
UK: NEW CASINOS ANNOUNCED

At last there has been a development in relation to the new casinos promised by the Gambling Act 2005 (“the 2005 Act”), passed almost three years ago. Many will recall that the original excitement associated with the advisory body appointed to select the areas for the eight small, eight large and one regional, or so called “super”, casinos, quickly faded to apathy and then towards despair when the Government had another of its (all too frequent in this process) collective nervous breakdowns over gambling policy or perhaps the lack of one.

The problem was that the Committee did not follow the political script and chose Manchester instead of Blackpool for the regional casino, a selection which was probably justified on the facts, but was out of step with the views of the less well informed press, and most members of Parliament. The consequence was that when the requisite Order for the 17 new casinos under the 2005 Act was put to Parliament in March 2007, the House of Lords rejected it, not least because it included the regional casino to be located in Blackpool.

The subsequent replacement of the excitable Mr Blair by the dour Mr Brown rang the death knell for the one proposed regional casino; indeed, Mr Brown saw fit to announce that the regional would not proceed almost the moment he set foot in Downing Street. Furthermore, by indicating that he would review all of the Government’s gambling policy, and given his predisposition to problem gambling – that is having a problem apparently with its very existence – the future appeared bleak indeed.

The review duly took place, and local authorities were invited to confirm or deny their interest in having one of the new casinos for which they had previously fought hard during the submission process, which they all duly did. The announcement was finally made in the House of Commons on 26 February, 2008 after an 11 month delay.

Policy Background

The 2005 Act was intended to give effect to the Government’s proposals for reform of the law of gambling. As it is now well known, those proposals changed almost as frequently as the direction of the wind, but suffice to say that it now provides for the licensing of eight large and eight small new casinos. That means 16 new casinos, in addition to the 150 odd casinos currently in existence under the 1968 Act.

In addition, and perhaps with greater significance, the 2005 Act contains an entirely new regulatory system to govern the provision of all gambling in Great Britain, other than the national lottery and spread betting. It replaces the legislation governing betting, gaming and lotteries, including the Gaming Act 1968, the Betting, Gaming and Lotteries Act 1963, the Lotteries and Amusements Act 1976 and the Gaming Acts of 1710, 1738 and 1835!

The key to the 2005 Act are the licensing objectives set out in Section 1 for all types of gambling, and the regulation of gambling is tested against those objectives, which are:

- To prevent gambling from being a source of crime and disorder;
- To ensure that gambling is conducted in a fair and open way;
- To protect children and vulnerable persons from being harmed or exploited by gambling.

All casinos, whether existing or new, will be required to abide by new rules relating to social responsibility that are to be put in place under the 2005 Act and to implement appropriate policies and procedures addressing social responsibility issues.

New casinos will differ from existing casinos in a number of ways: they will be able to offer more gaming machines (up to 150 for large and up to 80 for small casinos) and they will be able to offer new combinations of gambling facilities; for example “large” casinos will be able to offer bingo and betting. The operators of existing casinos will, like anyone else, be able to apply for the new licences.

16 New Casinos

The announcement was that the eight large and eight small casino licences envisaged by the 2005 Act will be awarded to the 16 licensing authorities identified by the Casino Advisory Panel. The new Secretary of State (Andy Burnham) stated this is casino policy, and must now lay a draft order which will need to be passed by both Houses of Parliament. For once, this should not present too much of a difficulty, given that both opposition parties, the Conservatives and the Liberal Democrats, have indicated their consent. The previous attempt to pass an order for the new casinos failed, when the House of Lords refused to pass the order that still, at that time, contained the proposal for the regional casino in Manchester. Once again, the Government backed down in the face of opposition.

Policy Changes

The limits on the number of new casino premises licences reflects the Government's cautious, and some might say prohibitive, approach to this reform. This was reflected in the statement by Andy Burnham. It seems these days that the UK Government cannot announce any progress in the implementation of its gambling legislation, without at the same time announcing some sort of further clamp down on either the ability of people to gamble, or alternatively their scope for enjoying it. He therefore announced that any new casinos authorised by the order would be required to abide by strict new rules, which would include prohibiting the provision of free drinks to customers while they are gambling, ensuring that cash machines are located away from gaming areas and requiring that all casinos – interestingly not just the new ones proposed – would be prevented from offering gambling over 24 hours, and requiring them to close for at least six hours a day.

This demonstrates a potential reversal of previous policy: for many years the regulator would not allow alcohol to be served on the gaming floor, although it never formed part of the 1968 legislation. This was relaxed some years ago, and some time before the passing of the 2005 Act. The effects were closely monitored by the regulator for any evidence of problems being caused either through drunkenness at

the tables or an increase in problem gambling. In fact, there was no evidence of any change at all, thereby illustrating what the industry have long believed, which is that people playing at the tables tend to want to concentrate on gaming, whereas those consuming too much alcohol either do so in the bar, or arrive having done so elsewhere. They tend to be evicted or refused entry, and drunkenness is certainly never tolerated on the gaming floor, because of the effect it has in disrupting those wanting to play. However, it may be that the Government intends no more than that players shall be given free drinks linked to the level of play, or otherwise be encouraged to drink, which the Gambling commission here have already required.

Similarly, the change in casino hours which the Secretary of State announced, reverses a change made by an earlier Secretary of State. Again there has been no evidence of adverse effects. In the same way that some casinos do not, as a matter of policy, serve alcohol on the gaming floor, there are few casinos that would in reality remain open for 24 hours in every day. Like so much of the Government's recent so called policy statements and actions in relation to casinos, expressed either directly, or through the regulator, the aim appears to be to address problems which exist only in their imagination or perception, in contrast with the effects that these policies have on the industry, which suffers in reality.

What Happens Next?

Once Parliament passes the Gambling (Inviting Competing Applications for Large and Small Casino Premises Licences) Regulations 2008, licensing authorities may invite and consider applications for casino premises licences for each of the 16 new casinos. Before doing so, they must comply with the minimum requirements set out by the Secretary of State. Accordingly, they must publish an invitation calling for applications so that as many potential operators, both in the UK and abroad, have the chance to apply. In addition, licensing authorities must make an application pack publicly available, providing useful information about applications.

If, having complied with the regulations, licensing authorities receive more than one application, they must then apply the two-stage consideration process required by Schedule 9 to the Act.

During the first stage, the authority will consider applications as it will consider any application for a premises licence under the Act: this is a process which has already been set up and tested with other applications. It was relatively straightforward, and gambling law firms have made many such applications already.

If more than one application makes it through the first stage of the application process, the second stage requires the licensing authority to determine which of the applications would result in the greatest benefit to its area. For that purpose, the authority may enter into an agreement with an applicant. This may, for example, provide for an applicant, if successful, to pay a proportion of its casino profits to the licensing authority for the purposes of the treatment of problem gambling in the authority's area. The application which gives rise to the greatest benefit, and only that application, will be granted. It is immediately apparent from this that, whatever facilities the operators promise with their applications, the most significant factor is likely to be the amount specified on the cheque.

The Secretary of State has already issued the Code of Practice about the two-stage consideration process, providing details about:

- Steps the licensing authorities should take to ensure that the consideration process is fair;
- Matters which licensing authorities may (and may not) consider during the first stage, and what they may consider during the second;
- Guidance on the matters about which licensing authorities should consult;
- Factors that a licensing authority may want to consider in determining whether an application would provide the greatest benefit to its area;
- Guidance on the discussions and negotiations that licensing authorities may have with applicants.

Timing

It is impossible to say with any certainty what the timetable for this process is likely to be. It is believed that the order will receive parliamentary approval within a short period, and local authorities will be able then to start the process. It remains to be seen the extent to which Parliament considers further local consultation to be necessary, but it is likely that the process will take several months to get properly underway and it is probably unlikely that it will be completed until early 2009. However, any estimates of timing should be treated with some caution!

Conclusion

The reference to applications being admitted from overseas in Government guidance for the new regulations is almost certainly unduly optimistic. Most international operators have long since lost interest in the UK as a jurisdiction in which to develop new resort casinos. Both Macau and Singapore, which initiated their processes for the provision of such casinos after the UK, long ago overtook the UK, and the astonishing success of Macau serves further to highlight what Tom Foster, the Liberal Democrat spokesman, referred to in the recent debate in Parliament as the Government's "sorry saga of dithering, wasted opportunities and considerable cost". It has been a sorry saga indeed, and illustrates the consequences of a Government reacting to ill-informed, ignorant minority opinion instead of providing leadership. However, the process is finally underway, so perhaps we should share E M Forster's call for "Two Cheers for Democracy"!

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Please note that the views expressed in this article are those of the author and do not necessarily reflect those of the International Association of Gaming Advisors or its other members.