

POSITION PAPER: LICENSING OF BETTING OPERATORS

Purpose

1. This paper outlines a framework for the licensing of betting operators. It is not a final statement of Government policy; rather it reflects the current thinking in preparation for the reform of gambling legislation.

Background

Betting

2. New gambling legislation will define gambling and its various forms, of which betting is a major category. In developing policy we have looked upon betting as a form of gambling in which one party offers and another accepts a stake and where the outcome (i.e. winning or losing the stake) depends on an unknown or unascertained event or a series of events. Such a definition might include some elements of gaming, but legislation will also define gaming, and, in general, these activities will require a separate operating licence.

3. The present statutory framework for the licensing of betting operators is set out in the Betting, Gaming and Lotteries Act 1963 (the '1963 Act').

Bookmaking

4. Bookmaking is defined in section 55 of the 1963 Act. It is generally regarded as the carrying on, whether occasionally or regularly, of the business of receiving or negotiating bets by a person who holds himself out for that purpose. The Totalisator Board and individuals working for them or the operators of a greyhound totalisator are not regarded as bookmakers. Nor are registered pools promoters where that is their only business.

5. Operating licences for bookmaking are known as permits. Licensing justices (and, in Scotland, local licensing boards) issue bookmakers permits that can vary in length between less than six months and three years five months according to the date when it was granted, running in three yearly licensing cycles (the next of which commences on 1 June 2003). The procedure for applications and the grounds for rejection are set out in Schedule 1 of the 1963 Act. Bookmaker's permits are held by racecourse bookmakers, bookmakers operating through betting shops, by telephone and over the Internet and other media. The operators of betting exchanges and spread betting companies also hold permits, although their specific operations were not envisaged by the 1963 Act.

Pool betting

6. Pool betting (also known as totalisator betting) is defined in Section 10(1) of the Betting and Gaming Duties Act 1981. It involves the pooling of stakes on a given event, and the splitting of the total pool, less a commission for the operator, amongst the winners. It falls into a number of categories, and different forms may operate through different media and premises.

- Pool betting on British horseracing may only be conducted with the approval of the Horserace Totalisator Board¹ (the 'Tote'). Tote betting may be offered at the racecourse when it is in use, through licensed betting shops or via remote technologies such as the telephone and the Internet.
- Local authorities register other pool-betting promoters. The procedure for registration is set out in Schedule 3 of the 1963 Act.
- Pool betting at greyhound tracks may be offered by the occupier or by a person authorised to act on their behalf, when the track is in use. Tracks may also conduct inter-track pool betting when all the tracks involved are holding races. Pool betting on dog races cannot be offered at betting shops, but could conceivably be offered via remote technologies.
- Entries and stakes for pool betting on football may be delivered to licensed betting offices and other shops, and winnings may be collected at betting offices. Unlike other forms of betting, the minimum age for participation in football pools is 16, not 18. Football pools are also organised using remote technologies.
- No other type of sports or athletic ground may offer pool betting on the premises. Pools on sports other than horseracing and football may not be conducted through betting offices. They must be organised via postal coupons or remote technologies.

Betting intermediaries

7. Betting exchanges generally operate on the Internet and enable consumers to both offer and accept odds. The operator creates a market that brings opposite bets together, and then takes a commission from the winner. Unlike most other betting operators, the exchanges tend not to offer a cash service.

Betting agencies

8. Betting agents are entitled to act as an agent for a bookmaker in the receipt and negotiation of bets, where those bets are made with the bookmaker². Holders of betting agency permits may also apply for a betting office licence. Over time, this licence has fallen out of use. In 31 May 2000, only eight such permits were in force (six in England, one in Powys, Wales and one in the Highland region of Scotland). We are not sure whether the applicants are genuinely acting in an agency capacity for another bookmaker.

Spread betting

9. Spread betting has a number of variants, but involves the consumer betting against a range or spread of possible outcomes for a particular market (e.g. the number of runs scored during a cricket innings). As with betting exchanges, there is no specific provision in the 1963 Act for spread betting. Moreover, it has been unclear whether operators are taking 'bets' or facilitating 'an exchange of contracts' or both. As far as the Department is aware all of the operating companies have sought bookmakers' permits. They are also regulated by the Financial Services Agency.

¹ In terms of section 14 of the 1963 Act.

² In terms of section 9(2) of the 1963 Act.

National Joint Pitch Council

10. The National Joint Pitch Council (NJPC) was established by the Horserace Betting Levy Board to administer bookmakers at horse racecourses, and arrange the auction of 'pitches' at those courses. Racecourse bookmakers (having bought their pitch) must operate in accordance with NJPC rules on the administration of betting rings and general conduct at the racecourse.

Policy aims

11. The Department's aims are those set out in the Government's response to the report of the Gambling Review Body, 'A Safe Bet for Success'. In these, gambling should:

- Be conducted fairly, where the risks involved are transparent to the customer;
- Exclude any criminal influence or infiltration, and;
- Offer protection for children and the vulnerable.

12. A Safe Bet for Success also made clear that the Government wishes to see a successful British gambling industry, one that is able to respond rapidly and effectively to technological and customer-led developments in both the domestic and the global marketplace. Legislation will therefore need to be durable. That means it has to be flexible, forward looking and as technology proof as possible.

Proposals

13. The Gambling Commission will license betting operators. An operating licence will have three main elements. These will:

- Confirm the holder's fit and proper status as a gambling operator and that the licence is valid for betting.
- Specify, in the form of a schedule, the betting activities that the holder may lawfully undertake. This will not be a restriction on products, but on operations requiring different skills, for example, between on and off course bookmakers.
- List those types of premises or media on or through which the holder is authorised to operate.

Licences will be valid for a period specified in secondary legislation subject to payment to the Commission of the prescribed annual fee.

14. The Secretary of State should have power, subject to Parliamentary approval, to specify additional categories of betting activity, and to revise or delete those set out in legislation. This flexibility will be of use in accommodating developments in betting operations, provoked perhaps by technology, that are not foreseeable at the moment.

(A) Fit and proper

15. The assessment of whether a person is fit and proper to carry on a betting operation is a feature of the present law. A probity requirement will continue into

the new regime. Applicants for betting operator licences will be required to submit information about their businesses and personal background. Specified individuals will be required to submit criminal record certificates and the Commission itself will be able to seek enhanced criminal records (that include information and intelligence held by police forces). A separate paper on the licensing of betting personnel is now available. The Commission will also be empowered, through statutory 'information gateways' to seek relevant information on applicants from other regulators, financial institutions, Government Departments and others. Through these various channels it will establish the propriety of applicant bodies and will identify who are the beneficiaries of the operation.

(B) Categories of betting activities

16. Applicants will be required to prove competence in at least one category of betting activity. Competence will be assessed in terms of knowledge, business plans, organisation and financial capacities to deliver the business model envisaged and, where relevant, bear possible losses. We envisage that the Gambling Commission will prescribe the form of applications.

17. There will be the following categories of betting activities:

- **Bookmaking**

18. Bookmaking will be defined largely as it is in the 1963 Act (unless some amendment is required to clarify the position of private persons using betting intermediaries such as betting exchanges). Bookmaking will therefore continue to include fixed odds and starting price betting operators and bookmakers operating at horse racecourses and greyhound tracks. We do not propose to maintain the separate category of betting agency. Evidence suggests that it has become redundant. Moreover, our proposal to license betting personnel should supersede its purpose.

- **Pool (totalisator) betting**

19. The definition of pool betting will be maintained as at present (see Para 6 above).

20. Pool betting on horseracing taking place at licensed horse racecourses will be a separate category of activity. The Secretary of State should have power to specify the number of licences that the Gambling Commission may issue for this activity. The Government is preparing proposals to allow for the sale of the Totalisator Board(the Tote)³ to a consortium of racing interests, known as the 'Racing Trust'. The Trust will ensure that profits from the Tote's business are directed to the benefit of horseracing. For a limited period following its sale, it is the Government's intention that the Tote will continue to be the only provider of pool bets on British horseracing. As a condition of its licence the Tote will be required to provide specified levels of service at horse racecourses. At the end of the first licence period, the Government will review the need for an exclusive arrangement.

³ The Tote has an exclusive right to conduct (and authorise others to conduct) pool betting on British horseracing, in terms of section 14 of the 1963 Act.

21. Persons aged 16 and above will continue to be permitted to participate in pool betting on football. Pool betting on greyhound racing will not be a separate category, but, as discussed in a separate paper on premises licensing, the occupiers of greyhound tracks will be permitted to apply for a licence to conduct pool betting on their track.

- **Betting intermediaries**

22. We propose to create a new category of operator: betting intermediaries. They do not offer or accept bets on their own behalf; rather they provide or facilitate a controlled market through which others may gamble. Typically this would include betting exchanges, betting brokers and public tic-tacs operating at horse racecourses.

23. In very different ways, they facilitate betting activity. Public tic-tacs are authorised by the NJPC to act as a conduit for bets between bookmakers operating at horse racecourses. They communicate bets between bookmakers, and take a commission. At the time of the report of the Gambling Review Body, there were only seven such tic tacs authorised. Betting exchanges are a relatively new phenomenon. Operating mostly through the Internet, they construct markets on betting events that allow users to both offer and accept odds. As these intermediaries are so different from bookmakers the intention is to create a completely new licensing regime for them. The attached annex gives further details.

- **Spread betting**

24. We do not propose the licensing of spread betting operations by the Gambling Commission. The Department and the Commission will keep the position under review, but the Financial Services Authority (FSA) will regulate spread betting. We do not wish to continue the existing double regulation, although we continue to regard spread betting as a form of gambling.

- **New categories**

25. We propose that the Secretary of State should have power to specify, through secondary legislation, additional categories of betting activity, and to revise or delete those set out in legislation. We propose also that the Gambling Commission be consulted prior to the use of such power. This flexibility will be of use in accommodating developments in betting operations, provoked perhaps by technology, that are not foreseeable at the moment.

- **Small operators**

26. We have considered the position of very small betting operators, particularly racecourse and track bookmakers. It seems a disproportionate cost for small (occasionally, one person) enterprises to require both an operating licence and personal licences for betting. Therefore we propose that betting operators who operate at no more than one site at any one time, who have five staff or fewer in total, and where the person who principally offers bets to the public holds the operating licence, should not also be required to seek personal licences.

27. This exemption will apply equally to betting operators who operate just one betting shop. Where an operator owns a small number of betting shops, it may be

that he, or another office manager, may also require a personal licence. The exemption would also apply to public tic-tacs. Detailed proposals for personal licensing are set out in a separate paper.

(C) Premises and media

28. The third element of the operating licence will list those premises or media on or through which the holder is authorised to operate. These are listed below for each type of operator. It will be an offence to conduct operations in or through places or technologies not specified. Operators will, of course, also require a licence for each premise. For remote gambling an additional licence will be required, but for the existing holder of a betting operating licence they will only have to go through a part of the process (e.g. there should be no need for a second set of probity checks). A separate paper on remote gambling will be issued shortly.

- **Bookmakers**

29. Bookmakers will be permitted to operate at betting tracks (including horse racecourses and greyhound tracks) on any day⁴, through betting offices and via all types of remote technology. On-course bookmakers may not accept bets on races taking place at a track of which they are also the operator (in part or in full).

- **Pool betting**

30. Pool betting on British horseracing, greyhound racing and other sports may take place at horse racecourses and greyhound tracks (on any day), through betting offices and via all types of remote technology. At other tracks, pool bets on the event taking place at the track will not be permitted. Whilst this is an arbitrary distinction, the Department does not wish to encourage the intensity and variety of betting associated with horse and dog racing to become a general feature of other sports grounds.

31. Entries for pool betting on football will continue to be allowed to be delivered to shops as well as betting offices. Retail premises will be able to pay out winnings to the same level as the National Lottery and we will address the rather nonsensical rules that prevent pools collectors from emailing or faxing coupons. The minimum age for participation in football pools will stay at 16.

32. Occupiers of horse racecourses and greyhound tracks that are exempt from premises licensing because of low usage (where the event in question takes place no more than four times a year – e.g. point to point horse races), and persons authorised by the occupier, will be authorised by the Tote to offer pool betting.

- **Betting intermediaries**

33. Public tic-tacs will be permitted to operate at betting tracks.

34. Betting exchanges will be permitted to offer their service through all forms of remote technology.

⁴ This represents a change from the current regime, where betting may only take place on race days and may not take place on Good Friday or Christmas Day.

35. We have considered carefully representations suggesting that customers of betting exchanges who offer (or 'lay') odds should be licensed as bookmakers. We have considered these proposals carefully but have concluded that it is not necessary for any exchange users to be licensed. Rather, we believe that the conditions of licence proposed for betting exchanges (outlined in summary form below) will be sufficient to ensure that the aims of gambling regulation can be achieved without further regulation. Nor do we propose any regulation of any other group of betting customers. An annex on this subject is attached to this paper.

Conditions of licence

36. When deciding what conditions should be attached to operating licences, the Gambling Commission will be guided by legislation, the regulatory aims (fairness to the punter, protection of the vulnerable and exclusion of crime) and any directions or guidance issued by the Secretary of State. Licence conditions may apply to all categories of operator, to a particular category or to a particular operator. Breaches of licence conditions will be criminal offences, subject to prosecution or an administrative penalty. As noted above, licences may be reviewed at any time by the Commission should there be evidence of non-compliance with licence conditions, a relevant criminal conviction is imposed or there is any other material change in circumstances. The licence conditions discussed below are suggested for illustrative purposes, and are not intended as an exhaustive or comprehensive list.

Conditions applying to all gambling operators

37. Separate licences will be issued for gaming, betting and lottery operators. Some licence conditions will, however, apply across all types of gambling operator. For example, it will be a standard condition of every licence that the holder should operate in a socially responsible manner. The Commission will issue codes of practice describing ways in which different types of operator might achieve this objective.

Conditions applying to all betting operators

38. Some licence conditions may have general relevance. For example, betting operators might be required to:

- a) Comply with Gambling Commission requests for information on the betting activities of particular persons or the betting associated with a particular event.
- b) Refuse any bet from categories of participant or other persons prohibited from betting (on specified events) by the governing body of the sport concerned, where the operator has reason to know the identity of the person. Operators should also refuse bets where they suspect that they are being placed on behalf of a prohibited person. The Gambling Commission might inform operators as to which categories of persons in relevant sports had been so prohibited.
- c) Make any payment or give any other form of benefit (or cause another person to do so) to the persons specified in b) above in return for information related to the likely outcome of a betting event.
- d) Ensure that their accounting structure separates money for the operation of the company (e.g. for wages, dividends and other corporate expenditure) from that held as stakes and for the payment of winning

bets. Stakes should be separated until the result of the event in question is confirmed.

- e) Compose, display and disseminate betting rules in accordance with guidance issued by the Gambling Commission.

The Department would welcome the views of betting providers and sports regulators on the detail of these suggestions.

Conditions applying to categories of betting operator

39. Some conditions may be relevant to particular types of betting provider:

- Betting intermediaries (betting exchanges etc) might be prohibited from offering or accepting bets on their own behalf.
- Permitted maximum deductions for pool betting on horseracing might be specified, for the period of time that there was only one such licence issued.

Conditions applying to particular operators

40. The Gambling Commission will be able to vary the terms of an individual operator's licence. A licence might include limits on the number of premises that can be operated by the holder before some further checks or tests might be applied. But operating licences will not be linked to specific premises.

Summary of recommendations

- The Gambling Commission will issue operating licences for betting. The categories will be:
 - a) Bookmaker;
 - b) Pool betting (horseracing held at racecourses);
 - c) Pool betting (other);
 - d) Betting intermediary (Betting exchanges, brokers and independent tic-tacs);
- There will be flexibility for the Secretary of State to revise these categories;
- The Commission will not license spread betting and provisions allowing for the licensing of betting agents will be repealed;
- There will be no requirement to license the users of betting exchanges, or the user of any other betting operation;
- An operator's licence will specify the premises and media where / through which the operation may be carried on;
- The Commission will set licence conditions and breaches of those conditions will be criminal offences.

ANNEX: LICENSING OF BETTING INTERMEDIARIES: BETTING EXCHANGES

Purpose

1. To make proposals for the licensing of betting exchanges.

Background

2. Betting exchanges have emerged over the past few years. Using the Internet, they offer consumers a new form of betting opportunity. The operator of the betting exchange constructs a market on particular events that allows users to both offer and accept odds. The operator brings opposite bets together, and takes a commission from the winner. In this way, like pool betting, the operator has no profit interest in the outcome of the event. A number of exchanges are now in operation.
3. The Department understands that operators have all sought, and been granted, bookmakers' permits. Arrangements have been made for operators to pay betting levy and betting duty (gross profits tax).

Product definition

4. There has been a lively debate amongst interested parties as to what it is that betting exchanges are doing. The operators argue that their product represents a no-risk form of bookmaking, where they only accept a punter's bet when they also receive an equal and opposite bet from another punter. Some people, including some of the conventional bookmaking companies, have suggested that an exchange acts as a conduit for unlicensed bookmaking. They argue that the facility to offer, as well as accept, odds makes some of the exchange users betting operators in themselves. Another view sees the betting exchange as a new form of betting intermediary that constructs a controlled market and allows access by its customers.

Proposals

A specific licence

5. The Department considers that betting exchanges merit a specific licence for their activities. That licence will permit the holder to establish betting markets and hold monies on behalf of its users. Where exactly opposed bets are initiated, the exchange may allow the bet to proceed and make arrangements for the winning user to be paid. Terms and conditions would allow the operator to generate an income through the charging of a commission.
6. Betting exchanges will be bound by all of the general conditions of licence noted in the main position paper. There will also be at least two further specific conditions:
 - Operators may not initiate bets in any way on the exchange. The Department thinks that it is important that a clear line is drawn between betting operators who are a party to the bet, like bookmakers and those, like exchanges, who merely construct a controlled market; and;

- However or wherever they operate, exchanges may not permit their customers to identify themselves to each other, either through personal contact or otherwise.

7. With this specific licence in place, defining what an exchange may and may not do, one can see how an exchange can achieve the Government's regulatory objectives:

- Fairness to the consumer can be achieved by the display and dissemination of betting rules. Where the exchange operates through the Internet the systems for play and payment that the operators propose to employ should be checked by a someone authorised by the Gambling Commission. In addition, the separation of 'punters' and the operating company's resources should eliminate any risks of failure to pay winnings. The Gambling Commission will work with other regulatory bodies to combat the threat of 'insider dealing'.
- Protection of the vulnerable can be assured through the entry barriers that exclude children, and control measures in place to discourage players taking on risks beyond their ability to pay and to detect signs of problem gambling. In this, betting exchanges operating on the Internet will be subject to the same level of regulation as any other gambling product operating through this media.
- Keeping crime out can be achieved first of all through personal licensing and examination of companies during the operational licensing procedure. The exchanges will also be subject to the same restrictions as other betting operators on the production of information to the Commission. As with all remote gambling operations a full anti-money laundering regime will need to be in place.

Licensing / control of exchange users

8. The Department has received a number of representations urging the licensing of exchange users who offer (or 'lay') odds through the exchange. We have considered these representations carefully. However, we do not agree that exchange users need to be licensed. We regard this step as unnecessary for the achievement of the Government's regulatory objectives (described above).

9. Those individuals and organisations advocating the licensing of exchange users laying odds suggest that this act, if carried on regularly and to some significant level of value, constitutes the business of bookmaking, as defined in the Betting, Gaming and Lotteries Act 1963 ('1963 Act'). Of course, the 1963 Act was formulated long before the Internet, let alone a betting exchange, were ever conceived of, and does not therefore specifically address the exchange business model. Interpretation of existing legislation is a matter for the courts. The Department will bring forward, in proposals for new legislation, definitions that draw a clear distinction between the acts involved in carrying on the business of bookmaking, and those that are involved in the operation and the use of betting exchanges. While there seems sure to be an ongoing debate about these issues it will not be productive for anyone to focus on the current definition of 'bookmaker'.

10. We have taken some time to understand the betting opportunity provided by betting exchanges. In broad terms, we regard an exchange user (whether they are

laying or backing) as a person involved in a relationship with the operator of the exchange. In the way that the exchanges operate at present, a user cannot bet without entering the controlled market provided by the operator. Once they have entered this market, they must conduct their activities in accordance with the rules and systems devised by the operator. They cannot hold themselves out as an independent business, capable of setting and altering the rules of the exchange. This is an important consideration when one considers what has been referred to as the risk of 'unlicensed bookmaking' through a betting exchange.

11. It has been put to the Department that the exchanges offer an opportunity for persons to carry on a betting business without first seeking a licence for that activity. It may well be possible, theoretically at least, for a person to use the exchange regularly in order to 'construct a book' in the traditional sense, or lay particular outcomes, and seek to make a profit. Such persons could conceivably be persons who had applied for a betting licence in their own name and, because they were not regarded as fit and proper, been rejected.

12. It has been asserted that, if such unfit persons use exchanges to lay odds regularly, the aims of regulation would be defeated. We do not accept this assertion.

13. A comparison with traditional forms of bookmaking illustrates the point: If a private person acts as though s/he was a bookmaker in public or at an office, and offers odds to other private individuals, there is a risk to those third parties. The unlicensed person offering odds may not have sufficient finance to make good winnings, or they may simply not make themselves available to pay. **There is a risk of harm.**

14. On the other hand, where someone who may not qualify as a bookmaker offers odds on the betting exchange, there is no risk of harm. The person cannot deprive other users of winnings, because s/he does not hold any stakes. Moreover, the exchange operator will not permit the 'unfit' user to bet or lay odds where s/he does not have sufficient funds deposited to cover the maximum liability associated with those transactions. **There is no risk of harm to the public from an exchange user.** The user enters a regulated market where the market provider is licensed in ways that ensure that no user may present a risk to other users. If payment is guaranteed and anti-money laundering measures are in place the threat of criminal activity is negligible.

Integrity of betting events

15. Representations have also been made to the Department that betting exchanges involve a new risk to the integrity of betting events. These representations observe that the exchange allow persons with 'inside knowledge' to exploit less informed punters. This threat seems to be particularly relevant to events, like horseracing, where there is a multiplicity of possible outcomes. Knowledge that one outcome is highly unlikely allows an individual to then offer apparently attractive odds on the exchange. One scenario might involve a user laying long odds on a horse otherwise thought to have a reasonable chance of success, on the basis of knowledge of an injury or illness.

16. Of course, the use of inside knowledge for personal profit, however inappropriate, is not new. It existed long before betting exchanges came into being, and the threat of corruption would be present even without the exchange model.

17. The responsibility for tackling it must fall primarily on the sport, and its regulators. Regulators must decide what restrictions to place on the betting activities of participants and other licensed persons. If they regard betting by some participants to be a risk to the integrity of their sport, they must take action to prevent it happening. The Government does not license people involved with sport, and cannot therefore restrain their private activities. Sports regulators can. So, for example, the Jockey Club has recently decided to prohibit licensed trainers from laying horses they train, although it would have been open to the Club to allow them to do so on the condition that the fact that any trainer laying one of his own horses had to make a public declaration to this effect, so that everyone contemplating betting on that horse was aware of the position

18. What the Government, and the Gambling Commission, can do is to give its full support to sporting regulators in their endeavour to maintain the very highest standards of integrity. Where the Commission is alerted to suspicions of wrongdoing, it will be able to conduct an investigation. It will require betting operators to produce specific information on events and / or customers and will be in a position to assess whether an operator has, knowingly or otherwise, accepted a bet from a prohibited person, or has otherwise not acted appropriately. It will be able to publish such findings.

DCMS: Betting and Racing team
May 2003