

OFGAM? OFBET? The Regulation of Commercial Gambling as a Leisure Industry¹

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This article sets out the current framework regulating commercial gambling within its social and historical context, and identifies and evaluates the likely impact of the Gambling Review Report's recommendations on the current regime.

Introduction

The Gambling Review Report

This article explores the background to, and the primary implications of, the *Gambling Review Report* which was published in July 2001 (hereafter, *GRR*).² When set in a socio-legal context that acknowledges the prevalence of gambling as a social pastime over at least the past two centuries, *GRR*'s recommendations signify a formal acceptance that commercial gambling has finally shed its pariah status as an essentially worthless leisure industry, grudgingly regulated lest the costs of an unregulated market become unmanageable.³ If its recommendations are fully implemented, commercial gambling will become a major feature of the wider leisure industry,⁴ alongside resort destinations,⁵ theme parks, and other entertainment complexes.

The Current Regime: A Snapshot

For the past 40 years the Home Office has overseen a regulatory regime predicated on two notions: first, that gambling is a socially endemic activity which, if unregulated, will create expensive social costs; and second, that while it is not the function of government to prevent individuals from gambling, neither is it its function to do more than facilitate them to do so. The former notion may be expressed in terms of three incidents of market failure.⁶ Regulation is needed to control externalities (for example, criminal exploitation of players, the commission of crime for the purpose of play, and

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third party harms arising from excessive consumption), to correct information imbalance and deficits (for example, there is widespread player ignorance of probabilities,⁷ and game operation and financial information and control are entirely in the hands of the supplier⁸), and to guard against consumption by those who may be unable to cope and/or whom social values conceive are inappropriate consumers within this market, in particular children. These features of regulatory policy ('polluter pays', correcting information asymmetry, consumer protection and paternalism) constitute *GRR*'s primary justifications for the continuation, and, indeed, in some respects enhancement, of the current controls for the new regime that it envisages.⁹

The second notion is famously captured in a concept familiar within welfare economics, 'unstimulated demand'.¹⁰ This requires that it is the function of government to provide such facilities for players to gamble as will meet that demand which would otherwise be satisfied by an unregulated market; beyond that, it is not the function of government to stimulate the market. The operation of this essentially problematic notion is exemplified by the comments made by the Royal Commission on Gambling which reported in 1978. Recalling the libertarian ethos of its predecessor some some 30 years earlier,¹¹ whose recommendations form elements of the current regime, the 1978 Report observed that its philosophy was:

To support broadly the principle that the facilities offered should respond only to 'unstimulated demand'. This is a principle about which it is not easy to be specific ... It implies, for instance, the maintenance of curbs on certain forms of advertising, and it has up to now been taken to imply the limitation of amenities in betting shops ... The principle applies in different degrees to different types of gambling. It is obvious that too wide and too literal adherence to it could result in nonsensical recommendations, such as, to give an extreme example, that there should be no football because it stimulates betting on the pools. But the principle has some sense. People should not be pestered: they should not be distracted from their real work, even if betting at appropriate times boosts the morale of those engaged in repetitive or otherwise uncongenial tasks (as the late Ernest Bevin is said to have believed).¹²

When the Royal Commission on Gambling reviewed matters in the mid-1970s it did so largely as an administrative exercise that did not seek to question commercial gambling's moral, social, or even economic value. Its view was, nevertheless, one of an activity which, if it were to go away, would not cause many to lose much sleep (save those dependent on it for a

living, together with a few diehards), but given that this was unlikely, a firm regulatory grasp was desirable. As I have argued elsewhere,¹³ the principle underlying the notion of unstimulated demand reflected the adoption of a model in which the function of regulation was to substitute for competition, rather than to provide the conditions within which competition would flourish, whether as a means of providing better prices or improved quality for the consumer. As we shall see, *GRR* does not share this view; beyond the need for regulatory discipline to control market entry and aspects of standard setting and compliance, market forces are apt to deliver price and quality control for the punter.

While unstimulated demand was the operating principle, the economic strength of the commercial gambling market in Great Britain was not especially important to successive governments.¹⁴ Certainly there has never been any significant public interest issue in the maintenance, for example, of a vibrant local authority lottery market, or of a financially strong bingo or machines industry. But the picture is now very different. The two key developments in recent history were the launch of the National Lottery on 14 November 1994, which re-introduced state-sponsored gambling as a revenue raising device, and the threat to government revenues consequent on the growth of e-commerce during the late 1990s, which took betting not just off-track, but off-shore.¹⁵ As important as *GRR*'s terms of reference was the Department of Customs and Excise's simultaneous announcement of a review of general betting duty with a view to its replacement by a fiscal system that would enable British companies to withstand global competition for the gambling pound and to exploit e-commerce, while also ensuring a return to the revenue.¹⁶ The abolition of general betting duty on 6 October 2001 signalled the Treasury's acceptance of the economic benefits that flow from a healthy commercial gambling market.¹⁷

The Structure of this Article

The purpose of this article, reflected in its structure, is twofold:

- to set the current framework regulating commercial gambling within its social and historical context; and
- to identify and evaluate the likely impact of *GRR*'s recommendations on the current regime.

The first section seeks to identify the key developments and pervasive themes in the commodification of the three main gambling media, betting on horseraces, casino gaming and lotteries, since the mid-eighteenth century. The section commences with a brief introduction to the gambling literature dealing with these matters.¹⁸

Betting, Gaming and Lotteries: A Short Socio-Legal History

The Gambling Literature

Betting, in particular with bookmakers, has attracted a number of scholarly monographs. These include Chinn's ethnographic study of the place of the bookmaker in a local community,¹⁹ Dixon's socio-legal account, by means of an analysis of the rise and fall of the National Anti-Gambling League, of the emergence of a regulatory rather than a prohibitory response to bookmaking,²⁰ and, with a more recent focus, Hill's account of the political debate surrounding the issue of the horserace betting levy following the legalisation of betting offices in 1960.²¹ Social and economic histories, notably Clapson and Munting,²² describe both the plurality of ordinary and local events upon which bets might be made (pitch and toss, cricket matches, pigeon racing, blood sports and the like) and the national dominance of horserace betting with bookmakers that became a feature of late nineteenth century popular gambling. These histories also describe the massive post-First World War popularity of greyhound racing and the emergence in the 1920s of two major forms of *pari-mutuel* (pool) betting, the football pools and the Tote (the Horserace Totalisator). Vamplew's economic histories focus on the commercialisation of professional sport in Great Britain, in particular the supply side costs of horseracing.²³ McKibbin, by contrast, analysed working-class demand for a product that offered both a financially limiting and rational basis on which to make a bet.²⁴ There is, in addition, a huge popular literature associated with horseracing. This celebrates, variously, individual horses,²⁵ riders,²⁶ races²⁷ and venues;²⁸ others describe the origins of the institutional arrangements under which horseracing operates.²⁹

While aspects of the history of gaming and lotteries in Great Britain figure in some of the works just cited, these two areas have, by contrast, attracted far less specific attention. This should not be interpreted as a reflection of their social significance; gaming was ubiquitous throughout the eighteenth century, as was participation in lotteries, both public and private. Ashton's two compendia of the late nineteenth century still represent the most comprehensive accounts of their salience during that and the previous century.³⁰ An extensive analysis of the twentieth century development of 'good cause' gambling is Douglas's account of the drive towards the creation of the National Lottery.³¹ Downes *et al.*'s study based on late 1960s data contains some useful sociological insights into gambling as a social activity,³² but it was not until 1999 that there was government support for a national evaluation of gambling behaviour in Britain. The *Gambling Prevalence Study* is a key document in understanding the salience of gambling across all social classes.³³

Betting, Gaming and Lotteries: Defining the Activity

A pervasive feature of the law is the absence of clear distinctions between the three primary incidents of gambling activity.³⁴ One apparently attractive possibility is to differentiate them according to the players' reliance on the role of skill or of chance in the determination of the gamble. A bet is a promise to pay money or money's worth upon the determination of an uncertain or unascertained event in a particular way.³⁵ In its typical form (betting on sporting events involving humans or animals), it involves the exercise of skill and judgment as to the outcome of a future event.³⁶ It may also involve the determination of a fact that is ascertained but unknown to the parties, such as the outcome of a past sporting event. Here, too, skill and judgment may play a part. Even betting on which drop of rain on a window pane will reach the sill first may be so considered: judgments as to the effect of surface tension, of irregularities in the glass, of any external force, and so on. But the presence of skill is not a defining characteristic; we may bet on the likelihood of the next turn of the roulette wheel being red or black: this outcome is purely a matter of chance.

Whereas a bet may involve the exercise of skill, a lottery, by definition, cannot. Although it has no statutory definition, at common law a lottery comprises the 'distribution of prizes by chance where the persons taking part in the operation, or a substantial number of them, make a payment or a consideration in return for the chance of a prize'.³⁷ In terms of its possible differentiation from other forms of gambling, the key point is that any gamble that is not entirely dependent on chance cannot (whatever else it may be) constitute a lottery. So conceived, it is clear that there are many gambling activities that would, but for any statutory stipulation to the contrary, be lotteries. Bingo is an example, as is roulette or the playing of a gaming machine, since they all involve the chance distribution of prizes. But like betting, some forms of gaming, such as backgammon or blackjack, may involve the exercise of skill and judgment.

A second possible basis for differentiating gambling activities turns on the nature of the gambler's participation, if any, in the event on which the gamble is made. Gaming, for example, has typically been understood as requiring participation by the persons in the game on whose outcome they have wagered.³⁸ The standard statement of this is Hawkins J.'s *dictum* in *Jenks v. Turpin*, that gaming comprises 'the playing of a game for stakes hazarded by the players'.³⁹ But while the word 'game' has never been exhaustively defined, it is clear that not any game will do: in particular those that involve physical exertion on the part of the player have not traditionally figured in the literature. To wager on the outcome of a cricket match, a popular eighteenth century activity,⁴⁰ was (and continues to be) betting; this would be so whether those making the wager were players or spectators, but

such wagering was not regarded as gaming.⁴¹ Betting thus may or may not involve the participation of the bettors in the determination of the event on whose outcome they have gambled. By contrast, purchasers of lottery tickets can exert no influence (whatever they may think about the particular combination of numbers they have chosen, say, for the National Lottery draw) over the outcome of the event.

Much of the legal history of gambling in England and Wales has concerned attempts by the courts (and the police and the Home Office) to formulate clear demarcations between these various gambling activities. These demarcations reflected those actors' perception of the social impact that new gambling media might have upon those who participated in them, and upon the community at large. This was, for example, true of the official responses to the advances in technology at the beginning of the twentieth century that led to the development of gaming machines. Of particular concern was their impact on children's behaviour;⁴² depending on whether the machine offered the player any opportunity to exercise skill in the outcome of the game, it was either betting (if it did), gaming or a lottery (if it did not), and in any case was unlawful according to the relevant legislation.

These imprecise classifications have been replaced in part by the stipulative definitions of the Gaming Act 1968. Introduced in response to the casino scandals of the 1960s, this Act (whose major features will be discussed later) brings within its regulatory remit those games that are particularly attractive to the player and which conduce to high levels of participation. They are characterised by their high event frequency, rapid payout, wide range of odds and stakes, and high level of player involvement. Another reason for their close control is that many of them, for example blackjack and punto banco (including baccarat),⁴³ are 'banking' or 'banker's' games, in which the process of the random selection of winning and losing denominations is managed by one of the players in a series of simultaneous two-player games with the other players. A central characteristic of banking games is their structural inequality. This consists, as Parlett puts it, 'in the fact that ties and special cases are invariably designed to favour the banker, who is thereby assured of a small but cumulative profit or rake-off. This makes banking games ideal activities for casinos, in which the bank is held by the management and the game is dealt and controlled by its agents'.⁴⁴ In modern parlance, this inequality is called the 'edge' and it is what makes banker's games especially amenable to exploitation.⁴⁵

The Social Construction of Leisure: Gambling in the Eighteenth and Early Nineteenth Centuries

A crucial factor in this history is the development among the wealthier classes of diversionary pursuits, with which they filled their increasing leisure time. As the Stones put it:

What does a leisured elite do with itself all day, year in and year out? There were, as have been mentioned, administrative responsibilities for the estate, the home farm, and the household; there were the endless parties and the flitting to and from house to house. There were field sports and indoor sports, particularly cards. But how also could the days be filled? Increasingly throughout the late seventeenth and eighteenth centuries one solution was escape – flight to London, to Bath ...⁴⁶

Gaming, for which Bath was particularly notable, offered a number of distinct social benefits. It provided opportunities for conviviality and also for an exclusivity of conversation among a small group sitting close to each other (gossip); this last was valued in an age when there were no clear notions of privacy.⁴⁷ It was uninterrupted by bad weather, and unlike some other sporting or leisure activities, required little in the way of physical or mental prowess. As in the case of other social activities, practice became, as Richard Seymour noted in *The Compleat Gamester*, prescription: ‘gaming is become so much the fashion amongst the Beau Monde, that he who, in Company, should appear ignorant of the Games in Vogue, would be reckoned low-bred, and hardly fit for Conversation’.⁴⁸ Equally popular at the other end of the social scale, gaming was, along with swearing, profaning the Sabbath, drunkenness and frequenting bawdy houses, but one instance of the idleness and immorality of the poorer classes which the reforming societies of the late eighteenth century came to regard ‘as immediate causes of crime and therefore in themselves direct threats to social stability’.⁴⁹ During the last quarter of the eighteenth century and throughout the Prince of Wales’s Regency and accession as George IV, gaming among the upper classes reached its zenith. It was as ecumenical as it was intense; Trevelyan commented, ‘society in those days was one vast casino’. Its ubiquity was, in his view, substantially the product of a national propensity to use the outcome of a bet as ‘the most authoritative solution of an argument’.⁵⁰ Economic models of decision-making in which proponents of alternative views are invited to express the strength of their conviction in the rightness of their views in financial values are routine; colloquially, putting one’s money where one’s mouth is.

A second prominent feature of Trevelyan’s casino was the permanent place which the state lotteries had acquired in the government’s financing arrangements. Between the 1750s and their abolition in 1826, they generated for the Exchequer gross annual profits varying from £89,302 to £437,543. A typical lottery of this period was that authorised by statute in 1796.⁵¹ £780,000 was to be raised by the sale of 60,000 tickets at £13 each. The 20,008 winners would share £500,000: three top prizes of £20,000, a

lowest prize of £17 and 20,004 permutations in between. Like most other lotteries, this was successful, generating £267,831 13s 10d for the government. It will be obvious from these figures that even by modern standards, the stakes, prizes and total turnover are quite considerable. In the first year of the National Lottery etc. Act 1993, a single chance cost £1, with a minimum win (for three numbers out of the six drawn from a range of 49) of £10, and a maximum, depending on the number of participants in any one week, and excluding roll-overs or a guaranteed top prize, of around £6–8m.

The Sporting Life: The Commercialisation of Betting in the Nineteenth Century

Gaming was merely one of a variety of social activities mixing gambling, sport and violence; betting on the outcome of cricket, boxing matches (pugilism), pedestrianism, cockfighting and bear-baiting was commonplace.⁵² Reflected in *Bell's Life in London and Sporting Chronicle*, founded in 1822, the gambling culture was not confined to the bear pit or the prize ring; the City's financial markets were, as now, frequently portrayed as being merely another gaming club: 'nowhere else is the adventurous rage for Stock-jobbing carried on to so great an extent' wrote Charles Dunne in 1823 of London's speculators.⁵³ While the addition of the Lotteries Act 1823 to the existing legislation prohibiting private lotteries meant that both public and private lotteries were now proscribed (the last state lottery was drawn in 1826), the law enjoyed only partial success. Illegal small-scale private lotteries multiplied, notably in the form of 'specs' (short for speculations) held in public houses. These were typically sweepstakes on horseraces, and their popularity during the 1840s and 1850s marks a transitional stage as popular gambling moved towards the system characteristic of the later nineteenth century, centred on betting with bookmakers.

Betting between individuals on the outcome of a horserace was a well-established feature of social life long before the first of the classic horseraces, the St Leger, was run at Doncaster in 1776. Throughout the late seventeenth and early eighteenth centuries, 'match betting', that is, a two-horse race on which their owners, and any other interested persons, could bet, was commonplace. Indeed, the binary structure of such races dictated the nature of betting transactions until the emergence of bookmaking in the early nineteenth century. The competitive racing of horses was, as such social historians as Cunningham and Malcomson have shown, an integral aspect of eighteenth century rural social life.⁵⁴ Rules regulating the conduct of a race meeting and the settlement of bets were at this time a mix of custom and practice, the common law and legislation. A key institution was

the Jockey Club. Founded in the early 1750s, the Jockey Club initially sought only to regulate racing at Newmarket, but by the last quarter of the eighteenth century it had on occasion arbitrated on disputes arising at other meetings. As races involving larger numbers of runners became more popular, with consequently larger sums of money riding on the outcome, so the call for checks on the probity of the runners and riders became increasingly important. Records authenticating a horse's pedigree and racing history were first formulated by George Weatherby, a Newmarket solicitor,⁵⁵ who, like Richard Tattersall, became eponymously associated with one of the principal institutions underpinning the organisation of horseracing.

For the working class, 'sporting public houses' provided both the information and the opportunity for cash betting.⁵⁶ The information was supplied in the form of lists of the runners, riders and odds for horses in forthcoming races. The opportunity was the presence of a bookmaker, who sometimes doubled as the landlord, with whom individual bets could be made. Regarded as being at least as pernicious in their impact on the working class as had been the copper hells of the turn of the century, 'list houses' were proscribed by the Betting Houses Act 1853. The legislative ambition was almost entirely undermined by the technological advances of the mid-nineteenth century which were harnessed to the further commercialisation of horserace betting. Prime among these was the railway revolution.⁵⁷ First, the massive expansion of the railways between 1840 and 1870 permitted spectators to travel substantial distances to attend meetings, a demand which the railway companies were quick to exploit *via* the 'racing special'. Second, it further accentuated the growing professionalism and specialisation within racing.

But while the railways brought more spectators to racing, they did not necessarily bring more income. For some meetings, particularly a number of those held in the outskirts of the metropolis, they brought only riot, drunkenness and the mob. The structural problem that affected all meetings, however, was that they had no means of exploiting the increased demand for the commodity that they supplied. There could be no general gate fees for all spectators because there were, as had been the case for over a century, no gates. The first enclosed racecourse was Sandown Park in 1875. It was, comments Vamplew, 'an instant success'.⁵⁸ The enclosed race meeting was able to tap the increased spending power of the working classes, which became particularly marked during the 1880s. It is significant, too, as one instance of the commercialisation of popular leisure in the last quarter of the nineteenth century, which also saw the development of the music hall, the seaside holiday,⁵⁹ gate-money for football matches, and the increasing reliance of the 'new journalism' on prize competitions as a means of engaging and retaining its readership.⁶⁰

The Anti-Gambling Movements

Gambling's opponents did not stand idly by as upper- and working-class participation in gaming, the state lotteries and horserace betting waxed and waned. At the same time as spas such as Bath were becoming centres of constructed leisure, gaming became the focus of attention for the many societies for the reformation of manners which had been formed at the end of the seventeenth century. Prominent among these were the Society for the Promotion of Christian Knowledge and the London Society for the Reformation of Manners, but as Birley writes, 'in the upper reaches of society, however, reform meant improving manners rather than saving souls'.⁶¹ Concern for the impact of gaming on the stability and predictability of inherited wealth was equally matched by the sudden prominence of working-class gaming in the consciousness of the propertied classes during the late 1740s and early 1750s. This was prompted in large measure by the pronouncements of the London magistrate Henry Fielding. In his 1750 tract, *An Inquiry into the Causes of the Late Increase of Robbers*, he had singled out working-class gambling, in all its forms, as but one instance of the 'riotous pleasures' of the lower orders that 'bid fair for the total overthrow of subordination'.⁶² Of Wilberforce, who also campaigned to abolish the state lottery, E.P. Thompson wrote: 'in every manifestation of moral indiscipline, Wilberforce saw the danger of Jacobin revival ... his conviction as to the intimate correlation between moral levity and political sedition among the lower classes is characteristic of his class'.⁶³

Keeping a common gaming house was unlawful, but prosecutions were few. Gaming 'hells' were well protected and police corruption was widespread. Exasperated by the flagrant law-breaking, the House of Commons appointed a committee in 1844 'to inquire into the existing statutes against gaming of every kind, to ascertain to what extent these statutes are evaded, and to consider whether any and what amendment should be made in such statutes'.⁶⁴ At a practical level, the committee concluded that the law was, 'generally speaking, wholly inoperative'. Of more enduring interest is the committee's philosophy, which was that the enforcement of gambling debts should henceforth be guided by Adam Smith's invisible hand.⁶⁵ Its legacy is s.18 of the Gaming Act 1845, which *GRR* proposes should be repealed so far as contracts between punters and licensed operators are concerned.⁶⁶

Neither the Gaming Act 1845 (which also increased police powers of entry and search) nor the Betting Houses Act 1853 had much impact on popular gambling. The decline in gaming that did occur was coincidental rather than causal; the social and economic conditions that prevailed in Victorian Britain were simply not conducive to excessive gaming. In

addition, the middle class began to show a marked interest in the leisure activities of the working class, in what Bailey terms the pursuit of rational recreation.⁶⁷ David Dixon has extensively analysed the efforts of the National Anti-Gambling League to put a stop to working-class gambling. Law students may study *Hawke v. Dunn* and *Powell v. Kempton Park Racecourse Company* as examples of the application of the *eiusdem generis* canon of construction in the interpretation of statutes.⁶⁸ What they miss is that John Hawke was Secretary of the League and that Richard Dunn was a bookmaker at Hurst Park Racecourse and that this important decision for a short while made it illegal for bookmakers to transact bets on-course. Charles Powell was a clerk at Kempton Park Racecourse who was given a single share in the company for the purpose of bringing what was in effect a collusive action designed to overrule the earlier decision. Following the House of Lords' acceptance that the bookmakers did not commit an offence under s.1 of the 1853 Act when taking bets on-course, further efforts were made to control working-class betting more closely. Responding to the *Report of the Select Committee of the House of Lords on Betting* in 1902,⁶⁹ the Home Office supported the enactment of the Street Betting Act 1906 which made it an offence to transact bets in the street or other public places. This was avowed class legislation: as the Metropolitan Police Commissioner, Sir Edward Henry, observed, working-class gambling was a very great public evil which 'cries out' for a remedy. 'Contrary to principle', he concluded, 'we need one law for the rich and one for the poor'.⁷⁰

Gambling in the Twentieth Century: A National Pastime and an Adverse Reaction

The 1920s and 1930s saw a continuing expansion in gambling media. Gaming machines, greyhound racing, the football pools, the Tote, bingo, newspaper prize competitions, whist drives and the widespread promotion of private 'good cause' lotteries all contributed, along with a vibrant (if illegal) off-course cash betting market, to a gradual commodification of gambling opportunities. The anomalies embedded in the law as a result of a century of uncertain enforcement were matters of comment by Royal Commissions in the early 1930s and immediately following the Second World War; but change was, until the 1960s, confined to the 'small lottery' problem.⁷¹

Although police corruption continued to be an issue in the enforcement of the Street Betting Act 1906, regular payoffs could also be viewed as an informal accommodation between the bookmaking community and the police which brought a degree of stability to what could readily become a highly volatile market.⁷² Nevertheless, organised bookmaking attracted crime, notably racecourse gangs,⁷³ but as commercial gambling had

expanded so it had gained a greater social legitimacy. For the Home Office, the traditionally awkward trade-off between its own preference for a quiet life, police concern about the resourcing implications of enforcing the anti-gambling legislation, and the occasional eruption of public anti-gambling sentiments, was made the more complex by the presence of a wider group of sectoral sporting and business interests ready to argue that their gambling promotions were harmless fun.

Between them, the 1932 and the 1951 Royal Commissions had conclusively accepted that the prohibition of off-course cash betting was fundamentally unsatisfactory, both in principle and in practice. Less easy was agreement on what should replace it; but by the time the 1949–51 Royal Commission reviewed matters in the very different post-war social and economic conditions, licensing of individuals and premises was the preferred option.⁷⁴ The existing, lawful off-course credit bookmakers would be included, thus creating a single, regulated betting market. This regime, designed to respond only to the unstimulated demand for off-course cash betting, was introduced by the Betting and Gaming Act 1960.⁷⁵ While we might applaud the irony of the introduction of the statutory test for a bookmaker's permit, which meant that former street bookies were in effect demonstrating their competence on the basis of their earlier illegal activities, there was a clear legislative ambition. Spartan in their appeal, the statutory conditions attaching to the conduct of licensed betting offices were deliberately intended to discourage any market expansion. By contrast, neither of the Royal Commissions had been unduly concerned about gaming,⁷⁶ and the 1960 Act included provisions designed to permit small-scale gaming in members' clubs. This was a serious mistake. Within months of its commencement, casinos were 'flourishing like weeds in many parts of the country'.⁷⁷ The Act was wholly ineffective to prevent the massive commercial exploitation of gaming. The social costs were of two main kinds. First, the absence of controls restricting the availability of gaming facilities encouraged excessive participation, leading to consumer indebtedness, personal bankruptcy and criminality. Second, the absence of controls vetting the quality and monitoring the performance of casino management permitted the acquisitive to exploit systematically, and to the detriment of consumers, those ostensibly limited opportunities offered by the Act for accumulating profit. Given the abundant and untraceable supplies of ready money, many clubs were used as outlets for stolen property and for laundering the financial proceeds of crime.⁷⁸ The legislative response was the Gaming Act 1968, which remains a paradigm of industry-specific regulation.

The Current Regime and the *Gambling Review Report*

Pervasive Themes

What is striking about the history of commercial gambling is the pervasiveness over time of the arguments that have been mustered in favour of its prohibition or regulation. The three primary arguments are succinctly stated by the *Gambling Review Report*:⁷⁹

- gambling can cause serious financial and psychological harm to some of those who do it (and to their families) (the ‘danger’ argument);
- gambling is intrinsically undesirable because of the attitudes it sustains or encourages (the ‘moral’ argument);
- the activity of gambling can adversely affect the lives of those who do not themselves gamble (third party extensions of the danger and moral arguments: externalities).

An important strand in the abolitionists’ case during the first decade of the nineteenth century was that the perpetuation of the state lotteries was inconsistent with the development by the working class of the proper attitudes to work and leisure. Likewise at the turn of the twenty-first century, there are critics who see in the National Lottery the promotion of values antithetical to those of industry, thrift and reward. And like their predecessors, they too consider these values to be further compromised by the fact that the Lottery is state-sponsored gambling, albeit for ‘good causes’. Divisive in their appeal and in their distribution of chance wealth, lotteries, though structurally unlikely to encourage excessive participation, have always been perceived by their opponents as asocial. A connected objection is that gambling implies ‘waste’. Apparently generating no socially or economically useful product,⁸⁰ gambling, at least among the working class, was perceived by the Victorian anti-gamblers as both symptomatic, and productive, of the economic downturn that Britain experienced at the end of the nineteenth century.⁸¹ In more recent times, the notion that gambling in some way reflects the individual’s lack of moral worth was neatly captured by the 1978 Royal Commission, while it simultaneously rejected its relevance to the public control of commercial gambling.

The objection that punters are wasting their time is a moral or possibly an aesthetic judgement. As it happens, none of us is attracted by the idea of spending an afternoon in a betting office. But the people who frequent betting offices have chosen to enjoy themselves in their own

way and we think that in a free society it would be wrong to prevent them from doing so merely because others think that they would be better employed in digging the garden, reading to their children or playing healthy outdoor sports.⁸²

Unwilling to subscribe to what some of its members considered to be the 'intolerably paternalistic' implications of this view, *GRR* redefined the issue as one of 'social excess', but immediately admitted that this too defied any ready analysis. In the end, *GRR* concluded that its focus should include 'some concern for the effects on society as a whole or on local communities of allowing increased freedom to establish gambling outlets'.⁸³ Difficult as the 'social excess' variant on the 'moral' argument is to operationalise, *GRR*'s regulatory philosophy nevertheless proceeds from the premise that it is better to guard against unforeseeable increases in consumption ('producer risk'), than it is to let consumers determine the size of the market ('consumer risk').⁸⁴

Regulating Commercial Gambling: A Summary of the Existing Controls

The primary forms of commercial gambling are: bookmaking; bingo; casino gaming; gaming by means of machine; lotteries, including the National Lottery; pool competitions; and spread betting. The parameters of control vary according to the propensity of the gambling medium to encourage continuous rather than discontinuous play. The continuum implied by this dichotomy captures more helpfully the distinction between 'hard' and 'soft' gambling.⁸⁵ This distinction was particularly relied upon by the 1978 Royal Commission as an analytical device on which differing regulatory regimes could be predicated. 'Hard' gambling may be characterised by high event frequency and rapid staking; typical examples are machines and casino games. As these features are likely to encourage repeat play, in particular chasing losses,⁸⁶ they present greater potential for exploitation and therefore a greater justification for strict regulation. Delayed game resolution, coupled with limited opportunities for repeat staking (for example, pool competitions and the National Lottery draw), on the other hand, may warrant a lighter touch. *GRR* preferred to distinguish high-staking games, where the defining variable is significantly dependent on the player's resources, from games presenting objectively addictive features. Thus, 'casino table games will typically be both, the weekly National Lottery neither; and gaming machines potentially addictive but currently not high-stake for most adults (although they may be for children)'.⁸⁷

In summary, the present regime imposes, first, market entry controls. These specify minimum personal, managerial and financial standards to be met by commercial gambling suppliers and operators, including, in the case

of the casino and bingo industries, their employees. Second, there are controls on the number and location of gambling venues, including standards relating to their internal condition and conduct. The gambling transaction is subject to standards regulating the price, payout regime, return to player, together with some measure of consumer protection. The games themselves are limited by type, frequency of play and availability. Players, likewise, may be required to meet certain standards, typically an age threshold, and may be precluded from obtaining access to the usual consumer facilities, notably credit for play. Consonant with the 'unstimulated demand' ethos, environmental controls limit advertising, and the provision of live entertainment, refreshments and alcohol to accompany the gambling. The intensity of these quantitative and qualitative controls depends in each case upon the particular gambling medium's potential for exploitation and thus for consumer losses.⁸⁸ This differentiation of regulatory treatment is most vividly seen in the case of the National Lottery, whose statutory objective is, in complete contradistinction to most other forms of gambling, to stimulate demand.⁸⁹ The following paragraphs detail briefly how the parameters of regulatory control affect the primary forms of commercial gambling.⁹⁰

- **Bookmaking:** no person may act as a bookmaker without the authority of a permit issued (in England and Wales) by the licensing justices. The essential test applied by the licensing justices in considering an application is whether the applicant is a 'fit and proper person'. A bookmaker operating from a betting office requires a licence for the premises issued by the licensing justices. The grant of that licence depends on demonstration of an unstimulated demand for the betting facilities which the applicant proposes to supply. Renewal is dependent on the manner in which the premises are conducted. There are approximately 3,800 bookmakers' permits and 8,100 betting shops, of which around half are operated by the 'Big Three': William Hill, Coral and Ladbrokes.⁹¹
- **Bingo:** commercial bingo is permitted in clubs licensed under the Gaming Act 1968; in 2000 the number of clubs was 705. Players must be club members who have initially waited 24 hours between application and the first gaming occasion (the '24 hour rule') or their *bona fide* guests. Bingo is a game of chance, determined by a random selection of numbers, which are not chosen by the player. Stakes and prizes are unlimited and all stakes must be returned in prizes. Clubs may offer linked bingo, where two or more clubs combine to pool the prize money. The National Game (multiple bingo) is authorised by the Gaming (Bingo) Act 1985, which permits more substantial prizes to be won by a player at one of the participating clubs.

- Casinos: casino gaming is confined to premises licensed under the 1968 Act (117 in 2000, 23 of which are in London).⁹² They are required to operate as members' clubs, to which the '24 hour rule' applies. An applicant who wishes to apply for a gaming licence must first obtain a certificate of consent from the Gaming Board for Great Britain. This will only be granted if the Board concludes that the applicant would be 'capable and diligent' in ensuring compliance with the Act. Throughout its life, the Board has applied this consideration very rigorously; applications by way of judicial review of its decisions have been of very limited success.⁹³ An application for a gaming licence may be refused on grounds that relate to the applicant (that he is not a 'fit and proper person') or to the premises (that there is insufficient demand for the gaming facilities). In addition, casinos are permitted only in certain designated areas of the country, known as 'permitted areas', and there are restrictions on the conduct of the casino. Likewise the games that may be played in which the bank has a financial interest are fixed by regulation.
- Gaming and AWP machines: the 1968 Act made provision for two types of gaming machine: jackpot machines and amusement with prizes (AWP) machines. The latter may be subdivided into cash/token and all-cash machines. Jackpot machines are confined to clubs licensed (that is, casinos and bingo clubs) or registered (for example, working men's clubs) under the 1968 Act (approximately 30,000 jackpot machines in total). The maximum stake is currently 50p and the maximum payout £1,000 in casinos, £500 in bingo clubs and £250 in registered clubs. AWP machines need permits from the local authority to be located in places to which the public has access, for example arcades and cafés. Permits are required from the liquor licensing justices for machines in pubs. The maximum stake for an AWP machine is 30 pence, and the maximum prize is limited to either £5 in cash or £8 in tokens. Since June 1996 all-cash AWP machines which pay out a maximum of £15 cash have been permitted in pubs, adult arcades, bingo clubs and, for the first time, in betting offices (approximately 215,000 AWP machines in total). Under 18s may not be admitted to an area in an arcade in which all-cash machines are located. The sale, supply and maintenance of machines is controlled separately through a scheme of certification run by the Gaming Board.
- Lotteries: all lotteries except the National Lottery are regulated under the Lotteries and Amusement Act 1976. Except those provided for by that Act, all lotteries are unlawful.⁹⁴ Permitted lotteries are: small lotteries incidental to certain entertainments, private lotteries, society lotteries and local authority lotteries. Their common feature is that they are

intended to contribute to a good cause rather than operating for commercial gain. Societies' lotteries comprise the single most significant form of mass participation lottery after the National Lottery (total ticket sales in 1999–2000 were £103.5m).

- The National Lottery: the National Lottery etc. Act 1993 established a National Lottery with the express purpose of raising money for good causes. It is run by a single body corporate, Camelot plc., whose licence, renewed as from January 2001,⁹⁵ runs for seven years. The Act requires the licensee to be a 'fit and proper person', as judged by the regulator, the National Lottery Commission. The Commission has power under the Act to set and modify the conditions of the licence. By s.4 of the Act, the regulator is under a statutory duty to ensure that the Lottery is run with all due propriety, that the interests of participants are protected, and, subject only to these, to maximise the revenue to good causes.⁹⁶
- Pool competitions: the most prominent form of pool competition is the football pools. They are governed by the Betting, Gaming and Lotteries Act 1963. The promoter must be registered with the local authority, which appoints an accountant to supervise his operations. The promoter has to submit to the accountant detailed information about each competition, showing, among other things, the stakes, the proportion paid in winnings and the expenses apportioned to each competition. Pool competitions resemble, but may be distinguished from lotteries in that they can involve the exercise of skill and judgment. In the case of horseracing, pool betting may only be operated by the Horserace Totalisator Board. In the case of greyhound racing, pool betting can only be operated by the track management, who are allowed to operate their own totes for private gain.
- Spread betting: by contrast with all other forms of commercial gambling, spread betting is, in law, a contract for differences. If conducted commercially it is an investment business and is subject to regulatory control under the Financial Services Act 1986 (the Financial Services and Markets Act 2000 when fully in force). As a gambling medium, it is a particularly potent means by which the player can lose a lot of money. It is unique in that whereas in all other forms of gambling, one's losses are determined by a combination of factors nominally within one's control – the stake and the frequency of staking – spread betting losses are determined additionally by the degree to which the player gets the bet wrong. In all other forms of betting, the player loses no more than the stake, irrespective of whether the losing horse lost by

a head or fell at the first: these distances make all the difference in calculating spread betting losses. Financial Services Authority (FSA) rules require that no spread betting operation may accept bets until it has first established that the investor's financial circumstances are sufficient to meet the proposed staking levels and frequency of activity, and must close the account if the player appears to be out of control. Investment advice, too, must be neutral as between the various betting choices open to the player; amongst other matters, the operator must advise, and possibly caution, the player against a bet which carries a risk greater than any loss he/she has to date borne.

There are a number of bodies responsible for this regulatory mix, and for a number of purposes, different bodies are responsible for different aspects of the same sector.⁹⁷ In terms of their sector-specific remit, the most significant are the Gaming Board for Great Britain and the National Lottery Commission. Both have extensive powers to require licensees' compliance with the regulatory regime for which they are responsible. In the case of the Gaming Board, these stem primarily from the Gaming Act 1968, regulations made thereunder, and a number of Codes of Practice and other informal guidelines that it has agreed with the trade associations representing the casino, bingo and machines industries.⁹⁸ The National Lottery Commission, like its predecessor, OFLOT,⁹⁹ exerts control primarily through the terms of the single licence granted under s.5 of the 1993 Act, which is granted in a process of competitive tendering.¹⁰⁰

The Gambling Review Body: The Market Background and its Terms of Reference

With an annual turnover of around £42bn yielding £7bn in gross profit to the industry,¹⁰¹ the commercial gambling market in Great Britain has, for the past decade, been in a state of flux.¹⁰² First, with the Home Office's full support, the industry has, since the late 1980s, successfully pursued a deregulation agenda designed to relax aspects of the regimes described in the preceding paragraphs. The vast majority of specific changes have been made under the procedures introduced by Part I of the Deregulation and Contracting Out Act 1994 to the rules governing the operation of gaming machines, casino, bingo and off-track betting facilities. By way of illustration, some ten years ago the only gambling product available in licensed betting shops was betting. It is now possible to engage in gaming by means of machine, play a fixed odds numbers game that strongly resembles in its format a lottery product, and engage in football pools transactions. By comparison with the original Spartan regime, the player can now also buy a soft drink and a sandwich, and wave at his friends

looking in through the clear front window from the street outside (if, as is customary, it is not primarily covered in advertising material). It is also possible to bet in the evening and on Sundays.¹⁰³ This homogenisation of gambling media in a single venue is a significant departure from the traditional view that different types of gambling media ought to be kept apart, where their structural characteristics are such that they offer different (and more effective) incentives to play and to repeat play. Gambling centres offering the entire range of gambling products are of course well known in other jurisdictions, but they typically exist for reasons diametrically opposed to those that have traditionally informed Home Office policy; viz., to stimulate rather than to do no more than respond to demand.

Second, the government's decision to introduce the National Lottery in 1994 radically transformed the commercial gambling market. One consequence of the shift in policy, that it was now in the public interest to promote mass participation gambling for good causes, was to compromise the continued legitimacy of the regulatory policy governing the existing market. The Gaming Board found itself seeking to hold to a regime for which it is statutorily responsible, while the government of the day was, arguably, undermining the very objective (social control) which that regime had traditionally sought to realise. In addition, its introduction gave greater urgency to the industry's deregulation agenda. In terms of the displacement of gambling expenditure from existing products to the Lottery, the evidence might be equivocal,¹⁰⁴ but the very existence of its statutorily privileged position meant that there would 'continue to be pressures from the rest of the gaming industry seeking change to compensate for the impact of, and freedoms given, to the National Lottery'.¹⁰⁵

Accompanying the changes made by Deregulation Order during the 1990s there had been a growing concern about the consequences of selective deregulation, graphically described by the House of Lords Select Committee on Delegated Powers and Deregulation as 'salami slicing':

One problem in relaxing any sector of the law by 'salami slicing' is that it becomes unclear as to when the principles governing the legislation are being fundamentally undermined. In our assessment of the present proposal, we do not think that this point has yet been reached. But the piecemeal relaxation of the gaming laws by means of the deregulation procedure is clearly unsatisfactory, and, in the strong view of this Committee, the legislation is now due for review.¹⁰⁶

The Home Office responded in February 2000 with the announcement of the establishment of the *Gambling Review Body*. Its terms of reference were to:

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- Consider the current state of the gambling industry and the ways in which it might change over the next ten years in the light of economic pressures, the growth of e-commerce, technological developments and wider leisure industry and international trends.
- Consider the social impact of gambling and the costs and benefits.
- Consider, and make recommendations for, the kind and extent of regulation appropriate for gambling activities in Great Britain, having regard to:
 - their wider social impact;
 - the need to protect the young and vulnerable from exploitation and to protect all gamblers from unfair practices;
 - the importance of preventing gambling from being carried out in a way which allows crime, disorder or public nuisance;
 - the need to keep the industry free from infiltration by organised and other serious crime, and from money laundering risks;
 - the desirability of creating an environment in which the commercial opportunities for gambling, including its international competitiveness, maximise the UK's economic welfare; and
 - the implications for the current system of taxation, and the scope for its further development.
- Consider the need for, and, if necessary, recommend new machinery appropriate for carrying out that regulation which achieves a more consistent and streamlined approach than is now possible and which is financed by the gambling industry itself.
- Consider the availability and effectiveness of treatment programmes for problem gamblers and make recommendations for their future provision, potential costings and funding.
- In conducting this review, the body should not consider changes to the National Lottery. But it will need to look at the impact on the Lottery of any proposed changes, including an assessment of the potential effect on the income to good causes.

It should be noted that the terms of reference exclude the National Lottery from any proposed changes. To the contrary, the requirement that the Review Body was to consider the impact on the Lottery of any proposed changes, together with an assessment of their potential effect on the income to good causes, is a clear indication that, like its predecessor, the present

government intends to retain the Lottery's privileged position within the British commercial gambling market.¹⁰⁷

The Gambling Review Report: Gambling Policy and the Role of Regulation

It will be seen that the Review Body's terms of reference explicitly required it to consider how to strengthen the market in the general interests of the British economy.¹⁰⁸ In this respect, the Review differs fundamentally from any of its predecessors, which have been primarily confined to a consideration of legislative and other techniques apt to control an inevitable but unwanted feature of social life. A second major difference between the Review and the 1978 Royal Commission is the disengagement of any concern for the activities which provide the pretext for betting. The nature of the economic relationship between horserace betting and bookmaking is a contentious, even acrimonious issue. The racing industry has for many years argued that it receives an insufficient share of the turnover generated by the bookmakers, given that without the horses, there would be no racing on which to bet. Its view is that the fundamental problem with the horserace betting levy (the bookmaker's statutory contribution to racing) is that the price is set not by the seller of the opportunity to bet (the racing industry), but by the buyer (the bookmaking industry).¹⁰⁹ For their part, the bookmakers reject the argument that there is a unity of interest between racing and betting, given that it is only 70 per cent of their turnover that is generated by bets on horseraces. What both positions miss is that 'horseracing' is, of itself, not a commercial leisure activity that is in substantial demand. Stripped of the opportunity for mass third party betting, horseracing would, as it was in the eighteenth century, be a leisure pursuit engaged in by those who enjoy the company of horses and are wealthy enough to maintain a racehorse, and watched (at a price) by a small number of like-minded enthusiasts. While it is the case that the British Horseracing Board does assist in the construction of betting-friendly fixtures, the horseracing 'industry' does not sell betting opportunities in the sense that that is its primary function.¹¹⁰

'The most difficult general issue' that the Review Body faced concerned 'the familiar dilemma between the desire to permit free choice and the fear that such choice may lead to harm either to the individual or to society more widely'. Given the nature of Britain's market economy at the close of the twentieth century, it is perhaps not surprising that the overall tenor of *GRR*'s recommendations is towards 'allowing greater freedom for the individual to gamble in ways, at times and in places than is permitted under current legislation. This move to greater freedom is balanced by rather tighter controls on the freedom of young people to gamble and by some tighter

controls over those who provide gambling services'. In short, *GRR*'s recommendations are designed to extend choice for adult gamblers and to simplify the regulation of gambling.¹¹¹

In terms of regulatory policy, *GRR* adopts a stance that is, in one key respect, essentially indistinguishable from that which the Home Office has pursued over the past 30 years. This is to ensure that 'permitted forms of gambling are crime-free, conducted in accordance with regulation and honest, players know what to expect, are confident they will get it and are not exploited, and there is protection for children and vulnerable persons'.¹¹² It is the function of regulation to guarantee the probity of the market and to guard against inappropriate consumption. Where *GRR* and the 1978 Royal Commission differ is the generation and maintenance of a fair price for the consumer. In 1978 this, too, was a function of regulation, since the whole point of the regulated market was to substitute for competition. By contrast, for *GRR*, a fair price for the consumer will, with some exceptions, be a function of the competitive market that it envisages will be created by the implementation of its recommendations.

Notwithstanding its generally industry-oriented approach, *GRR* repeatedly draws attention to both the paucity and the recency of evidence concerning the impact of gambling on the individual as a reason for the adoption of a cautious approach to the scope of its recommendations and the manner of their implementation.¹¹³ The *British Gambling Prevalence Survey* indicates that compared with other countries in which commercial gambling is socially significant, the proportion of problem gamblers in Great Britain is low;¹¹⁴ but as these jurisdictions currently offer a wider mix of gambling opportunities in single-licensed venues than is the case here, it is a matter of speculation whether the kinds of market expansion that could follow from its recommendations will carry with them the potential for a disproportionate increase in the number of problem gamblers. Against this background *GRR* takes an 'industry (or producer) risk' approach to the scope and likely impact of its recommendations. Where the potentially harmful consequences of the availability of a new product are unknown or uncertain, either of two regulatory stances may be adopted as a matter of policy.¹¹⁵ The first states that in the absence of agreed evidence that the product is safe, the function of regulation is to restrain the producer; this runs the risk that the product is in fact safe, which thus works to the detriment of the industry. The second, 'public (or consumer) risk' states that in the absence of agreed evidence that the product is unsafe, the function of regulation is to allow its production; this runs the risk that the product is in fact unsafe, which thus works to the detriment of the public. *GRR* elects the former policy throughout, and is particularly evident in its recommendations concerning gaming machines.¹¹⁶ One of the Gambling

Commission's functions will be to monitor the safety of gambling products, with a view to modifying the intensity of the regulatory intervention.

The Gambling Review Report: Primary Recommendations

In terms of extending choice for adult gamblers, *GRR* makes a number of proposals designed, first, to relax the rules governing casino gaming. These include the abolition of the permitted areas restrictions, the provision of alcohol on the gaming floor and of live entertainment, and permission to provide a wider range of gambling activities, including betting and bingo and slot machines with unlimited stakes and prizes. In addition, *GRR* recommends abolition of the 24 hour rule. This will also cease to apply to bingo clubs, which will be permitted to offer unlimited prizes, rollovers and unlimited linked games. Betting offices will be permitted to instal jackpot machines and to take bets on the National Lottery. In respect of all three, *GRR* proposes the abolition of the demand test, and recommends that credit cards be approved for gambling purchases with the exception of direct use in gaming machines.¹¹⁷

If implemented, these recommendations would change the face of the commercial gambling market. In particular, they permit the development of 'resort casinos', that is, substantial gambling venues which offer a mix of gambling and non-gambling leisure activities. Models may be found in Las Vegas, Reno and Atlantic City, and, in Australia, the Queensland Gold Coast. Whether such developments will be approved in Blackpool or Brighton will depend on the local authority, to whom responsibility for all licensing matters will be transferred.¹¹⁸ Overseeing the entire provision will be a new single regulator, the Gambling Commission (OFGAM? OFBET?), similar in concept to the FSA, which will retain its responsibility for spread betting. The Commission will license all individuals and companies who wish to offer any commercial gambling opportunities, including their key employees.¹¹⁹ In essence, it will have to deal with threshold controls, 'fit and proper' tests on operators and employees, controls over the conduct of gambling, monitoring compliance and illegal gambling.¹²⁰ Like its counterparts in other jurisdictions, it is proposed that the Commission be given power to impose administrative sanctions, ranging from cautions to fines, in addition to the current powers of prosecution and licence revocation.¹²¹ To be enacted in a single framework Act which sets benchmark standards and which authorises the Commission to regulate the entire market by means of Codes of Practice and other administrative techniques, these proposals represent *GRR*'s commitment to simplify the regulatory structure.

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The Gambling Review Report: Regulatory Themes and its Implementation

By way of conclusion, we may first summarise the regulatory themes subsumed within these recommendations:

- the present regulatory segmentation will be replaced by a single regulator able to monitor the entire market both horizontally (for example, the provision of a particular gambling medium throughout the country) and vertically (for example, the provision of particular gambling media by individual regulatees);
- the regime maintains the existing mix of central (personal) and local (venue) controls that has characterised gambling regulation for the past 40 years;
- within a single licence having increasingly demanding regulatory standards, a single venue may be permitted to offer a variety of gambling media;
- commercial gambling opportunities will largely to be confined to premises licensed for the purpose, with a corresponding elimination or reduction in ambient gambling;¹²²
- a simultaneous tightening of the quality controls over operators together with relaxation of controls over the premises to be licensed for gambling.

Some of *GRR*'s specific recommendations are already evident in recent shifts in regulatory practice. In 1999 the Gaming Board conducted a review of the advice it gives to licensing justices (which they must observe) on the issue of demand.¹²³ It concluded that its longstanding policy of formally objecting to any application for a new licence in an area already served by a casino was no longer appropriate. In particular, the Board found that it was difficult to justify its objections where, 'from a regulatory viewpoint it was neutral as to the grant of an additional licence'.¹²⁴ In the case of betting shops, licensing justices now take a less stringent approach to the issue of demand.¹²⁵ Implementation of recommendations 38 and 39, abolishing the demand test for casinos, bingo clubs and betting offices may therefore be more of a formal than a substantive change.

Of more general significance was the transfer of responsibility for gambling from the Home Office to the Department for Culture, Media and Sport (DCMS) following the 2001 General Election. Formerly the Department for National Heritage, created, *inter alia*, to promote the

National Lottery, DCMS is a small department with none of the Home Office's historical baggage of having to cope with the externalities of unregulated commercial gambling. More importantly, it will fall to DCMS to advance the economic strength of the commercial gambling market in general, as it does in the particular case of the Lottery. Ensuring that the success of the former does not come at a cost to the latter will not necessarily be an easy matter to reconcile, as the Secretary of State acknowledged when announcing the publication of the *Review*.¹²⁶ The difficulty is that there is a structural tension between the Lottery and the rest of the commercial gambling market. In creating a statutorily protected market for the Lottery the government inevitably invited demands that it should further relax the existing regime to create a level playing field. What this demand signally fails to recognise is that the whole point about the Lottery was that it was to have its *own* playing field.¹²⁷ If *GRR*'s recommendations are to be implemented in full,¹²⁸ it is possible that DCMS would also seek to reposition the Lottery's competitive edge. Given the government's increasing willingness to fund from Lottery proceeds projects that pre-1994 would have come from standard public revenue (even though Lottery money *is* public money), it is difficult to imagine that it is likely to compromise spending on the matters now authorised by the National Lottery Act 1998; viz., health, education and the environment.¹²⁹ It may be, as *GRR* accepts, that gambling 'has become an everyday part of the way in which millions of people choose to spend their leisure',¹³⁰ but as in the past, government continues to have an interest in how that leisure is spent.

NOTES

1. I am grateful to my colleague David Campbell for helpful comments on an earlier draft. The usual disclaimer applies.
2. Department for Culture, Media and Sport (DCMS), *Gambling Review Report*, Cm 5206 (London: Stationery Office, 2001).
3. Peter Dean, Chairman of the Gaming Board for Great Britain, commented at the GamCare conference on 17 October 2001 that *GRR* had confirmed that commercial gambling was ready to 'emerge from the shadows' to join the 'mainstream leisure industry'. The characterisation of commercial gambling as a pariah industry which in the mid-twentieth century was transformed into a regulated business essentially no different in that respect to any other service industry is J. Skolnick's classic study of the casino market in Nevada, *House of Cards: The Legalisation and Control of Casino Gambling* (Boston: Little, Brown, 1978).
4. Business in Sport and Leisure is a trade association representing the interests of major companies in the sport and leisure industry. As its commissioned report, *The Economic Value and Public Perceptions of Gambling in the UK* (London: BISL, 2000), makes clear, this is precisely how those companies which currently hold licences to offer gambling opportunities to the public view their industry.
5. Readers who have experienced, even vicariously, the extravagances of Las Vegas, Reno or

- Atlantic City will have some conception of what is implied by the phrase 'resort destination' when linked with commercial gambling. Less florid versions are to be found in Australia; the question is whether, and to what extent, Blackpool will be able and be permitted to emulate them, *The Times*, 18 July 2001. On the United States, see W. Thompson and J. Dombrink, *The Last Resort: Success and Failure in Campaigns for Casinos* (Reno: University of Nevada Press, 1990); *National Gambling Impact Study Commission Final Report* (Washington DC: www.ngisc.gov, 1999). On Australia, see J. McMillen, 'Gambling in casinos: a political economy of Australian developments', *Journal of Gambling Behaviour* 4 (1988), 152–70, and Productivity Commission, *Report of the Inquiry into Australia's Gambling Industries* (Canberra: www.pc.gov.au, 1999).
6. See generally, S. Breyer, *Regulation and its Reform* (Cambridge, MA: Harvard University Press, 1982), 15–35; A. Ogus, *Regulation: Legal Form and Economic Theory* (Oxford: Clarendon Press, 1994), 15–54; and R. Baldwin and M. Cave, *Understanding Regulation* (Oxford: Oxford University Press, 1999), 9–17.
 7. For example, casinos are forbidden from offering blackjack players what are known as 'mug bets'; these are options to do with staking and drawing further cards which appear to offer the player opportunities to enhance the value of their hand but in fact operate to the bank's (the casino's) advantage; Gaming Clubs (Bankers' Games) Regulations 1970, SI 1970/803.
 8. In a lottery, for example, the player has no independent means of knowing either the total amount paid in or whether the promised prizes have been paid out.
 9. DCMS (note 2), para.18.1.
 10. This is a pious wish masquerading as 'economics'. While 'unstimulated demand' might be defensible if it were possible sensibly to operationalise it, it cannot be, and therefore leads to sporadic and spurious interventions in the market.
 11. *Report of the Royal Commission on Betting, Lotteries and Gaming 1949–51*, Cmd 8190 (London: Stationery Office, 1951).
 12. Royal Commission on Gambling, *Final Report*, Cmnd 7200 (London: Stationery Office, 1978), para.1.8(ii).
 13. D. Miers, 'Objectives and Systems in the Regulation of Commercial Gambling', in J. McMillen (ed.), *Gambling Cultures: Studies in History and Interpretation* (London: Routledge, 1995), 288–311.
 14. Apart, perhaps, from the economic health of the bookmaking industry so far as it contributes to the support of the horseracing; see Home Affairs Committee, *Levy on Horserace Betting*, HC 146-I (London: Stationery Office, 1990–91); *The Tote*, HC 451 (London: Stationery Office, 1990–91).
 15. See the Report of the Public Accounts Committee, *HM Customs and Excise: Revenue from Gambling Duties*, HC 423 (London: Stationery Office, 1999–2000), which concluded (para.4) that losses from gambling duties due to illegal behaviour are estimated as being at least £50m and may exceed £100m, 'and new risks are emerging from telephone and internet betting with bookmakers overseas'.
 16. Customs and Excise Consultation Document Budget 2000, *Our Stake in the Future: Modernisation of General Betting Duty for the 21st Century* (April 2000). Likewise the internet poses a threat to the gaming industry; Gaming Board, *Report of the Gaming Board for Great Britain 1990–2000*, HC 616 (London: Stationery Office, 2000), App.VIII; and DCMS (note 2), ch.30.
 17. General betting duty (then at 6.75 per cent on each bet) was replaced by a tax on gross profit (viz., stakes less winnings) levied at 15 per cent (Finance Act 2001, s.6; Finance Act (Commencement) Order 2001, SI 2001/3089). This benefits punters directly (who no longer pay 'tax' up front, which, with the addition for the levy bought the price per bet to nearly nine per cent) and the bookmaking industry indirectly (as punters will see better returns they will bet more), but also, by virtue of the predicted increase in the volume of betting, will continue to generate income to the government; for general accounts, see *The Times*, 8 March, 15 September, 6 October, 6 November 2001. In his pre-Budget speech on

- 27 November 2001, the Chancellor announced that pool betting duty (currently 17.5 per cent of turnover) will likewise be replaced by a 15 per cent tax on gross profit.
18. The article is not concerned with sociological, criminological or psychological explanations of gambling, nor with accounts of gambling as a social or economic activity, though there is an extensive scholarly and anecdotal literature assuming all of these standpoints. An excellent recent overview of gambling's cultural significance is G. Reith, *The Age of Chance: Gambling in Western Culture* (London: Routledge, 1999).
 19. C. Chinn, *Better Betting with a Decent Feller: Bookmakers, Betting and the British Working Class 1750–1990* (London: Harvester Wheatsheaf, 1991).
 20. D. Dixon, *From Prohibition to Regulation* (Oxford: Oxford University Press, 1990).
 21. C. Hill, *Horse Power: The Politics of the Turf* (Manchester: Manchester University Press, 1988).
 22. M. Clapson, *A Bit of a Flutter: Popular Gambling and English Society 1823–1961* (Manchester: Manchester University Press, 1992); R. Munting, *An Economic and Social History of Gambling in Britain and the U.S.A.* (Manchester: Manchester University Press, 1996).
 23. W. Vamplew, *The Turf: A Social and Economic History of Horseracing* (London: Allen Lane, 1976), *Pay up and Play the Game* (Cambridge: Cambridge University Press, 1988).
 24. R. McKibbin, 'Working Class Gambling in Britain 1880–1939', *Past and Present* 82 (1979), 147–78.
 25. A useful compendium is S. Magee, *Complete A–Z of Horse Racing* (London: Channel 4 Books, 2001).
 26. For example, D. Francis, *The Sport of Queens* (London: Pan, 1957); C. Duvall, *Willie Carson* (London: Stanley Paul, 1980).
 27. For example, R. Green, *A Race Apart: The History of the Grand National* (London: Hodder & Stoughton, 1988); D. Munroe, *The Grand National 1839–1931* (London: Heinemann, 1931); R. Mortimer with T. Nelligan, *The Epsom Derby* (London: Michael Joseph, 1984).
 28. For example, R. Onslow, *Headquarters: A History of Newmarket and its Racing* (Cambridge: Great Ouse Press, 1983); D. Hunn, *Epsom Racecourse* (London: Davis-Poynter, 1973).
 29. For example, the Earl of Suffolk and Berkshire *et al.*, *Racing and Steeplechasing* (London: Longmans, 1887); E. Rickman, *Come Racing with Me* (London: Chatto & Windus, 1951); E. Eliot, *Portrait of a Sport: A History of Steeplechasing* (London: Longmans, 1957); D. Craig, *Horseracing* (London: Penguin Books, 1963); M. Ayres and G. Newbon, *Under Starter's Orders: A Guide to Racing on the Flat* (Newton Abbott: David & Charles, 1975); G. Plumptre, *Back Page Racing: A Century of Newspaper Coverage* (London: Queen Anne Press, 1989).
 30. J. Ashton, *A History of English Lotteries* (London: Leadenhall Press, 1893; Cornmarket Reprints, 1972); *The History of Gambling in England* (London: Leadenhall Press, 1969; Patterson Smith Reprint Series, 1898). See also G. Stutfield, 'Modern Gambling and Gambling Laws', *The Nineteenth Century* 26 (1889), 840–60.
 31. A. Douglas, *British Charitable Gambling 1956–1994* (London: Athlone Press, 1995).
 32. D. Downes, B. Davies, M. David and P. Stone, *Gambling, Work and Leisure* (London: Routledge and Kegan Paul, 1976).
 33. K. Sproston, B. Erens and J. Orford, *Gambling Behaviour in Britain: Results from the British Gambling Prevalence Survey* (London: National Centre for Social Research, 2000). *GRR*, Annex J contains more recent (2001) data on public perceptions of gambling, DCMS (note 2).
 34. An authoritative account is C. Smith and S. Monckom, *The Law of Betting, Gaming and Lotteries* (London: Butterworths, 2001).
 35. The law on betting is to be found in the Betting, Gaming and Lotteries Act 1963. The Act does not, however, define a 'bet', although s.55 stipulates certain transactions that would normally be so regarded as not constituting betting.
 36. A novel form is spread betting. This offers far greater opportunities to bet on, for example,

- a sporting event, than the relatively sterile bets implied by simply forecasting which team will win. In essence, the player bets that, say, a cricket team will score more ('buying') or less ('selling') than a spread of runs forecast by the person with whom he makes the bet. Because wins and losses will depend on how many runs are scored, it follows that a far higher risk attaches to the bet than is the case with traditional betting; DCMS (note 2), paras.9.45–9.54; and see further below.
37. Lord Widgery CJ, *Readers Digest Association v. Williams* [1976] 1 WLR 1109, 1113, approved by the House of Lords in *Imperial Tobacco v. AG* [1980] 2 WLR 466.
 38. See further D. Parlett, *The Oxford Guide to Card Games* (Oxford: Oxford University Press, 1990), pp.11ff. Compare the stipulative definition of gaming in s.52 of the Gaming Act 1968: 'the playing of a game of chance for winnings in money or money's worth ...'
 39. (1884) 13 QBD 505.
 40. D. Vaisey, *The Diary of Thomas Turner* (Oxford: Oxford University Press, 1985), xxxvii, 46, 158, 187, 206.
 41. This remains the case: s.52 of the Gaming Act 1968 provides that a 'game of chance' does not include any athletic game or sport.
 42. This continues to be the case: DCMS (note 2), ch.17, passim, and paras.23.14–23.28.
 43. The two most popular card games in casinos: Gaming Board, *Report of the Gaming Board for Great Britain 2000–01*, HC 95 (London: Stationery Office, 2001), para.2.16.
 44. Parlett (note 38), 75.
 45. So advantageous was the edge in the card game basset, that in France the role of banker was reserved for the sons of noblemen; A. Steinmetz, *The Gaming Table* (1870; New Jersey: Patterson Smith reprint, 1969), vol.II, 306.
 46. L. Stone and J. Stone, *An Open Elite?: England 1540–1880* (Oxford: Oxford University Press, 1986), 218.
 47. Stone and Stone (note 46), 213.
 48. R. Seymour, *The Compleat Gamester* (1754; Cambridge: Cornmarket Reprints, 1972), 111.
 49. L. Radzinowicz, *A History of English Criminal Law: The Enforcement of the Law* (London: Stevens, 1956), vol.2, 3.
 50. G. Trevelyan, *The Early History of Charles James Fox* (London: Longmans, 1881), 478.
 51. 36 Geo III c 104.
 52. W. Lewis, *Three Tours through London in the Years 1748, 1776 and 1797* (New Haven: Yale University Press, 1941), 62; D. Birley, *Sport and the Making of Britain* (Manchester: Manchester University Press, 1993), passim. Betting on cockfights is still with us: *The Times*, 12 April 1995 and 10 March 2001.
 53. B. Dunne, *Rouge et Noir. The Academicians of 1823* (1823), 121.
 54. H. Cunningham, *Leisure in the Industrial Revolution* (London: Croom Helm, 1980), 19–28; R. Malcolmson, *Popular Recreations in English Society 1750–1850* (Cambridge: Cambridge University Press, 1973), 49–50.
 55. See further, Hill (note 21), passim; Royal Commission on Gambling (note 12), 'Glossary of Technical Terms'.
 56. J. Whyte, *History of the British Turf*, 2 vols. (London: Henry Colburn, 1840), 617.
 57. Vamplew (note 23), 33 comments, 'It is no exaggeration to say that the railways revolutionised racing'.
 58. *Ibid.*, 38.
 59. See generally, J. Pimlott, *The Englishman's Holiday* (London: Faber & Faber, 1947).
 60. A. Lee, *The Origins of the Popular Press in England* (London: Croom Helm, 1976), 38.
 61. Birley (note 52), 104.
 62. T. Roscoe (ed.), *The Complete Works of Henry Fielding* (London: George Bell, 1889), 763; L. Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, Vol.3: *The Reform of the Police* (London: Stevens, 1957), 16.
 63. E.P. Thompson, *The English Working Class* (Harmondsworth: Penguin, 1968), 442.
 64. House of Commons, HC 297 (1844).
 65. See *ibid.*, para.vi. It should be stressed that gambling debts were, until 1845, legally

- enforceable; but the courts had become increasingly frustrated by the waste of judicial time spent arbitrating on the details of private wagers. During the 1840s there were, in addition, a number of racing scandals which, when litigated, attracted considerable judicial criticism.
66. DCMS (note 2), recommendation 108.
 67. P. Bailey, *Leisure and Class in Victorian Britain* (London: Routledge and Kegan Paul, 1978).
 68. [1897] 1 QB 579; [1899] AC 143.
 69. HL 114 (1902).
 70. Public Record Office, Home Office file 45/10682, 27 April 1911.
 71. *Royal Commission on Lotteries and Betting 1932–33*, Cmd 4341 (London: Stationery Office, 1933). The legislative product was the Betting and Lotteries Act 1934. See further D. Miers and D. Dixon, 'The National Bet: the Re-Emergence of the Public Lottery', *Public Law* (1979), 372–403.
 72. It should be noted that the 1906 Act did not make the betting transaction itself illegal; it was the venue (the street or other public place) that made it so.
 73. The activities of the Sabini family in the 1930s and their feuding with organised Jewish bookmakers, culminating in the 'Battle of Lewes' (racecourse) in 1936, were matters of public concern. This violent confrontation provided the basis in fact for Graham Greene's fictional account of a racecourse beating in *Brighton Rock* (1938).
 74. These developments are comprehensively documented in Dixon (note 20), especially 320–40.
 75. Re-enacted in the consolidating Betting, Gaming and Lotteries Act 1963.
 76. Note 11, paras.408–17.
 77. Royal Commission on Gambling (note 12), para.18.1.
 78. There was also widespread criminal exploitation of the gaming machine market.
 79. DCMS (note 2), para.3.7.
 80. P. Aranson and R. Miller, 'Economic Aspects of Public Gaming' *Connecticut Law Review* 12 (1980), 822–53. The 1978 Royal Commission rejected the relevance of the argument that the activity itself produces no economic value: 'canoes and skates have to be bought but in general, canoeing and skating are leisure activities which do not create wealth and there is no reason why they should. The same is true of many forms of gambling ...', Royal Commission on Gambling (note 12), para.1.11.
 81. Dixon (note 20), 53–63.
 82. Royal Commission on Gambling (note 12), para.7.30.
 83. DCMS (note 2), paras.3.22–3.27.
 84. See further below.
 85. The distinction has been developed by Mark Griffiths: see 'Gambling Technologies: Prospects for Problem Gambling', *Journal of Gambling Studies* 15 (1999), 265–83, for a useful overview. An important earlier overview, which particularly emphasised the situational and structural conditions under which gambling opportunities may be available, is D. Cornish, *Gambling: A Review of the Literature and its Implications for Policy and Research* (London: Home Office, 1978).
 86. This is one of the standard indicators of problem gambling, used by both of the internationally accepted measures, Sproston *et al.* (note 33), ch.5, and was singled out in *GRR*'s glossary of technical terms, DCMS (note 2), Annex A.
 87. DCMS (note 2), para.17.55.
 88. In this respect, spread betting is by far the most dangerous, since, as noted in the text, the bettor cannot control his liability on each bet simply by limiting his financial commitment.
 89. Societies' lotteries authorised under the Lotteries and Amusements Act 1976, such as those promoted by charities and football clubs, are properly intended to stimulate purchase; they are, however, limited in various ways (in particular in terms of stakes and prizes) by comparison with the National Lottery; see DCMS (note 2), paras.10.17–10.20.
 90. DCMS (note 2), chs.4–11, provide a much more extensive account.
 91. A useful review of the bookmaking market is Monopolies and Mergers Commission,

- Ladbroke Group plc and the Coral Betting Business*, Cm 4030 (London: Stationery Office, 1998).
92. A useful review of the London casino market in the late 1990s is Monopolies and Mergers Commission, *London Clubs International plc and Capital Corporation plc*, Cm 3721 (London: Stationery Office, 1997).
 93. *R v. Gaming Board for Great Britain, ex parte Benaim and Khaida* [1970] 2 QB 417. See further D. Miers, 'Great Britain', in A. Cabot, W. Thompson and A. Tottenham (eds.), *International Casino Law* (University of Las Vegas: Institute for the Study of Gambling and Commercial Gaming, 1999), 383–405.
 94. This includes foreign lottery operations promoted in the United Kingdom; *Commissioners of Customs and Excise v. Gerhart Schindler*, Case – C – 275/92 [1994] ECR I-1039.
 95. This followed the initial decision by the National Lottery Commission not to accept either Sir Richard Branson's (The People's Lottery) or Camelot's bid. In a highly charged and acrimonious sequence of events, the Commission then permitted Camelot, but not Branson, the opportunity to respond to its concerns, a permission that Richards J. held to be unlawful in *R v. National Lottery Commission, ex parte Camelot Group plc* [2001] EMLR 43.
 96. See further, D. Miers, 'The Implementation and Impact of Great Britain's National Lottery', *Journal of Gambling Studies* 12 (1996), 343–73.
 97. These are: the police, licensing justices, local authorities, the Department of Customs and Excise, and the Financial Services Authority.
 98. See, for example, the Gaming Board, *Code of Practice on Mechanised Cash Bingo, Machine Guidelines*, and *Agreed Guidelines on the Acceptance of Cheques and Debit Cards*. These and other examples may be found on the Gaming Board website: www.gbgb.gov.uk. The Board's regulatory style is predominantly 'command and control', coupled with a significant degree of enforced self-regulation; Baldwin and Cave (note 6), 35–41.
 99. It was, however, the inappropriately cosy relationship between the then Director General of the Office of the National Lottery and Camelot that prompted the abolition of OFLOT and its substitution in the National Lottery Act 1998 with the five-person National Lottery Commission; see D. Miers, 'Regulation and the Public Interest: Commercial Gambling and the National Lottery', *Modern Law Review* 59 (1996), 489–516.
 100. On the use of franchising as an example of market-harnessing controls, see T. Daintith, 'The Techniques of Government', in J. Jowell and D. Oliver (eds.), *The Changing Constitution* (Oxford: Oxford University Press, 1994), 209–36.
 101. DCMS (note 2), para.5.15. Turnover represents an estimate of the amount that is bet (staked), not the amount that players initially bring to their gambling. Money staked thus includes recycled winnings. Gross profit represents the difference between the total of money staked and winnings. The 1978 Royal Commission preferred to call this difference the 'true turnover', rather than the amount of money staked, Royal Commission on Gambling (note 12), para.1.3.
 102. C. Miers, 'Regulatory and Market Problems in the Provision of Commercial Gambling in Great Britain', *Gaming Law Review* 3 (1999), 109–28.
 103. See DCMS (note 2), ch.3, 26.
 104. DCMS (note 2), paras.5.11–5.14. Home Office research did confirm a direct statistical relationship between the Lottery and off-course expenditure. Nevertheless, other factors (such as a mild winter or the expense incurred in additional opening hours) may explain some of horserace betting's difficulties in the mid-1990s; S. Field and J. Dunmore, *The Impact of the National Lottery on the Horse-race Betting Levy: Second Report* (London: Home Office, Research and Statistics Directorate, 1997), 4.
 105. Gaming Board, *Report of the Gaming Board for Great Britain 1994–95*, HC 587 (London: Stationery Office, 1995), para.1.20. There was also 'a danger of a "ratchet" effect developing, with different sectors vying for ways in which they can seek to match or better any concessions made to others'.
 106. Twentieth Report from the Committee on Delegated Powers and Deregulation, *The*

- Proposal for the Draft Deregulation (Casinos) Order 1999*, HL 76 (London: Stationery Office, 1998–99), para.22. The Order was made as the Deregulation (Casinos) Order 1999, SI 2136; see also House of Lords Debates, cols.1260–62, 23 July 1999. This view was shared by the Gaming Board, *Report of the Gaming Board for Great Britain 1998–99*, HC 525 (London: Stationery Office, 1999), paras.1.12–1.27.
107. In this respect, the initial establishment of the Lottery, with its monopoly franchise, ran wholly counter to almost every other aspect of the Conservative government's approach to the provision of public and semi-public goods.
 108. Likewise a concern of the Department of Customs and Excise's consultation paper on the impact of off-shore betting on the bookmaking industry (note 16).
 109. The Levy is fixed by the Horserace Betting Levy Board, a statutory body established in 1961. It was the price to be paid by bookmakers for the legalisation of off-course cash betting and has always proved a controversial matter. A useful historical overview is Hill (note 21).
 110. Despite the exclusion of this issue, the Review Body is clearly sympathetic to the views expressed by the 1978 Royal Commission, that there it is not self-evident that bookmaking should contribute to the cost of horseracing, but that it is a matter for the market; DCMS (note 2), ch.13. The Tote, which enjoys a statutory monopoly on pool betting on horseracing, is to be sold to a consortium of racing interests. The aim is to bring to an end the government's direct involvement in the administration and financing of racing.
 111. DCMS (note 2), paras.3.1–3.2, 1.1.
 112. *Ibid.*, para.1.2.
 113. *Ibid.*, paras.3.21, 3.29, 14.20, 17.69, 24.26, 32.21. The 1978 Royal Commission's recommendation that the Home Office establish a Gambling Research Unit was never acted on. With a few exceptions, there is very little empirical research in the public domain which evaluates the social or economic impact of commercial gambling. The *British Gambling Prevalence Survey* is, as noted earlier, unique; see DCMS (note 2), ch.17.
 114. Depending on which screening measure is used, the proportion of problem gamblers is between 0.6 per cent and 0.8 per cent of the adult (16+) gambling population (33m). Compare Australia: 2.3 per cent; New Zealand: 1.2 per cent, Sproston *et al.* (note 33), ch.5. DCMS (note 2), recommendations 153–59, proposes that the research and treatment of problem gambling should be funded by the industry.
 115. K. Shrader-Frechette, *Risk and Rationality* (Berkeley: University of California Press, 1991).
 116. DCMS (note 2), ch.23.
 117. There are 176 recommendations in all, 108 of which are sector-specific.
 118. DCMS (note 2), recommendations 40–47, ch.21. Currently licensing decisions are made variously by local authorities (e.g., gaming machines in amusement arcades) and the licensing justices (casino, bingo and betting office licences).
 119. This will include bookmakers who, by comparison with casino and bingo operators, are 'very lightly regulated', DCMS (note 2), para 19.34.
 120. The Betting Office Licencees' Association values illegal gambling at approximately £1bn.
 121. DCMS (note 2), recommendations 160–176, ch.33. On the use of discretion in the enforcement of administrative sanctions, see generally, K. Hawkins (ed.), *The Uses of Discretion* (Oxford: Clarendon Press, 1992). The Commission is to be financed from licence fees.
 122. 'Ambient gambling' is the phrase used by DCMS (note 2), para.23.9, to describe 'gambling which is incidental to another non-gambling activity'; the presence of gaming machines in cafes and taxi-cab offices was a particular concern.
 123. Gaming Act 1968, Sched.2, para.18.
 124. Gaming Board (note 16), para.2.14 and App.IX.
 125. *The Queen on the application of Heatview Ltd (Claimant) and Snaresbrook Crown Court (Defendant)* [2001] EWHC Admin 144, 23 February 2001.
 126. House of Commons, 17 July 2001, col.81 (written answers). This will become more

- difficult should the lottery fatigue evident in the 27 per cent downturn in Camelot's half year pre-tax profits for 2001 continue. Camelot has announced that it will no longer guarantee the £15bn for good causes that was a key element of its bid to renew its licence, *The Times*, 28 November 2001.
127. This is reflected in the view that has been persistently urged by successive governments, that 'there is an important distinction between the National Lottery and other forms of gambling', namely, that the Lottery's primary purpose is to raise money for good causes, whereas all the others are commercial activities, with any charitable contribution being incidental. See the government's response to the First Report of the Culture, Media and Sport Select Committee, *The Operation of the National Lottery*, HC 56 (London: Stationery Office, 1999–2000), presented in October 2001, DCMS, Cm 5270, para.25. This is true up to a point; but societies' lotteries, for example, support the society in whose name they are promoted, and by law cannot be used for commercial profit.
 128. *GRR* concluded that some of its recommendations could impact adversely on Lottery income, see DCMS (note 2), ch.35.
 129. Where state lotteries have been relied upon to support public goods, the pressure to maintain existing levels of funding is universal, as the experience in the United States amply illustrates. See C. Clotfelter and P. Cook, *Selling Hope: State Lotteries in America* (Cambridge, MA: Harvard University Press, 1989).
 130. Tessa Jowell MP, Secretary of State, House of Commons, 17 July 2001, col.81 (written answers). The *British Gambling Prevalence Survey* found that 72 per cent of the adult population (33m) gambled within the preceding 12 months, Sproston *et al.* (note 33), ch.1. The government response to *GRR* is expected in early 2002.