Changes in UK gaming legislation and the opportunities presented for property developers and investors

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Abstract

Apart from the high rents sought for casino premises, it is probably true to say that casinos have been the poor relation in the retail and leisure property family. Almost every other sector within the market has succeeded in reinventing itself several times over the last 40 years. The retail sector has seen ever-larger shops and the development of supermarkets, hypermarkets, shopping centres and retail parks. In the leisure sector, larger hotels have been developed by global operators and one has seen the development and growth of health clubs, multiplexes, new and themed pub chains, marina developments, leisure parks and family entertainment centres (FECs).

In contrast, since the Gaming Act 1968, the number of casinos in the UK has grown by only 30 per cent during that 35 years.¹ Moreover, until very recently the size, style and nature of those casinos have remained virtually unaltered during all that time. In 1989 the number of casinos operating was 116. Almost ten years later, in 1998, there were 115. By 2002 this number had grown to 130, but a year later there were 135.² This paper will examine the reasons why this sector has been so left behind in the retail and leisure explosion of the past 30 years, why that is apparently beginning to change and the prospects for future growth, investment and development.

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Gaming Act 1968

BACKGROUND

The casino industry is governed primarily by one piece of legislation — the Gaming Act 1968. Aside from some minor (although important) changes the framework of the Act has remained intact since 1968. It governs the licensing of casinos, their operators and employees together with almost every aspect of their business and operation. In contrast with every other sector in the retail and leisure markets, the facilities available have been moulded overwhelmingly by the legislation, and therefore are oblivious to consumer preference and changes in society or fashion.

It is a fact universally acknowledged that the Gaming Act 1968 is outdated and overdue for reform. Almost everybody, including the industry regulatory authority, the Gaming Board for Great Britain, and GamCare, the charity which helps people with gambling problems, agrees that the industry should be freed from the shackles binding it to a past age, enabling competition between operators within the industry and with other leisure facilities.

1960s proliferation

LIVING IN THE PAST

In 1960 a loophole in the law led to the unforeseen proliferation of unregulated small casinos throughout the UK. Crime and cheating were rife, and there was little or no protection for the vulnerable. By 1968, when the Gaming Act was passed, there were over 1,000 casinos in the UK. The morals of the time dictated that gambling was a vice, but the government recognised that commercial gaming could no longer be suppressed. It was therefore decided to bring it under strict controls, based on the principle that no one has a right to provide commercial gaming, it is a privilege to be conceded subject to searching scrutiny and only in response to public demand. The common object of the controls was to purge commercial gambling of criminal elements, to cut out excessive profits and to ensure that gaming was honestly conducted in decent surroundings. The principal agent for achieving these objects was to be the Gaming Board which the Act established.

There can be no doubt but that the Gaming Act achieved its purpose and both it and the Gaming Board have been highly successful in producing a stable and reputable gaming industry held in high esteem by regulators and operators alike throughout the world. For those who are unfamiliar with it, casino gaming in the UK has, throughout the period, been essentially crime free, fairly conducted and the vulnerable have been protected.

Effect of National Lottery

Over the period, however, the concept of allowing no more facilities than necessary to meet ‘unstimulated demand’ has become outmoded, particularly following the introduction of the National Lottery in 1992, which exposed the British government as a sponsor

Casino restrictions

of gambling on a massive scale. The demand criterion certainly achieved the object of preventing proliferation and unfair competition, but it also served as an enormous barrier to entry, and kept the industry within a small group of operators.

Moreover, casinos were only allowed in 53 permitted areas, frozen according to 1971 population criteria. The result was that a number of very substantial towns and cities are excluded. It is small wonder then that the casino sector has suffered for many years from arrested development, and has failed to march in time with other sectors in the retail and leisure markets. Apart from the need to satisfy the demand criterion, the other measures that have dictated the type of casino operated in the UK are as follows.

- Permitted areas: 53 according to Budd³ (the Department of Culture, Media and Sport (DCMS) said 51!).
- Casinos must be operated as members' clubs. Once granted membership, a new member must then wait for 24 hours before playing.
- Subject to very limited exceptions, advertising casino facilities is not permitted.
- Only ten jackpot machines are allowed, and with a maximum prize of £2,000.
- Casinos cannot be linked with any other leisure facilities, such as hotels.
- Until very recently, alcohol was not allowed to be provided on the gaming floor and no live entertainment (even a pianist) was permitted.

Effect of restrictions

It is these restrictions that have created the type and style of casino seen in the UK market. They have inhibited growth, preventing resort-style casinos, the linkage to hotel and other facilities and machine gaming rooms, and created the generally very low profile of casinos in the UK. Indeed, until very recently the almost total ban on advertising made it quite difficult for people to ascertain whether, and if so where, they could find a casino in a particular area, given that they were not even allowed to be listed in the telephone or other directories. In the circumstances, it is perhaps not surprising that only 3 per cent of the adult population visit casinos in the UK on a regular basis, compared to much higher percentages in countries such as France and the USA, where the figure is closer to 20 per cent.⁴ In contrast, the UK has a huge sports betting industry, bingo industry and the National Lottery, accounting for the staggering 88 per cent of the population who indulge in gambling in one form or another, spending upwards of £13bn per year on the activity.⁵

As a result of these restrictions, casinos in the UK tend to be small, often exclusive clubs, offering mainly table games to members and providing no other facilities apart from perhaps a bar and a restaurant. In almost all other major gaming jurisdictions,

including those in Europe and in Australia, South Africa and the USA, casinos offer all sorts of leisure facilities, often with hotels and conference venues. They are also usually on a much larger scale and purpose built. In short, they tend to be mainstream leisure facilities rather than private gambling clubs.

THE NEW DEAL

Gambling Review

Pressure for reform from the industry, the Gaming Board and others led to the government establishing the Gambling Review Body under the chairmanship of Sir Alan Budd. This body produced its report in July 2001.⁶ The report contains 176 recommendations. Following a period of consultation, the government produced its own policy statement in March 2002, accepting all but 20 of the Budd Report's recommendations.

More recently, on 15 July 2003 the DCMS published the first part of the draft Gambling Bill⁷ which will, if implemented, give effect to the government's proposals for reform. This part of the Bill provides for the establishment of a modern regulator, the Gambling Commission, and sets out its core functions and powers. The Commission will have an overall remit to regulate gambling generally, including responsibility for casinos, betting shops and bingo clubs.

Gambling as leisure

The first part of the Bill sets out the 'licensing objectives' which underpin the licensing functions which the Commission will perform. The public perception of gambling has changed dramatically since the establishment of the Gaming Board. Gambling is no longer regarded as a vice to be tolerated, but as a socially acceptable, adult leisure activity. Indicative of this change in attitude is the evidence given by the Minister of State to the House of Commons Select Committee, when he said:

'It has been significant in discussion that gambling has effectively now become part of the mainstream leisure industry and we believe the law should reflect that.'⁸

Licensing objectives

The Commission is designed to operate in this new environment, but at the same time the government is determined to strike the right balance between economic gaming and social protection. To ensure that gambling remains a safe, well-conducted and crime-free activity, the licensing objectives are enshrined in Clause 1 of the Bill, 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.

On 7 August 2003 the DCMS published its position paper⁹ on a number of important matters about which it was undecided at the time the main proposals were published. These referred to the proposed requirements concerning the size of casinos and gaming areas within casinos, and the type and number of machines that would be permitted.

Proposed reforms

From the government's proposals and its latest position statement, the major reforms for casino gambling are likely to comprise the following:

- The demand criterion will be abolished, thereby opening the market to competition by removing the requirement to demonstrate existing unsatisfied demand and enabling operators to generate business, for example, by advertising and offering better or different facilities.
- Casinos will have a minimum table gaming area of 5,000 sq ft (465m²) to prevent the possible proliferation of smaller high-street casinos.
- The 24-hour rule will be abolished, but there will be controls on entry, with identification requirements and under 18s will be barred.
- There will be no statutory membership requirement.
- Permitted areas will be abolished and casinos will be allowed everywhere, subject to planning permission.
- Casinos will be free to offer a wide range of types of gambling, as well as other entertainment.
- Advertising will be permitted on TV and other media, subject to a code of practice.
- Unlimited-payment casino slot machines will be allowed, up to three machines for each gaming table, but where casinos have more than 40 tables there will be no restriction on numbers of machines, paving the way for US-style casinos.
- Responsibility for licensing of premises will transfer from licensing justices to local authorities.
- All premises licensing decisions will be subject to national criteria and guidance from the Gambling Commission.
- Credit cards will be approved for gambling.
- All gambling debts will be legally enforceable.

UNCERTAINTIES

Local authorities

The DCMS position statement¹⁰ on casino size and machine numbers invites views and is thus subject to a further period of consultation. There must remain some uncertainty about these proposals, although only as to numbers, not principles. In addition, there are two further major uncertainties, both of which may have a substantial impact on the future of casino gaming in the UK and the level of investment in it.

Local authorities, which will be responsible for planning applications and the grant of gambling licences, will be issued with

detailed criteria guidelines from the Gambling Commission. While it is known that local authorities will not be able to limit the number of gambling outlets in their area arbitrarily, or to impose a complete ban on them, it is not yet known how much discretion they will have. Local authorities, through planning discretion, are already able to extract development agreements from planning applicants, and these are likely to feature to a greater extent under the new legislation.

Regional planning

Some clue of the government's intentions can be gained from the recent DCMS position statement, which bears not only the DCMS heading, but also that of the Office of the Deputy Prime Minister, who has responsibility for the regions. In the statement, Planning Minister Keith Hill said:

'Regional Planning Bodies will promote economic growth, development and regeneration in the right places. Casinos as part of large tourist and leisure development can make a significant contribution to the local economy especially in areas that depend on tourism and need regeneration. I want to see Regional Planning Bodies help give such areas a boost through tourism led regeneration.'¹¹

The Planning Minister also envisages that the market will determine the number, size and character of casinos and where they will be located. He has indicated his hope that there will be major opportunities for regeneration and tourism development, particularly where they can make the greatest contribution. The government therefore expects regional planning bodies to set out, where they deem it appropriate, planning policies for leisure developments of regional significance, including the largest casinos, which identify suitable locations that will optimise their contribution to tourism and regeneration. Local planning authorities will need to develop policies and identify sites for such developments in their local plans which are consistent with regional policies.

Gambling law in relation to casinos of all sizes will apply equally in Scotland and Wales, but it will be for the Scottish Parliament and the Welsh Assembly to decide what adjustments to their planning and land-use arrangements might be appropriate to take account of changes to gambling regulations.

Taxation

The other all important area of uncertainty that remains is the level of tax. The current level of tax of 40 per cent of gross gaming yield at the top end would be unlikely to attract the major investment needed to develop large resort-style casinos. The average duty level paid by casinos currently stands at approximately 23 per cent, and some commentators argue that this may win the day for an across-the-board rate. At this stage, however, it is impossible to say. It is perhaps too much to hope that the government will decide to follow the course it set with betting and bingo duty of abolition

and replacement with a 15 per cent flat rate on gross profit. The level of tax will have a significant bearing on the extent and nature of future development. Casino taxes have always been high, but have increased under the present administration. If the government wants to achieve the objectives it has set, particularly in the latest position statement, its demands will have to be reasonable. If it is too greedy, the investment and jobs it hopes to attract will not materialise.

Effects of reform

THE NEW DAWN

The new legislation will change the face of gambling in Britain. On that everyone can agree, but it is not so easy to say precisely what the new gambling landscape will look like.

One can dismiss some of the more outlandish predictions, such as that which foresaw a proliferation of casinos 'on every street corner'. The proposed minimum gaming area requirement has certainly put paid to that, and therefore in all probability the prediction that there will be a return to the 1,000 or more casinos of the 1960s.

Types of casino

One can also dispel the notion promulgated by those taking a misanthropic view of the proposals that casinos would become little more than glorified machine arcades, given the ratio between machine and table numbers now set at three machines per table, but unlimited when there are 40 or more tables.

Others have said that the British have a cultural affinity with the type of casino that already exists, and accordingly believe that European or US-style casinos are alien to the UK way of life. This is not a conclusion that can be drawn from the existing evidence. Far from being the result of consumer preference, existing casinos derive from the very restrictive nature of the 1968 legislation and reflect not consumer preference but only a view of gambling that prevailed in 1968. Indeed, there is no evidence to suggest that, given the opportunity to exert consumer preference, the British would have a view of gambling facilities any different from their European neighbours or US cousins.

There are currently 135 licensed casinos in the UK, of which 24 are located in London. It may be thought that once all of the restrictions mentioned above are removed, casinos in the UK will become much larger multifunction venues, and that accordingly the number of casinos could actually reduce, leaving perhaps less than 100 in total, although on a much larger scale. The author does not envisage this as a likely scenario now, although that is possibly where the industry would be today had the law been drafted differently in 1968. As the government has recognised, gambling is a popular mainstream adult leisure activity and the UK is a sophisticated gambling market in the world's fourth largest economy. Yet only 3 per cent of the population regularly visit casinos.¹² With the added attractions that casinos will be able to offer, coupled with their ability to advertise widely and the removal

of many of the current restrictions, the likelihood must be of a substantial increase in the percentage of the population visiting casinos.

In addition, there will be the ability for casinos to open in many towns and cities where casinos have not previously been permitted. There are a number of large population centres, such as Peterborough, Norwich, Guildford and York, which could support casinos and there are many other such locations, not least within and around the M25 area. It is certain therefore that there will be an increase, and possibly a substantial increase, in the total number of casinos.

Future expansion

The Budd Report quoted an estimate by the Gaming Board suggesting that in time there might be some 450 casinos in Great Britain. That figure had been arrived at by taking the then existing 130 (or so) casinos, adding a further 100 on account of abolishing permitted areas, and then doubling the number as a result of the easing of other restrictions, and in particular allowing unlimited-prize slot machines. But this figure does not appear to take account of the huge cost of infrastructure for a large modern casino with all the additional facilities that will be provided. Nor does it take account of the likelihood of very much larger casino premises than are currently seen in the UK.

In its position statement, the government has allowed for the continuation of existing casino licences, albeit for the large number of casinos that have less than a 5,000 sq ft (465m²) gaming area. Many of those casinos are located in city centres with little room for expansion. In London the problem is acute. The majority of the 24 casinos in Central London would be unable to expand significantly, but those operating at the high end of the market, catering predominantly to an exclusive foreign clientele, would probably wish to remain as they are. Certainly a proportion of the existing casinos will remain relatively small, and these may be termed 'local' casinos, catering either to a very exclusive high-end market or to a predominantly local market. It is often forgotten that there are many such casinos in Nevada.

Regional casinos

At an intermediate level, there are likely to be a number of larger casinos at the 'regional' level, of a size often seen in mainland Europe. Some of these will provide multi-gambling activities, including bingo and sports betting and some form of live entertainment. Some may have cabaret facilities and a mix of restaurant and bar facilities.

Resort casinos

Finally, there will be the much-heralded casino resorts, possibly in Blackpool, but also in a number of other locations in Great Britain. There are a number of locations which have resort casino potential; indeed, not only have some of these already been identified, but operators are already in the course of being selected by the owners.

TIMING

It was originally anticipated that the Gambling Bill would form

part of the government's programme for legislation for the 2003–2004 parliamentary session, set out in the Queen's Speech. During the spring, however, rumours began to circulate that it may not be included, because of government plans for legislation on other issues. Whether or not the Bill is included in the speech from the throne, it is believed likely that it will form part of the parliamentary programme during 2004. Certainly the DCMS is giving every indication of its determination to press ahead with gambling reform, having so far maintained their timetable. The Secretary of State has published the first part of the Bill, and has promised that the balance of the Bill will be published in September, in time for it to be considered by the Scrutiny Committee of the House of Commons and House of Lords. The legislation therefore remains on course and could receive royal assent early in 2005.

OPPORTUNITIES FOR INVESTMENT

Existing operators cannot afford to be complacent or to believe that they will flourish by simply continuing to run their businesses as they have done in the past, albeit in many cases very successfully. The new legislation will lead — as it is intended to do — to even greater competition, in an already increasingly competitive market, from existing operators, overseas operators and new entrants to the market. The new legislative framework will change beyond recognition to reflect technological advances and modern customer expectations, and operators will have to look afresh at their businesses.

On the face of it, existing operators in the UK enjoy significant advantages over both of these other groups looking to enter the market. They have existing premises, existing customers, established brand names and a knowledge of the market. On the other hand, overseas and new operators will be unfettered by the ideas of the past. For example, many overseas operators will have experience of operating much larger casinos and casino slot machines which will be new to the UK. Nor will they be hampered by existing, possibly unsuitable, premises.

The paper will look now at the prospects for each of these groups in turn.

Existing casino operators

The largest four operators, Stanley Leisure Group, Rank Group, Gala Group and London Clubs International, control 114 of the existing 135 licensed casinos. Rank and Gala are also the operators of the largest number of bingo clubs, operating 295 out of the total 688. Some of their large new-built bingo clubs could be converted or expanded into multi-facility gaming establishments, and this must be a strong possibility given that many are located in areas that are not currently permitted for casino gaming.

These operators, with the scent of reform in the air, have been

New casino licenses

applying for new casino licences, as the figures at the beginning of this paper demonstrate, and expanding their existing premises for at least the past two years. It is very likely that they will seek to move some of their licences to new, larger premises to take advantage of the ability to offer mixed gambling and an increased number of other facilities.

Overseas operators

Until now the UK market has been of such a different character to those in most other jurisdictions that overseas operators have been reluctant to dip even a toe into it. For example, Kerzner's recent entry into the UK market was the first foreign application to the Gaming Board in more than 25 years, and there have been no foreign operators since the Playboy Club closed in 1984. Now that the market is set to develop in ways that they will recognise, they have the opportunity to apply their own skills and experience to take full advantage of the new market. Moreover, some of them have the ability to make investments on a huge scale, hitherto unseen in the UK market, and almost certainly incapable of being matched by existing UK operators.

Entry into UK

Even before the legislation has been passed, a number of major operators from overseas have already entered the market, with Harrah's entering into a joint venture with Gala to develop a number of 'regional' casinos, MGM/MIRAGE linking with Metro Casinos to develop a new casino in Bristol and Kerzner International acquiring a Northampton property and licence from London Clubs. Most recently, Isle of Capri has acquired a casino in Dudley. Harrah's, MGM and Kerzner operate some of the biggest casinos in the world. With the exception of the Harrah's/Gala joint venture, these other acquisitions may seem small fry, but there is wisdom behind all of them. In order to operate a casino, or even to apply for a casino licence, an operator must be approved as 'fit and proper' by the Gaming Board. In the case of new operators, and particularly those with complex business structures and licences in numerous jurisdictions, the process can take at least six months, whereas an existing UK operator will obtain a new certificate of consent from the Gaming Board within a matter of weeks. Already the Gaming Board is busy with applications, and once the new legislation has been passed the new Gambling Commission is likely to be faced with a flood of applications for new operator's licences.

Reasons for entry

Moreover, there is no inexhaustible supply of suitable new premises either in the existing permitted areas or in new areas. It is also likely that there will be only a limited number of opportunities for major regional or resort-style casinos of the type that international operators have developed, many of them from the USA. Some of those opportunities have already been identified and deals are in some cases being put together now. Those operators entering the market now will be the beneficiaries of those deals. They will also have the advantage of getting to know and

understand the UK market and of calculating opportunities before the new legislation comes into effect.

New entrants

There are already applications in the pipeline from new entrants to the casino market. There are many such businesses, particularly in the non-casino leisure market, which may wish to develop casino interests and take advantage of an increased market. Some of them, such as hotel groups, may have some of the best premises and locations.

Property companies

Moreover, there has been a considerable amount of interest from large property companies considering joint ventures or partnerships with casino operators and potential casino operators. Again, these are companies with substantial property portfolios. There is equally interest from other sectors of the gambling industry, wishing to develop multi-gambling facilities. The most obvious example will be the provision of betting in casinos. Very few companies in the UK have experience of both betting and gaming, and it does not automatically follow that an experienced casino operator would be able to run a profitable betting operation, or vice versa. There may well be opportunities here for joint ventures and partnerships.

CONCLUSION

Support of reform

There remain grounds for optimism that gambling reform will become a reality in 2004 or early 2005. Everyone agrees that the existing gambling laws are hopelessly out of date and do not reflect technological advances or modern attitudes to gambling as a mainstream leisure activity.

There is widespread support for the government's proposals in most sectors of the gambling industry, and in parliament, across the party divides. The proposals pave the way to re-establishing the UK as a leading gambling jurisdiction with the attendant and potentially lucrative source of tax revenue. Just as important, as the Deputy Prime Minister has recognised, reform would generate significant investment in the UK, with estimates of £9bn not being regarded as unrealistic. In addition, new jobs would be created, with figures of 70,000 being mentioned, many of them in areas of high unemployment. On this basis, there could be little doubt that the gambling reform could be a vote winner for the government.

From any viewpoint, the government's proposals would revolutionise the UK gambling market. There will be exciting business opportunities for existing operators, whether based in the UK or overseas, and for potential new entrants to the market. The winners in this new market will be those who best predict, at an early stage, how the new gambling market will evolve and formulate their business strategies accordingly.

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