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Gambling for local authorities: Licensing, planning, and regeneration

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“The modest objective of this book is to provide a clear explanation of the law relating to the licensing and planning control of gambling clearly and succinctly, principally as it relates to local authorities” (p. ix). This objective is admirably achieved; in the words of a well-known U.K. advertisement, it “does exactly what it says on the tin” (Ronseal Ltd.). The book comprises 28 chapters, 22 of which fall within the seven parts grouped under the heading “The Gambling Act 2005.” The eighth part, “Planning and Regeneration,” comprises the final six chapters. The book’s clarity stems not only from its structure but from its inclusion, in each chapter, of short paragraphs summarizing points of law pertinent to that chapter. A number of helpful charts (e.g., chapters 1, 11, and 19) also contribute to the book’s clarity. In addition to the specific duties set out in the Gambling Act, the book also deals with those duties that arise under the planning legislation and under the general law concerning the delegation of functions and proper decision-making.

This is not, therefore, a book that addresses questions such as why do people gamble and how ought governments regulate it, or what can and should be done about problem gambling. It is a book written largely by practising lawyers (11 of the 16 contributors) for local authorities as they are called upon to discharge their statutory duties under the Gambling Act 2005. Readers from other disciplines will find more legal detail than they need, but those chapters that set out the framework of the new regulatory regime (part 1) and the legal structure in particular of the

permissible gaming-machines will assist them to recognize the complexity of gambling regulation. To write about the contribution of machine gaming (or any other gambling medium) to problem gambling, it is important to understand not just how and why people play on machines, but also the legal context within which the machines are available for play. This book provides that context (chapters 6 and 13), and has been timely, as the Gambling Act 2005 became fully operational on September 1, 2007.

The Gambling Act 2005 brings about the most important changes to the regulation of *betting, gaming, and non-profit lotteries* in Great Britain since the regime currently governing these matters was introduced in the 1960s. Readers familiar with the commercial-gambling market in Britain before 2005 will know that a principal defect was that its regulation was fragmented between a number of agencies. (In part, this reflected the market segmentation between off-track betting, casinos, and machines [chapter 7], but technology, exemplified by *Fixed Odds Betting Terminals*, has elided the notoriously difficult legal distinctions between gaming and betting, such that only a single regulator can hope to exert leverage over the entire market.) Of these agencies, the Gaming Board was the most prominent, but its remit was limited. It did not, for example, have any responsibility for betting markets. Neither did the Board enjoy the range of sanctioning powers now normally given to regulatory agencies, such as the power formally to warn, to impose financial penalties, and, in extreme cases, to prosecute. These regulatory weaknesses have been addressed in the creation of a single regulator, the Gambling Commission (chapter 2). The Commission is able to monitor the entire market both horizontally (the provision of a particular gambling medium throughout the country) and vertically (the provision of particular gambling media by individual regulatees). Its capacity to monitor compliance is complemented by extensive enforcement powers (chapters 18 and 19). Another welcome change is that for the first time in British law there are now statutory definitions of all the key terms—gambling, gaming, betting, and lottery—although, as chapter 6 helpfully points out, there remain some overlaps between them.

Readers may also be familiar with the mix of central and local controls that characterized gambling regulation under the old law, particularly as it applied to casino gaming. This mix is maintained under the new law, wherein there are three kinds of licences: operating and personal licences (chapters 9 and 10), which are issued by the Gambling Commission, and premises licences, which are issued by local authorities (chapter 11). Under the old law the licensing authority comprised licensing justices; now it comprises local authorities (chapter 4). While this book lightly touches upon the Gambling Commission's statutory duties (and the role of the Gambling Appeal Tribunal, which hears appeals of the Commission's decisions [chapter 3]), it is, as was noted, primarily addressed to local authorities' exercise of and compliance with their statutory duties. An important area that is therefore not

addressed in this book is remote gambling, for the simple reason that local authorities have no duties with regard to it, their interest being only in “bricks and mortar” venues.

The Act commences with a statement of three licensing objectives that are intended to underpin its implementation. These (section 1[a]) are as follows:

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

As the book observes, compliance with these objectives does not fall evenly upon the Commission and on local authorities (chapter 8C and 8D). The Commission is obliged to take them into account when discharging its statutory duty under section 22 (to permit gambling that it “thinks is reasonably consistent with the pursuit of” those objectives) and under section 23 (to publish a Statement of Principles). But they may be displaced: Even if an applicant for an operating licence met the conditions, the Commission would surely be entitled to refuse the application if it found the applicant's “suitability” wanting (section 70). By contrast, local authorities are under no overriding duty to pursue the objectives. Some provisions require them “to have regard” for the objectives, while others permit the authority to ignore them (all helpfully listed on page 98).

In a reflection of the obligation imposed on the Commission by section 23, section 349 of the Act requires a local authority to publish a three-year statement of the principles it proposes to apply when exercising its functions. And when it exercises them, it is also required to take account of the Codes of Practice that the Commission publishes concerning the manner in which facilities for gambling are provided (chapter 2). These concern a variety of matters, such as advertising (chapter 20) and the protection of children.

Chapters 11–17 deal with the licensing authorities' principal functions. These are, first, to issue premises licences to applicants holding operating (and personal) licences in respect of premises to be used for the purpose of providing facilities for gambling. There are five types of premises' licences, and in deciding whether to grant one a local authority must comply with a range of statutory duties. Some of these are straightforward; for example, a licence can be granted only in response to an application made by a person holding an operating licence (section 159[3]). More demanding is the determination (under section 158) of the cogency and relevance to the issue of a licence of the objections made to an application by “an interested party.” This is someone who lives sufficiently close to the premises to be likely to (or does) have a business interest that might be affected by the premises'

use. The determination of these matters is likely to be controversial (chapter 11.18 et seq). Local authorities are also required to hold hearings where representations have been made under section 161, and there are detailed rules with which they must comply.

The licensing authorities' main function, which involves the exercise of a considerable discretion, is set out in section 153, and is rightly identified (para. 11.77) as giving rise to “fundamental issues.” The section provides that a licensing authority “shall aim” to permit the use of premises for gambling so far as it thinks the application meets these criteria:

- Accords with any relevant section-24 codes of practice and any relevant Commission guidelines issued under section 25.¹
- Accords in a reasonably consistent manner with the licensing objectives.
- Accords with its own statement of principles.ⁱⁱ

Like the Gambling Commission, a local authority's exercise of its statutory duty is cast in terms of aspiration: It “shall aim” to bring about certain legal consequences. As the book observes (paras. 11.79–11.80), this does not sit happily as a statement of the nature and scope of a discretionary power of a quasi-judicial body. Chapter 11 helpfully considers in detail how a licensing authority should go about the exercise of its statutory discretion. It concludes that taken as a whole, an application that fails to meet one of the section 153 criteria is likely to, but need not inevitably fail; conversely, complete compliance does not mean the grant of a licence. Recall the language the authority “shall aim.” This does not mean that the authority “shall permit” (as the Act could have said) an application that ticks all the section-153 boxes. However, the authority will, of course, need to be very careful how it states its reasons for its decision.

Licensing authorities deal, secondly, with a range of what might collectively be called *smaller scale gambling operations*. These are regulated in a variety of ways: for example, registration with the authority (lotteries: chapter 14), occasional and temporary use notices (chapter 12), and permits (small-scale gaming machines: chapter 13).

The book's final part deals with gambling, planning, and regeneration. When the Gambling Bill was in its genesis, and then in parliamentary debate, there was substantial concern about what might broadly be called gambling's environmental impact, in particular as associated with casinos. On the one hand, many critics feared that, by enabling operators to open casino premises offering a much wider range of gambling facilities than is currently the case, towns and cities would be covered by “gaming sheds” that would create a variety of social problems. On the other hand, the government (eventually) came to the view that such developments

could also bring tangible economic benefits for the areas in which they were located. Three types of new casinos were approved (*small, large, and regional*; section 175[1]–[3]). An independent panel called the Casino Advisory Panel was established under section 175(4) to advise the government on their location. Following acrimonious exchanges during the 2004/5 parliamentary session, the government was forced to impose new limits as follows: one regional casino, eight small casinos, eight large casinos. Acrimony resurfaced in 2007 following the Panel's announcement that it had selected Manchester to be the location for the regional casino. The government failed to secure a vote in Parliament to implement the 17 new casinos, and in July the new Prime Minister, Gordon Brown MP, announced that the government would not proceed with the regional casino.

Nevertheless, 16 new casino locations have been identified. These casinos will be larger than almost all of the pre–2005 Act venues, and they will all be expected to yield *planning gain*. This is not a legal term, but refers to the benefits that may be associated with the grant of planning permission. Like all new or converted commercial developments, gambling premises must meet the general requirements of planning law. These are set out in chapters 23 and 24. One of the consequences of the earlier concern about *stealth casinos*, that is, the conversion of leisure premises such as a cinema or a concert hall into a casino, was the specification in April 2006 of casinos as falling outside the standard Use Class system.ⁱⁱⁱ “Major Gambling Proposals” (the title of chapter 25) predicts that the applications for the 16 new large and small casinos will significantly test existing planning policies and may lead to their modification. These policies are both local and national in their reach, and for “town centre uses” set five tests that the local planning authority must address. A striking difference between the planning and the licensing decision is that whereas the *planning* authority is required to consider the “need” for the casino, by section 153(2) of the 2005 Act the *licensing* authority is expressly forbidden to have regard to the expected demand for the proposed facilities.^{iv}

Planning gain (chapter 26) is achieved in routine cases by the use of statutory conditions that the planning authority imposes as part of the permission. The applicant's willingness to invest in development above and beyond the immediate location is not to be confused with “buying” the permission. But in terms of Gambling Act 2005 gain, as chapter 26 puts it, “if an operator is prepared to offer the moon in return for a Gambling Act casino licence, nothing forbids the licensing authority from accepting it”(para. 26.22).

The final chapter addresses more broadly what might be meant by *regeneration* and how the economic rents that flow from restrictions on casino expansion may be captured. Professor Peter Collins, the chapter's author, is well placed to speak on these matters, and offers a model by which the value of any required

regeneration may be calculated, taking into account the likely increase in income once the new venue is in business. He also comments on the difficulties that the government faced in creating the conditions for the best possible test of the social impact of the new breed of casino. Chapter 25 notes the apparent similarity between this and another of the statutory tests that a planning authority must apply, namely, the impact of the proposed development. But problem gambling, which continues to be a major concern for the government and a major reason for the social-impact test, is not a matter that obviously figures in planning law. And, this chapter concludes, it is arguable whether another 16 new casinos would be sufficient to provide the evidence that the government seeks.

No doubt that question is not one that will figure in the determinations that licensing authorities will be routinely making under the Gambling Act. For these routine and frequently controversial decisions, this excellent book will be an indispensable guide.

Notes

ⁱGambling Commission, *Guidance to Licensing Authorities* (2nd edition, June 2007).

ⁱⁱSee *Gambling Act (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007*, SI 2007/173.

ⁱⁱⁱSection 166 of the Act permits a licensing authority to “resolve not to issue casino premises licences.”

^{iv}Section 210 of the Act provides that a licensing authority is not to have regard to the outcome of a planning application.

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