The Journal of Gambling Business and Economics 2013 Vol 7 No 3 pp 111-149

THE RELATIONSHIP BETWEEN THE REGULATORY ENVIRONMENT GOVERNING COMMERCIAL GAMBLING AND THE SHAPE OF THE MARKET IN THE SUPPLY AND GAME PARAMETERS OF GAMING MACHINES

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ABSTRACT

This paper has three main purposes. The first sets the controls over the supply and the game parameters of gaming machines within the broader regulatory environment governing commercial gambling in Great Britain. This account notes the tensions that existed prior to the regime introduced by the Gambling Act 2005, but whose legacy continues to present both regulatory and commercial difficulties. Its second purpose is to indicate how these controls have shaped the gaming machine market and the debate around the ways in which the government could realise its policy of striking a balance between the interests of both operators and players. This paper does not address the regulation of online gambling; that is, 'remote gambling' by means of 'remote communication' (s. 4 of the Gambling Act 2005). Its third purpose is to provide a critical account of the regulatory regime governing the availability of gaming machines as the background against which the Responsible Gambling Trust's other commissioned contextual papers may be read.

The text falls into four sections:

1. An overview of the regulation of machines under the Gaming Act 1968 and of the reasons underlying the structure of the new regime
2. A summary of the overall regulatory structure of the 2005 Act
3. A descriptive account of the 2005 Act's regulation of machines
   - preliminary
   - common core definitional features of a 'gaming machine'
   - the categories of gaming machines
   - gaming machine licences and permits

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- conditions and standards for their use

4. Some concluding comments on how these arrangements have shaped both the commercial availability of gaming machines and the debate about how the interests of operators and of players can be accommodated

1 REGULATION UNDER THE GAMING ACT 1968

1.1 Background

The main purpose of the Gaming Act 1968 was to bring under control the massive expansion in casino and machine gaming unwittingly facilitated by legislation enacted in the 1960s.[1] The casino operators had succeeded primarily by means of their exploitation of the minor concessions to that legislation's basic proposition that commercial gaming was lawful only where the operator had no financial interest in its outcome (Miers, 2004: chapter 3.6). By contrast, the profits generated by the machine suppliers were largely derived from the latter's studied ignorance of the legislation's requirement that stakes not returned as winnings could lawfully only be applied to purposes other than private gain, and by their reliance on oppressive bargains imposed on the premises on which the machines were located. The proliferation of 'one-armed bandits' and the criminality that accompanied them were substantially the consequence of there being, first, no limit on the size of the jackpots they offered, which encouraged repeat play at a maximum stake of six (old) pence, and, second, that there was no regulation of those who supplied and maintained machines (Monkcom, 2009: chapter 25.1-25.7). These deficits were addressed by an intricate regime designed to regulate the entire commercial gaming market, enforced by the Gaming Board for Great Britain ('the Board'), a newly created regulator having powers that were, for 1968, unusual in their imagination and scope.

'In a nutshell', as the leading practitioner's work comments, the scheme in Part III of the 1968 Act, 'was to define the machines to which it applied, to place restrictions on the sale, supply and maintenance of such machines, and to define the circumstances under which and the conditions in which they could be used for gaming' (Monkcom, 2009: chapter 25.10). But cracking open the nutshell reveals a highly complex set of inter-locking provisions that are difficult to summarise without loss of important detail, were the subject of frequent and occasionally unresolved legal challenge, and whose implementation was in many cases subject to 'soft law' guidelines published by the Gaming Board after representations by the trade association, the British Amusement Caterers' Trade Association (BACTA). When it came to its

[1] Betting and Gaming Act 1960, repealed and replaced by the Betting, Gaming and Lotteries Act 1963, and the Betting, Gaming and Lotteries Act 1964. The principal purpose of the 1960 Act was to permit off-course bookmaking.

consideration of gaming machines, the Gambling Review Report, established in 2000 to review the whole commercial gambling market, commented that the issue was 'one of the most difficult we have tackled' (DCMS, 2001: paragraph 23.1), observing that if it were creating a regulatory framework for the first time, it wouldn't start from the received position. Of its sector-specific recommendations, by far the majority concerned machines (36 out of 101).

1.2 The scope of the Gaming Act 1968 Part III

Perhaps the simplest aspect was the Act's requirements (ss.27-29) concerning the sale, supply and maintenance of machines, which applied to any machine defined by Part III. No-one could lawfully sell, supply or maintain a machine who did not hold either a trading certificate, or in the case of a transaction in respect of a particular machine, a permit issued by the Board. The Act also prohibited, with some exceptions, profit-sharing agreements between the supplier and the owners of the premises on which a machine was located. These requirements undoubtedly fulfilled their purpose. The certification procedure was at least as rigorous as that which applied to operators seeking a certificate of consent to hold a gaming licence (for a casino or bingo facilities),[2] and for the most part following the Board's advice, the terms and conditions of machine rental contracts avoided the past excesses. But while, until amended, the law is fixed, machine technology and commercial interests do not stand still. When enacted, Part III contemplated machines whose operation was electro-mechanical. Within the machine's cabinet its operative physical elements would constitute its 'equipment' or its 'apparatus' within the profit-sharing prohibition; but because these terms do not readily apply to computer software there arose some difficulties in its application to more modern machines. In addition, by the time that the Gambling Review Report was published, the machine market was dominated by national pub chains whose purchasing power negated the kind of leverage that the suppliers had formerly exerted. While it maintains the certification requirements and makes clear provision for computer software, the 2005 Act did not continue the prohibition on profit-sharing.

Because gaming machines could be built or altered to play any one of a variety of games of chance, under any conditions and on any premises, Part III of the Gaming Act 1968, 'gaming by means of machine', did not attempt to define them solely by reference to their intended or actual use. Rather, it defined them by reference to a combination of their purpose, physical construction, and the means by which the game of chance being played was to be determined. This was to enable the Act then to distinguish for regulatory purposes between jackpot and amusement with prizes (AWP) machines, and

[2] Gaming Act 1968, s.19 and Schedule 2; for commentary see Miers (2004): chapter 13.

the conditions under which and premises on which they could be operated. Thus, s.26 provided that Part III applied to any machine which, first, '(a) is constructed or adapted for playing a game of chance by means of the machine, and (b) has a slot or other aperture for the insertion of money or money's worth in the form of cash or tokens.' Secondly, 'playing a game of chance by means of a machine includes playing a game of chance partly by means of a machine and partly by other means if (but only if) the element of chance in the game is provided by means of the machine'. These definitions call for some comment.

First, it should be noted that 'gaming' was defined in the Act as 'the playing of a game of chance for winnings in money or money's worth, whether any person playing the game is at risk of losing any money or money's worth or not'. This meant that a machine was caught by Part III if a game played on it involved an element of chance even though the player stood to lose nothing, and also if it were 'constructed or adapted' to play a game of chance even though it was not designed for use for gaming. One commercially significant implication of these provisions for both their operators and their suppliers related to the many machines that presented a virtual reality game, such as a simulated car race, in which the player exercised skill when participating in the race, but without winning money or money's worth. The Board was always alert to these 'for amusement only' machines, which were (and still are) commonplace in seaside arcades and fairs; while distortions or interruptions in the game might introduce a small element of chance, if they were genuinely games of skill (this was and is always a question of fact),[3] they would fall outside Part III. This was not, of course, the case with machines that did offer a game of chance, notwithstanding that they might be labelled, 'for amusement only'. Here, the Board took a much stricter line, not least because they were amenable to manipulation by the operator.

A second commercially significant implication of the s. 26 definition concerned the question whether Fixed Odds Betting Terminals (FOBTs) were caught by Part III. In their original format FOBT customers would bet on a variety of 'events', which could include representations of horseracing, greyhound racing, football penalty shoot-outs, numbers and roulette. The terminal accepted the bet, displaying the event and result on-screen in a format which varied with the type of event chosen. FOBTs' high-volume / low-margin betting potential was particularly attractive for bookmakers following the replacement in 2001 of general betting duty by a tax on gross profits. With the development of new software, FOBTs offering roulette became widely available to bookmakers, substantially increasing their appeal. This new format at once raised difficult questions of law for the Board. First, the outcome of the 'roulette' event was driven by a random number generator (RNG) operated by an independent third party and located remotely, which

[3] *R v Kelly* [2008] EWCA Crim 137.

raised the question whether the element of chance in the game was provided 'by means of the machine'. In a parallel development, operators licensed under s.16 of the Lotteries and Amusements Act 1976 to provide amusements with prizes had been able to demonstrate that their gaming machines, being linked to an RNG, fell outside Part III. Secondly, although FOBTs offered 'roulette', the game was not conducted on the same terms as it was played in a casino, in accordance with the Gaming Clubs (Bankers' Games) Regulations 1994.[4] Depending on their membership casinos might apply different minimum and maximum stakes to different roulette tables, but a player who bet, say, £50 on a single number would expect to win at the regulated odds of 35:1 (£1,750). But within bookmakers' premises (licensed betting offices, LBOs), all FOBTs operated with restrictions on both stakes and prizes. Summarising the position in 2005 a report commissioned by the Association of British Bookmakers (ABB) noted that the usual minimum stake for roulette was £1 and the maximum £15. But the highest possible payout was restricted to £500; if the customer attempted, for example, to place a £15 bet on a single number the terminal would limit the stake so that the payout (£525) would not exceed that ceiling; *a fortiori* if the bet were as in the casino example above (Europe Economics, 2005: paragraphs 2.1.6-2.1.7). Nevertheless, both the maximum stake and the prize were significantly greater than the equivalents in the 'all cash' AWP gaming machines that LBOs were permitted under Part III.

Concerned in part about their facilitation of problem gambling the Board began to raise objections to the use of FOBTs, which in its view were for all practical purposes identical to gaming machines and should be treated as such. But whether they were caught by Part III or did indeed constitute betting, and were thus outwith the Board's jurisdiction, was legally uncertain. Like many other points of law disputed by the Board and the operators, the issue was resolved by a code of practice agreed in 2003, which provided that LBOs would be able to operate no more than four machines in total (whether conventional gaming machines or FOBTs, or a mix of the two); that the maximum prize would be £500 and the maximum stake £100, with a chip size no greater than £15; that no casino games other than roulette would be allowed on FOBTs and that their speed of play would be restricted (Joint Committee, 2004: paragraphs 485-487). FOBTs received statutory recognition under the 2005 Act (as Category B2 machines), but their legacy continues to shape both the structure and the debate about how machines should be regulated.

1.3 Premises on and conditions under which machines could be used

While the sale, supply and maintenance of any machine falling within Part III were subject to regulation by the Gaming Board, for the purposes of the

[4] SI 1994 No. 2899.

identification of the premises on which they could lawfully be sited the Act distinguished, first, commercial from non-commercial use, and, secondly, 'jackpot' (although this soubriquet had no statutory authority) from 'amusements with prizes' (which did) machines. Given the Act's overall purposes these distinctions were fundamental: to bring all commercial gaming with jackpot machines within the Board's jurisdiction, to require commercial gaming with AWPs on other premises to be authorised by the local licensing authority, to leave private and small-scale non-commercial gaming subject only to registration with that authority; and in all cases, to subject them to the Act's conditions of use.

The starting point was that no machine to which Part III applied could be used for gaming unless it met one of the conditions summarised in s. 35. Thus, under s. 31, jackpot machines could be used for commercial purposes only on premises holding a gaming licence (casinos and bingo clubs); but they could be used non-commercially in a club or miners' welfare institute (MWI) registered under Part II or Part III of the Act, and, by s. 33, at non-commercial entertainments of the following kind: 'bazaars, sales of work, fetes, dinners, dances, sporting or athletic events and other entertainments of a similar character, whether limited to one day or extending over two or more days.' I have quoted this permission in full to illustrate an important point about the machine regime under the 1968 Act. This is that in drafting the Act the Home Office could not disengage itself from the inherited exceptions that had built up since machines first appeared in the first decade of the 20th century. Another of these exceptions was the 'travelling showmen's pleasure fair', at which gaming by means of AWP machines was permitted without any local authority permit at all (s. 34(1)(d)). And lest this be thought an anachronism, 'travelling fairs' continue to figure in the 2005 Act. AWPs could also be used for commercial purposes in LBOs, in 'amusement machine premises', at pleasure fairs permitted by the Lotteries and Amusements Act 1976 (s. 34(1)(a)-(c)), and, if their management sought the relevant authority, bingo clubs by way of substitution for their jackpot machine entitlement (s. 32). A second point is that behind this very simplified statement of the application of Part III lay a complex and intricate hinterland of primary and secondary legislative provision.

The application of the rules governing the registration of clubs under Part III inevitably created some legal difficulty,[5] but far more challenging were the continuing questions concerning the interpretation of key elements of the provisions governing the conditions under which machines could be used. Some of these related to fundamental aspects of the regime; for example, what, in s. 31(3), which governed jackpot machines, was meant by 'playing a game once'? Despite a decision by what was then the supreme court for the United Kingdom, on a similar phrase, that the insertion of a coin into the

[5] *Tehrani v Rostron* [1972] 1 QB 182.

machine was not part of the 'game',[6] the question arose whether, in stipulating that 'the charge for play for playing a game once' could not exceed 50p, it was lawful for a machine to accept a £1 or £2 coin, crediting the player with the balance. And there were also difficult questions of interpretation for both jackpot (s. 31(3)) and AWP (s. 34(3)) machines concerning the restriction on providing the player with 'any article, benefit or advantage' in respect of 'any one game' other than 'a coin or coins delivered by the machine'; for example, whether a 'nudge' feature was permissible, and in the case of AWPs, the 'trading up' of non-monetary prizes whose value exceeded the £6 statutory limit, which became common in the 1990s. In some instances there was a judicial answer,[7] but for the most part the Board would, following discussions with BACTA, issue guidelines on its implementation of the provision (Gaming Board, 2000). Although these could not constitute authoritative propositions of law, they accommodated both the Board's concern for regulatory discipline and the industry's concern for commercial leg-room, and they were particularly useful where, as for example in the case of the industry's proposals for the use of smart cards in machines, developments in machine technology had outstripped the legislative text.

1.4 The Gambling Review Body's Report

In 2000 the Department for Culture, Media and Sport (DCMS) established the Gambling Review Body whose terms of reference were to consider how the gambling industry might change in the light of the growth of e-commerce and the use of the internet to supply gambling products, the social impact of gambling and its costs and benefits, and how the dated but extensively deregulated gambling legislation might be recast by way of response (DCMS, 2001: paragraph 6). The government's key objectives were: to modernise gambling legislation and to consolidate it into a single piece of flexible and comprehensible legislation; to create a new single regulatory authority, funded through licence fee income, to regulate all gambling (with premises licensing performed by local authorities); to relax advertising restrictions, and the use of credit cards for payment; to establish a new regulatory framework for gaming machines; to deregulate casinos and bingo, in order to provide greater choice for both players and industry; to legalise the provision of the full range of online gambling services by operators located in the UK; to provide proper controls and protections for children and vulnerable people – as part of the conditions of licences to operate - and to ensure that there is prevention, research, education and treatment in relation to problem gambling (DCMS, 2001: paragraph 33).

[6] *Rosenbaum v Burgoyne* [1965] AC 430.
[7] *R v Burt and Adams Ltd* [1999]1 AC 247.

Taking into account the deregulatory amendments made during the 1980s and 1990s, together with the successive increases in stakes and prizes, there were three categories lawful machine at the date of the Review:

- jackpot machines: permitted under s.31 for casinos, bingo premises, and clubs and MWIs with a maximum stake of 50p and maximum prizes of £1,000, £500 and £250 respectively
- 'all-cash' machines (also confusingly sometimes called AWPs): permitted under s. 34 and located in amusement arcades, bingo premises, clubs, pubs and LBOs, with a maximum stake of 30p and maximum prize £15
- traditional cash/token amusement with prizes machines (AWPs): also permitted under s. 34, and located in amusement arcades and other commercial premises permitted by the local licensing authority, which might include premises whose primary purpose was not to provide facilities for gambling, such as cafes, with a maximum stake of 30p and maximum prize of £5 cash or £8 in tokens (or a non-cash prize).

In addition, jackpot and AWP machines could also be used for gaming commercially at travelling showmen's pleasure fairs and non-commercially at entertainments held 'for purposes other than private gain'. Exact figures are not possible, but on the basis of trade information, the Gaming Board estimated that in 2002/03 there were some 26,000 jackpot machines located in casinos, bingo clubs, private members' clubs and MWIs, 221,000 AWP machines (both 'all cash' and the 'traditional' type) and some 8,000 of the long-established crane and pusher AWP machines.

As noted earlier, the Gambling Review Body found this regime particularly challenging, and did so for two broad reasons. The first related to its regulatory anomalies. The regime was 'both more and less restrictive than that typically applying in other developed countries. It is more restrictive in that permitted machines are limited to three specified types – up to £1,000 jackpot, £15 all-cash and £5 cash/£8 token – and there is no provision for the unlimited prize "casino slots" which are widely available in casinos overseas. It is less restrictive in that: machines are allowed in many places not specifically licensed as gambling premises and children (under 18s) are allowed access to £5 cash/£8 token machines, and even to jackpot machines in certain circumstances' (DCMS, 2001: paragraph 23.3). The second, illustrated in the preceding sections, related to the regime's implementation:

- the complexity of the law, which did not define a gaming machine directly
- the challenges presented by technological developments in machine design and operation

- the variety of premises on which machines could be located and the differing levels of control exerted over their use
- the differing authorities responsible for licensing and registering the location of and conditions attaching to the use of machines
- the stipulation in the Act of such conditions as the fixed numbers of jackpot machines in casinos (10), bingo clubs (4) and private clubs and MWIs (3), and of stakes and prizes for both jackpot and AWP machines, meant that changes had to be made by a procedurally onerous deregulation process

I detail in Section 3 the regime introduced by the 2005 Act. Within its recommended structure of a regulatory body having oversight of the entire commercial gambling market, with powers to guide, direct and intervene in the manner of its operation, the Gambling Review Body's ambitions for the regulation of machines were two-fold. First, 'gaming machines', which would be better defined, could only lawfully be used on premises that were themselves licensed for gambling. There would be no 'ambient gambling'; that is gambling incidental to another, non-gambling activity, which meant that machines could not be located in places like cafés and taxicab offices. A specific application of this policy was to remove their accessibility to children. The second ambition, which in many ways mimicked the policy underlying the 1968 Act, was to create a hierarchy of control regulated by reference to the stake, the value and nature of the prize, the kind of gambling and the premises on which a machine was to be used, all of which would be defined by the government or the newly created agency, the Gambling Commission. At its apex would be machines having unlimited stakes and prizes (Category A machines), although in the event these did not receive parliamentary approval.

2 THE REGULATORY STRUCTURE OF THE GAMBLING ACT 2005

2.1 Establishing the new structure and the Gambling Commission

The Gambling Review Body's Report commenced with a very clear statement of intent: to simplify the regulation of gambling and to extend choice for adult gamblers (DCMS, 2001: paragraph 1.1). Although it did not accept all of its recommendations the government endorsed the Review Body's market philosophy, that competition would 'create a more open and competitive gambling sector' giving 'better choice for consumers and enhanced opportunities for business both in the UK and abroad' (DCMS, 2003: paragraph 1.78). For its part, regulation would be 'confined to what is necessary to keep crime out, protect the vulnerable, and ensure that gambling products are fair to the consumer' (DCMS, 2002: paragraphs 9-10), reflected

in the three licensing objectives set out in s. 1 of the 2005 Act: '(a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, (b) ensuring that gambling is conducted in a fair and open way, and (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.'

Central to its recommendations was the creation of the Gambling Commission, a new regulatory agency having responsibility for the entire commercial gambling market in Great Britain, with the exception of spread betting and the National Lottery.[8] Established by Part 2 of the Gambling Act 2005, the introduction of this 'unified regulator' addressed one of the main weaknesses of the regime that had been in place for the preceding 40 years: the fragmentation of enforcement responsibility across a range of agencies. By s. 22 the Commission 'shall aim' to pursue and have appropriate regard to the licensing objectives and to permit gambling so far as it thinks it reasonably consistent with them. It is worth emphasising that the second of these statutory duties requires the Commission to 'aim' to permit gambling, not simply to permit it. This is a subtle difference, often overlooked by commentators who assume an unconstrained deregulatory purpose to the Act; in some areas, notably betting, the Act imposes significantly more extensive regulation than was formerly the case. The Commission works with the industry, but it is not its duty to promote gambling; it is not an economic regulator such as those that govern the energy or the telecommunications markets (Gambling Commission, 2012a: Foreword). It is, however, fair to say that by comparison with the repealed legislation the new regime is essentially permissive; but 'pursuit of the licensing objectives comes first; the duty to permit gambling is subsidiary' (Monkcom, 2009: chapter 1.15).

2.2 Gambling regulation: structure and licensing

The manner in which the Act subjects commercial gambling to the Commission's control is, in essence, very simple. By s. 33 it is a criminal offence to provide facilities for gambling, whether remotely, for example by the internet, or non-remotely, that is in 'bricks and mortar' venues, unless the Act authorises their provision or they constitute one of its many exceptions. These latter cover, first, a range of private and non-commercial betting and gaming facilities that are legacies of the exceptional cases provided for by the 1968 Act: MWIs, members' and other kinds of social clubs that are established mainly for purposes other than gambling. They are either subject to no regulatory control or only to notification requirements to the licensing authority, provided that they comply with a lengthy set of conditions, which

[8] The Gambling Commission and the National Lottery Commission merged on 1 October 2013. The Gambling Commission has assumed responsibility for licensing and regulating all commercial gambling and the National Lottery in Great Britain. For background see DCMS (2012a).

inter alia, prohibit private gain and require the gaming to be 'equal chance gaming' as defined in s. 8. Secondly, there are a number of exceptions covering small-scale commercial gambling, notably gaming in a public house, at a travelling fair, and prize gaming, a characteristic of bingo halls, seaside resorts and fairs, all of which are equally long-standing.[9] A legal practitioner with considerable experience in this area has observed 'so many of [these provisions] apply to the most numerous forms of establishment providing gambling – pubs and clubs – that the practical law of gambling in Great Britain may properly be understood as a law of exemptions' (Kolvin, 2007: paragraph 9.25).

All other forms of commercial gambling facilities must be authorized by the Commission ('operating licences') as must their operators ('personal licences'), and where the facilities are provided non-remotely, by the local authority in which the premises in which they are provided are located ('premises licences'). Operating, personal and premises licences comprise the centrepiece of the Gambling Act's regulatory structure. In these respects the 2005 Act is comprehensive of the commercial gambling market. In addition to the regulation of casinos, bingo, lotteries and gaming machines that existed prior to its enactment, the new regime covers, for the first time, betting, remote gambling and arcades. The law and procedure on these three licences is complex (Monkcom, 2009: chapters 6, 7, and 10). The following sections summarise their principal features.

2.2.1 The operating licence

Part 5 of the Act requires any operator to hold one (or more, depending on the facilities to be provided) of the ten different kinds of operating licences specified in s.65 of the Act. These cover the range of permitted gambling facilities, as well as authorising persons to manufacture or supply the software for gaming machines. These licences refer to the provision of gambling facilities in 'bricks and mortar' premises. In respect of eight of them it is, additionally, possible to hold a 'remote operating licence'.[10] This authorises activity to be carried on either in respect of remote gambling or by remote communication. One operator may hold both a remote licence and a non-remote licence. For example, a bookmaker that operates both on the high street and on the internet would be required to hold two separate 'general betting operating licences', each authorising one of these activities. Taking into account all the permutations of remote, non-remote, ancillary and restricted licences that were introduced by the first set of regulations

[9] Gambling Act 2005, Parts 12, 13 and 14 and Schedules 14 and 15.
[10] It does not appear to be possible for an operator to hold both a non-remote and a remote operating licence for an adult gaming centre or a family entertainment centre. They are by definition land-based operations.

concerning fees, there were, just before the Act came fully into force on 1st September 2007, some 35 varieties of operating licence.

In considering an application for an operating licence the Commission must have regard to three matters (s.70), the first of which is the licensing objectives set out in s.1 of the Act. Secondly, it must form an opinion of applicant's suitability to carry on the licensed activities. This opinion is a central element of the quality controls that comprise the Act's regulatory structure, and is informed by evidence supplied by a wide range of law enforcement and other regulatory agencies. The criteria of suitability are the applicant's integrity, competence and financial circumstances. These apply with equal force to any person 'relevant' to the application, in particular, someone who 'is likely to exercise a function in connection with, or have an interest in, the licensed activities.' There will be some persons whose functional relevance to the application will be obvious; for example, the directors of the company that is to hold the licence and anyone who has some responsibility for ensuring compliance with its terms and conditions. Thirdly, and reflecting the increased awareness of their impact on the player, the Commission must consider the suitability of any gaming machine to be used on the premises. One final point to note is that even if the application meets the requirements set out in s. 70(1), the Commission may still refuse it where the applicant has a conviction for a 'relevant offence' or because a 'relevant person' has such a conviction.

2.2.2 The personal licence

Personal licences constitute quality controls on those who are to perform either managerial or functional roles in respect of the operating licence. They are determined on the basis of the provisions of Part 5, modified to apply to their particular requirements. Thus all of the criteria just outlined that refer to a person's suitability to hold an operating licence apply to personal licences. The Act requires (s. 80) as a condition of an operating licence that there be at least one person who holds a personal licence in respect of a 'specified management office' (a personal management licence (PML)). It also permits the Commission to require those who perform 'operational functions' to hold a personal licence (a personal functional licence (PFL)). These conditions are amplified in the Commission's *Licence Conditions and Code of Practice* (LCCP) (Gambling Commission, 2011), discussed in Section 2.3 below, which specifies that anyone performing a function, for example regarding the overall management and direction of the licensee's business or affairs, or who is the head of any finance or regulatory compliance function will require a personal licence.

2.2.3 The premises licence

The Act provides that premises cannot be used to operate a casino, provide facilities for bingo, make a gaming machine available for use or provide facilities for other forms of gaming or for betting unless the licensing authority has issued a premises licence in respect of them (s. 37). Whereas s. 33 deals with the provision of any gambling facilities, the prohibition in s. 37 is limited to premises used for the provision of non-remote gambling facilities. In other words, an operator located in Great Britain who seeks only to provide facilities for remote gambling requires only the Gambling Commission's authorisation. The operator who also seeks to provide them non-remotely requires in addition the licensing authority's permission.

Maintaining the central-local division of function that was a feature of the 1968 Act premises licences are issued not by the Commission but by local licensing authorities, which share with the Commission a number of responsibilities that give effect to the shift in the ethos underlying the 2005 Act. In exercising their functions under Part 8 ('premises licences') and in a deliberate echo of the duty on the Commission, licensing authorities 'shall' by s. 153, 'aim to permit the use of premises for gambling' so far as they think this is, *inter alia*, 'reasonably consistent with pursuit of the licensing objectives.'[11] The section also requires them to take account of any relevant code of practice published by the Commission (discussed in Section 2.3 below) and of any 'guidance' that it has published under s. 25. Now in its fourth edition (Gambling Commission, 2012b), the Commission's *Guidance to Local Authorities* is a key document containing extensive explanations both of the regime regarding machines in general (Part 16), and of the authorities' particular responsibilities in respect of them.

2.3 Gambling regulation: licence conditions and codes of practice

One of the Gambling Review Body's main criticisms of the existing arrangements was their inflexibility: 'as far as possible, discretion will be given to the Gambling Commission to adjust regulation to respond to new demands and to fill any loopholes that may be exposed. We recommend that future legislation should be in the form of an enabling act which delegates the detailed provisions to subordinate regulation and to codes issued by the Gambling Commission' (DCMS, 2001: paragraph 18.23). Accordingly, the Act gives the Commission power to attach conditions to an operating licence that are of general or individual effect (ss. 75-77). General conditions can

[11] In discharging this duty neither the Commission nor a licensing authority may take account of the existence or otherwise of any demand for the facilities to be provided (ss. 72(a) and 153(2) respectively). Nor may they impose any condition on the licence requiring the facilities to be restricted to membership of a club or other body (ss. 87(b) and 170 respectively).

apply to each, or to a class of, operating licence; specific conditions may be applied to an individual operating licence. And by s. 80 the Commission must ensure that in respect of each operating licence at least one person has a PML and one has a PFL. These operating and personal licence conditions are published in Part I of the LCCP (Gambling Commission, 2011). In addition, the Secretary of State has power under s.78 to provide for a specified condition to attach to operating licences of a specified description; these conditions are made by way of regulation.

By s. 24 the Act also requires the Commission to issue one or more codes of practice about the manner in which facilities for gambling are provided. One of these must describe the arrangements that operators are to make for the purpose of ensuring that gambling is conducted in a fair and open way, protecting children and other vulnerable persons from being harmed or exploited by gambling, and making assistance available to persons who are or may be affected by problems related to gambling. These arrangements, which may be directed at the holders of operating or personal licences and are set out in the Commission's consolidated *Gambling codes of practice* (Gambling Commission, 2013), comprise the core elements of the social responsibility code that licence holders are, by virtue of s. 82, obliged to pursue as a condition of their licences. But s. 24 also extends the codes of practice to any other person involved in providing facilities for gambling, which means, for example, that holders of permits for gaming machines in clubs and premises with an alcohol licence are also subject to what the Commission calls 'ordinary' and 'social responsibility' code provisions (Gambling Commission, 2013: code provision 12). In addition to the conditions that apply to operating and personal licences, the Act provides for mandatory and default conditions prescribed by the Secretary of State to be attached to a premises licence (ss. 167 and 168 respectively). And by s.169 the licensing authority may add conditions to the licence. We shall see examples of these various conditions in Section 3 below.

2.4 Gambling regulation: enforcement

Another defect of the 1968 Act was the limitations on the Gaming Board's power to enforce its requirements. These have been comprehensively remedied. The Commission has broad powers to investigate and prosecute offences under the 2005 Act, which include the breach of an operating licence condition, as that would mean that unauthorised gambling is taking place on the premises. Separate from criminal proceedings and the sentence that a court could impose, the Commission also enjoys a range of regulatory sanctions, which include warnings, unlimited fines and suspension or revocation of the licence. As noted, 'social responsibility' provisions are conditions of the operating licence and therefore breach attracts the same potential penalties as the breach of any other licence condition. Failure to comply with an

'ordinary' code of practice provision is not a criminal offence, but may be taken into account in considering licence breaches or criminal prosecutions.

2.5 The hierarchy of regulatory control

The Act's regulation of the commercial gambling market may be seen as a hierarchy of control. At the apex is DCMS, which sets the government's policy on gambling. This includes such broad questions as what counts as gaming, a lottery or as remote gambling, what kinds of 'gambling activity' should fall within the Act and whether there should be any more casinos other than those that were licensed under the Gaming Act 1968. The Secretary of State has power under the Act to specify by regulation or order a wide range of definitional and operational matters. The Commission's primary duties concern the formulation, setting and enforcement of the conditions under which authorised gambling may be carried on. It performs these functions, as noted above, through its procedures for granting and attaching conditions to operating and personal licences, publishing codes of practice and advising local authorities on the grant of premises licences. By s. 26 the Commission is required to advise the Secretary of State about the incidence, effects, regulation and 'the manner in which gambling is carried on'. This advice may be given at the Commission's own initiative, as for example in the case of Camelot UK's challenge to the lawfulness of the Health Lottery,[12] or, as in the case of the Triennial Review of Gaming Machine Stake and Prize Limits (DCMS, 2013a), at the government's request.

A very simple depiction of this hierarchy is:

- The Act: primary legislation that establishes the regulatory structure, the Gambling Commission, and gives power to the government (DCMS) to amend, remove or add to the principal categories of regulatory control
- Regulations: secondary legislation (statutory instruments) authorised by the Act and made by DCMS to give effect to those categories; a licensee's failure to comply may amount to a criminal offence, and may prompt a regulatory sanction
- Conditions made by the Secretary of State under s. 78: these attach to operating licences within a specified description; non-compliance is a criminal offence and may prompt a regulatory sanction
- General licence conditions made by the Commission under s. 75 (published in *LCCP* Part 1): these conditions attach to specified operating licences; non-compliance is a criminal offence and may prompt a regulatory sanction

[12] *The Queen on the application of Camelot UK Lotteries Limited v The Gambling Commission* [2012] EWHC 2391 (Admin).

- Individual licence conditions made by the Commission under s. 77: these conditions attach to a specific operating licence; non-compliance is a criminal offence and may prompt a regulatory sanction
- Social responsibility code provisions made by the Commission under s.24 (published in *Gambling codes of practice)*: these automatically attach as conditions of an operating licence; non-compliance is a criminal offence and may prompt a regulatory sanction
- Mandatory, default and licensing authority conditions attached to a premises licence: non-compliance is a criminal offence and may prompt a regulatory sanction
- Ordinary code provisions made by the Commission under s. 24 (published in *Gambling codes of practice)*: these conditions attach to any operating licence or gambling facilities to which they refer; non-compliance may prompt a regulatory sanction
- Advice: made by the Commission, departure from which attracts no regulatory sanction of itself.

3 THE REGULATION OF GAMING MACHINES UNDER THE GAMBLING ACT 2005

Preliminary

It should be noted, first, that the regulation of gaming machines is contained not only in the 2005 Act 'but in a plethora of statutory instruments, and also in licence conditions and technical standards documents promulgated by the Gambling Commission' (Monkcom, 2009: chapter 25.13). Apart from the primary legislation, in April 2013 this body of law comprised 10 sets of regulations affecting gaming machines made by DCMS, 12 sets of technical standards and over 20 'publications, guidance, and advice for the gaming machines sector' made by the Commission.[13] Nor is it sufficient to refer in the Act only to Part 10, 'Gaming Machines' (ss. 235-251); other key operative provisions include ss. 41 (gambling software), 59 (age limits for Category D machines), 86 (limits on operating licence conditions affecting machines), 96 (gaming machine technical operating licence standards) and 172 (numbers and types of machines relating to the differing premises licences).

The regulation of the circumstances in which gaming machines may be made available for use is a microcosm of the Act's overall structure. Regulatory leverage is exerted by a combination of the primary legislation's allocation of machines to four principal categories that in differing combinations may be used on the various premises licensed under the Act,

[13] There are also regulations governing the use of machines in pubs and clubs.

and of secondary legislation specifying, *inter alia*, their level of stakes, the value and nature of their prizes, and the conditions under which they may be made available for use. The following discussion concentrates on the common definitional features of a 'gaming machine', the categories of machines, gaming machine licences, permits and exceptions, and the core conditions and standards for the use of machines. Reference is made to the commentaries and advice to be found on the Commission's website.[14]

3.1 Common core definitional features of a 'gaming machine'

3.1.1 The definition of a 'gaming machine'

By s. 235(1) a '"gaming machine" means a machine which is designed or adapted for use by individuals to gamble (whether or not it can be used for other purposes).' Clearly it is necessary for regulatory purposes to know what constitutes a 'machine'; and this is especially important where the numbers of machines permitted on any premises is limited. A 'machine' does not necessarily imply the existence of a unique object. By virtue of s. 235(5) the Gaming Machine (Single Apparatus) Regulations 2007 provide that where 'a single piece of apparatus' (defined as apparatus using or applying mechanical or electrical power or both (s. 235(3)(a)) is a 'gaming machine' and is made available for use by more than one person at a time, it may be treated as comprising more than one machine; that is, it is to be treated as the number of machines equal to the number of persons able to use it at that time.[15] This regulation therefore precludes an operator from installing a 'central' gaming machine from which a number of others are run ('slave units'), with the effect of increasing the total of playing places (machines) beyond the statutory limit. The Commission's advice on its interpretation of the phrase 'available for use' (Section 3.1.2 below) reminds operators that 'if two people can play a gaming machine simultaneously, then the machine counts as two machines' (Gambling Commission, 2012(c)).

By virtue of its non-reliance on any physical features of the machine (such as 'a slot or other aperture') or on the requirement that the machine should itself determine the game's outcome, and its inclusive reference to 'gamble', which means (s. 3) betting, gaming or participating in a lottery, the broad definition in s. 235(1) avoids the difficulties that arose under the 1968 Act exemplified by the disputed status of FOBTs. They and other machines permitted under s. 16 of the Lotteries and Amusements Act 1976 now all fall within the Act's definition. But this is not to say that there are no definitional difficulties, some, but not all of which have been anticipated. Whereas 'a gaming machine' was in 1968 too narrowly defined, the basic definition in the 2005 Act would be over-inclusive were it not for a substantial list of

[14] http://www.gamblingcommission.gov.uk/gambling_sectors/gaming_machines.aspx.
[15] SI 2007 No. 2289, regulation 2.

exceptions provided by s. 235(2). This subsection excludes two broad groups of machines that would otherwise be caught by Part 10. The first comprises what the Act terms 'domestic' and 'dual use' computers: computers used at home or in an office, or located in a cyber café, are not gaming machines by reason only of the fact that they could be used to access internet gambling sites. More specifically, the Gambling Act 2005 (Gaming Machine) (Definitions) Regulations 2007 provide that 'dual use' computers are excluded where they are not presented (in a cyber cafe, for example) in such a way as to facilitate or to draw attention to the possibility of its use for gambling.[16] 'Domestic' computers are computers located in a private dwelling and used on 'a domestic occasion', a definition that also applies to telephones and televisions.[17]

The second group of excepted machines all relate to gambling that is regulated elsewhere under the Act. They include, first, automated casino games, provided that they are used in connection with a real game of chance (semi-automated), or are authorised by a condition attached to the casino operating licence (s. 235(2)(h) and (i) respectively). Provided that they meet the two conditions in s. 235(2)(d) lottery ticket terminals are not gaming machines. These conditions are that the result of the lottery must not be determined by the machine, and that, as provided by the Gambling (Lottery Machine Interval) Order 2007,[18] there must be an interval of one hour between each entry to the lottery and the announcement of the result. A third non-contentious exception is those machines, commonly found in LBOs, that permit the user to bet on a future real (but not virtual) event (s. 235(2)(c)). More difficult is the scope of the exceptions in favour of various kinds of machines used in connection with the playing of bingo.

Under s. 8 of the 2005 Act bingo must be 'equal chance gaming'; otherwise it would be a 'casino game' (s. 7(7)) and could not be played under a bingo operating licence. The position was similar under the 1968 Act, which permitted what was known as mechanised cash bingo (MCB). This was played on machines that looked like but were exempt from the strict Part III controls, a permission that the 2005 Act continues. Under s. 235(2)(e) a machine designed or adapted for playing bingo and used in accordance with the conditions attaching to a bingo operating licence is not a 'gaming machine' (Gambling Commission, 2008a). Under the 2005 Act licensed bingo premises are, as was previously the case, permitted to install a limited number of gaming machines.[19] But because bingo does not generate profits directly

[16] SI 2007 No. 2082 regulation 2; see also Gambling Commission (2010a).
[17] SI 2007 No. 2082 regulation 3; the exceptions are summarized on the Commission's website.
http://www.gamblingcommission.gov.uk/gambling_sectors/gaming_machines/about_gaming_machines_fruit_m/about_gaming_machines_fri.aspx.
[18] SI 2007 No. 2495, regulation 2.
[19] http://www.gamblingcommission.gov.uk/gambling_sectors/bingo/operating_licence

from the games played but from their permitted gaming machines its operators have every incentive to maximise their customers' access to them, or, in this case, to machines that look like gaming machines. But as there are no limits on the number, stakes or prizes of MCBs the industry has always been keen to find new ways of devising 'machine' bingo games that are not 'gaming machines' and that will be exempt from the controls under Part 10. This places a considerable burden on the definition of bingo: but s. 353 says only that '"bingo" means any version of that game, irrespective of the name by which it may be described.' This lacuna has prompted the Commission to publish a list of bingo's key characteristics, commenting that pending a decision to incorporate them in the technical standards it is 'content to provide the industry with an opportunity to secure the arrangements set out above on a voluntary basis. If that does not prove possible, we will pursue a more formal regulatory route' (Gambling Commission, 2009a). Finally, bingo played by way of prize gaming is not a gaming machine if it is played in reliance on a family entertainment centre (FEC) machine permit or a prize gaming permit, and in compliance with any Code of practice issued under section 24 (s. 235(2)(g)).

Before leaving the definition of a 'gaming machine' it is appropriate to comment briefly on the status of 'skills with prizes' (SWP) machines. These have been an important part of the entertainment provided by amusement arcades and public houses. For a relatively small payment (50p) the player engages in what in other contexts would be a video game or in a quiz based on a popular TV format. The issue to which SWP machines give rise is whether they are 'games of chance', in which case they constitute gaming and are thus unlawful where used without authorisation. By s. 6 a game of chance is any game that involves an element of chance and skill, but which does not include a sport.[20] Like the Board before it, the Commission has been concerned that SWP machines may nevertheless engage an element of chance, whether by accident or design, and because s. 6 also provides that a 'game of chance' includes a game 'that is presented as a game of chance' it has also become concerned that some SWP games continue to be designed to look like games of chance. In the absence of direct regulation under the Act the Commission has published an advice note indicating the conditions under which a SWP will not be treated as a gaming machine, which includes a handy algorithm for that purpose (Gambling Commission, 2010b). While they are not for regulatory purposes gaming machines, SWPs are, however, fiscally

_holders_wh/key_information_for_the_bingo/gaming_machines_bingo_premises.asp
x.

[20] Unlike in other jurisdictions, it is irrelevant that a player may by the exercise of superlative skill eliminate the element of chance. This maintains the position under the 1968 Act. In *R v Kelly* [2008] EWCA Crim 137 the question arose whether Texas Hold'Em Poker is a 'game of skill' under that Act. The Court of Appeal held that notwithstanding that it was a game of combined (high) skill and chance it was, as the Act provided, a game of chance.

equivalent. From 1st February 2013 games designed to look like games of chance are subject to the same Machine Games Duty (MLD, formerly Amusement Machine Licence Duty) as those that in reality do so (HMRC and HM Treasury, 2010).

3.1.2 Prizes, charges and a machine's availability for use

In setting the limits on the numbers of machines that may be installed on any premises, s. 172 refers to machines being 'available for use'. There is no statutory definition of this key phrase but the Commission considers that a gaming machine is available for use 'if a player can take steps to play it without the assistance of the operator. This does not relate to the player requesting permission from the operator, but simply the player's ability to access and play the machine regardless of whether permission is sought. It follows that more than the permitted number of machines may be physically located on a premises, provided the operator has a robust system in place that ensures no more than the permitted number are ''available for use'' at any one time' (Gambling Commission, 2012c). This understanding is important for commercial, regulatory and fiscal reasons. First, many operators will wish to maintain on their premises a supply of 'extra' machines in the case of a fault in one of those that is available for use. Secondly, the presence of these additional machines is of central importance in determining whether the operator complies with the statutory limits on numbers that apply to the premises; and, lastly, MLD will be payable in respect of any that are available for use, whether or not the total exceeds the statutory limit. In short, operators must ensure that any spare machines cannot be used by their customers; for example, by keeping them under lock and key in an area of the premises to which the public have no access.

As was the case under the 1968 Act, the primary method by which the 2005 Act differentiates gaming machines is by reference to their prizes and charges for use; their definitions form the framework on which the various categories of machine is based (Section 3.2 below). By s. 239 a 'prize' includes 'any money, article, right or service won, whether or not described as a prize', but a prize 'does not include an opportunity to play the machine again.' The regulations use the phrase 'prize value', which means 'the amount or value of any prize which can be won as a result of use of a gaming machine once';[21] this thus includes both money and non-money prizes; in the latter case where the prize may, for example, be redeemed by means of a token provided by the machine. All machines could, therefore, be permitted to provide both money and non-money prizes, but only Category D machines are permitted to do so. As detailed below, Category D non-money prize machines include specifically the 'crane and grab' machines, which are permitted only

[21] Categories of Gaming Machine Regulations 2007, SI 2007 No. 2158, regulation 2(1).

to provide a non-money prize (the physical object plucked by the crane), and generically, those providing only a non-money prize, or a combination of a money and a non-money prize; in all cases subject to quite low limits. It will be recalled that a problem with non-money prizes that arose under the 1968 Act concerned the 'trading up' of the limited prizes from a number of winning games to one single prize of much greater value. In the test case the House of Lords held that the practice was lawful,[22] and it now has statutory approval in s. 343(3) provided that the value of the 'traded up' prize does not exceed the aggregate prize value of the individual prizes. Or, in vernacular as distinct from legal life, two Category D teddy bears valued at £8 each (the maximum prize value under regulation 3(1)) may be exchanged for one not exceeding £16 in value.

It is commonplace to refer to a machine's 'charge for use' as its stake; but s. 236 speaks of regulations being made in respect of 'amounts paid in respect of the use of a machine'. The formal position is, therefore, that machines are defined in part by the 'charge for use' that is specified for them; that is, 'the amount a person pays for using a gaming machine once.'[23] This is qualified by the succeeding paragraph, which provides that 'a person is to be treated for the purposes of these Regulations as using a gaming machine once, even where he uses the machine to gamble more than once, if the payment for each gamble is made before he is able to know the result of any of them.' The purpose of this paragraph is to prevent the development of 'parallel games' (a practice that arose under s. 16 of the Lotteries and Amusements Act 1976), where a player would start a 'game' once, the machine making a number of determinations at the same time. 'Such machines [sought] to circumvent the maximum stake and prize limits, by enabling a player to stake, simultaneously, multiples of the maximum stake permitted for its category of machine. The Department is clear that such practices should be outlawed' (DCMS, 2007: paragraph 7.22). What the new definition means in practice is that if a player plays a number of games simultaneously on the same machine, each game requiring its own charge for use, the total of those charges must not exceed the limit set for that machine, and for the purposes of the law, he only uses the machine once provided that his use of the machine occurs before the result of the gambles is known.[24] The payment for the 'charge for use' must be in coins or tokens; it is an offence to supply or install a machine

[22] *R v Burt and Adams Ltd* [1999]1 AC 247; see Section 1.3 above.
[23] Categories of Gaming Machine Regulations 2007, SI 2007 No. 2158, regulation 2(1).
[24] There is an exception in favour of Category D 'pusher and penny falls' machines, where a player inserting a second coin may know at that time that the first coin gave him a prize; Categories of Gaming Machine Regulations 2007, SI 2007 No. 2158, regulation 2(2).

which is designed or adapted to permit money to be paid by means of a debit or credit card.[25]

3.2 The categories of machines

Section 236(1) specifies four categories of gaming machine, A-D, which, by regulations made under s. 236(2), may be differentiated by reference to the amounts paid in respect of the use of a machine (the stake or the charge for use), the value and the nature of prizes, the nature of the gambling for which the machine can be used, and the premises where a machine is used. These categories need to be read alongside ss. 172-175 of Part 8 of the Act (premises licences) to discover the locations in which they may be made available for use, and in what number; and also in conjunction with regulations made under s. 240 concerning their conditions of use. As noted above, the primary method by which the Categories of Gaming Machine Regulations 2007 define what are in effect nine machine categories is by reference to their stake and prize levels.[26] 'Under the Gaming Act 1968, stakes and prizes were the defining elements used to distinguish between different classes of gaming machine (e.g. under sections 31 and 34). The government believes that stake and prize levels should continue to be the primary means by which the new categories of machine created by the Gambling Act 2005 are defined. Stake and prize levels are fundamental to (a) the nature of gambling offered by the machine, and (b) whether the machine can be considered a relatively safe amusement (like a crane grab or penny pusher), or a harder and potentially more addictive form of gambling (like a high stake, high prize gaming machine)' (DCMS, 2007: paragraph 7.6). In combination with other regulations made under the Act, the greater the degree of regulatory control exerted by the operating licence the more extensive the machine entitlement in respect of the relevant premises.

In summary, only a regional casino may install a Category A machine. The number of Category B, C, and D machines that 'large' and 'small' 2005 Act casinos may install is determined by reference to the number of gaming tables above one, in the proportion of N x 5 and N x 2, subject to an overall limit of 150 and 80 respectively (ss. 172(4) and (5)). Betting operating licences entitle the holder to install no more than four of any combination of Categories B, C and D machines. Bingo and Adult Gaming Centre (AGC) premises licences authorise Categories C and D and a limited range of

[25] The Act originally extended this prohibition only to credit cards (s. 245). This was repealed by the Gambling Act 2005 (Repeal) (Remote Operating Licence and Credit) Regulations 2007, SI 2007 No. 2321, and replaced by the Gaming Machine (Supply etc) Regulations 2007, SI 2007 No. 2320, regulation 2.

[26] SI 2007 No. 2158. These are summarized on the Commission's website http://www.gamblingcommission.gov.uk/gambling_sectors/gaming_machines/about_gaming_machines_fruit_m/gaming_machine_categories.aspx

Category B machines; but a FEC licence is restricted to Categories C and D, to the last of which children have access. The number of machines in any permissible category for a given set of premises thus varies in the case of regional, large and small casinos by reference to the number of gaming tables used, and in the other premises by a combination of absolute statutory limits on the higher category and relative limits based on the number of lower category machines that are installed.

3.2.1 Category A

'A Category A machine is a machine which is not a Category B, C or D machine.'[27] There are no limits on the stakes and prizes for these machines, which may be located only in a 'regional casino' as defined in s. 172(3). A regional casino is authorised to make any category of machine available for use, the total of machines being determined by reference to the number of gaming tables in the proportion: N x 25 machines, subject to an overall limit of 1,250. Following a lengthy and acrimonious political debate about its location the then Prime Minister determined that there would be no regional casino (Miers, 2007). As the matter is unlikely to be revived in the near future I make no further reference to it.

3.2.2 Category B

By regulations made under s. 236 there are now five sub-categories of Category B. They differentiate machines according both to their stakes and prizes (though they are not a financial hierarchy), their location and number. Two connected general points concerning casino entitlements may be made. Any 2005 Act casino may install (subject to the limits mentioned above) any Category B machine except Category B3A.[28] If they have any Category B machines casinos licensed under the 1968 Act and converted under the 2005 Act are limited to a total of 20 machines, including any in Category C or D; if they have none in Category B they may have any number of C and D machines.[29]

3.2.2.1 Category B1

The maximum permitted charge is £2 and the prize £4,000.30 They are only permitted in the new 'large' and 'small' casinos and in the existing 1968

[27] SI 2007 No. 2158, regulation 7.
[28] Categories of Gaming Machine Regulations 2007, SI 2007 No. 2158, regulation 6(3).
[29] Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 SI 2007 No. 3272, Sch. 4, Part 7, para 65(6).
[30] SI 2007 No. 2158, regulation 5(6).

Act casinos. In its response to the Triennial Review consultation the government has proposed that their stake and prize values be increased to £5 and £10,000 respectively (DCMS, 2013c: p.38). I note below any proposed increases in the case of the other categories of machine.

3.2.2.2 Category B2

This category was specifically designed to legitimise FOBTs. The maximum permitted charge is £100 (in multiples of £10) and the prize £500; they may be located only in casinos and premises licensed for betting, which, if they are tracks, must also hold a pool betting operating licence.[31] Generating a high gross gaming yield they remain very popular with betting operators, who may install a maximum of four B2 machines. They are equally unpopular with the agencies that deal with problem gambling.

3.2.2.3 Category B3

Machines within this category are limited to a prize of £500 and a charge of £2,[32] and may be sited in casinos, LBOs, licensed bingo and AGC premises; but they differ in the numbers permitted in these locations. As noted, depending on whether they are 'large' or 'small', the total of all machines permitted in the 2005 Act casinos is limited by the formulae in ss. 172(4) and (5), and in the 1968 Act casinos to a total of 20 machines. LBOs are limited to four of any machine (except categories A and B3A); in practice their machines' software will run both B2 and B3 games. Premises licensed for bingo and AGCs were initially limited to four Category B3 (or B4) machines each,[33] increased in the case of bingo premises to eight in 2009 following the industry's representations that it had been adversely affected by the reduction under the 2005 Act of its permitted category B3 machines,[34] and in the case of both, to any number of C and D machines (ss. 172(1)(b) and (c) and 172(7)(b) and (c)). Further amendments were made in 2011 to both bingo and AGCs, permitting them to install no more category B3 (or B4) machines than 20% of the number of C and D machines available for use on their premises.[35] This relative rather than absolute limit therefore depends for its effectiveness on the size of the premises in question, the commercial judgement of the operator as to the appropriate mix of machines, and any

[31] Categories of Gaming Machine Regulations 2007, SI 2007 No. 2158, regulation 5(5), and Gambling Act 2005, s. 172(9).
[32] Categories of Gaming Machine (Amendment) Regulations 2011, regulation 2.
[33] Categories of Gaming Machine Regulations 2007, SI 2007 No. 2158, regulation 6(3).
[34] Gambling Act 2005 (Gaming Machines in Bingo Premises) Order 2009, SI 2009 No. 324.
[35] Gambling Act 2005 (Gaming Machines in Adult Gaming Centres and Bingo Premises) Order 2011, SI 2011, No. 1710.

conditions imposed on the operating licensing by the Commission other than those already contained in the LCCP and the Gambling codes of practice.[36]

3.2.2.4 Category B3A

Machines in this category have a maximum permitted charge of £1 (to be increased to £2) and a prize of £500). They are limited to lottery machines and are only permitted in premises that constitute a members' club or a MWI under Part 12. By ss. 271(3)(a) and 273(2) such premises may only have a total of three Category B3A, B4, C or D machines;[37] and, by agreement with the representative body, only one of Category B3A (Gambling Commission, 2008b; paragraph 4.4).

3.2.2.5 Category B4

The maximum permitted charge is £1 and the prize £250 (to be increased to £2 and £400 respectively). These machines may be used on any of the premises identified under Category B.

3.2.3 Category C

Initially set at 50p and £35, the charge for play and prize levels for Category C machines were doubled from 1st July 2009;[38] with a proposed increase in the prize value to £100. These machines may be used on any of the premises identified under Category B, on premises having an FEC premises licence, and, most commonly, in premises having an alcohol on-licence; that is, in pubs.

3.2.4 Category D

Although in general Category D machines have the lowest maximum permitted stakes and prizes the extensive parliamentary scrutiny of the Gambling Bill was productive of some of the most intense debates concerning their control. Unlike all the other categories they may be made available to persons who are under 18 years of age. Category D machines are the 2005 Act equivalent of the most restricted level of AWP machines that have traditionally provided a significant income to fairs and seaside arcades. As the

[36] For example, under licence condition 16 ('Primary gambling activity'), 'gaming machines may be made available for use in licensed bingo premises only on those days when sufficient facilities for playing bingo are also available for use.' This is to prevent bingo premises being open simply to permit gaming by means of machine (Gambling Commission, 2011).

[37] Categories of Gaming Machine Regulations 2007, SI 2007 No. 2158, regulations and 6(4).

[38] Categories of Gaming Machine (Amendment) Regulations 2009, SI 2009 No. 1502, regulation 3.

legislation went through its parliamentary stages the arcades' operators became increasingly concerned about its impact; in the event the government permitted their continuance, but with some slight variations in the matter of stakes and prizes. These AWPs were also the target of many groups who argued that it was undesirable that they should be available in unregulated premises such as food take-away and fish-and-chip shops. Any child could use them, with the potential for long-term harm. Following a long campaign DCMS agreed to prohibit Category D machines from these and similar premises with effect from 31st July 2009 (Gambling Commission, 2012d).

Initially subdivided into three sub-categories (though without any equivalent designation (D1-D3) Category D machines have since June 2007 been designated as either 'complex' or 'non-complex' machines. In essence, a Category D machine is 'complex' where 'the outcome of a game is determined by a random number generator (or equivalent) and/or where there is invariably some form of closed loop feedback control (a measurement of game outcome used to determine or alter the chance of winning) to control the percentage return to the player' (Gambling Commission, 2012e). It is a non-complex machine where the game outcome 'is achieved by mechanical means such as a coin drop & moving decks, or electro-mechanical or electronic selected game outcomes which are not automated or capable of alteration through electronic or other circuitry' (Gambling Commission, 2007(a): paragraph 1.1). These designations must in turn be read with the distinctions contained in the regulations concerning the prizes that may be won. With the exception of a 'coin pusher or penny fall' machine, a Category D machine may be 'a money prize' or a 'non-money prize machine', a distinction that requires no explanation;[39] and a single prize may comprise an element of each.

The 'non-complex' machines comprise what the Commission describes generically as the familiar 'crane' and 'pusher' machines, and 'multi-slot' games, such as a machine that presents a five horse race and have five slots each designated for betting on one of the horses (Gambling Commission, 2007a; paragraphs 1.2-1.4). Where a machine is a 'crane grab machine', the regulations provide that it is a Category D machine if the maximum charge for use is no more than £1 and the maximum prize value, which must be a non-money prize, being an individual physical object (such as a stuffed toy), worth no more than £50.[40] In contrast to a crane grab machine (which is a non-money prize machine), a 'coin pusher or penny fall' machine is a Category D machine if the stake is no more than 10 pence and the maximum prize value is no more than £15, of which no more than £8 may be a money prize (to be increased to 20 pence, £20 and £10 respectively). Other than these two named

[39] Categories of Gaming Machine (Amendment) Regulations 2009, SI 2009 No. 1502, regulation 3(6)(a), (b) and (d).
[40] Categories of Gaming Machine (Amendment) Regulations 2009, SI 2009 No. 1502, regulation 3(6)(c).

machines, a money-prize machine is a Category D machine if the maximum stake is no more than 10 pence and the prize value is no more than £5; it is a non-money prize machine if stake is no more than 30 pence and the prize value is no more than £8. The third option is a machine that has a maximum stake of 10 pence and a maximum prize value of no more than £8, of which no more than £5 may be a money prize.[41]

These somewhat intricate arrangements were the outcome of a review of Category C and D machines conducted by the Commission during 2008/09. The stakes and prize limits on these two categories of machine were increased 'principally to provide economic support to seaside arcades', a colloquial and long-established description of AGCs and FECs. One aspect of this support was the creation of the two new subcategories within Category D ('pusher' and 'crane grab' machines). Since then these traditional elements of amusement arcades now attract prizes of higher value than the standard money-prize AWP machines. As part of its review the Commission advised DCMS that provided appropriate controls were put in place it did not consider that the proposed increases would pose a threat to the licensing objectives. But this was balanced following later reassessment, introducing compensatory measures to slow the average speed of play for Category D AWP games and restricting the number of game links on Category C machines (Gambling Commission, 2009b; 2012f).

3.3 Gaming machine licences, permits and exceptions

3.3.1 'Making a gaming machine available for use'

As we have seen, the Act proceeds by making the provision of gambling facilities unlawful unless that provision is authorised either by an operating licence or by an exception in the Act. The same equation applies to gaming machines. The regulatory triggers for gaming machines are ss. 37 and 242. These make it an offence to 'make a gaming machine available for use' without a premises licence (s. 37) or without an operating licence (s. 242), unless its use is authorised by a permit or an exception. These various authorisations are numerous: this section seeks only to identify their key features.

First, Category D gaming machines may be made available for use without any licence or permit in a travelling fair (s. 287), and any category of machine may likewise be used for the purpose of private gaming (s. 296 and Schedule 15), or for non-commercial prize gaming or equal-chance gaming (s. 298(2)). The common feature of these last two exceptions is that the gaming does not involve private gain; they are, typically, occasions on which charities

[41] Categories of Gaming Machine (Amendment) Regulations 2009, SI 2009 No. 1502, regulations 3(1), (2) and (5).

and similar bodies generate funds for participation in sports or cultural activities.

Secondly, permits are sufficient authorisation in the case of three broad groups of premises: in alcohol licensed premises, clubs, and unlicensed FECs. All three are variously significant for commercial purposes or for their members' interests. On giving notice to their alcohol licensing authority public houses have an automatic entitlement to install no more than two Category C or D machines (s. 282). The licensee may, in addition, apply for a 'gaming machine permit', by which the licensing authority may authorise a greater number of Category C or D machines (s. 283 and Schedule 13). In reaching its decision the authority must have regard to the licensing objectives and any Commission guidance (Gambling Commission, 2012b; Parts 26.6-26.20; the licence or permit holder in either case is required to comply with any s. 24 code published by the Commission (Gambling Commission, 2007b; 2013: provision 12).[42] Commercial and members' clubs, both of which must be established wholly or mainly for purposes other than gambling (ss. 266 and 267),[43] and MWIs, which are established for their members' social and recreational purposes (s. 268), may install up to three gaming machines (of Category B3A, B4, C or D) having been granted a 'club machine permit' by their licensing authority (s. 271 and Schedule 12). In determining the application the licensing authority has the same duty as in the case of a gaming machine permit, and the clubs are likewise bound to comply with any s. 24 code.

The 2005 Act authorises three kinds of amusement arcade. AGCs, considered further below, can only operate on the basis of an 'adult gaming centre premises licence', which authorises them to install machines within Categories B, C and D (s. 172(1)). An FEC, which means 'premises (other than an adult gaming centre) wholly or mainly used for making gaming machines available for use' (s. 238) may, if its operator holds a 'family entertainment centre premises licence' install machines within Category C and D (s. 172(2)). The third kind of amusement arcade is an unlicensed FEC; that is, an FEC managed by persons who do not (unlike in the case of AGCs and licensed FECs) hold operating or personal licences, but who may, on application to the licensing authority be granted a 'family entertainment centre gaming machine permit' authorising them to install Category D machines only (s. 247 and Schedule 10). In determining these applications the licensing authority 'need not (but may)' have regard to the Act's licensing objectives

[42] This specification is necessary because neither the licensee nor the permit holder is licensed directly by the Commission; that is, holds no operating licence.

[43] But a club can be established for the purpose of providing gaming, provided that it is only of a prescribed kind. The only prescribed kinds are bridge and whist; Gambling Act 2005 (Gaming in Clubs) Regulations 2007, SI 2007 No. 1942, regulation 2.

but must have regard to any Commission guidance (Gambling Commission, 2012b: Part 24).

Lastly, and more substantially, all other premises on which machines are made available for use must be managed by persons holding the relevant operating and personal licences, and be authorised by the corresponding premises licence. In the case of non-remote casino, bingo, general and pool betting operating licences the licence holder is authorised, without more, to make gaming machines available for use (s. 67(5)); that is, the licence holder does not have to make a separate application for a gaming machine operating licence. This authorisation is a necessary but not a sufficient condition of any gaming machine in fact being made available: that depends on the licensing authority's issue of a premises licence. 'Gaming machine general operating licences' are required only in respect of AGCs and FECs where the FEC proprietor wishes to make Category C machines available for use (s. 65(2)(f) and (g)). As noted above, an AGC requires a premises licence, as does an FEC that is to make Category C machines available for use. Like those who operate casinos, LBOs and bingo clubs, their operators are subject to the licence conditions in Part I of the Commission's *LCCP* and to any applicable provision in its gambling codes of practice. Because they can both install Category D machines regulations made under the Act require them to display prominently a notice stating that no person under the age of 18 years is permitted to enter the premises.[44] In the case of an AGC they also require access from any premises to which those under 18 could lawfully enter to be prevented, and in the case of an FEC that the area in which the Category C machines are available is physically separate them from the rest of the premises and is amenable to surveillance directly by staff or by CCTV to ensure that children or young persons or both do not enter the area.[45] For this reason also, AGCs and FECs operators are subject to a number of ordinary and social responsibility code provisions concerning 'access to gambling by children and young persons' (Gambling Commission, 2013: provisions 3.16-3.25 (AGCs) and 3.26-3.35 (FECs).

3.3.2 The manufacture and supply, etc of gaming machines

It will be recalled that one of the major deficits of the legislation enacted in the 1960s was its failure to regulate those who manufactured, supplied, installed, adapted, maintained or repaired gaming machines. This was

[44] By s. 47 it is an offence to invite a child or young person to enter an AGC or an FEC when a Category C machine is accessible and available for use.

[45] Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007 No. 1409, Schedules 3 and 4. Note also that s. 182 provides that the licensee of a horse-race track shall ensure that children and young persons are excluded from any area where a gaming machine other than a Category D machine is situated.

generally remedied in 1968, but the 2005 Act is far more comprehensive, requiring anyone engaged in any of these activities to hold an operating licence (s. 67(2)(h)). But the 1968 Act was, as we have seen, inevitably fixed in its understanding of machine technology, so the 2005 Act also requires those who manufacture, supply, install or adapt gambling software to hold an operating licence (s. 67(2)(i)). In practice the Commission distinguishes three kinds of non-remote gaming machine operating licence: full, supplier, and software, which may be linked to reflect the operator's particular commercial interests.[46] Like all (natural and corporate) persons these operators are subject to the licence conditions set out in the LCCP and to a formidable set of requirements for the different categories of machine, under the headings of hardware, software, critical memory, machine credit and payment, specific game requirements, specific error conditions and alert requirements, meter, and artwork and game display. I illustrate some of these requirements in the following Section.

3.4 Conditions and standards for the use of gaming machines

As noted, those operators who require operating and personal licences in order to make gaming machines available for use on their premises (that is, casinos, LBOs, bingo clubs, AGCs and licensed FECs) are all subject to the general conditions that attach to their licences by virtue of Part I of the Commission's LCCP, and to the ordinary and social responsibility provisions that attach by virtue of its *Gambling codes of practice* (Gambling Commission, 2013). As noted, breach of any of these requirements may lead to the imposition of regulatory sanctions; breach of licence conditions, which includes the social responsibility code provisions, is also a criminal offence. Conditions may be attached to the premises licence, made by the licensing authority (subject to some restrictions, ss. 169-171), or by regulations made under ss. 167 and 168: these are the mandatory and default conditions, which, besides those concerning children and young persons, also control the availability of any ATM in casino, LBO, AGC, FEC licensed premises so that a customer who wishes to use it must cease gambling at any gaming machine in order to do so.[47]

In addition, all gaming machines are subject to the Gaming Machine (Circumstances of Use) Regulations 2007 made under s. 240 and to the Commission's suite of technical standards relating to particular machine categories with respect to game features, display notices and general machine operation including metering. These are substantial documents that need to be

[46] See the Commission's website http://www.gamblingcommission.gov.uk/gambling_sectors/gaming_machines/getting_a_licence_what_you_ne/do_i_need_a_licence/what_operating_licences_do_i_n.aspx

[47] Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007, SI 2007 No. 1409, Schedules 1, 3, 4 and 5.

read together and cannot be examined here in detail. The following comments give an overview of their scope, with some examples of their application. First, the Regulations cover a number of the core features of all machines: display of information; payment methods, minima and limits; and the nature and delivery of prizes.[48] Secondly, in stipulating their applicability to the different machine categories, the Commission has, as noted in Section 3.3.2 above, structured the technical standards according to a set of common headings: hardware, software, critical memory, etc. But the technical standards are designed to be more than instrumental in operation; the Commission has developed them in order to help ensure that the Act's three licensing objectives are met. For example, in pursuit of the second objective, to ensure that gambling is conducted in a fair and open way, regulation 3 makes provision for the 'display of information'. This display must include information about the category, or sub-category, of the machine, the proportion of amounts paid to use the machine that is returned by way of prizes ('return to player' or 'RTP') and the odds of winning prizes from use of the machine, all of which must be readily visible by someone using or inspecting the machine. More particularly, the technical standards provide that the outcomes for Category A1, B1 & B2 machines must always be entirely random and that the machine must display to the player 'either at all times when it is in operation, or at the point a game is selected for play, the following statement: THIS MACHINE IS RANDOM' (Gambling Commission, 2012(g); 2012(h): paragraph 5.1 in both). By contrast, outcomes for Category B3, B4, C and D gaming machines can be compensated or random; if the game is compensated the machine shall in this case display the following statement: 'THIS GAME IS COMPENSATED AND MAY BE INFLUENCED BY PREVIOUS PLAY' (Gambling Commission, 2012(i): 2012(f); 2012(e): paragraph 5.8 in all cases) A final example under this licensing objective can be seen in the requirements concerning notification of the RTP. The theoretical target percentage RTP must be clearly displayed, and the player must also be informed if that RTP can vary according to the player's strategy: 'THE RETURN TO PLAYER BASED ON BEST STRATEGY IS (VALUE) %' (Gambling Commission, 2008c: paragraph 8.3(c)).

Section 3.3.1 above gave some examples of conditions that give effect to the Act's third licensing objective, to protect children and other vulnerable persons from being harmed or exploited by gambling. The Gaming Machine (Circumstances of Use) Regulations contain two further examples. Regulation 3(1)(b) requires that all categories of machine must display the name and telephone number of a person from whom assistance may be obtained by people who are or may be affected by problems related to gambling; a requirement that is typically met by a *Gamble Aware* sticker on the machine. Secondly, unless it is in Category D, the machine must display information

[48] Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007 No. 2319.

constituting a warning that the machine is not to be used by a child or young person.

The physical security and machine identification aspects of the technical standards' hardware requirements are particular examples of the first licensing objective, preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime. These standards require all reasonable efforts to be made to ensure that a gaming machine is robust enough to withstand forced entry which would not leave behind evidence of the attempted entry, and, so that it can be tracked, an identification plate displaying the manufacturer, unique serial number, model number and the date of manufacture. One of the Commission's principal problems with the enforcement of this regime is the illegal siting of machines. In some cases this is the result of the licensing authority's misapplication of the law, in others, of the proprietors' deliberate evasion, possibly to avoid machine duty. In either case this is also a matter of concern for the second objective, as illegal machines are unlikely to offer fair and open conditions for the player. The Commission has, in conjunction with other law enforcement agencies, been pursuing a vigorous enforcement policy to locate and prosecute persons unlawfully operating gaming machines, regularly reporting in its e-bulletins on convictions.[49] It has also engaged licensed suppliers by appealing to their commercial self-interest in maintaining a 'clean' industry and reminding them that it is their responsibility to ensure that they do not supply machines to unauthorised premises or operators.[50]

4 CONCLUDING COMMENTS

4.1 Numbers and income from gaming machines

It is a truth universally acknowledged that the commercial success, and thus profitability, of any premises on which gambling facilities are provided, will be noticeably enhanced by the presence of gaming machines. Although their definition, categorisation and detailed regulation have changed, the total numbers of machines available for use in Great Britain during 2011/12 was, broadly speaking, of the same order as it was when the Gambling Review Body surveyed the scene; that is, around 260,000 machines, of which 140,516 were located in the sectors licensed by the Commission. Because it does not license them, the Commission does not hold machine figures for pubs, clubs, MWIs or FECs operating under a local authority permit, but industry

[49] These are the police, licensing authorities and Her Majesty's Revenue and Customs; see Gambling Commission, Annual Report (2009b), p. 16.

[50] Condition 15.1 of the LCCP (information requirements) requires licensees to provide the Commission with any information that they know relates to or suspect may relate to the commission of an offence under the Act; in this case, ss. 242(1) and 243(1) (Gambling Commission, 2011).

estimates suggest a further 125,000 machines on these premises (DCMS, 2013b: p. 9)

The following Tables show (a) the number of machines and their GGY (£m rounded) by sector, and (b) the number of machines and their GGY (£m rounded) by Category. Figures are taken from the Commission's *Industry Statistics* (Gambling Commission, 2012j) and Annual Report (Gambling Commission, 2012a: p. 14, Table 3.

Table (a) the number of machines and their GGY (£m rounded) by sector.

Sector	Licences	Premises	Total Profit	Machines	GGY
LBOs	1,152	9,128	2,842 (GGY)	35,852	1,447
Bingo	221	697	404 (playing fees)	30,707	230
Casinos	187	146	868 (GGY)	2,723	129
AGCs	536	1,820		42,666	275
FECs	199	315		28,566	76

Table (b) the number of machines and their GGY (£m rounded) by category.

Category	Numbers	GGY
B1	2,656	126
B2	33,345	1,431
B3	13,482	154
B4	256	2
C	38,371	128
D	53,376	83

Commission licensed machines generated in 2011/12 a total GGY of M£2,157, of which nearly 70% was contributed by machines in LBOs. In their particular case the GGY from machines marginally exceeded the GGY of over-the-counter betting activity (£1,395). The 35,852 machines located in LBOs accounted for 26% of the total number of machines across all licensed gambling sectors and 67% of their GGY. The vast majority of machines located in LBOs were in Categories B2 and B3 (35,662); the GGY from B2 machines accounted for 99% of GGY across all machine types in LBOs and 66% across all machine types and gambling sectors. It will be seen from Table (b) that while Category B2 comprise 24% of the total of machines their GGY is 37% of the total GGY; by comparison, Category D machines comprise 37% and 2% respectively.

As in the case of LBOs, the GGY contribution that its machines made to the bingo sector was also more than half of that sector's total. Of its 30,707 machines the vast majority was either Category C (14,615) or D (11,761); but the return from its comparatively small number of Category B3 machines (4,138) yielded a proportionately higher GGY (M£59). By comparison with

LBOs and bingo halls the proportion of casino GGY contributed by machines (predominantly Category B1) is much lower: 15% of total GGY. As described in Section 3.3.1, in addition to AGCs the arcades sector includes a small number of licensed FECs whose gambling facilities are also limited to gaming machines. The number of gaming machines in AGCs accounted for 30% of the total across all gambling sectors, and in FECs 20%. Whereas GGY in FECs has remained static over the past three years at 4% of gaming machine GGY across all sectors, machine GGY in AGCs has seen a declining trend (now 13%) over this period. In addition to the arcade sector the Commission also issued 458 licences for the supply of gaming machines and 76 licences for their manufacture and for machine software.

4.2 Commentary

Although the money-prize machines themselves when seen on the premises on which they may lawfully be made available for use may, apart from their advertised stake and prize levels, appear to be much the same, it is clear from the summary in Section 3 that their regulation is complex, and subject to a wide range of different controls. Some, such as the permissions favouring travelling fairs and private, or the non-commercial use of machines, are the products of long-established exceptional cases. Others, such as the technical standards that apply to all machines, wherever they are located, reflect and seek to anticipate the fast-moving technological developments in the design of machine software. Indeed, it is not necessarily appropriate to speak of 'machines' as if each category of machine was of itself clearly distinct in appearance from every other category. This may be so with the non-money prize Category D machines, but the software in machines that are capable of delivering money prizes can be programmed to meet any of the Category B or C stake and prize (and other technical) parameters. It is often more accurate to speak of the category of the game that is provided by the machine than of the physical cabinet in which its software is housed, to be of one category or another.

Viewed as a whole, there is, as was the case under the 1968 Act, a hierarchy of games that runs from the least to the most financially demanding permitted levels. This is most clearly seen in at the case of the baseline money prize Category D machine (10p charge and £5 prize) to which children and young persons have access and, at the hierarchy's apex, the B1 machine permitted only in casinos (£2 charge and £4,000 prize). But the legacy of the disputed status of FOBTs injects an inconsistency in what would otherwise be a broadly pyramidical hierarchy, in particular in the level of permitted stake (£100 in multiples of £10); its prize level being the same as a B3 machine (£500) but which has a £2 stake. Even without the FOBT legacy, the intricacy of the categorical hierarchy means that it is difficult for the government or the Commission to respond to one sector's request for change without affecting the conditions under which the others operate. Indeed, as the Triennial

Review makes clear, this difficulty has been, even in the short time since the 2005 Act came fully into force in September 2007, exacerbated by targeted changes to maximum limits in particular specific sectors in response to their commercial interests. The Review commented that the resulting inconsistencies within the categorical hierarchy means that 'tensions have arisen across some of the categories of gaming machine, with some stake and prize limits falling out of kilter with each other and eroding the distinctions that regulations made under the Gambling Act originally put in place' (DCMS, 2013a: paragraph 1.2).

These tensions are, as the Review discusses, evident, first, in the commercial concerns of the various operators to improve their market share by changes that will make their own machine products more attractive. To a limited extent their interests can be accommodated within the categorical structure; but I do not discuss here the implications of one sector's desire to increase its market share, either at the expense of other machine or broader commercial gambling sectors, or of other aspects of discretionary spending.[51] But as the categorical structure is itself the framework on which the intensity of regulatory intervention varies, so the government, while acknowledging that within this entirely legitimate entertainment activity there needs to be a broad offering of different machine products to satisfy consumer interests, also has a clear desire not to risk any increase in problem gambling / gambling-related harm arising in particular from machine gambling. And as its regulator, the Commission, which, while having no duty to promote gambling does have a statutory duty to aim to permit it where it is consistent with the licensing objectives, has to ensure that incremental change to particular sectors (that might as well as relaxation involve closer regulation) does not compromise the structure's integrity. It may be recalled that in 1999 the House of Lords' Delegated Powers and Deregulation Committee graphically described the incremental changes to the regulation of commercial gambling made during the 1990s as 'salami slicing', a criticism that was one of the reasons for the establishment of the Gambling Review Body. The Committee commented, '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' (DPDC, 1999: paragraph 22). It goes without saying that neither DCMS nor the Commission would wish to see a recrudescence of this outcome, which is one reason why the Triennial Review seeks some alternative basis on which to predicate the regulation of machines. This includes the adoption of technology-driven harm minimisation measures, which the government hopes 'will allow a move towards a more long term, strategic approach to stake and prize regulation that is better targeted and more proportionate in its scope' (DCMS, 2013a: paragraph 1.5). I do not intend to discuss the Review here; the point being made is to note how the arrangements made in the 2005 Act shape both the

[51] See context paper 2 (Forrest).

commercial availability of gaming machines and the debate about how the balance between the interests of the operators and those of their recreational and potentially vulnerable players might best be struck.

So the tensions to which the Triennial Review refers are also of concern to those who are critical of what they see to be an expansion in machine availability and those who provide education and treatment services for problem or at-risk gamblers. Their concerns have in recent years largely centred on B2 machines, which have the potential for prompting substantial losses for the player. This concern is heightened by the obvious financial interest that LBOs have in FOBTs; as Table (a) above shows, LBO income is almost 50:50 as between machines and bookmakers' traditional betting services. This homogenisation in the provision of gambling facilities in LBOs is in part a product of technological development in gambling products over the past two decades (Miers, 1996; Austrin and Curtis, 2004), now facilitated by the permissive regime introduced by the 2005 Act. While the industry made no proposal to increase their stake and prize values, the government considers 'that there remains a very serious case to answer in relation to potential harm caused by B2 machines', and that 'the future of these machines to be unresolved pending further work' on their social impact' (DCMS, 2013c: pp.19 and 37). There also remains a longer-established concern with Category D machines, which, as we have seen, fall into two sub-categories. Despite their higher non-monetary prize values, seen most strikingly in the crane grab machine's £50 maximum for a £1 stake, the crane-grabs and coin pushers (non-complex Category D) machines comprise in the government's view those relatively softer forms of traditional 'amusement with prizes' games, distinct from the more straightforward gambling machines, even though the simplest money prize (Category D complex) reel based machine is limited to a £5 prize on a 10p stake. This is a distinction the government is keen to maintain, but here too, sectoral interests threaten such coherence as currently exists in Category D. The kind of significant change that critics of the availability of machines to children and young persons would wish will require amendment not just to the regulatory structure but to substantial parts of the primary legislation.

Nor do these comments take account of the exponential growth in remote gambling and in social gaming, and in the devices by which remote communication with the internet can be achieved. The 2005 Act of course has its own regime for remote gambling, but at the risk of understatement, parity between the regulation of real machines sited in bricks and mortar premises and virtual games supplied by operators beyond the Commission's jurisdiction is a challenge. Even where the government is taking steps to redress the regulatory (and fiscal) deficits caused by terrestrial operators moving off-shore to avoid on-shore duty (DCMS, 2012b), the regulation of internet gambling presents its challenges (Williams, et al., 2012).

5 REFERENCES

Austrin, T. and Curtis, B. (2004) The Desegregation of Gambling Media and the Emergence of a Single Form of Gambling, *Social Policy Journal of New Zealand,* 21*:* 41-48

DCMS (2001) *Gambling Review Report* (Cm 5206; Chairman, Sir Alan Budd; London: The Stationery Office)

DCMS (2002) *A Safe Bet for Success: Modernising Britain's Gambling Law* (Cm 5397; London: The Stationery Office)

DCMS (2003) *Draft Gambling Bill: Regulatory Impact Assessment* (Cm 6014-III; London: The Stationery Office)

DCMS (2007) *Explanatory Memorandum to the Gaming Machine (Circumstances of Use) Regulations 2007, SI 2007 No. 2319 and the Gaming Machine (Supply etc) Regulations 2007, SI 2007 No. 2320*

DCMS (2012a) *Consultation on the proposed merger of the Gambling Commission and the National Lottery Commission* (21 July 2012; London: The Stationery Office)

DCMS (2012b) *Draft Gambling (Licensing & Advertising) Bill* (Cm 8497, December 2012; London: The Stationery Office)

DCMS (2013a) *Gambling Act 2005: Triennial Review of Gaming Machine Stake and Prize Limits: proposals for changes to maximum stake and prize limits for Category B, C and D Gaming Machines* (15 January 2013; London: The Stationery Office)

DCMS (2013b) *Gambling Act 2005: Triennial Review of Gaming Machine Stake and Prize Limits: proposals for changes to maximum stake and prize limits for Category B, C and D Gaming Machines. Impact Assessment* (15 January 2013; London: The Stationery Office)

DCMS (2013c) *Gambling Act 2005: Triennial Review of Gaming Machine Stake and Prize Limits: Government Response to Consultation on Proposals for Changes to Maximum Stake and Prize Limits for Category B, C and D Gaming Machines*. (October 2013; London: The Stationery Office)

DPDC (1999) Delegated Powers and Deregulation Committee, *Proposal for the Draft Deregulation (Casinos) Order 1999* (20th Report, Session 1998-99, HL Paper 76)

Europe Economics (2005) *Fixed Odds Betting Terminals and the Code of Practice: A report for the Association of British Bookmakers Limited* (London: Chancery House 53-64 Chancery Lane, WC2A 1QU)

Gaming Board (2000) Gaming Board for Great Britain, *Machine Guidelines for features on Gaming and Amusement-with-Prizes Machines* (March 2000; London: The Stationery Office)

Gambling Commission (2007a) *Machine Standards 'Non-Complex' Category D* (June 2007)

Gambling Commission (2007b) *Gaming Machine Permits Code of Practice: Club Gaming Permits and Club Machine Permits; Alcohol Licensed Premises Permits and Permissions and automatic entitlements* (June 2007)

Gambling Commission (2008a) *Bingo and Casino Equipment Technical Requirements Part II* (July 2008)

Gambling Commission (2008b) *Advice on gaming in clubs and alcohol licensed premises: Gambling Act 2005* (September 2008).

Gambling Commission (2008c) *Gaming Machine Standards Supplement 1: Explanation of Changes* (July 2008)
Gambling Commission (2009a) *Key characteristics of bingo* (June 2009).
Gambling Commission (2009b) *Annual Report 2008/09* (HC 1062, 2 November 2009)
Gambling Commission (2010a) *Computers in gambling premises, dual-use computers* (November 2010).
Gambling Commission (2010b) *Is a prize machine a gaming machine? (*July 2010)
Gambling Commission (2011) *Licence Conditions and Codes of Practice (consolidated version)* (December 2011)
Gambling Commission (2012a) *Annual Report and Accounts 2011/12* (HC 253, 3 July 2012)
Gambling Commission (2012b) *Guidance to licensing authorities, 4th edition* **(**September 2012)
Gambling Commission (2012c) *Advice regarding when a machine is 'available for use'* (November 2012)
Gambling Commission (2012d) *Illegal siting of gaming machines: A quick guide for small businesses* (December 2012)
Gambling Commission (2012e) *Machine standards complex category D* (June 2012) Revision 3
Gambling Commission (2012f) *Machine standards category C* (June 2012), Revision 3
Gambling Commission (2012g) *Machine standards category A & B1* (June 2012), Revision 2
Gambling Commission (2012h) *Machine standards category B2* (June 2012), Revision 2
Gambling Commission (2012i) *Machine standards category B3 and B4* (June 2012), Revision 2
Gambling Commission (2012j) Industry statistics April 2009 to March 2012 (December 2012)
Gambling Commission (2013) *Gambling codes of practice: Consolidated for all forms of gambling* (March 2013)
HMRC and HM Treasury (2010) HM Revenue & Customs and HM Treasury, *Amusement Machine Licence Duty: review of skill with prize games* (July 2010). http://www.hmrc.gov.uk/machinegamesduty/machine-games-duty.htm.
House of Commons (2012), Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill* (Sixth Report, Session 2012-13, HC 905)
Joint Committee (2004) House of Lords, House of Commons, *Joint Committee on the Draft Gambling Bill, Draft Gambling Bill* (Session 2003-04, HL Paper 63-I, HC 139-I)
Kolvin, P., ed. (2007) *Gambling for Local Authorities: Licensing, Planning and Regeneration* (The Institute of Licensing: http://www.instituteoflicensing.org/Default.aspx#-1_g-HOME_idLeft(3))
Miers, D. (1996) Objectives and systems in the regulation of commercial gambling, in J. McMillen (ed.) *Gambling Cultures: Studies in History and Interpretation*, (New York: Routledge)
Miers, D. (2004) *Regulating Commercial Gambling: Past, Present and Future* (Oxford: Oxford University Press)

Miers, D. (2007) Another U Turn: Great Britain's Casino Questions and Other Gambling Issues, *Gaming Law Review, 11(4):* 699-713.

Monkcom, S., ed. (2009) *Smith and Monkcom: The Law of Gambling* (Hayward's Heath, West Sussex: Tottel Publishing)

Williams, R., Wood, R. and Parke J., eds. (2012) *Routledge International Handbook of Internet Gambling* (London: Routledge)