fish and chip shops and mini-cab offices (recommendations 60 and 61).

On the other hand, we reject in our response a number of the Joint Committee's recommendations because we wish to take a more cautious approach than they propose.

- We will maintain the prohibition on the offering of credit by the operators of casino and bingo premises, and will, therefore, reject part of recommendation 70.
- We propose to reduce the number of gaming machines that small casinos may install for each gaming table they have. We propose that they be permitted two machines per gaming table, rather than the three noted in recommendation 74.
- We will reduce the maximum prize for gaming machines that offer non-monetary prizes, which can be played by children. We, therefore, reject recommendation 97.
- We propose that pubs and clubs will be required to seek an additional bingo licence if in any period of seven days stakes or prizes exceed £1000. We, therefore, reject recommendation 95, which proposes raising that limit to £2000.

New proposals to strengthen protections

Having reflected on the evidence offered to the Joint Committee, we also now bring forward new proposals to strengthen further our precautionary approach and the protections for the public in the Bill.

- We will put social responsibility at the heart of the new regime. Every operator will be required, as a condition of their licence, to comply with Gambling Commission codes of practice on social responsibility. Any operator failing to meet the conditions of their licence will risk its revocation.
- We will limit the accessibility of unlimited prize gaming machines. We think it important that these machines be introduced gradually to allow close monitoring of their effect on consumer behaviour and of the success of regulatory controls. We, therefore, propose that only the largest 'regional' casinos will be permitted to install unlimited prize gaming machines. Small and large casinos will be permitted gaming machines with limited prizes only.

- We propose to cap gaming machine numbers in all casinos. Small casinos will be permitted a maximum of 80 machines; large casinos, 150 machines, and regional casinos, 1250 machines.
- Lastly, we wish to give local communities and local authorities greater influence in deciding whether to have new (or more) casino premises in their area. We propose, therefore, that local authorities should have a power to consider whether they wish to license any or further casino premises in their area. This new power will ensure that local communities, working with their elected representatives, have a strong voice in determining whether or not casinos are appropriate for their neighbourhoods.

Continuing the debate

The Joint Committee suggested (recommendation 2) that it be re-convened to consider the content of a further policy statement on casino regulation and the role of Regional Planning Bodies in considering the location of the largest casinos provided for under the Bill. The Government acknowledges that it was not possible for the Committee to reach a final view on this issue. We, therefore, accept their recommendation and will put motions before both Houses of Parliament to renominate the Committee to consider their final view on this one issue. It is hoped that the Committee will be able to report before Parliament rises for its summer recess. The Government will give whatever assistance it can to aid the Committee's work.

To that end, this response document also includes, at the annex, a further statement of Government policy in relation to casinos, which provides further details of the Government's proposals for casinos. The statement explains, in particular, how proposals for gambling regulation are to be integrated with arrangements for regional and local planning in the case of the largest casinos.

Moving forward to legislation

The Government is grateful to the Joint Committee for the substantial work it has done in scrutinising our draft proposals. Their recommendations have improved further a programme of reform that had already undergone a rigorous process of independent review, public consultation and consideration by Ministers. That programme has now also been scrutinised by a committee of both Houses of Parliament representing all the major parties. That Committee, and the vast majority of other representations, have concluded that reform of our gambling laws is now needed as soon as possible. The Government agrees. We will introduce a Gambling Bill as soon as Parliamentary time permits.

Department for Culture, Media and Sport

June 2004

GOVERNMENT RESPONSE TO THE JOINT COMMITTEE

This section of the response document explains the Government's view on each of the Joint Committee's recommendations and conclusions. In some places, the Government provides a view on a combination of recommendations where that appeared sensible.

Recommendations and Government response

Introduction

1. We recommend that, in future, the Government should ensure that the full text of draft Bills is available to pre-legislative scrutiny committees in good time before they are asked to report. We further recommend that the clauses of this draft Bill yet to be published are, at the very least, referred to an appropriate Select Committee for consideration, and that the proposals relating to other parts of the United Kingdom are considered either by the appropriate devolved parliamentary body or territorial affairs Committee in the House of Commons, depending on whether they cover devolved or reserved matters.

The Government acknowledges that the task of the Joint Scrutiny Committee was made more difficult because the Department was not able to publish the full text of the draft Bill. However, the Department was able to publish 271 clauses, which covered the main policy proposals, together with a full delegated powers memorandum and a number of detailed policy notes on issues not addressed by draft clauses, which it is hoped were of some assistance to the Committee. The Government will certainly attempt, in future, to make available the full text of draft Bills where possible.

The Government accepts that any further publication of draft clauses from the Bill should be made available to Parliament, the Culture, Media and Sport Committee and that clauses that address the functions or interests of devolved parliamentary bodies or a territorial affairs Committee in the House of Commons should also be made available to them. The Government is working closely with The Scottish Executive to settle legislative proposals for Scotland, where it is likely that the Scottish Ministers will exercise a number of powers under the Bill in relation to premises licensing. The Government will be guided by the Scottish Executive as to the most appropriate form of consultation with the Scottish Parliament.

2. We believe that there are a number of key questions yet to be answered by the Government concerning the draft Bill. The most important of these, we would suggest, is the threshold at which casino developments are considered by Regional Planning Bodies and are obliged to contribute to regeneration. We gather that a decision on this matter is due to be made by the Department for Culture, Media and Sport (DCMS) and the Office of the Deputy Prime Minister (ODPM) before the summer of 2004. In this context there is a strong case for putting motions before both Houses to renominate this Committee in order for us to make a further Report on those matters. We urge the Government to consider tabling motions to reappoint this Committee so that we can finish the task we have started.

The Government accepts that the Joint Scrutiny Committee considered the draft Bill while some important aspects of policy in relation to casinos remained unresolved. Discussions within Government continued during the period of the Committee's consideration on the issue of large casinos and their interaction with arrangements for local and regional planning approval. This response document includes, at the annex, a further statement on casino policy that addresses the matters left unresolved by the August 2003 ODPM-DCMS policy statement.

In the light of this further statement, the Government agrees that it would be helpful to give the Committee a further opportunity to consider the casino proposals. The Government will, therefore, move motions in both House to renominate the Committee with this specific remit. We hope that it will be possible for the Committee to consider these matters and report before Parliament rises for its summer recess.

Regulatory framework

3. As a Committee, we are content that the objectives in Clause 1 of the draft Bill are balanced and appropriate, and recommend that they be included unamended in the final version of the Bill.

The Government welcomes this recommendation. The licensing objectives in clause 1 are, of course, fundamental to the Bill and the operation of the new system of regulation proposed. They will be included in the Bill when it is introduced.

4. The fact that we have not been able to scrutinise in draft the various codes of practice and other guidance to be issued by the Gambling Commission, in particular under Clauses 15 to 17 of the draft Bill, is regrettable. We understand the reasons why they have not been produced, given the lack of a formally appointed shadow Commission, which we consider later in this Report. However, their absence hampered our consideration of the draft Bill.

This response includes the Government's views on recommendations 4, 8 and 9.

The Government agrees that the Gambling Commission should have the resources necessary to fulfil its responsibilities and has provided the Gaming Board with the funding requested for 2004/05. We envisage the Gaming Board beginning its preparatory work as a shadow Commission following Second Reading of the Gambling Bill in the first House. We do not consider that a paving Bill would now offer any practical advantage in speeding up this process.

Delegated powers

5. We agree with the Lords Delegated Powers and Regulatory Reform Committee's comments about the delegated powers relating to certain key policy areas in the draft Bill, and recommend that the Department for Culture, Media and Sport (DCMS) should accept the Lords Committee's points.

6. It is clear that the Secretary of State would be granted significant delegated powers by the Bill. Parliament must retain control over key policy issues. We suggest that there should be a presumption that statutory instruments concerning key policy areas should be subject to affirmative, rather than negative, resolution procedure.

7. We welcome the acceptance by the Department for Culture, Media and Sport (DCMS) in the Schedule of Detailed Comments on the draft Bill (Annex 1), that there are areas in which the draft Bill should contain additional delegated powers.

This response provides the Government's view on recommendations 5, 6 and 7.

The Government accepts recommendations 5, 6 and 7, and also the views offered on the draft Bill by the Lords Delegated Powers and Regulatory Reform Committee. It is a principle of the Government's approach to gambling reform that the new regulatory framework needs to be flexible.

This flexibility will allow Parliament, the Government and the Gambling Commission to address quickly new developments (and new risks to the consumer) in this quickly developing industry. It is for this reason that the Bill includes a significant number of powers to make secondary legislation.

The Government accepts that where the exercise of secondary legislation powers significantly alters the regulatory impact of the legislation or the licensing structure, the presumption should be that those instruments are subject to affirmative resolution.

The Gambling Commission

8. We are very disappointed that not enough has been done to ensure that the Gaming Board has the resources and authority to conduct its diverse and complex transitional responsibilities. We recommend that the Department for Culture, Media and Sport (DCMS) and HM Treasury address this together as a matter of urgency. If necessary, a paving Bill should be presented to Parliament to establish the necessary authority for this expenditure. In the meantime, DCMS must do all it can to ensure that additional funding requested by the Gaming Board for 2004-05 is made available and can be used to full effect.

Please see response to recommendation 4, above.

9. It is essential that the Gambling Commission has sufficient resources, once established, to carry out its diverse and substantial responsibilities. These include various new and complex areas, such as social responsibility and remote gambling. Once the issue of transitional funding has been resolved, we would expect DCMS and the Gaming Board to maintain an ongoing dialogue about whether the present figure of between £9 million and £11 million needs to be reviewed in the light of experience, and of the assumption of any new responsibilities that are suggested in this Report which the Government accepts. We note that a recent press report referred to a significantly higher estimate, of £14 million. On the basis of the estimates we have seen, even the higher figure would be likely to be a small fraction of the additional revenues that will be generated both for the industry and the Government.

Please see response to recommendation 4, above.

10. The sanctions given to the Gambling Commission in Clauses 95 to 97 of the draft Bill and the direct access to be given to the Crown Prosecution Service, represent a substantial increase in the regulator's capacity to enforce compliance. We are satisfied that these additional enforcement powers are sufficient. We also consider the additional powers in Part 14 of the draft Bill, together with the establishment of formal gateways, to be adequate for the Commission to inspect gambling operators and premises. However, we emphasise that the Commission's success can only be guaranteed if adequate resources are made available to it.

The Government welcomes the Committee's support for the powers available to the Gambling Commission to enforce compliance. The Commission will be able to conduct its own prosecutions and will also have a range of statutory 'gateways' to allow it to gather information and will be able to conduct its own prosecutions.

11. The Committee believes that there is a strong case for a single regulator for the whole of the gambling industry, which we expand on in the next chapter of this Report. We note the arguments made by the Gaming Board and others as to why the Gambling Commission should assume responsibility for certain aspects of spread betting. However, given the

potential difficulties of disentangling sporting spread betting from spread betting on other products, as noted by the Budd review, we recommend that this should be monitored and made subject to review after five years or so, rather than at the time of Royal Assent. We note that this flexibility could be achieved by including a power for the Secretary of State to include spread betting in the definition of “betting” in Clause 7 of the draft Bill. In the meantime, liaison between the Gambling Commission and the Financial Services Authority in this area will be crucial.

The Government welcomes the Committee’s conclusion that spread betting should continue to be regulated by the Financial Services Authority for the time being. The Government agrees that this should be capable of review and that there should be a mechanism for transferring the regulation of spread betting to the Gambling Commission. We will amend the draft Bill accordingly.

12. We look forward to the Commons Culture, Media and Sport Committee’s Report on this issue of the proposed changes to the licensing of the National Lottery, which is to be published as we conclude consideration of this Report. Having heard the arguments from various sources on the Government’s proposals, we are not convinced of their practicality, and believe that the Department for Culture, Media and Sport (DCMS) should reconsider its future policy in this area.

The Government agrees with the Joint Committee that there is a need to consider how to ensure an effective licensing arrangement for the National Lottery that maximises returns to good causes. The Government, therefore, agrees that further work is required ahead of the third licence competition. As part of this, the Department and the National Lottery Commission (NLC) will undertake additional research on the options to maximise returns to good causes. In this, account will be taken of changes in the UK lottery and gambling market and of international experience. The Government will also have full regard to the evidence provided to the Joint Committee. Following this further work, the Government will produce a report on how returns to good causes can be maximised.

13. The Committee is attracted to the idea of a single regulator, and takes the view that there would be distinct advantages for the National Lottery if it were to be included within the remit of the Gambling Commission rather than excluded from it as proposed in Clause 222 of the draft Bill. We are not convinced that the proposed structure will ensure consistency of approach across the gambling sector, particularly on key issues such as problem gambling and player protection.

14. Despite the apparent deficiencies of the National Lottery Commission, given the comments we have already made about the volume of the Gambling Commission’s transitional responsibilities, we do not think that it would be feasible to transfer the regulation of the National Lottery to the Gambling Commission before the next licence competition for the Lottery, in 2007.

15. We accept that the National Lottery Commission will continue to regulate the National Lottery after the Gambling Commission comes into existence. As soon as possible after the next licensing round is complete, this arrangement should be monitored with reference to the possibility of placing the Lottery under the Gambling Commission and to the outcome of the value for money study referred to below.

16. Michael Grade of Camelot suggested that one way of encouraging [the National Lottery Commission and the Gambling Commission] to work together would be to have the “Chairman of the NLC sitting ex officio on the new Gambling Commission just to be present

and to argue the case where there is conflict between [the ...] Lottery and the other gaming products". We so recommend.

17. In the light of the fact that there will be two regulatory structures, we recommend that there should be a detailed value for money study of the National Lottery Commission two years after the Bill receives Royal Assent.

This response provides the Government's views on recommendations 13, 14, 15, 16 and 17.

The Government considers that the National Lottery Commission (NLC) should continue to regulate the National Lottery and, therefore, does not agree that Gambling Commission should regulate the National Lottery. The NLC has very important and distinctive role in the maximising of returns to good causes, which is different to that proposed for the Gambling Commission. The Government, therefore, remains of the view that to combine the regulation of the National Lottery with that of the rest of the sector regulated by the Gambling Commission could give rise to irreconcilable conflicts of interest.

The Government also considers that similar conflict of interest arguments apply against overlapping membership of the Gambling Commission and NLC. Furthermore, the Bill provides explicitly for the NLC and Gambling Commission to work together on issues of common interest, which might include problem gambling and player protection.

The Government agrees that, given the volume of the Gambling Commission's transitional responsibilities, it would not be feasible to transfer the regulation of the National Lottery to the Commission before the next licence competition. But the Government accepts that it would be right to carry out a value for money study of the arrangements for the regulation of the Lottery in the future – the Joint Committee recommends that this should take place two years after Royal Assent. The Government would note that this approach would likely result in the study taking place in the midst of the third licence competition. The Government, therefore, considers that to avoid any risk of destabilising the competition that it would be prudent for the study to take place after the next licence competition.

Regulation

18. We believe that limited duration operating licences, imposed by Clause 89(2) of the draft Bill, could deter investment in gambling developments in the UK and would unnecessarily add to the Gambling Commission's and the industry's regulatory burden. We therefore recommend that, in line with the default position for premises licences, operating licences should have an indefinite duration.

19. If the Government is not minded to amend Clause 89(2) of the draft Bill to remove the limited duration of operating licences, we recommend that the time limit for renewal applications set out in Clause 93(3) should be more flexible, reflecting the type of operation to which the licence relates.

This response offers the Government's views on recommendations 18 and 19.

The Government accepts the recommendation that the Bill be amended to provide that operating licences are not time limited, consistent with the approach taken towards premises licences. The Government notes that the Gambling Commission has the power to review, amend or, ultimately revoke a licence where, amongst other things, operators are no longer complying with their licence conditions.

20. Given the fundamental way in which conditions, attached to operating licences under Part 5 of the draft Bill, could impact on all aspects of an operator’s business, we recommend that guidance is issued, as soon as possible, as to the standard conditions that are likely to be applied to categories of licence.

The Government agrees that it will be important, once the Gambling Commission is established, that it begins as soon as it can the process of consulting on the standard conditions to be attached to operating licences.

21. We agree with the Government’s view that the costs of regulation should be borne by those that are regulated, broadly in proportion to the amount of regulation that each operator requires. We recommend that this should be achieved in the regulations prescribing the fees payable under Clauses 57 and 80 of the draft Bill.

22. The agreement of an equitable fee structure will be a major and challenging task. We recommend that, as soon as possible and before the second reading of the Bill, the Government should publish drafts of the regulations to be made under Clauses 57(5) and 80(2) of the draft Bill, that will prescribe the fee levels. These should be subject to consultation with the industry and the Gaming Board.

This response provides the Government’s view on recommendations 21 and 22.

The Government welcomes the Committee’s acknowledgement that the costs of regulation should be borne by those regulated. The Government also agrees that the appropriate mechanism for achieving this are the fee provisions in clauses 57 and 80. The Government agrees that as soon as possible after the work on the costs of the Gambling Commission is settled, consultation on the fees regime should start, although it may not be feasible to do so by second reading if the Bill is introduced later this year.

23. As with many other aspects of the draft Bill, a lack of available detail has restricted our ability to assess whether the personal licence regime will strike the right balance between regulating key staff and avoiding unnecessary regulatory burdens. Given the potential impact of this regime on the industry and employees, we recommend that draft guidance is produced as soon as possible, for consultation with the industry.

The Government agrees that it will be important, once the Gambling Commission is established, that it begins as soon as it can the process of consulting on the nature of the requirements relating to personal licences which will be imposed as operating licence conditions.

24. We recommend that draft regulations to be made under Clause 104(2) of the draft Bill, defining “small-scale operators”, be produced as soon as possible for consultation with the industry.

The Government agrees that draft regulations defining “small scale operators” should be issued as soon as possible.

25. The Gambling Commission’s proposed powers to sanction non-compliance with licence conditions under Clauses 95 to 97 of the draft Bill are irrelevant if the Commission is not given adequate resources to enable it to monitor compliance and to identify breaches. Accordingly, we recommend that adequate resources must be made available to it for this purpose.

The Government agrees that the Gambling Commission should be properly resourced.

26. Although we acknowledge the concerns about the ability of the Gambling Commission to impose unlimited fines under Clause 97 of the draft Bill, we recommend that this power should be retained and note that the Financial Services Authority has been given a comparable power. Such a sanction would only be a concern to those who have breached their licences and, for some, would be a preferable alternative to the ultimate sanction of revoking a licence under Clause 96. Society lotteries and those who promote them should be required to abide by regulatory requirements and the ability to sanction non-compliance by imposing a fine, however sparingly applied, should be retained.

The Government welcomes the Committee's agreement that the Gambling Commission should be able to impose unlimited fines on operators, including on society lotteries.

27. While we have received some evidence suggesting that appeals from the Gambling Appeals Tribunal should be in respect of both law and facts, we agree with the Government's assessment that the appeals provisions in Part 7 of the draft Bill, which already exceed those suggested by Budd, are adequate.

The Government welcomes the Committee's endorsement of the provisions relating to the Gambling Appeal Tribunal.

28. We concur with Budd's recommendation that ultimately premises licensing should be a matter for local authorities. We consider that the principle underlying such an approach has a number of advantages, including consistency with the regime under the Licensing Act 2003. However, local authorities must be fully prepared before assuming this additional responsibility, which could have significant resource implications.

The Government agrees with the Committee on the need to ensure that local authorities are properly prepared for their new responsibilities. The Government is already in consultation with the Local Government Association, the Convention of Scottish Local Authorities and the Welsh Local Government Association and others about this matter.

29. Balancing the industry's need for certainty and consistency of approach with the requirement that local authorities are able to take account of local circumstances is one of the most challenging aspects of the draft Bill. Our ability to assess whether the proposed regime would achieve this balance has been restricted in part because we have not seen drafts of key information such as the guidance the Gambling Commission would issue to local authorities under Clause 17. We recommend that drafts of this guidance are issued as soon as possible for consultation.

The Government agrees that issuing of guidance to local authorities on premises licences will be a key early task of the Gambling Commission.

30. We recommend that the draft Bill is amended to clarify that any change to a local authority's three-year licensing policy to be issued under Clause 126 would not prejudice the status of existing premises licences. We also recommend that the duration of operating and premises licences in respect of the same activity should be consistent.

The Government does not consider any amendment to Clause 126 to be necessary. In its view, there would be no automatic impact on existing licences from a change in the local authority's three-year licensing policy. The Government accepts that a policy change could lead to a review of licences

taking place; and that the authority would have to take account of its amended policy statement in carrying out the review. Nevertheless, the Government believes that the local authority needs to have the freedom to take account of current policy in carrying out a review. In exercising its functions the authority would of course be required to act reasonably and to take account of the rights of those affected by its decisions.

31. The assumption of the proposed premises licensing function by local authorities will require a great deal of preparation with potentially significant resource implications. Accordingly, we support the recommendation of the Commons Culture, Media and Sport Committee that local authority staff should be trained before the premises licensing function is transferred to them and that the Government should meet the cost of such training. It is also imperative that residual powers are in place to ensure that sufficient funding is available to meet the ongoing costs of local authorities if, for any reason, this is not adequately met by the licence fees payable by operators under Clause 148 of the draft Bill.

The Government agrees that local authority licensing staff will require training before taking on their new responsibilities. The Department is working with the Office of the Deputy Prime Minister, the Local Government Association and others to evaluate the training needs of local authorities. The costs incurred by local authorities to issue premises licences will be fully recovered through premises licence fees. The fees specified in the regulations will be set after full consultation with local authorities to ensure that no additional burdens fall on the general public. The regulations will be reviewed on a regular basis to ensure that they continue to allow local authorities to recover their reasonable costs. This should obviate the need for residual funding powers.

32. We recommend that the Department for Culture, Media and Sport (DCMS) and the Office of the Deputy Prime Minister (ODPM) work together to clarify the interaction of planning permission and premises licensing for gambling premises. Although local people should retain adequate opportunities to have their concerns about proposed gambling developments heard, double jeopardy for the operator should be kept to a minimum.

The Government does not consider that there is a risk of double jeopardy as a consequence of there being arrangements for planning approval and licensing of gambling premises.

Planning approval and the licensing of gambling premises serve different purposes. Planning is about general issues of land use and the way in which land is developed; and local communities will have an interest in those questions. The licensing of gambling premises is focussed specifically on the licensing objectives set out in clause 1 of the draft Bill; and local communities will have an interest in these issues too. The Government therefore believes that these arrangements achieve different purposes and that it is appropriate for local people to have an involvement in both.

It is open to a prospective operator, of course, to apply simultaneously for planning permission and a gambling premises licence. The Bill does not prevent this.

The statement at the annex explains the interaction between local and regional planning arrangements and the licensing of gambling premises with respect to the largest casinos.

33. We recognise the industry's concern that the ability of local authorities to reject planning applications on the basis of need threatens the policy aim of removing the "demand test". However, we consider it appropriate that local authorities should retain the power to prevent the proliferation of gambling premises and, in particular, unlimited stake and prize gaming machines within their areas. We recommend that the model applied to address

saturation of on-licensed premises, in the context of the Licensing Act 2003, should be adopted and that, where relevant, local authorities should be able to address proliferation in the three-year licensing policies they issue under Clause 126 of the draft Bill. We further recommend that the Gambling Commission’s guidance to local authorities under Clause 17 should regulate the means by which local authorities are able to address proliferation in order to ensure consistency and transparency of approach.

The Government accepts this recommendation. In considering this recommendation, we acknowledge the particular concern that, following the removal of the controls in the 1968 legislation; there may be a sudden increase in the number of casino premises in different parts of the country.

The Government has listened to these concerns and has reconsidered its policy on premises licensing, and in particular the level of discretion available to local authorities. We therefore propose that local authorities have power, in the preparation of their licensing policy statement under clause 126, to resolve that they will not issue licences for casino premises in their area or parts of it (or that they will not issue further such licences). The status of existing casinos would not be affected by such a resolution.

We propose also that local authorities should not be limited, in the exercise of this power, only to a consideration of the Bill’s licensing objectives. Local authorities have a wide role in relation to their areas and they should be able to take into account their view of the area’s wider interests in considering this matter. They may also wish to take into account local opinion.

We do not consider that such a power is necessary in relation to other types of premises. But we do believe that local communities and their representatives should have a role in considering whether they wish to limit the growth of new casino premises in their area.

We take this view in the particular circumstances of the present market, where casino growth has been constrained far more rigidly than has been the case in any other sector of gambling. There is consequently the greatest potential for considerable expansion, and impact upon towns, cities and other localities. In assessing a similar proposition, the report of the Gambling Review Body noted that the proper role of the local authority “is to ensure that local people can help shape the environment in which they live”¹ The Government agrees.

In this area, there will also be important synergies between alcohol and gambling licensing. The same committee of the licensing authority (in England and Wales) will consider licence applications for gambling and alcohol; and will therefore be alive to issues of community safety and child protection that may well have implications for licence applications under both systems. Licensing Boards in Scotland already consider applications under the existing gambling regime as well as those for alcohol. Some categories of gambling premises, like casinos, bingo premises and betting tracks, are also likely to seek licences to serve alcohol, and all the arrangements under the Licensing Act will apply to these premises.

34. We welcome the Government’s clarification, in the Schedule of Detailed Comments on the draft Bill (Annex 1), that operators may apply for a full premises licence under Clause 132 at any time, provided that they have a right to occupy the premises to which the application relates. As in the Licensing Act 2003, where an applicant does not have the right to occupy the

¹ Report of the Gambling Review Body; CM 5206: Paragraph 21.11; Page 117.

premises, they could obtain a provisional statement under Clauses 168 and 169 of the draft Bill. We consider that the combination of these provisions would provide adequate certainty for operators. However, we recommend that further consideration should be given to the “change in circumstances”, referred to in Clause 169(2)(b), that would justify a local authority having regard to representations made when a full premises licence is sought that were not made in the context of the provisional statement application.

The Government accepts that further consideration should be given to the “change of circumstances” that would justify a local authority having regard to representations made when a full premises licence is sought that were not made in the context of the provisional statement application.

35. We agree that licensing decisions by local authorities must be subject to review by the courts, as is proposed in Clauses 170 to 173 of the draft Bill. However, we are concerned about the likely number of such appeals and the impact that this could have on both local authorities and operators. As discussed above, we recommend that the risk of double jeopardy with respect to appeals should be removed and that it should not be possible to use the same grounds of appeal against both the licensing and planning decisions of local authorities.

Planning decisions and decisions with respect to premises licences represent different processes where different considerations are liable to play a part. The same matter may have a different weight, relevance or impact in the context of the different proceedings. We believe it would be wrong to assume that the fact that a particular ground of appeal had been considered in the context of an appeal in one set of proceedings would mean that it was unnecessary for that ground to be considered in the other set of proceedings. We also do not want to adopt a measure which might allow a person to argue that a restriction had been imposed on their right to a full and fair hearing when appealing against a local authority’s decision regarding a premises licence.

36. We welcome the recent guidance on the proposed arrangements for the transition to the new licensing regime. However, we do not think that this staggered implementation should be used to justify delays in any preparations that the Gaming Board and local authorities could make before the Gambling Bill receives Royal Assent. In particular, as discussed in Chapter 12 of this Report, we recommend that remote gambling licences should be issued as soon as possible after the Bill is enacted.

The Government agrees that the Gaming Board and local licensing authorities should begin preparations for the new regime as soon as is possible and proper within the constraints of Parliamentary approval. The Government also agrees that remote gambling licences should be issued as soon as possible after enactment.

37. We are particularly concerned about the challenges that local authorities would face in the assumption of their proposed licensing function. We recommend that the transitional arrangements should take account of the additional burdens recently placed on local authorities under the Licensing Act 2003. We further recommend that the Government should consult on and then publish a timetable for the transition to the premises licensing regime proposed in the draft Bill.

38. The new premises licensing regime should be introduced at the earliest opportunity. As we discuss in Chapter 8 of this Report, this is necessary to prevent authorisations for new casinos continuing to be granted without regard to either the licensing objectives set out in Clause 1 of the draft Bill or the possible objective of regeneration. If the full preparation of

local authorities for this task would delay the introduction of this regime, we recommend that, as a transitional measure, the Government should consider enabling magistrates to grant premises licences under the Gambling Act, subject to Gambling Commission guidance.

This response offers the Government's view on recommendations 37 and 38.

The Government agrees that the impact of the Licensing Act 2003 should be taken into account when preparing for the transition to the new premises licensing regime. The Government also agrees that the new premises licensing regime should be introduced at the earliest opportunity and will work with local authorities to ensure they are prepared for their new responsibilities. The Government has no reason to believe that local authorities will not be in a position to accept applications when the provisions for premises licences under Part 8 of the draft Bill are brought into effect. However, the Government does not accept that, as a transitional measure, magistrates should be enabled to grant premises licences under the new regime, as this would require similar resources and training to that required by local authority licensing staff.

Social implications

39. We recommend that, prior to the implementation of the Bill, the Government should commission and publish the results of a baseline prevalence study against which the impact of the Bill can be measured. We recommend that this should cover all existing forms of gambling including those which have become more widespread since 1999, namely spread betting, betting exchanges, remote gaming and FOBTs. We believe that such a comprehensive study is necessary in order to provide data on gambling that will be needed to inform future regulatory decisions.

The Government had intended to arrange for a baseline prevalence study to be taken before the Bill's implementation, and welcomes the Committee's agreement that this is needed.

40. We would expect the draft Bill to lead to an increase in the prevalence of problem gambling, even if only as a result of an increase in the numbers of those who gamble. We do, however, expect that a number of the recommendations in this Report would, if implemented, contribute to a reduction in the scale of any increase which might otherwise occur.

The Government does not intend there to be any increase in the numbers of persons who encounter problems when gambling. Great Britain has one of the lowest rates of problem gambling in the developed world, at under one per cent. We intend to keep it that way.

We believe that problem gambling will very likely increase if there is no Bill. The existing regime does not provide effective safeguards against the irresponsible use of new technology on the Internet and in gaming machines. We need to act to address these new risks.

Participation in most forms of gambling, other than the National Lottery, remains relatively low. Fewer than ten per cent of the adult population report that they have gambled, in the previous twelve months, on fruit machines, bingo and betting exchanges. Only two per cent report gambling at a casino. Even with respect to horserace betting, the figure is only eleven per cent.

We don't know if more people will choose to gamble after our legislation is passed. But the point is that any adult who chooses to gamble under this more effective regime will be far better protected than they are now. And we are determined that consumer choice will only be extended where protections can be put in place to address effectively the risks of new products as well as those of

existing gambling opportunities. We are confident that this is possible. We are therefore not satisfied that the predictions of increases in problem gambling that have been published take fully into account the proposals we are making. We know of no country that will have a more effective system of regulation than ours will be under the Bill.

We are deliberately avoiding the mistakes made in other jurisdictions, like Australia, where high stakes gaming machines in particular have been allowed to invade normal social spaces. Unfortunately, the rate of problem gambling there is now over two per cent, over twice the rate in Great Britain. On the contrary, our proposals will lead to a significant overall reduction in the number of premises where gaming machines are available.

It has been claimed that the Gambling Bill, by removing some restrictions on consumers, will have the unintended effect of substantially increasing the incidence or gravity of problem gambling. The Government does not accept that these claims are supported by a sound analysis of the evidence. These claims derive from two reports, one by National Economic Research Associates (NERA) and the other by the Henley Centre, both commissioned by interests within the existing gambling industry.

The Henley Centre report forecast that the number of problem gamblers in Britain would rise to about 500,000 by 2010 without legislation, and that the proposed Gambling Bill would see this figure increase to about 700,000. An earlier report by NERA suggested an even higher figure. Yet, neither report produced new evidence about the underlying causes of problem gambling. Nor, critically, did they take any account at all of the important new safeguards across the entire gambling industry that the Bill will introduce and enable the Gambling Commission both to enforce and where necessary strengthen. Nor could either study have taken account of all of the new protective measures proposed in this response.

The protections we propose for the Bill do not exist now. And it is important to note that they will apply to *all* gambling, and not just to any growth in the market. The Gambling Commission will have extensive and unprecedented powers to *interfere with the detailed operation of gambling across the entire industry* so that they can ameliorate the factors that evidence suggests are related to risks of problem gambling.

In this context, we do know that some forms of gambling tend to be particularly risky. Across the world, gaming machines are perceived to involve increased risks of excessive play. Gam Care, the charity looking after people with gambling problems, reported in their Care Services 2003 Report noted that 42.2% of first time callers to their national helpline service reported problems related to the use of ‘fruit machines’ or Fixed Odds Betting Terminals. 40.5% reported problems related to betting on horseracing.

So we propose strong new safeguards for gaming machines. These will be enforced through statutory instruments, licence conditions and codes of practice. They may include the powers:

- To control speed of play
- To control game design features such as “near misses” and progressive tiers, which may reinforce incentives to repeat play
- To require information about odds and actual wins or losses in the play session to be displayed on screen
- To require “reality checks” or the need to confirm continuing play

- To implement loss limits set by players before starting through use of smart card technology
- To vary stake and prize limits

The Gambling Commission will also have power to impose new consumer protection measures for horserace betting too.

The Government does acknowledge, without any reservation, the destructive impact that problem gambling can have on individuals and families. Gambling brings with it self-evident public health risks. The Department for Culture, Media and Sport, and the Department of Health are working closely together to develop an integrated approach to problem gambling. The Department of Health will contribute to the design of future prevalence studies, and is also assessing the current spread of service provision for problem gambling.

41. We recommend that the Government should fund prevalence studies at five-yearly intervals. These measures would enable the impact of the Bill to be accurately measured and also enable the Government and the Gambling Commission “to take the toughest possible action if there is any evidence that modernisation has given rise to an increase in problem gambling”. We further recommend that, in order to monitor the impact of change closely and adjust regulations according to the findings, the Gambling Commission should undertake appropriate studies and publish a report within three years of enactment of the Bill.

The Government welcomes this recommendation, but believes that further prevalence studies should be undertaken more frequently than at 5 year intervals. The gambling industry, to its credit, is highly dynamic and innovative. With this in mind, and learning the lesson from overseas experience that prompt adjustment to the balance of regulation needed if problems emerge, the Government believes that it would be preferable for the Gambling Commission to commission surveys every 2-3 years.

42. We welcome the provisions of the draft Bill, such as the licensing objectives in Clause 1, that address problem gambling and recommend that the Gambling Commission is given adequate resources and time to enable it to carry out its many important responsibilities in this area. We also recommend that the Commission should use the existing codes of practice voluntarily adopted by the industry as a starting point for those it is to issue under Clause 16 of the draft Bill and that it should start consultation on the new codes of social responsibility as soon as possible.

The Government agrees with the Committee’s view. The industry codes of practice are a useful starting point for the Gambling Commission’s social responsibility codes.

In this respect, the Government has listened carefully to the views expressed during the process of pre-legislative scrutiny. We therefore wish to make new proposals to further strengthen protections for the public in the Bill. We propose that every operator will be required, as a condition of their licence, to comply with Gambling Commission codes of practice about socially responsible services. Any operator failing to meet the conditions of their licence will risk its revocation.

Codes of practice are likely to *require* licensees to make available training on social responsibility issues to their staff. Such training will be particularly important for staff encountering customers, but will be relevant to all staff. In this respect, the establishment of a Sector Skills Council, ‘People First’, which includes the gambling industry, is a welcome step and may provide a useful support for such efforts.

43. We consider an effective, independent and adequately-funded Trust that provides support for treatment, education and research to be a crucial counterbalance to the deregulatory aspects of the draft Bill. We greatly welcome the steps that have been taken to date to establish the Responsibility in Gambling Trust and consider that it might provide a valuable model for other jurisdictions.

44. The Committee recommends that, in the run up to enactment of the Gambling Bill, the Responsibility in Gambling Trust provides funding for: the provision of treatment for problem gamblers and their families; education programmes to promote responsible gambling and highlight dangers of excessive gambling; public awareness campaigns to inform everyone as to the help available; and research into aspects of gambling and of problem gambling.

45. While industry representation [on the Responsibility in Gambling Trust] is of clear benefit in the context of fundraising, it is important that sectional interests and bias do not impact on the way those resources are allocated.

46. We recommend that the Responsibility in Gambling Trust continue with its proposals to achieve a majority of independent Trustees. We further recommend that “industry trustees” should not be appointed to act as representatives of trade associations, but that they should be appointed and should act on the basis of their experience of problem gambling from an industry perspective. In particular, we recommend that the distribution of resources by the Trust should be assessed by the Gambling Commission and should be included in their three-yearly monitoring report to the Government (which we recommend in paragraph 221).

47. We recommend that industry contributions made directly to service providers should also be taken into consideration as a demonstration of operators’ social responsibility.

48. We recommend that before the Bill receives Royal Assent, the Responsibility in Gambling Trust should commission an independent assessment as to the cost of: (i) providing the services required to run a nationwide education campaign; (ii) raising public awareness of the help that is already on offer; (iii) providing efficient counselling and other treatment, for both problem gamblers and their dependants; and (iv) determining and conducting the research needed to inform decision-making. We recommend that the industry should contribute the funds that are determined to be necessary to meet those costs and consider that, given the industry’s current value and likely growth as a result of the proposals in the draft Bill, this would not be an unreasonable burden.

49. In principle, and subject to any legal restrictions preventing this, every commercial operator should contribute something to help address problem gambling.

50. The contributions that the industry might be required to make in order to address problem gambling adequately, are likely to represent a tiny fraction of the industry’s profits. We, therefore, recommend that, as far as legally possible, all sectors of the industry should contribute to the Responsibility in Gambling Trust. We note that, by making such contributions voluntarily, businesses will not only illustrate that they are socially responsible but will also avoid the imposition of the statutory levy.

This response provides the Government’s views on recommendations 43-50.

The Government agrees with the points made by the Committee, and acknowledges the measures already taken by the industry and the Responsibility in Gambling Trust.

The Trust has received pledges from the gambling industry, totalling £2.4m for the current financial year. When added to the £850,000 raised in 02/3 and £1.25m in 03/4, the industry will have contributed £4.5m since the Trust was set up in 2002.

The Trust has also taken steps to solidify its independence. There are now seven independent Trustees and six industry Trustees.

The Trust has commissioned an international team led by Professor Max Abbott of the University of Auckland in New Zealand to undertake systematic reviews of research worldwide, to ascertain whether a consensus exists on the best way of providing support for problem gamblers, and the best way of raising awareness amongst vulnerable people about the risks of gambling.

The Trust will provide Gam Care with all the funds it needs, for the remainder of this financial year, to answer all the calls to its helpline and to meet demand for face to face counselling.

The Trust also plans to provide further support for the Gordon House Association enabling it to provide residential support for about 75 severely addicted gamblers plus support for a further 500 ex and future residents and their dependants.

The Government welcomes this programme of work. We also encourage every section of the gambling industry to contribute to the Trust.

51. We recommend that the ability to impose a statutory levy under Clause 98 of the draft Bill should be retained. We acknowledge Lord McIntosh's comment that "I do not see how you can make contributions to a voluntary trust a condition of licensing". However, we do not believe that this would prevent the Gambling Commission taking account of an operator's financial contributions, whether to the Responsibility in Gambling Trust or direct to a service provider, when considering, under Clause 58 of the draft Bill, whether they are suitable to carry on a licensed activity. We consider that such an approach would encourage operators to make voluntary contributions, but we would not expect non-payment to be a reason, in itself, for the Gambling Commission to refuse to issue or renew a licence.

The Government considers that this recommendation sets out exactly the right position and welcomes the Committee's view that the ability to impose a statutory levy be retained in the Bill. The Government believes the making of contributions to the Trust or problem gambling service providers is capable of demonstrating an applicant's commitment to social responsibility in gambling, and that it will be open to the Commission to take account of such evidence when considering applications for an operating licence. The Commission may also wish to address the matter in its policy statement, issued under clause 15.

52. The Responsibility in Gambling Trust should not absolve the Government of its responsibilities with respect to problem gambling. We recommend that the Government should accord greater priority and resources to problem gambling and that problem gambling should be recognised as a public health issue.

The Government does not intend there to be any increase in the numbers of persons who encounter problems when gambling. Great Britain has one of the lowest rates of problem gambling in the developed world, at under one per cent. We intend to keep it that way.

We believe that problem gambling will increase if there is no Bill. The existing regime does not provide effective safeguards against the use of new technology on the Internet and in gaming machines. We need to act to address these new risks.

We are determined that consumer choice will only be extended where protections can be put in place to address effectively the risks of new products. We are confident that this is possible. We are therefore not satisfied that the predictions of increases in problem gambling that have been published take fully into account the proposals we are making.

The Government agrees that provision should be made now and in the future, within the National Health Service, for the very small proportion of individuals whose problem gambling, whether on its own or as part of a range of mental health problems, is serious enough to require this level of assessment or treatment. In this connection, the Government certainly acknowledges that problem gambling is a public health issue.

There is a level of provision currently within a network of specialist addiction services. These services are kept under review and it is intended that they will be mapped in more detail than is currently available and proposals be made for service development. The Department for Culture, Media and Sport and the Department of Health are co-operating closely in this work.

53. Earlier in this Chapter (paragraphs 221 and 239), we recommended that, three years after the Bill has received Royal Assent, the Gambling Commission should publish a report into the impact of the Gambling Act on problem gambling and the effectiveness of the distribution of resources by the Responsibility in Gambling Trust. We recommend that following this, the Secretary of State for Culture, Media and Sport should report to both Houses of Parliament on: (a) the success of the Trust in meeting its objectives and in particular the distribution of funds; (b) the steps the Gambling Commission has taken to address problem gambling; and (c) the work the Government, and particularly the Department of Health, have done to address problem gambling.

54. We also recommend in paragraph 221 that prevalence studies should be conducted at five yearly intervals. We recommend that, after the results of the first post-enactment prevalence study are available, the Secretary of State for Culture, Media and Sport should update both Houses of Parliament on the impact of the Gambling Act on problem gambling prevalence.

This response provides the Government's view on recommendations 53 and 54.

The Government agrees that it should provide Parliament with a post-implementation report on problem gambling; and that further reports should be published in the light of subsequent prevalence studies.

55. We recommend that the minimum age to buy and sell pools coupons and lottery tickets, including for the National Lottery, should remain at 16, as is currently proposed in Clauses 36(2) and 42 of the draft Bill, given the lack of evidence that this causes harm. We recommend that the Government commission further research to ascertain whether 16 and 17 year olds are harmed by this experience and that the age-limit should be re-assessed in the light of that research.

56. We welcome the Government's clarification that young persons will be able to be employed in areas of casino complexes in which gaming does not take place. We consider that Clauses 41 to 45 of the draft Bill should not prevent young persons being employed in gambling premises, provided that the employment does not relate to the gambling provided in those premises. As discussed above, we consider it to be appropriate that Clause 42 permits over-16s to be employed to sell lottery tickets and pools coupons.

This response provides the Government's view on recommendations 55 and 56.

The Government agrees with these recommendations. In particular, the Government confirms that it is its policy that persons under 18 should not be prevented from working in non-gambling areas of gambling premises, like casinos and horse racecourses, as long as they are not permitted to enter the gambling area (if otherwise prohibited) or provide facilities for gambling.

Category D gaming machines

57. We agree with the conclusions of Budd and the Commons Culture, Media and Sport Committee that there is an absence of sufficient evidence to show that the playing of Category D machines by under-18s causes problem gambling. We recommend that the Government commission research to ascertain whether there is any causal link between the playing of Category D machines by under-18s and problem gambling. The decision to permit the playing of Category D machines by under-18s should be reviewed in the light of that research. We do not, however, agree with their recommendations that a formal review should take place after a specific period of time. Such a measure would unfairly penalise the industry by creating unacceptable uncertainty and deterring investment.

The Government agrees with this recommendation, and that further research is needed.

58. Given the existing lack of clear evidence as to whether machine gaming by under-18s causes problem gambling, we recommend that children should continue to be permitted to play Category D machines in adequately supervised family entertainment centres as is currently envisaged in Clauses 36(2)(e) and 37(5) of the draft Bill. We also recommend that family entertainment centres should be subject to strict codes of social responsibility to be issued by the Commission under Clause 16, like those voluntarily adopted by British Amusement Catering Trades Association (BACTA) members including, as discussed below, strict enforcement of segregated areas in which adult gaming machines are sited.

The Government agrees with this recommendation.

59. We agree with the Government's position that under-18s should not be able to play Category A, B or C gaming machines and support the Clauses of the draft Bill designed to ensure this. We recommend that detailed codes of social responsibility relating to the enforcement of those rules should be issued by the Gambling Commission under Clause 16. Such codes should, however, take account of practicalities and of the effectiveness of measures in the context of different types of premises.

The Government accepts this recommendation. The Bill contains criminal offences designed to prevent children and young people gaining access to Category A, B or C gaming machines. Operating and premises licence conditions will be used to support these requirements. The Commission's codes of practice under clause 16 will play an important role in informing operators what practical steps they should take to ensure they comply with the law.

60. We recommend that, in general, gaming machines should not be permitted in premises where gambling is ancillary to the main services provided. We do not, however, consider that this should apply to pubs, clubs and tenpin bowling centres, on the basis that these premises are licensed and gambling has become an accepted and important part of the facilities they offer.

61. We are concerned about the difficulties in ensuring that illegal machines are not sited in premises like cafes and taxicab offices and that children are adequately supervised when using machines in these premises. Accordingly, we recommend that the draft Bill should be amended to prohibit Category D gaming machines from such locations. We consider that this should be a blanket prohibition rather than a prohibition that local authorities are able but not required to impose, as is currently proposed in paragraph 7(2)(a) of Schedule 7 of the draft Bill. As discussed above, we do not, however, consider that this prohibition should extend to motorway service stations, pubs or bowling alleys, subject to compliance with strict codes of social responsibility and the provision of appropriate physical supervision.

This response provides the Government's view on recommendations 60 and 61.

The Government is making new proposals to reduce the number of unlicensed premises offering gaming machines. It is an important principle of our approach that individuals should make a positive choice to gamble. We want to avoid ambient gambling as much as possible, with further restrictions on gaming machines in normal social spaces. We believe that, as a consequence of these proposals, the number of unlicensed premises offering gaming machines may fall by around 6000.

We have reconsidered the issue of gaming machines sited in non-gambling premises in the light of the Committee's comments about the difficulty of ensuring that such places have full and effective authorisations. In particular we have listened to the Committee's concerns (which the Government shares) about the extent to which the use of gaming machines in such places can be properly supervised, and access to machines controlled. We believe the distinction between destination and ambient gambling for machine use is an important one, and that where machines are used on premises where they are ancillary to the main activity, there must be suitable controls over the use of such machines. The Government also acknowledges that access to ambient gambling may create problems for those who wish to avoid being exposed to opportunities to gamble, and for children.

It is a principle of the Government's policy that individuals should make a positive choice to gamble, on premises that are licensed or where one can be confident that access to any gambling offered will be controlled to some degree and supervised appropriately. The Government accepts that such confidence is not fully demonstrated in relation to all of the premises that can now site low stake and prize (category D) gaming machines.

There were four particular ways in which category D machines would have been made available under the November 2003 draft of the Bill:

- a) In pubs and other premises licensed for the consumption of alcohol pursuant to an alcohol licence, under Part 13 of the Bill;
- b) For clubs and miners' welfare institutes pursuant to permits under Part 14 of the Bill
- c) In family entertainment centres (FEC) (either with a category D gaming machine permit under Schedule 6 of the Bill or with an FEC premises licence under Part 8 of the Bill); and
- d) In any other (non-gambling) premises with a category D gaming machine permits under Schedule 6 of the Bill.

We now propose to remove from the Bill the authorisation described at (d) above, since we do not believe the controls proposed for them were sufficient in light of the Committee's concerns. This means that there will be no category D gaming machines permit for general, non-gambling

premises such as fish and chip shops or mini-cab offices. FECs will still be able to apply for a permit under Schedule 6 (which will, in effect, become an FEC permit). Premises such as pubs, clubs, ten pin bowling alleys and motorway service stations will be able to obtain permission to use category D gaming machines under (a) to (c) above, as appropriate.

We believe this strikes the right balance between allowing the use of what is the lowest category of gaming machine (in premises with adequate supervision and licensing controls) with the need to protect children and the vulnerable.

The response to recommendation 101 deals with further points on the licensing of machines in ten-pin bowling alleys.

Advertising

62. We recommend that further detail on the proposed regulation of gambling advertisements, including additional clauses of the draft Bill, should be published as soon as possible for consultation with stakeholders.

The Government agrees that it will be necessary to consult with key stakeholders on the draft advertising clauses when they become available. Detailed consultation has already taken place on the underpinning policy within Government and with external stakeholders.

63. We recommend that the Clauses on the advertising of illegal gambling should be drafted so as to provide a flexible legislative framework that could take account of future European developments.

The Government will ensure that the clauses on advertising are compliant with current European legislation. If subsequent changes to European legislation require changes to the Gambling Act it should be possible to incorporate these by use of subordinate legislation under the European Communities Act 1972.

64. We agree that gambling advertisements should not be directed at children and that operators should take care to identify and control their actual audience. However we recommend that Clause 36 of the draft Bill, and any guidance or codes made under Clause 16, should not penalise operators that have taken all reasonable steps to prevent children receiving gambling advertisements.

The Government believes that it is essential that children be protected from harmful advertising. The Gambling Bill will not allow advertising of gambling to be targeted at children. Nor will it allow incentives or inducements, like loyalty cards, to be offered to children.

Children must be protected from harmful advertisements. In addition to the offences under the Bill, the Government will look to Ofcom, the ASA and the Gambling Commission to use their powers to protect children, and this might well include, for example, preventing advertising of gambling at certain times of the day. The Communications Act and the Bill (through operating licence conditions and regulations) also provide powers to restrict advertising. If additional action is required the Government will not hesitate to use its powers.

We have no desire, however, to penalise licensed operators who have taken all reasonable steps to prevent children receiving gambling advertisements. The Government believes that the Bill is sufficient to achieve this, but will consider whether any further improvement is possible to better

achieve the policy objective. The Gambling Commission will also take note of the recommendation in due course.

65. As gambling does not cause problems for the majority of people who gamble we are not convinced that health warnings, like those used for tobacco products, would be appropriate. We also have doubts as to the effectiveness of some cautionary statements included in advertisements such as those for financial products. Nevertheless, we recommend that gambling advertisements should include information about sources of help for problem gamblers and that the future regulator should consult relevant stakeholders before agreeing any detailed rules on advertising content, for example those to be specified in codes to be issued under Clause 16 of the draft Bill.

The Government notes this recommendation, and agrees with the broad thrust of the Committee's observations. Information about available sources of guidance on gambling behaviour may well be a useful requirement for gambling advertisements. We agree that the Secretary of State and the Gambling Commission should consult relevant stakeholders, including the Advertising Standards Authority (ASA), before making such a proposal in regulations or licence conditions.

66. We recommend that the draft Bill should not prejudice the continuation of the existing and seemingly effective self-regulatory model for gambling advertisements. This would have a number of benefits, including relieving the Gambling Commission of one of the many burdens that would be placed on it under the draft Bill. We do, however, recommend that the draft Bill should contain a reserve power that would enable the Commission to assume regulatory responsibility if it is determined that self-regulation is not a success in any particular area.

67. We recommend that the Gambling Commission should be a backstop regulator for gambling advertisements. We consider that one simple way of helping to achieve this might be for compliance with advertising codes to be attached as a condition of operating licences pursuant to Clause 62 of the draft Bill.

This response provides the Government's view on recommendations 66 and 67.

The Government certainly agrees that the Gambling Bill should not preclude the continuation of controls guided by the ASA and its codes. But, equally, the Government does believe that the risks involved in gambling do require there to be a statutory underpinning for controls that can have effect if, for some reason, existing arrangements are seen to have lost their protective effect.

Accordingly, the Government's policy is that the content and conduct of advertising conducted by Gambling Commission licensees will be controlled by operating licence conditions imposed by the Secretary of State or the Commission. Advertising conducted by all other persons, other than with respect to television and radio broadcast advertising (which will continue to be regulated by Ofcom), is to be controlled by regulations made by the Secretary of State.

In the operation of this system, it will be open to the Secretary of State and/or the Commission to make licence conditions that require compliance with codes issued by the ASA. This approach was reflected in our policy statement published on 5 February 2004, where the Government stated that if, following consultation, it were possible for existing regulators to amend their codes in a way that fully met the Commission objectives, then the Commission may consider it unnecessary to impose licence conditions beyond one requiring operators to observe those codes.

Inducements and credit

68. We recognise that determining which inducements to gamble should be allowed and which should be prohibited is difficult. Accordingly, we agree with the Government’s proposal not to impose a blanket ban on all inducements. We also agree with the current proposal to give the Gambling Commission the power to control the offer of inducements by operators, whether by way of stringent codes of practice issued under Clause 16 and/or licence conditions under the new Clause published on 12 March. We believe that the licensing objective to protect the vulnerable under Clause 1 would make it incumbent upon the Commission to use these powers to prevent inducements which amount to predatory marketing and which threaten the ability of consumers to control their gambling behaviour.

69. We recommend that the Gambling Commission consider the risk associated with loyalty cards alongside other forms of inducement. If the Gambling Commission concludes that loyalty cards do not pose disproportionate risks, we recommend that the ability of such cards to collect information on those who gamble should be harnessed to help address problem gambling. Conditions might then be attached to licences under the Clause published on 12 March to this effect. Obtaining information about people with a gambling problem could also be an additional benefit of casinos retaining membership schemes, as we discuss below.

This response provides the Government’s view on recommendations 68 and 69.

The Government welcomes these recommendations. In the draft Bill, we proposed strong powers for the Gambling Commission to control credit and inducements provided by gambling operators. The committee is right to highlight the risks of over-aggressive marketing. The Gambling Commission will have the powers it needs to deal with it.

With respect to loyalty cards, the Government accepts the committee’s suggestion that such cards could be a useful tool in collecting data about problem gambling. It is evident, of course, that loyalty schemes could present a regulatory risk if used to encourage excessive play, but the Government agrees that the technology can be employed to protect consumers too. It will look to the Commission to use its licence condition powers to best effect in this area. The Commission will, of course, tackle actively attempts by licensees to use loyalty card schemes to encourage excessive play.

70. We do not believe that the use of credit should be prohibited on the face of the Bill. We do, however, recommend that the Gambling Commission should be required to issue codes of practice under Clause 16 and to attach licence conditions under the Clause published on 12 March, regulating the offer and acceptance of credit by operators. We note that, in line with the licensing objective under Clause 1 “to protect the vulnerable”, such codes of practice should restrict the use of credit where necessary to protect problem gamblers.

The Government agrees with the recommendation that the Gambling Commission should regulate the use of credit through licence conditions and codes of practice. However, we remain of the view that the Bill should expressly prohibit casino premises operators from providing credit on them. The circumstances in which casinos provide high risk gambling products lead us to the view that we do not believe that it would be appropriate, under any circumstances, for the operator to provide credit.

We also propose a prohibition in relation to bingo premises. Whilst the level of consumer risk is lower, we are not aware of any appetite or need for credit to be available for bingo consumers. In line with our general policy of restricting credit, we therefore propose to keep the ban in place.

Casinos

71. There is a considerable urgency to the issue [of grandfather rights for casinos] as plans for the development of a number of large scale casinos are well advanced. If permitted, such developments would seriously undermine the licensing objectives and whatever policy objectives on regeneration the Government decides to adopt.

The Government understands the Committee's concerns, but current law on casino licensing must remain in place until the new Gambling Act comes into force. Provided that their prospective new casino is in one of the currently permitted areas, operators are entitled to apply to the Gaming Board and to the magistrates (or the appropriate Scottish licensing authority) for consent certificates and licences under Part II of the Gaming Act. The Government does not see a viable route for intervening in that process, but agrees that this constitutes an additional reason for proceeding with the Gambling Bill as quickly as possible.

72. The Committee is not minded to support the Office of Fair Trading's view [that the proposed minimum size for casinos is anti-competitive] and agrees with the Government that a 5,000 sq ft minimum size will aid the objective of preventing proliferation so as to avoid an unacceptable rise in problem gambling and thereby help to secure the statutory objective of protecting the vulnerable.

The Government welcomes this conclusion.

73. We recommend that the Government should set out a definition of gaming machines which takes account of current and anticipated developments in the technology through which gaming products are delivered.

The Government agrees that the Bill should define gaming machines in the way which the Committee envisages, and draws attention to the provisions of clause 194, which it will look at again in the light of the Committee's report.

74. We support the proposal for small casinos to be defined in the regulations made under Clause 10(5)(b) as having a minimum table gaming area of 5,000 sq ft and a maximum table gaming area of 10,000 sq ft. We agree that casinos of this size should be permitted a 3:1 gaming machine to table ratio, as currently proposed under Clause 142(4)(a) of the draft Bill.

75. We are aware that retaining the 3:1 ratio will disappoint some sectors of the casino industry. The Committee therefore, supports a review of the 3:1 ratio by the Gambling Commission three years after Royal Assent, with a view to recommendations being made to the Government on whether the ratio set out in Clause 142(4)(a) should be adjusted. Such changes could be made pursuant to the delegated power contained in Clause 142(10) of the draft Bill and we agree that any such amendment should be subject to the affirmative procedure.

This response provides the Government's view on recommendations 74 and 75.

The Government welcomes this conclusion. After careful consideration, however, we now propose that small casinos be subject to a lower gaming machine to table ratio than we proposed in August 2003, of 2:1. We also propose that gaming machines in small and large casinos (but not in regional casinos) have stakes and prizes limited to the maximum available for category B machines. In providing for this we will ensure that existing and new small (and large) casinos retain a right to operate at least ten "jackpot" gaming machines as part of their category B entitlement. This will allow casinos to continue providing the gaming machines made available in casino premises now.

The Government makes these proposals because it wishes to limit the accessibility of high prize machine gaming. The Government does believe that the risks associated with category A machines can be addressed through protective regulatory measures, and that the increase in problem gambling feared can be averted. But the Government acknowledges too that category A machines will be a new and unfamiliar product in the British gambling market, about which there is a degree of nervousness. Accordingly, the Government sympathises with the desire to control the number of premises where category A machines are available, particularly in the initial period of the new regime.

We agree there should be a review process for these machines to tables ratios. The Government will consider the advice of the Gambling Commission in considering whether to propose any alteration over time. We will not maintain restrictions on consumer choice for longer than is necessary. But the Government wishes to make it clear that no alteration of ratios or other entitlements approved by Parliament will be contemplated until there is sustained evidence available, in the Commission's prevalence studies and in other research, that regulatory controls over gaming machines have indeed been effective.

The Government intend the first prevalence study after implementation of the new regime to take place after three years. Even if that first study were to provide some reassurance in terms of the prevalence of problem gambling, the Government however, believes that it would be imprudent to make adjustments to the regime on that basis alone. It may take some time for the effect of the new regime to be fully understood, in terms both of the implications of additional consumer choice and the impact of new regulatory controls. The Government is therefore minded to await the results of at least two prevalence studies, after implementation of the new regime, before considering significant alteration to the entitlements proposed above.

76. Whilst we appreciate the significant contribution gaming machines can make to a casino's profits, and their ability to contribute to planning gains for local communities, we believe that allowing certain casinos unlimited numbers of gaming machines as of right will result in a damaging proliferation of gaming machines and risk a significant increase in problem gambling. We therefore recommend that no casino should be permitted an unlimited number of gaming machines and that Clause 142(4)(c) should be amended accordingly.

The Government accepts this recommendation. We have reflected upon the views expressed during the Committee's consideration of the draft Bill, and agree that the Bill should limit the numbers of new unlimited prize gaming machines (category A) in any single premises. The Government therefore proposes that category A machines should be permitted only in the very largest casinos and should be subject to a cap of 1250 individual machines.

77. We recommend that large casinos should be defined in the regulations to be made under Clause 10(5)(a) as those with a minimum table gaming area of more than 10,000 sq ft and a minimum of 41 gaming tables. We consider that a higher gaming machine to table ratio than that for small casinos should be allowed and that the ratio should be set by the Government following consultation with the industry and further policy development. Any agreed ratio should be subject to review by the Gambling Commission after three years.

78. As part of the definition of a large casino, we recommend that large casinos should be required to provide leisure and cultural facilities ancillary to gambling.

79. We feel that a separate definition of resort casino is necessary to provide clarity and ensure that regeneration benefits can be achieved. The Office of the Deputy Prime Minister

(ODPM) and the Department for Culture, Media and Sport (DCMS) have not yet decided where the line will be drawn to distinguish between large and resort casinos. The lack of a definitive policy in this area is regrettable and has made the Committee's work much more difficult.

80. The Government proposes that "Regional Planning Bodies will set out planning policies for leisure developments of regional significance, including casinos". A definition of what is regionally significant has yet to be agreed by the Office of the Deputy Prime Minister (ODPM) and the Department for Culture, Media and Sport (DCMS); an announcement is expected "by the summer". When this happens we recommend that this Committee should be reappointed to help the Government determine the correct gaming machine to gaming table ratio for large casinos and the appropriate threshold at which a casino is considered to be a resort casino.

81. The Committee recommends that the draft Bill is amended by the inclusion in the regulations made under Clause 10(5) of an additional definition of a resort casino. Whilst we are not yet in a position to make a detailed recommendation on the definition of resort casinos, we nevertheless believe that the Gambling Commission should be given the discretion to allow resort casinos a greater ratio of gaming machines to gaming tables than that provided for large casinos. For the reasons outlined above regarding the issues of proliferation and risks associated with problem gambling the Committee believes that no casino should have an unlimited number of gaming machines. We recommend that the Government provides in regulations, for a statutory maximum number of machines for resort casinos, in the range of 1,000 or 1,250. We recommend that resort casinos must be subject to requirements to contribute regeneration benefits as discussed below.

82. As recommended in paragraph 379, the Committee recognises the potential benefits that can be derived from large casinos for a local community. We therefore recommend that, in addition to requiring large casinos to provide leisure and cultural facilities, local authorities should also seek appropriate planning gains from all large casinos, as part of the planning process.

83. The Committee has grave concerns that the lack of clarity, particularly the failure of the Department for Culture, Media and Sport (DCMS) and the Office of the Deputy Prime Minister (ODPM) to have decided where to draw the line between large and resort casinos, could have serious consequences. Regeneration cannot be achieved until the process for achieving planning gains and regenerative benefits has been resolved. This has become a matter of some urgency as casino licences are being granted without relevant planning gains having been negotiated.

84. Resort casinos have the potential to have a significant impact on the economies of the regions in which they are located. The Committee recommends that plans for resort casino developments are considered in line with Regional Economic Strategies and the regional planning process to ensure that the economic impacts of any such developments are properly considered. This will encourage the benefits ensuing from such a development to be maximised.

85. Given the potential for regeneration from resort casinos we believe that planning for such developments should be the responsibility of Regional Planning Bodies. As recommended in paragraph 385, we reiterate our view that all resort casinos should provide

regenerative benefits. They should be required to do so by Regional Planning Bodies. We so recommend.

This response gives the Government’s views on recommendations 77-85.

We are publishing, at the annex, the further statement of casino policy sought by the Committee. The statement sets out further details of the Government’s proposals for casino regulation, and outlines how it is intended arrangements for licensing under the Bill will interact with those for planning approval and, in particular, the role of Regional Planning Bodies in England.

In responding to the recommendations of the Joint Committee, the Government proposes, for the Gambling Bill, three categories of casino premises licence, as follows:

- **Small casinos** – will require a minimum area exclusively for casino table games of 500m² (the rounded metric equivalent of 5000 square feet). Small casinos will also require a minimum non-gambling area available to customers of 250m². Small casinos will be permitted two gaming machines (of up to category B) for each gaming table available for play², up to a maximum of 80, and will also be permitted to provide betting, but not bingo.
- **Large casinos** – will require a minimum area exclusively for casino table games of 1000m². Large casinos will also require a minimum non-gambling area available to customers of 500m². They will be permitted five gaming machines (of up to category B) for each gaming table available for play, up to a maximum of 150 machines, and will also be permitted to provide betting and bingo.
- **Regional casinos** – will require a minimum area exclusively for casino table games of 1000m², and a minimum additional gambling area of 2500m². Regional casinos will also require a minimum non-gambling area available to customers of 1500m². They will be permitted twenty five gaming machines (of up to category A) for each gaming table available for play, up to a maximum of 1250, and will also be permitted to provide betting and bingo.

These proposals represent an acceptance of recommendations 77, 79, 81 and 83 and can be summarised in terms of the table, below:

Licence category	Min table gaming area (child free)	Min additional gambling area (child free)	Min non gambling area	Min total customer Area	Min no of gaming tables	Categories of gaming machines Permitted	Machine / table ratio	Bingo	Betting
Small	500m ²	0	250m ²	750m ²	1	Up to B	2:1 (Cap 80)	N	Y
Large	1000m ²	0	500m ²	1500m ²	1	Up to B	5:1 (Cap 150)	Y	Y
Regional	1000m ²	2500m ²	1500m ²	5000m ²	40	Up to A	25:1 (Cap1250)	Y	Y

² The definition of ‘available for play’ is discussed in the response to recommendation 89, below, and at the annex.

The purpose of the non-gambling area requirement is regulatory: in order to provide consumers with an easily accessible area where they can take breaks from gambling, and consider whether they wish to resume playing. Uninterrupted gambling might otherwise increase the risk of excessive or uncontrolled play. On-site facilities will, therefore, make it easier for users to reconsider their options. So these areas could contain no facilities for gambling. The nature of these facilities could include restaurants, bars, cafes, cinemas, sporting facilities, or the like. It is not proposed to specify appropriate facilities in legislation; rather, this is a matter that will be addressed in Gambling Commission guidance to licensing authorities. Such guidance should also address the form and scale of any advertising in these areas.

The non-gambling area could also be used by children and others who were either not allowed or did not wish to use the casino's gambling facilities. It would be for local authorities, in the light of guidance by the Commission, to make sure that access between the gambling and non-gambling areas was convenient in one direction but at the same time properly controlled in the other.

These proposals are designed to protect the public by preventing a sudden and substantial increase in the availability of high prize gaming machines. The Government acknowledges that a rapid and uncontrolled increase could present too significant a risk in terms of stimulating problem gambling and its social consequences. As a result we have concluded that the appropriate course of action at this stage is to limit those locations where Category A machines are available for use.

We believe that regional casinos are the most suitable location for these machines for several reasons. First the relatively low number of regional casinos that are likely to develop in Great Britain (by reason of the size requirements) will lead to fewer concentrations of machines, which will be more easily regulated than a large number of locations of fewer machines. Secondly, regional casinos offer a destination gambling opportunity which is more likely to minimise repetitive, casual use of machines than if were they located in smaller casinos in high street locations, to which relatively larger numbers of people have access. The Government accepts there is no scientific formula for determining these matters but its assessment is that, initially, regional casinos offer the safest venue for these machines.

The Government believes that this approach will bring about a gradual development in the casino market. We view this as desirable, because it will ensure that effective and rigorous monitoring can take place of those limited locations where unlimited prize gaming machines are offered, while permitting the more traditional casino offering to be developed alongside. The Government does believe that the risks inherent in these new machine products can be addressed by focussed regulatory measures but, equally, we accept that it is preferable that their introduction to the British market is controlled and monitored carefully.

If, over time, the evidence of social impact collected through problem gambling prevalence research, and other methods, indicates that the regulatory controls have indeed been effective, then the Bill provides the scope for a review of the machine to table ratios and the entitlements for each category of casino. The Government and the Gambling Commission will keep the situation under review.

Recommendations 80 and 84 propose that Regional Planning Bodies (in England) consider the location of regional casinos and their contribution to regional economic development in their Regional Spatial Strategies. The Government accepts these recommendations and explains at the annex how it is intended that these arrangements are to work in practice. Recommendation 80 also repeats the content of recommendation 2 above, that the Committee be re-convened to consider these proposals.

Recommendations 78, 82, 85 and the final sentence of recommendation 81 propose that large and regional casinos be required, either through the licensing system and/or the planning system, to contribute leisure and cultural facilities in addition to those for gambling and, in the case of regional casinos, wider and additional regeneration benefits.

Recommendation 82, in particular, urges planning authorities to seek planning gain from all large casinos. This, of course, is a matter for local planning authorities in the exercise of their functions; the Government acknowledges that processes exist for planning obligations to be sought and, to that extent, it accepts the recommendation.

The Government acknowledges the reasoning that underpins recommendations 78, 81 and 85. The Joint Committee, in its visits to other jurisdictions and in its evidence sessions, learned of examples of licensing processes that seek explicit ‘add-on’ gains from large casino developments. These processes are designed to ensure that local economies derive additional, identifiable, economic and social benefits from the siting of large casinos in their area. In some cases (e.g. in South Africa) these processes involve an auction, where regional monopolies are ‘sold’. The Government does not seek to criticise these approaches, but does not propose similar proposals for the extraction of additional economic benefits through the licensing system. Accordingly, the Government does not accept the proposals in recommendations 78, 85 and the last sentence of recommendation 81.

The Government’s strategy is based upon the direction of regional casinos to the most suitable areas. We believe that this strategy will, through the choice of location of these major developments, achieve the significant economic development and regeneration benefits through the development of the casino and ancillary activities, the substantial activity associated with the casino and its knock-on demand for goods and services both at the casino and in the wider local economy. Local planning authorities can, when including proposals for such casinos in their local development plan, specify the kinds of facilities they expect to see included in the development and seek to secure these from the developer. It is also likely that prospective operators will propose to build additional facilities, like hotels, if they are not available in that area. In addition, planning obligations may be offered or sought in relation to all categories of casinos, where additional facilities or undertakings are necessary to secure an acceptable development.

The statement at the annex provides further details in relation to these proposals.

86. The Committee is concerned that the lack of clarity over grandfather rights could lead to the undesirable proliferation of casinos and to the loss of planning gains and regeneration benefits in some areas. Planning permission and casino licences granted prior to the Bill achieving Royal Assent could invalidate much of the Government’s policy in this area. It could also result in there being considerable inconsistency in the interpretation of grandfather rights in different areas.

87. [Grandfather rights] is unfortunately another area where government policy has failed to take account of developments in the industry. The lack of clarity on grandfather rights could lead to a series of missed opportunities for certain areas and risks an inconsistent approach being taken across the country. The Committee considers this to be most regrettable.

This response provides the Government’s view on recommendations 86 and 87, and the response to recommendation 71 is also relevant to these recommendations.

The Government agrees with the Committee that it will be important to make clear provision for

grandfather rights in the Bill. We regret that it was not possible to publish draft clauses on this issue. Arrangements for transition to the new regime and grandfather rights were, however, addressed in the policy memorandum published on 5 February 2004. In it, it was made clear that where the holder of a casino gaming licence (issued under Part II of the Gaming Act 1968) applies to a licensing authority for a new style premises licence under the new regime, then the licensing authority will be required to issue the premises licence. The statement at the annex provides further detail on arrangements for grandfather rights for existing casinos that are smaller than the new proposed minimum sizes.

88. On balance, we agree with the general prohibition on the linking of gaming machines situated in different casino premises, contained in Clause 203 of the draft Bill. We consider the prohibition to be necessary at this stage to prevent the proliferation of high-value gaming machines which, as discussed elsewhere, we consider to pose a considerable threat to the prevalence of problem gambling. However, we recommend that Clause 203 should be amended to give the Secretary of State the power to remove this prohibition at a future date, subject to the affirmative procedure. The Committee recommends that the Gambling Commission and Ministers monitor the extent to which the ability to link machines within premises results in a proliferation of high value jackpot offers and what effect, if any, this has on competition between small and large casinos.

The Government accepts this recommendation.

89. Given the importance of the [meaning of “available for use”] the Department for Culture, Media and Sport (DCMS) need to agree a definition of “available for use” as soon as possible. The Committee encourages the Gambling Commission to monitor the availability of gaming tables and the levels of consumer demand. If tables are not being used on a regular basis then the corresponding number of gaming machines should be removed from play. We so recommend.

The Government accepts this recommendation. We agree that this issue is important and the annex on casinos sets out a formula for determining whether a gaming table is ‘available for use’. We have discussed this proposed formula with the Gaming Board and the industry.

90. We are concerned by the evidence we have received regarding the detrimental impact of passive smoking on casino employees.

91. We believe that non-smoking policies in the gaming areas of casinos would be an effective means of helping to protect casino employees from the dangers of tobacco smoke. We accordingly recommend that the Gambling Commission should incorporate provision for a non-smoking policy in either licence conditions or the codes of practice to be issued under Clause 16 of the draft Bill.

This response provides the Government’s views on recommendations 90 and 91.

The Government shares the Committee’s concern about the effects of passive smoking on casino employees. Smoking in other gambling venues like bingo premises and betting offices raises similar concerns. We believe that it makes more sense, however, to address these issues as a whole. The Department of Health announced plans for a public consultation on public health on 3rd March 2004. The consultation exercise includes questions on smoking in public places and workplaces and ends on 30th June. The Government then intends to publish a White Paper detailing proposals.

92. We agree with the decision to remove restrictions on alcohol on the gaming floor of casinos. However, in view of the fact that serious concerns have been expressed as to the relationship between gambling and alcohol the Committee considers it is an aspect that needs to be monitored by the Commission and included in its third year report.

The Government accepts this recommendation. Alcohol has been permitted on the gaming floor since 2002, and the Gaming Board has monitored the effect of the change. The Board have not identified any regulatory problems. Notwithstanding this, the Government accepts that this matter should be kept under review. And, if the presence of alcohol on the gaming floor were seen to cause problems, particularly for vulnerable consumers, then the Bill as drafted provides the Government and the Gambling Commission with the powers necessary, through premises licence conditions, to reintroduce the prohibition on its consumption in these areas of the casino.

Bingo

93. The Committee has reservations about the potential consequences of all casinos being able to offer bingo. We acknowledge that some of these concerns could be addressed under Clause 125(1) of the draft Bill, which would require existing bingo clubs intending to operate as casinos to obtain a new premises licence. As we discuss in paragraph 417, we consider that the guidance issued by the Gambling Commission to local authorities under Clause 17 should clarify that local authorities should be able to take account of potential problem gambling implications of such conversions and the accompanying risks of merging soft and hard forms of gambling when deciding whether or not to grant a casino premises licence.

The Government notes the Committee's concerns about the potential impact of the conversion of bingo clubs into casinos. We make new proposals in response to recommendation 33 that are relevant to this recommendation. In relation to this recommendation, we would note that licensing authorities are already able to take into account evidence that relates to problem gambling whenever they consider an application for any premises licence. This will be by reason of their duty under clause 127 to grant premises licences in a way that is reasonably consistent with the licensing objectives, and having regard to guidance from the Gambling Commission on the exercise of their functions under the Act.

94. Under Clause 143 of the draft Bill casino premises would be entitled to offer bingo. We consider that bingo should be ancillary to the casino's core and traditional gaming activities. We would not, therefore, have concerns about large or resort casinos offering bingo. However, we consider that Clause 143 should be amended to enable local authorities to prevent small casinos offering bingo. We would expect this discretion to be exercised in accordance with strict guidance issued by the Gambling Commission pursuant to Clause 17, which should take account of the proximity of existing bingo clubs.

The Government acknowledges concerns expressed about the potential risks involved in mixing different forms of gambling, but we do not agree that licensing authorities are best placed to judge these risks. Rather, we propose that these matters be dealt with in the Bill and considered by Parliament.

We do not yet have a firm evidential basis yet to assess the likelihood of a drift from 'soft' to 'hard' gambling, and consequent risk of problem gambling. But, as in the case of machine gambling, we think it better to take a precautionary approach. Accordingly, we propose, in the first place, to allow only large and regional casinos to provide bingo in addition to their core casino gambling products. If monitoring suggests that the mix of hard and soft gambling does not create enhanced risks to

vulnerable consumers, then the Bill will allow the Government, through secondary legislation, to remove the restrictions in relation to small casinos.

95. The Committee recommends that pubs and clubs should have to apply to the Gambling Commission for an additional bingo licence if in any period of seven days stakes or prizes have totalled £2,000 or more. Clause 238 of the draft Bill should be amended accordingly.

The Government does not think it would be right to accept this recommendation. £1,000 per week – the level recommended by the Budd Review – represents bingo on a commercially significant scale. The amount of bingo played in clubs and (especially) pubs is not known and the Government has concluded that it is right to proceed with caution at least until the true level of this activity has become clear.

Gaming machines

96. We accept that Category A machines pose particular risks and, as a new feature of gambling in the United Kingdom, must be introduced gradually. We therefore recommend that Category A machines should be limited to those permitted venues as listed in the draft Bill and should not be permitted in unlimited numbers.

The Government has noted this recommendation. We make new proposals above about the availability of category A gaming machines in casinos.

97. We recognise the validity of the distinction between the prize level for cash and non-monetary prizes and therefore propose retention of the current level of 30p stake and £8 maximum non-monetary prize value.

The Government is not persuaded that it would be right to accept this recommendation, given the risks to children and the vulnerable that it would involve. The proposal in the Gambling Bill is that Category D gaming machines (the only type playable by children) should have maximum stakes and prizes of 10p and £5 per game, unless the machine pays out in goods only (i.e. neither money prizes nor prizes which can be exchanged or redeemed for money), when the maximum stake could be up to 30p (as allowed by current law). As compared with that, the Committee suggest that:

- Machines which pay out in goods would have a higher top prize than we envisage (£8 not £5); and
- Machines which pay out in redeemable tickets or tokens (so-called ‘redemption’ machines) would have higher top stakes and prizes than we envisage (30p not 10p, £8 not £5).

The concept of ‘redemption’ potentially involves incentives to repeat play which some may find it hard to control. The Government, therefore, continues to believe that its own proposals represent a better way of making the vital distinction between low-stake and prize gaming machines which are designed primarily for amusement and the higher stake and prize gaming machines at Category C and above which are for adults only.

98. In addition to the current requirements as to the display of information on gaming machines, the Committee recommends that the Regulations under Clause 199(2) should also require machines to display information regarding the chance players have of winning major prizes.

The Government accepts this recommendation, and confirms that clause 199(2)(e) provides the Secretary of State with the power to require the display of information about chances of winning.

99. We support the change to the Government's initial policy, granting pubs grandfather rights for as many Category C or D gaming machines as are already authorised under those licences.

The Government welcomes this conclusion. The Government would, however, wish to clarify that the policy explained in the memorandum published on 5 February 2004 did not represent a change in policy.

100. We agree with the Government's conclusion that clubs should continue to have the same gaming machine entitlement as at present.

The Government welcomes this conclusion.

101. We welcome the Government's acknowledgement that consideration must be given to the treatment of tenpin bowling centres under the draft Bill. We recommend that further thought must be given to the appropriate number and mix of machines in these premises, to the licensing requirements that should be applied to them under the draft Bill, and to the provision of possible grandfather rights for machines which currently exist.

The Government accept this recommendation and considers that the position of tenpin bowling centres under the Bill should be as follows:

- Where a centre has an alcohol licence, and machines pursuant to that licence, the grandfather rights applicable to alcohol licensed premises (described for pubs in relation to recommendation 99) will apply – this will allow the centre to have both Category C and Category D machines;
- Where a centre does not have an alcohol licence, it will be able to apply for status as a Family Entertainment Centre (FEC) under Parts 5 and 8 of the Bill – that too will allow it to have both Category C and Category D machines;
- Where a new centre is being established, the operator will have the choice of whether to apply for machines pursuant to an alcohol licence under Part 13 of the Bill, or to apply for FEC status under Parts 5 and 8 of the Bill
- But premises with the status of an FEC will not be permitted to serve alcohol – we anticipate therefore that most centres will wish to apply for their gaming machines to be licensed on the same basis as pubs.

102. We recommend that the Gambling Commission should take account of world best-practice when formulating its policy on the regulatory standards to be applied to the testing of gaming machines. However, this best-practice has been designed in the context of casino slot machines and the Gambling Commission must take account of the differences between these machines and the types of machine that are currently available in the UK. If the Gambling Commission considers that the existing testing regime for Category B, C and D machines is adequate to satisfy the licensing objectives, we recommend that this should be maintained and that a uniform testing regime should not be imposed for the sake of consistency.

The Government supports this recommendation. We agree that it is particularly important to achieve the highest international standards in the regulation and testing of Category A gaming machines. It will be an early task of the Commission to advise on the standards necessary in the testing of machines in Categories B, C and D and on how, and how far, our existing regime for testing these machines can be improved.

103. As we recommend in paragraph 436, we agree that, at this stage, the limitations on the linking of gaming machines contained in Clause 203 of the draft Bill are appropriate.

The Government accepts this recommendation.

104. The Committee is concerned that categorising FOBTs as Category B machines would significantly increase their accessibility by placing them in adult gaming centres and bingo clubs and risk contributing to an increase in problem gambling. We therefore recommend that FOBTs are defined as a separate category of gaming machine in the regulations to be made under Clause 195(1) of the draft Bill. The draft Bill should be amended to ensure that FOBTs may only be located in casinos and licensed betting shops, with stakes and prizes as set out in the agreement between the Gaming Board and the Association of British Bookmakers to be enshrined in regulations.

The Government notes the Committee's concern about the spread of FOBTs. Under the published clauses these machines will be clearly classified as gaming machines (clause 194), and therefore subject to all the controls and safeguards relating to gaming machines (Part 10 of the Bill). We do not propose to create any separate Category of machine for a particular type of gambling activity e.g. betting. We believe such distinctions would be unhelpful, and could reproduce the problems the Committee has considered in relation to FOBTs, where the technical nature of the definition of a gaming machine in the present law has not kept pace with changes in technology. The Government wishes to prevent this problem reoccurring. It should be noted, however, that the Bill does provide flexibility for stakes and prizes to be altered in secondary legislation.

As a result, having brought FOBTs within the core definition of gaming machine in the Bill, the Government proposes that machines which are currently being operated as FOBTs will become Category B gaming machines.

The draft Bill provides that betting offices, adult gaming centres, and bingo halls should be entitled to install up to 4 Category B machines. Clubs and miners' welfare institutes will be able to offer up to 3 Category B machines. The prize limits for a Category B machine will vary according to where the machine is situated (Clause 195).

The Committee has raised the important question of whether machines currently termed FOBTs and situated in betting shops should comprise a distinct sub-category of Category B gaming machine, with the same maximum prize as other Category B machines (other than machines in clubs and miners' welfare institutes) of £500 but with a higher stake limit (£15 as opposed to £1) or whether the stake limit for Category B machines for all premises other than clubs and institutes should be raised to £15.

The Government sees the force of the Committee's preference for the former of the alternatives set out above and will consider carefully the points that have been made. It would, however, prefer to await the outcome, later this year, of the first stage of the independent research into FOBTs which the Association of British Bookmakers has commissioned before reaching a final view. This research will allow us to consider whether there is a case for providing a single class of Category B machine, with uniform maximum stakes and prizes for all premises (other than in clubs and institutes).

105. We recommend that [the evidence we have received] on the impact of FOBTs on problem gambling is considered as part of the Association of British Bookmaker's research project.

The Government agrees with the Committee's recommendation, and can confirm that the evidence concerned will be considered as part of the research project.

Betting

106. Under Clause 143 of the draft Bill casino premises would be entitled to offer both bingo and betting. We consider that such activities should be ancillary to the casino's core and traditional gaming activities. We would not, therefore have concerns about large or resort casinos offering betting. However, we consider that Clause 143 should be amended to enable local authorities to prevent small casinos offering betting. We would expect this discretion to be exercised in accordance with strict guidance issued by the Gambling Commission pursuant to Clause 17, which should take account of the proximity of existing betting shops.

The Government sees little regulatory reason to prevent casinos from offering betting, bearing in mind the opportunities which their customers will already have to undertake table and machine gaming at high stakes, which gives rise to an equivalent regulatory risks. Operators of casinos offering betting will require an operating licence which authorises the provision of betting facilities, and, as a result, the regulation of betting in a casino will not be watered down by reason of it being offered in a casino. The Government believes that it is safe to permit the mixing of similar gambling activities in these strictly controlled environments without there being implications for the level of regulation needed. On this basis the Government is not persuaded that there is a good case for distinguishing between casinos by size of their table gaming area in relation to the availability of betting and proposes to retain the Bill's authorisation for betting on casino premises, pursuant to a betting operating licence.

107. We believe that the best way of achieving a balance is to ensure that those using betting exchanges to lay bets professionally are identified, regulated, made subject to the appropriate levy arrangements, and have their status checked. There is an opportunity here in that the audit trail produced by betting exchanges is far superior to that produced by ordinary bookmakers, as acknowledged by the Chief Executive of the Association of British Bookmakers. We expand on this in the sections below.

The Government has discussed with the operators of betting exchanges, in the light of the Committee's recommendations, the possibility of identification and regulation of layers operating beyond a certain threshold. The Government proposes that all exchange users, and not just a subset, should be properly identified and registered by exchanges (regardless of how much or little they use the exchange, or the amount they win on it). This means that information about accounts or transactions can be reported to the Gambling Commission or particular individuals can be notified to the Commission if required. The Commission will in turn have the power to pass on this information, where appropriate, to sporting regulators and other responsible bodies with whom it will have information gateways under the Bill.

The Government will ensure that the Bill makes it possible for licence conditions to be attached to betting intermediary operating licences (and general betting operating licences) requiring operators to implement a customer registration scheme.

The Government agrees with the Committee's conclusion that those who use exchanges to conduct betting operations in the course of business should be regulated. The Bill already provides that all

such persons must obtain a Gambling Commission operating licence, and does not differentiate between backers and layers in this respect: any such distinction would, in the Government's view, be arbitrary and introduce unnecessary and unwise regulatory loopholes. The relevant provisions of the Bill provide that any person providing facilities for betting requires an operating licence unless they are involved in private and non-commercial betting under Schedule 1 of the Bill, or their provision of facilities is not in the course of business (clause 22). Laying or backing on a betting exchange constitutes providing facilities for betting, and therefore where someone does this in the course of business without a general betting operating licence s/he will have committed the offence under clause 21.

The Government is not persuaded that the current law should be amended to bring exchange users within the scope of the horserace betting levy arrangements, bearing in mind the proposed abolition of those arrangements in the Horserace Betting and Olympic Lottery Bill.

108. We recommend that the Gambling Commission takes steps to ensure that where existing bookmakers are using the exchanges, or causing others to operate on them on their behalf, that this is treated as part of their regulated activity.

The Government agrees with this recommendation, and can confirm that the draft Bill will have the effect sought.

109. The Committee recommends that the Department for Culture, Media and Sport (DCMS) should consult the betting exchanges on whether a ceiling on the sum which may be laid "recreationally" would be appropriate. We are also attracted to the idea that all transactions above a certain level should automatically be reported to the Gambling Commission to assist the Commission's monitoring of integrity. Such arrangements could be included either in regulations or codes of practice.

This response also provides the Government's view on recommendation 111.

The Government has, as the Committee recommended, and as noted in response to recommendation 107, consulted betting exchanges about the possible introduction of a registration scheme for users of exchanges. As part of this process we considered whether a scheme should apply to only non-recreational users. A threshold would then need to be determined for when transactions would be deemed no longer to be recreational. The Committee has suggested that this threshold should incorporate both the amount laid by users as well as the frequency of laying.

We have concluded that the registration scheme operated by exchanges should apply to all users, and not just layers (recommendation 107). We believe that any attempt to define a threshold for non-recreational users would inevitably be arbitrary and could not provide any certainty about the point at which a user was undertaking betting transactions in the course of business. We think it preferable to implement a universal registration scheme proposal, and to require exchanges and the Commission to work together to identify parties who may be using exchanges to run a business, without the appropriate licences under the Bill. To do otherwise would fetter the Commission's responsibility to make a judgment on the basis of all relevant circumstances of the case, and would risk both false positives and false negatives.

The Government considers, however, that the Committee is right to want the Bill to give the Gambling Commission power, in the interests of achieving the licensing objectives, to require exchanges, as conditions of their operating licences, to report individual transactions above a specified level of stake or winnings, so that the Commission may consider whether further inquiries

may be warranted. The draft Bill allows such conditions to be attached for this. It will, however, be for the Commission to make judgments about whether and, if so, how to use this power in the light of the level of betting business at the time of implementation and of the consultations with interested parties, and to keep those judgments under review.

We do not propose to adopt the Committee's proposal that non-recreational users of exchanges should be registered with the Gambling Commission. People who are betting in the course of a business require an operating licence from the Commission for their activities. As explained above, we do not believe there is then a further category of user who can be identified clearly who needs separate regulation.

110. We think it likely that the Inland Revenue may wish to impose regulatory requirements on the exchanges as part of any money laundering or taxation arrangements for non-recreational layers as is the case with banks and other financial institutions.

The Chancellor of the Exchequer, in his Budget speech, announced a review of the tax treatment of betting exchanges and their clients. HM Customs and Excise are continuing work with the betting and gaming industry to settle a fair and equitable tax treatment of betting exchanges and their clients. The Government is also working with the industry more generally to address concerns about money laundering.

111. We recommend that betting exchange operators should be made responsible, as part of the conditions attached to their operating licences under Clauses 62 to 65 of the draft Bill, for the operation of a system of registration of Non-Recreational Layers and the transmission of information to the Gambling Commission about such users. We note that if betting exchanges are also to be treated as a collecting agency, their own accounting practices will become more expensive, costs which they may have to transfer to those using the exchanges, though we think this cost would be marginal.

The response to recommendation 109, above, provides the Government's view on this recommendation.

112. We believe that the Department for Culture, Media and Sport (DCMS) should review the wording of Clause 30 and redefine the offence of cheating, assessing in particular whether there is a case for incorporating the misuse of information into this definition in such a way that does not catch the long-standing practice of sharing information, as described by Mr Savill (Chairman of the British Horseracing Board).

The Government does not intend Clause 30, on cheating, to have the effect of criminalising the sharing of information where such sharing is innocent in nature, in relation to racing, or any other sport or activity. Accordingly, we will consider with Parliamentary Counsel whether clarification is needed to ensure that the clause does not have this effect. There will be cases where information is misused so as to constitute cheating and then, quite properly, Clause 30 should apply. Information use will also be a matter which the Commission will oversee in relation to its powers to void bets under Part 15 of the Bill.

113. We believe that the Department for Culture, Media and Sport (DCMS) should take immediate steps to work with sporting bodies in an effort to ensure that those who participate in sports understand the dire consequences of any involvement in illegal betting, whether with traditional bookmakers or on betting exchanges. The detail of this regulation is not a matter for us, but in the context of this Bill it is vital that this consultation takes place.

The Government shares the Committee's concern to protect the integrity of sport. The Department already works closely with the Jockey Club on horse racing and National Greyhound Racing Club on greyhound racing; and will extend these contacts to the regulatory bodies of other sports on which high levels of betting take place. The Department will also continue to press betting exchanges, and indeed bookmakers, to share relevant information with all such bodies; and has been encouraged by the willingness of the Jockey Club to use all available information in discharging its own responsibilities. The Government believes that the creation of the Gambling Commission will provide a powerful new support.

Remote gambling

114. We congratulate the Government on its decision to regulate the remote gambling industry within the United Kingdom and to enable the Gambling Commission to issue remote gambling licences under Clause 55 of the draft Bill. Not only could this have significant fiscal advantages but it also recognises the fact that, even if it were desirable, it would be impossible to prohibit the use of remote gambling services by UK citizens effectively. The proposals would create safe areas for gambling on the Internet and give UK consumers the option to use well-regulated services.

The Government welcomes the Committee's conclusions.

115. The regulation of remote gambling operators should not be delayed. The licensing regime proposed in the draft Bill should be introduced at the earliest opportunity and preparations for the licensing of remote gambling operators should commence as soon as possible.

The Government wish to make the quickest progress possible in implementing the Gambling Bill. We and the Gaming Board are having continuing discussions with the remote gambling industry, and we will use these to ensure that operators are prepared for the high standards of social responsibility that will be required by remote operating licence conditions.

116. Perhaps more than in any other area, it is vital that the Gambling Commission is given the resources to enable it to develop the necessary expertise and to prepare itself for the regulation of remote gambling. We recommend that these resources should be made available at the earliest opportunity.

The Government accepts this recommendation. One of the key tasks for the Gaming Board Transition team, for whom the Government has provided substantial funding, will be to anticipate the work needed to regulate the remote industry effectively.

117. We agree that the precise detail of the proposed regime cannot be set down on the face of the Bill. However, we recommend that, as soon as possible, the Gambling Commission should begin consultation on the details of the proposed regulation for UK-based remote gambling operators.

The Government accepts this recommendation. The Department has been working with Interactive Gambling Gaming and Betting Association (IGGBA) and a range of other interested parties for some time on these issues, and we and the Gaming Board will continue this work.

118. We recommend that operators should be subject to the same standards of regulation, regardless of whether they provide their services remotely or non-remotely. As with all sectors,

the regulation of remote gambling should not be excessive or disproportionate. It must, however, be effective. Care should be taken to ensure that the threat of operators locating themselves in other jurisdictions with less restrictive regulation should not lead to the creation of a UK regime that fails to protect the consumer and to deliver the reputational benefits sought by the industry. We, therefore, welcome the assurance of the Secretary of State that “we will definitely not get involved in a race to the bottom with any other jurisdictions; or be willing to lower our standard by forgoing necessary safeguards.”

The Government welcomes this conclusion and confirms its intention to provide for appropriate regulation of remote gambling.

119. We recommend that the draft Bill should be amended to clarify that relevant software providers would be required to be licensed under the new regime. We consider that this is not adequately clear from the existing wording in Clauses 53(2)(h) and 194(3)(b), as the Department for Culture, Media and Sport (DCMS) has acknowledged in the Schedule of Detailed Comments on the draft Bill.

The Government confirms its intention to re-consider the wording of these clauses, and will ensure that relevant software providers for remote gambling are licensable.

120. Despite the risks that may be associated with remote gambling, we acknowledge that it is preferable for this sector of the industry to be effectively regulated within the UK than for consumers to have no option but to use offshore sites, many of which appear to be poorly regulated. We recommend that, as soon as possible, the Gambling Commission should start to consult the industry and those with expertise in the field of problem gambling in order to draw up stringent codes of social responsibility for this sector. We further recommend that the Commission should use those codes that have been voluntarily adopted as a basis for the statutory codes to be issued under Clause 16 of the draft Bill.

The Government welcomes this conclusion. The Department has discussed the possible content of a code with Gam Care and a range of industry representatives. While it will be for the Commission to consider the contents of its codes of practice, the Government is confident that work undertaken on voluntary codes will provide a strong basis for further detailed discussions once the Gambling Commission is in place.

121. It is important that the remote gambling industry takes measures to prevent children accessing its services. However, we acknowledge that existing technology does not make it possible to eliminate this possibility entirely. We recommend that codes of practice should be adopted under Clause 16 that require operators to take all possible steps to prevent under-age access. We also acknowledge that this responsibility should not be borne solely by the operator. We recommend that banks should be encouraged to assist operators in this respect and that parents should also be encouraged to use the technology that is currently available, such as internet filtering services, to control the websites their children are able to access.

The Government welcomes this recommendation. It is essential that the most stringent measures be taken to exclude children from remote gambling services. The Government has been working with the industry for some time to ensure that the best possible barriers are in place to prevent children from accessing remote gambling services. The Gambling Commission will continue this work, and will expect licensees to improve continuously their efforts in this area.

Further, the Government confirms that DCMS will work with colleagues in HM Treasury and the

Financial Services Authority to consider what assistance the financial sector might be able to provide.

122. We agree with the Government’s vision of “a global market where a well-regulated British based industry is able to establish itself as a world leader” and would not generally consider it appropriate to prevent UK-based operators providing remote gambling services to non-UK consumers.

The Government welcomes this recommendation. We agree that individuals in other countries can rely on the thorough regulation provided by the Gambling Bill and the Gambling Commission.

123. The decision to designate any territory as being prohibited for the purposes of Clause 32 should be subject to full Parliamentary scrutiny. We note that Clauses 32 and 263 of the draft Bill would require an order to be laid before and approved by both Houses of Parliament. We consider that this would provide adequate opportunity for Parliament to consider any such proposals.

The Government welcomes this conclusion.

124. We agree with the Government’s decision not to prohibit all non-EEA advertisements. However, we are concerned that the current proposal would make the UK a less attractive destination for remote gambling operators. We also consider that the proposed power to designate jurisdictions as prohibited for these purposes would be cumbersome and that it would not be possible to exercise it sufficiently quickly to prevent advertisements from unregulated overseas operators, especially in the initial period after the Bill receives Royal Assent. We recommend that the Bill should instead contain a general prohibition on advertisements from non-EEA operators but that the Gambling Commission should be able to designate non-EEA territories as permitted if it is satisfied that the standards of regulation in those territories are adequate. We believe that this would address the concerns of the Alderney Gambling Control Commission.

The Government welcomes the Committee’s endorsement of its decision not to prohibit all non-EEA advertisements. Had we done so, the relevant jurisdictions might well have taken a similar approach to advertisements from companies licensed in Great Britain. For this reason, we do not agree with the alternative approach proposed by the Committee, which might well elicit the same response as the general prohibition. The Government does not agree that the procedure proposed, where the Government could designate territories suitable for prohibition, is cumbersome. On the contrary, the Government believes it is a more straightforward task for the Commission to take action where there is evidence of poor practice than would be the case if it were required to assess the quality of regulatory control in each non-EEA country. This approach would also run counter to our preferred strategy of promoting co-operation among gambling regulators and favouring free access to properly regulated online gambling products.

Lotteries

125. We recommend that adequate resources should be available to the Gambling Commission to enable it to initiate prosecutions against those conducting lotteries that would be illegal under the Bill and, thereby, help to preserve lotteries for good causes.

The Government accepts this recommendation. The Commission will be adequately resourced to pursue illegal lotteries.

126. Premium rate telephone calls are a very common feature of existing lottery-type schemes and we consider it to be vital that the use of such calls to enter lotteries should be treated as a form of payment to enter under the Bill. We recommend that Schedule 7, paragraph 5(2) of the draft Bill should be amended to clarify that this would be the case.

The Government considers that the wording of schedule 7 to the Gambling Bill, as published in November 2003, already achieves the objective of ensuring that premium rate phone calls can be counted as payment to enter a lottery. ‘Premium rate’ services are accessed by dialling a particular group of telephone numbers. Customers pay for the product or service, as well as the telephone call itself, through their normal telephone bill. The Bill provides that ‘a reference to paying [to enter the scheme] does not include a reference to incurring the expense, at a normal rate, of... making a telephone call’, but that a normal rate is ‘a rate which does not reflect the opportunity to enter a lottery’. So, under the Bill, wherever a rate is charged which reflects the opportunity to enter the scheme, as will be the case in a ‘premium rate’ call, this will be ‘payment to enter.’ The cost of calls, or the *premium*, above the normal rate reflects the opportunity to enter the lottery.

127. We agree with the Government’s position, as set out in Schedule 7, paragraph 2(c), that buying goods should not be considered as payment to enter a “lottery” accompanying those goods, unless the price of the goods reflects the chance to win the lottery. However, we also acknowledge the concerns that have been expressed about the possible abuse of these provisions and recommend that the Gambling Commission should issue guidance on the meaning of a “normal price” for goods. For this purpose, it should consider using trading standards rules as a guide to determining what is normal.

The Government accepts this recommendation. The Committee’s suggestion about the use of trading standards rules is helpful and will be brought to the Commission’s attention in due course.

128. We welcome the Department for Culture, Media and Sport’s (DCMS’) willingness, expressed in the Schedule of Detailed Comments on the draft Bill (Annex 1), to amend paragraph 6 of Schedule 7 to rectify the existing omissions [with respect to payments to take possession of a prize].

The Government confirms its intention to do so.

129. We do not consider that *bona fide* sales promotions should be treated as lotteries and recommend that paragraph 6 of Schedule 7 is amended to clarify that this would not be its effect.

The Government agrees that *bona fide* sales promotional draws should not be treated as lotteries (provided that the cost of buying the goods involved does not reflect the cost of entry to the draw). We believe that the Bill, as drafted, achieves that objective.

130. We agree with the Government’s general policy aim of preserving lotteries for good causes and agree that, if this is to be achieved, it is necessary to prevent competitions in which the level of skill involved is so minimal that they are, in effect, lotteries.

The Government welcomes this conclusion.

131. We acknowledge and agree with the Government’s aim to preserve non-commercial lotteries and to distinguish them from commercial prize competitions. We are not, however, persuaded that Clause 208(4) of the draft Bill is sufficiently clear to create a workable and certain regime that will achieve this. We recommend that further thought should be given to

the wording of this Clause.

132. We would suggest that greater clarity could be achieved by including a definition of prize competition in the draft Bill. This would make it easier to draw a distinction between lotteries, on the one hand, and prize competitions, on the other. If a definition of prize competition were provided, it would then be easier to distinguish between those prize competitions which are illegal, because they have an inadequate skill element, and those which are legal, because the skill element is adequate.

133. We urge the Government to clarify the treatment of hybrid schemes under the draft Bill.

This response provides the Government's views on recommendations 131-133.

The Government agrees that it is important to ensure that the distinction between lotteries and prize competitions should be as clear as possible. It will give further consideration to clause 208(4) of the draft Bill and to the possibility of a clause about prize competitions.

134. We consider that there would be advantages to the single statutory definition of "lottery" covering the National Lottery. We welcome the Government's statement, in the Schedule of Detailed Comments on the draft Bill (Annex 1), that they will consider this request and urge it to amend Clause 222 accordingly.

The Government accepts this recommendation and is happy to repeat that it will make the necessary amendments so that the definition of a "lottery" in clause 208(1) of the draft Bill also applies to lotteries forming part of the National Lottery.

135. If the Government has evidence as to the risks of rapid draw lotteries, we recommend that it publish this evidence and that it apply any proposed restrictions equally to the National Lottery. If rapid draw lotteries do pose risks, we recommend that the required period between ticket purchase and draw be set at that necessary to address this risk, rather than at 24 hours as currently proposed in Clause 79(2). We recommend that the Gambling Commission be given the discretion to attach a condition to this effect.

The Government is giving further thought to controls on rapid draw lotteries, but it is plain that the '24-hour rule' set out at clause 79(2) of the draft Bill is unsatisfactory because it would prevent perfectly unexceptionable activities (such as half-time lottery draws at soccer matches) which the Government has no wish to stop.

136. We believe that the Budd recommendation to remove financial limits on lotteries has merit and recommend that it should be achieved progressively over time. We welcome the Department for Culture, Media and Sport's (DCMS') acceptance that the limits should be capable of amendment by secondary legislation. We recommend that Clause 79 of the draft Bill should include an additional delegated power of this type and that the Secretary of State should use this power on the recommendation of the Gambling Commission.

The Government confirms its intention to include a delegated power of the type described, but does not give any pledge to raise limits on society lotteries at any particular time.

137. We believe that some of the examples used to illustrate the potential for the abuse of "customer lotteries" may be exaggerated. However, while we agree that small raffles by local businesses should be regularised, we recommend that DCMS re-consider the existing wording in Part 3 of Schedule 8 to remove any possible scope for abuse.

The Government accepts this recommendation. We see no immediate scope for abuse of the ‘customer lotteries’ provisions but will consider them further as the Committee suggest.

Economic impact

138. Once account has been taken of the potential for substitution between sectors of the gambling industry, the wider displacement effects for the rest of the leisure industry, the potential cannibalisation of local businesses and the costs associated with addressing problem gambling, we conclude that the overall net [economic] benefit could be smaller than has been estimated.

The Government agrees with this conclusion. There have, of course, been a considerable number of estimates of the economic impact of the Bill, from industry groups and others. Some have predicted substantial benefits; others have highlighted the effects of displacement between sectors. The Government’s estimates of benefit have been cautious, but positive. We will re-consider these estimates in the light of our response to the Committee and will publish a revised Regulatory Impact Assessment prior to the Introduction of the Bill.

139. The Committee accepts that it is difficult to finalise the tax regime until the legislation is complete but encourages close co-operation between HM Treasury and the Department for Culture, Media and Sport (DCMS) on this matter.

The Government welcome the Committee’s recognition of the difficulty in developing tax regimes without full knowledge of the new regulatory environment. As John Healey MP, Economic Secretary to the Treasury, said in his evidence to the Committee, officials from the Treasury, Customs and Excise, and the Department for Culture, Media and Sport have been working together closely and will continue to do so through the steering group sponsored by John Healey MP and Lord McIntosh of Haringey. The Treasury will use this work when it considers the options for the future gambling tax regime.

Department for Culture, Media and Sport
June 2004

ANNEX: JOINT ODPM-DCMS STATEMENT ON CASINOS

1. This note supplements the Government's response to the Report of the Joint Committee. It sets out in further detail the way in which the Government envisages that the regulation of casinos will be achieved, and answers questions that have been raised about the statement made on 7 August 2003.

Gambling issues

Definition of resort casino – regional casino premises licence

2. The Government understand 'resort' casinos to be the largest casino developments, which are often combined with ancillary leisure facilities and accommodation. Under the Gambling Bill operating licensees who wish to operate such facilities will be able to apply for a regional casino premises licence. These casinos will be defined as a casino with no less than 1000 square metres of table gaming area, making up part of a total (adult only) gambling area of no less than 3500 square metres. In this wider gambling area a resort casino may install 25 gaming machines (of up to category A) for each table available for play in the table gaming area, up to a maximum of 1250 machines. It may also provide facilities for betting and bingo. The regional casino must have in addition a minimum non-gambling area of 1500 square metres, to which persons under 18 may also have access. The total minimum customer area is therefore 5000 square metres.

3. The machine entitlements of the three types of casino premises will be variable by secondary legislation made under the Bill. The purpose of the non-gambling area requirement is regulatory: in order to provide consumers with an easily accessible area where they can take breaks from gambling, and consider whether they wish to resume playing. Uninterrupted gaming might otherwise increase the risk of excessive or uncontrolled play. On-site facilities will, therefore, make it easier for users to reconsider their options. So these areas could contain no facilities for gambling. The nature of these facilities could include restaurants, bars, cafes, cinemas, sporting facilities, or the like. It is not proposed to specify appropriate facilities in legislation; rather this is a matter that will be addressed in Gambling Commission guidance to licensing authorities. Such guidance will also address the form and scale of any advertising in these areas.

Definition of 'available for use'

4. An important aspect of the Government's casino policy is that casinos should be balanced between casino table games and gaming machines. That is why we link entitlement to gaming machines to the provision of tables available for use.

5. DCMS accepts that 'available for use' needs to be defined pragmatically. As with any other customer-based business, demand in any casino will vary over the day and the week. It is unrealistic to expect a casino to have dealers stationed at all its gaming tables whenever it is open.

6. Following discussion with the Gaming Board and industry representatives, the Government agrees that a certain definition of available for play is needed. This definition must involve a formula that includes:

- The number of tables a casino has;
- The number of staff which it has who are properly qualified to run them; and
- The number of staff on the premises who can operate the tables if needed.

7. The key feature would be a rule that the casino has to have a minimum number of qualified staff that reflects the number of gaming tables that it has. Individual fluctuations of staff during any one day will remain a commercial decision for the operator.

8. It will be for the Government and the Commission to give detailed consideration, in consultation with interested parties, to the terms of such a formula, and how it will be achieved under the Bill.

Automatic and remote casino terminals

9. Industry respondents to the consultation that followed the 7th August 2003 statement were uncertain about the status of automatic gaming tables and tables with remote terminals under the Bill.

10. There are different varieties of this sort of equipment. A dealer operates some, while others work automatically with a new game being played every minute or so. Some allow for players to stand around the table in the traditional way, while others only have remote-standing terminals at which players must place their stakes and watch the game on a screen.

11. Following discussion with the Gaming Board and the industry we propose that:

- Equipment which requires casino staff to operate them should be treated as gaming tables;
- Where one dealer controls a group of linked tables they should be counted as one table; and
- Wholly automated tables should be treated as gaming machines.

12. Player positions linked to apparatus in the first or second groups could be sited on the table gaming floor. But they would not count against the casino's total of gaming tables or against its total of gaming machines.

13. Each player position linked to the third group – wholly automated tables – would count as an individual gaming machine.

14. These broad principles will be developed in the Bill and in regulations.

Casinos licensed under the Gaming Act 1968

15. Only a handful of the existing 126 casinos licensed in Great Britain meet the minimum size requirements for new casinos that will be specified under the Gambling Bill. Nonetheless, the Government believe it only fair that these casinos be permitted to continue operating under the new regime. In addition, the Government propose that existing casinos with floor space under the new minimum area:

- Should be able to relocate premises (subject to planning controls), without being required to change to the minimum size threshold, within the area of the licensing authority in which they hold a premises licence; and
- Should be able to be resold freely so long as the new owner also holds an appropriate operating licence.

16. We have settled on this proposal following consultation with industry representatives and the Gaming Board. In the Government's view it avoids either imposing an arbitrary penalty on the value of businesses licensed under the present regime or undermining the general principles of the Bill with respect to the size of new casinos.

Planning issues

What are Regional Planning Bodies and how do they agree their Regional Planning Guidance (RPG) / Regional Spatial Strategies (RSS)?

17. Regional Planning Bodies (RPBs) are currently the regional assemblies for the English regions, made up of local authorities and economic and social partners. There are 8 RPBs in England. In London, the Spatial Development Strategy – The London Plan – produced by the Mayor is the equivalent of the Regional Spatial Strategy (RSS). RPBs prepare regional planning policy following consultation with regional stakeholders, including Government Offices, Regional Development Agencies and the wider community. Under an order laid following commencement of the new Planning and Compulsory Purchase Act 2004, nearly all Regional Planning Guidance (RPG) will become RSSs. As RSSs will now be part of the Development Plan, Local Development Documents, which replace local plans, will need to conform generally to the RSS and local planning authorities will have to take the RSS into account when considering planning applications.

18. Planning Policy Guidance (PPG) 11: Regional Planning (October 2000), issued by the then Department of the Environment, Transport and the Regions, is being replaced by a new *Planning Policy Statement 11 (PPS11) – Regional Planning*, in Summer 2004. Like PPG11, PPS11 requires the RSS to establish the locational criteria appropriate to regionally or sub-regionally significant leisure uses, or to identify the broad location of major new leisure developments.

How will the Government advise RPBs to consider locations for regional casinos?

19. The broad policy context for the assessment of regionally or sub-regionally significant developments, including casinos, is set out in PPG11 and the emerging PPS11, as discussed above. More detailed policy relating to casino development is included in the emerging PPS6: *Planning for Town Centres* and PPG13: *Transport* will also be relevant with regard to location, transport and parking. The effect of these policy statements is to enable RPBs to define regional casinos as regionally-significant leisure or inward investment proposals as they see fit.

How will RPBs revise their Regional Spatial Strategies to take account of regional casinos?

20. Most Regional Planning Guidance (RPG) will become Regional Spatial Strategies (RSS) on commencement of the Planning and Compulsory Purchase Act 2004. RPBs may wish to review all or part of their RSS to address the issue of casino development.

Proposals for casinos outside specified locations

21. At present, where RPG sets out the preferred location(s) for regionally significant leisure developments, and a local planning authority resolves to approve an application for such development elsewhere, the First Secretary of State may call in the application for his own determination.

22. The First Secretary of State may also call in departure applications (i.e. where a local authority proposes to grant permission for a development that does not accord with the

development plan). Particular provisions exist under *The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999*, whereby some ‘departure’ applications must be specifically notified to the Secretary of State, enabling him to check general compliance with development plan policies, and to consider whether an application should be called in. These include development of more than 5,000 square metres gross floor space which consists of or includes leisure floor space, or would, by reason of its scale or nature, or the location of the land, significantly prejudice the implementation of the development plan’s policies and proposals. Amongst the examples given in the Directions of the types of development proposal that might significantly prejudice the implementation of the development plan’s policies and proposals are:

- Applications for development of major importance having more than local significance, e.g. major leisure developments (other than those notified automatically to the Secretary of State);
- Applications which raise important or novel issues of development control; and
- Applications which, through their cumulative impact with existing and/or proposed development, may have a significant impact on the implementation of the policies and proposals in the development plan.

23. The First Secretary of State is selective about calling in planning permissions and will; in general, do so only if planning issues of more than local importance are involved.

What changes will the Planning and Compulsory Purchase Act 2004 make?

24. As mentioned above, RSS will, in contrast to RPG, be part of the development plan for an area, and, as a result:

- Local Development Documents (formerly ‘local plans’) must be in general conformity with the RSS; and
- Planning applications must be determined in accordance with the RSS and the new type of ‘local plan’ known as the ‘Local Development Framework’ (unless material considerations indicate otherwise).

25. Where broad locations are identified in the RSS for regionally significant casino proposals, any resolution to grant planning permission for such a proposal coming forward in another location within the region would be a departure from the development plan, and, given the likely size, would automatically be notified to the First Secretary of State, who may call in a proposal for his own determination.

Planning obligations

26. The planning system allows local planning authorities, when considering applications for planning approval, to enter into legal agreements (‘section 106’ agreements) with developers, also known as planning obligations. Planning obligations, which are intended to mitigate the impacts of a development, enable proposals to proceed which might otherwise be refused. Examples of contributions made through planning obligations include public transport improvements; affordable housing; open space provision; social, educational, recreational or sporting facilities; and environmental protection.

Devolved responsibilities

27. Gambling law in relation to casinos of all sizes will apply equally in Scotland and Wales. But it will be for the Scottish Executive and the Welsh Assembly Government to decide whether adjustments to the planning and land use arrangements might be appropriate to take account of changes to gambling regulation.

Conclusion

28. The combination of existing planning policies and proposed arrangements for gambling can combine to ensure that:

- New casinos will be attractive developments that enhance the productivity of the leisure sector, offering consumers a high quality gambling and leisure experience, which can also be regulated to ensure that the risks associated with gambling are addressed effectively;
- There can be vigorous competition between operators and premises;
- New large casinos will be located in the most appropriate places in terms of their tourism and regenerative potential, and will contribute to the mitigation of the impacts associated with their development, and;
- There will be an opportunity for RPBs to consider whether substantial developments outside the areas specified in the RSS might have a significant negative impact on the achievement of tourism and regeneration benefits envisaged in the RSS.

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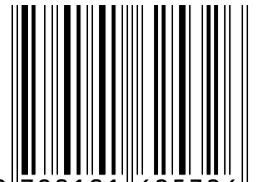
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