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UNITED KINGDOM

I. INTRODUCTION

1. General Approach to Gambling

1.1. Territorial Considerations

The United Kingdom is not a federal state, nor is it a unitary state divided into provinces that are subordinate to a central administration. Instead, the United Kingdom is composed of four distinct countries, or nations, namely England, Northern Ireland, Scotland and Wales. Until recently, largely distinct legal systems were applied by separate court structures in Northern Ireland, in Scotland and in England and Wales combined, but all executive and legislative powers were vested in a single British Government and a single Westminster Parliament. Differing proportions of these powers have since been delegated to executive agencies and national assemblies for Northern Ireland, Scotland and Wales.

Despite this constitutional diversity, **substantive law on the subject of gambling has remained fairly uniform across the United Kingdom.** The principle pieces of legislation currently in force apply, with some essentially procedural exceptions, in England, Scotland and Wales. Although the legislation applying in Northern Ireland has a quite distinct format, its substantive provisions have much the same effect as that of the legislation applying in the other three countries. **The differences appearing in the Northern Irish legislation will be dealt with relatively succinctly in this report,** in so far as they do not impose additional barriers on the free movement of gambling services. **For the most part, this report will refer to British norms in the sense of those applicable in the three countries located in Great Britain, namely England, Scotland and Wales.**

The United Kingdom also possesses a number of **Dependencies** which are geographically situated in Europe but do not constitute part of the European Union. Some of these Dependencies are of considerable significance for the present Study, as they are to a very large degree self-governing and have the competence to legislate on a wide range of subjects including gambling. It is particularly worth referring to **Alderney** (a part of the Bailiwick of Guernsey in the Channel Islands), to **Gibraltar** and to the **Isle of Man**. By virtue of the Treaty of Accession of the United Kingdom of Great Britain and Northern Ireland to the European Communities, **the fundamental freedom to provide services extends to Gibraltar, but not to Alderney or to the Isle of Man.** Gibraltar (together with Northern Ireland) should therefore be dealt with in this report as a province of the United Kingdom, while Alderney and the Isle of Man would be considered only in the economic sections of this Study, together with other third countries that actually supply gambling services to the Internal Market. However, information about the legal and regulatory framework governing gambling in Gibraltar was received only shortly before the termination of this Draft Report. We will accordingly deal with that jurisdiction only in our Final Report.

1.2. Temporal Considerations

Since 1999, the British government has been engaged in a thoroughgoing review of the law on gambling. It established a broadly representative Gambling Review Body in that year, chaired by Sir Alan Budd. The final report of that Body, generally known as **the Budd Report**, was published in July of 2001 and made a large number of recommendations generally aimed at liberalising the British gambling market. The British government reacted to that report by initially announcing that it intended to implement most of the Budd Report's recommendations and by instructing the Department of Culture, Media and Sport to draft reform legislation along those lines. Instead of waiting until a final and complete draft was ready for publication, the Department published and asked for public comments on

preliminary drafts at several stages of elaboration and reacted to comments by amending the contents of the draft. Additional amendments were introduced into the draft during its passage through the Westminster Parliament. The resulting **Gambling Act 2005** is therefore much less of a radical renewal than was envisaged by the Budd Report, but nevertheless represents an important departure from the existing law governing several sectors of the British gambling market.

The most important result of these developments for the purposes of the present report is that several of the barriers which have hitherto been placed by British law in the way of free movement of gambling services will soon disappear. **Although the Gambling Act 2005 became law on 7 April 2005, its operative provisions will come into force on future dates** to be specified by ministerial orders. The British government currently anticipates that these dates will fall into the **second half of 2007**. While the pre-existing gambling laws will almost all continue to apply until that time, there would be little point in our specifying barriers to free movement of gambling services which the British government has already legislated to remove. This report will accordingly list the very extensive body of gambling-related legislation that is currently in force in Great Britain, so as to provide a legal framework for the economic and fiscal analysis of the British gambling market, but **will identify only those barriers to free movement which are to be found in the Gambling Act 2005 and in other enactments that are not to be replaced by the new legislation.**

2. Definitions

2.1. Gambling

A general definition of the whole regulatory concept of **gambling** is set out in sec. 3 of the Gambling Act 2005:

In this Act gambling means gaming, betting, and participating in a lottery .

The purpose of this (not very illuminative) provision is to indicate that activities which involve the contribution of something valuable and an outcome dependant on chance and therefore fall within the theoretical concept of gambling, but cannot be classed as gaming or betting or lottery participation, are to be treated as falling outside the scope of British gambling legislation and gambling industry regulation⁸⁸³.

2.2. Lottery

The Gambling Act 2005 divides lotteries into **simple lotteries** and **complex lotteries** and defines these variations in subsecs. 14(2) and 14(3) respectively:

- (2) An arrangement is a simple lottery if
 - (a) persons are required to pay in order to participate in the arrangement,
 - (b) in the course of the arrangement one or more prizes are allocated to one or more members of a class, and
 - (c) the prizes are allocated by a process which relies wholly on chance.
- (3) An arrangement is a complex lottery if
 - (a) persons are required to pay in order to participate in the arrangement,
 - (b) in the course of the arrangement one or more prizes are allocated to one or more members of a class,
 - (c) the prizes are allocated by a series of processes, and

⁸⁸³ Refer to para. 34 of the official *Explanatory Notes to the Gambling Act 2005*.

(d) the first of those processes relies wholly on chance .

Those definitions give the strong impression that a competition which initially requires participants to adduce some kind of skill or knowledge cannot be classed as a lottery, because that is not a matter of pure chance. However, subsec. 14(5) adds a completely artificial extension to the concept of **whole reliance on chance** :

- A process which requires persons to exercise skill or judgment or to display knowledge shall be treated for the purposes of this section as relying wholly on chance if
- (a) the requirement cannot reasonably be expected to prevent a significant proportion of persons who participate in the arrangement of which the process forms part from receiving a prize, and
 - (b) the requirement cannot reasonably be expected to prevent a significant proportion of persons who wish to participate in that arrangement from doing so .

That extension is supposed to prevent avoidance of lottery regulation by operators who introduce an entry condition that actually excludes no-one who would be interested in participating⁸⁸⁴.

As for the other concepts which constitute the definition, subsec. 14(4) provides that the concept of a **prize** that can be won in a lottery

- includes any money, articles or services
- (a) whether or not described as a prize, and
 - (b) whether or not consisting wholly or partly of money paid, or articles or services provided, by the members of the class among whom the prize is allocated

Quite detailed rules are set out in Schedule 2 to the Gambling Act 2005 for determining when participants in a lottery can be said to be **required to pay** . As these have the effect of laying down the conditions under which a business can lawfully offer a prize competition without obtaining a lottery license, they will be considered under point 2.8. of this section, below.

2.3. Casino Gaming

Although the term **casino gaming** is not directly defined in British law, the Gambling Act 2005 does define each of the words that make up that term. Thus, subsec. 7(1) provides that

a **casino** is an arrangement whereby people are given an opportunity to participate in one or more casino games ,

while subsec. 6(1) provides that

gaming means playing a game of chance for a prize .

An incomplete definition of the fundamental concept of a **game of chance** is provided by subsec. 6(2), which states that the term includes:

- (i) a game that involves both an element of chance and an element of skill,
- (ii) a game that involves an element of chance that can be eliminated by superlative skill, and

⁸⁸⁴ Refer to paras. 70 to 72 of the official *Explanatory Notes to the Gambling Act 2005* and to the definition of **prize gaming** under point 2.9. of this section, below.

(iii) a game that is presented as involving an element of chance

and specifies, to the contrary, that a sport cannot constitute a game of chance. A collateral indication of meaning is given by subsec. 7(2), according to which

casino game means a game of chance which is not equal chance gaming

and subsidiarily by sec. 8, which in turn defines the concept of **equal chance gaming** :

- (1) For the purposes of this Act gaming is equal chance gaming if
 - (a) it does not involve playing or staking against a bank, and
 - (b) the chances are equally favourable to all participants.
- (2) For the purposes of subsection (1) it is immaterial
 - (a) how the bank is described, and
 - (b) whether or not a bank is controlled or administered by a player

Further clarification could be provided by regulations or license conditions formulated under sec. 90, read in conjunction with secs. 75, 77 and 78, in order to delimit the classes of casino games which may be played in licensed casinos and in order to lay down the rules according to which those games must be played. Although no such regulations or conditions have been formulated as yet, guidance as to their likely contents can certainly be obtained from the contents of the current regulations on that subject⁸⁸⁵. These list the following games:

- roulette
- dice (craps)
- baccarat (including *baccarat banque*, *chemin de fer*, *punto banco* or any other version)
- blackjack (as a specific version of pontoon or *vingt-et-un*)
- casino stud poker (as a specific version of stud poker)
- super pan 9
- the big six (wheel of fortune)
- sic bo
- three card poker

and set out their rules on the basis of a requirement that the casino licensee or its servant always act as the banker .

Some of the other concepts employed to define a casino and gaming are also defined further in the Gambling Act 2005. Thus, subsec. 6(5) specifies that a **prize** ,

in relation to gaming (except in the context of a gaming machine)

- (a) means money or money's worth, and
- (b) includes both a prize provided by a person organising gambling and winnings of money staked ,

subsec. 353(1) subsidiarily states that a

stake means an amount paid or risked in connection with gambling and which either

- (a) is used in calculating the amount of the winnings or the value of the prize that the person making the stake receives if successful, or
- (b) is used in calculating the total amount of winnings or value of prizes in respect of the gambling in which the person making the stake participates

⁸⁸⁵ Gaming Clubs (Bankers Games) Regulations 1994, S.I. 1994/2899

and subsec. 6(4) introduces additional clarifications to the extent that

- a person plays a game of chance for a prize
- (a) if he plays a game of chance and thereby acquires a chance of winning a prize, and
- (b) whether or not he risks losing anything at the game .

The (rather unexpected) result is that an activity may fall within the concept of regulated casino gaming even if the players involved do not incur the risk of losing any stake.

As for the very broad conception of a casino as an **arrangement** , subsec. 7(4) provides that,

- (a) whether an arrangement is provided on one set of premises or on more than one;
- (b) whether an arrangement is provided wholly or partly by means of remote communication .

Finally, as concerns the designation of a person as a **player** and of her activities as **play** , subsec. 6(3) specifies that

- a person plays a game of chance if he participates in a game of chance
- (a) whether or not there are other participants in the game, and
- (b) whether or not a computer generates images or data taken to represent the actions of other participants in the game

and further attention is given in subsec. 353(1) to the concept of a **participant** :

participant , in relation to a game of chance, includes a person who discharges an administrative or other function in relation to the game .

It should be noted that the Gambling Act 2005 makes specific provision for forms of gambling that can *prima facie* be characterised as falling into two regulatory categories, for example as both a lottery and casino gaming. The aim of these provisions⁸⁸⁶ is to facilitate the enforcement of British gambling law by removing conceptual uncertainties in the minds of regulators and operators, as well as to avoid any form of gambling having to comply with two regulatory structures simultaneously.

Thus, in the present context, sec. 17 deals in three steps with **arrangements** that fall with the definitions, as set out above, of both lotteries and casino gaming. First, subsec. 17(2) states that

An arrangement shall be treated for the purposes of this Act as a game of chance (and not as a lottery) if a person who pays in order to join the class amongst whose members prizes are allocated is required to participate in, or to be successful in, more than three processes before becoming entitled to a prize .

Secondly, subsec. 17(3) stipulates that arrangements which qualify as private, charitable or sales promotional lotteries under Schedule 11 (and will be considered below), are to be treated as lotteries and not as casino gaming.

Thirdly, any relevant arrangement which is not allocated as a result of the first or the second step, is to be treated as casino gaming by virtue of subsec. 17(4).

⁸⁸⁶ Refer to Harris, J. & Hagan, J, *Guide to the Gambling Bill* (London, 2004), p. 11, para. 40.

2.4. Machine Gambling

A general definition of a **gaming machine** is to be found in subsecs. 235(1) and 235(2) of the Gambling Act 2005:

- (1) In this Act **gaming machine** means a machine which is designed or adapted for use by individuals to gamble (whether or not it can also be used for other purposes).
- (2) But
 - (a) a domestic or dual use computer is not a gaming machine by reason only of the fact that it can be used to participate in remote gambling,
 - (b) a telephone or other machine for facilitating communication (other than a computer) is not a gaming machine by reason only of the fact that it can be used to participate in remote gambling

That definition is supplemented in subsec. 235 (3) by clarifications of the concepts of a **machine** and of being **designed or adapted** :

- In this Act
- (a) a reference to a machine is a reference to any apparatus which uses or applies mechanical power, electrical power or both,
 - (b) a reference to a machine being designed or adapted for a purpose includes
 - (i) a reference to a computer being able to be used for that purpose and
 - (ii) a reference to any other machine to which anything has been done as a result of which it can reasonably be expected to be used for that purpose

The largest part of the very extensive definitions to be found in subsec. 235(2) is concerned with delineating the boundary between the gaming machines for which a specific gaming machine general operator's license may be issued under the Gambling Act 2005, and machines which are incidentally used in other sectors of the lawful gambling market. This is true of subparas. 235(2)(c) (betting machines), 235(2)(d) (lottery ticket machines), 235(2)(e) and (f) (bingo machines) and 235(2)(h) and (i) (machines in casinos which enable individuals to play a real game of chance, as distinguished from a **virtual game of chance**, which is defined in subsec. 354(3) by reference to computer generated images or results or imaginary races, events or processes).

Special reference should be made in that context to **machines which are designed or adapted for the playing of bingo by way of prize gaming**. Under subpara. 235(2)(g), such machines are excluded from the class of gaming machines for which a gaming machine general operator's license is required, provided that they are used pursuant to a prize gaming permit. Such permits can be issued by local licensing authorities under Part 13 of the Gambling Act 2005 to holders of bingo operators or gaming machine general operators licenses, but also to persons wishing to offer ancillary amusement at travelling fairs. As the last variation is not among the market sectors with which the current Study is concerned, it will not be considered further in this report.

2.5. Betting

Subsec. 9(1) of the Gambling Act 2005 purports to provide a definition of **betting**, but actually just provides a description:

- betting means making or taking a bet on
- (a) the outcome of a race, competition or other event or process,
 - (b) the likelihood of anything occurring or not occurring, or

(c) whether anything is or is not true .
 However, a useful indication is to be found in the opening words of subsec. 11(1), which deems certain activities to constitute betting⁸⁸⁷ even though the punter

does not deposit a stake in the normal way of betting

The general definition of a **stake** , which is contained in subsec. 353(1), has been quoted above⁸⁸⁸. The combined affect of these provisions would seem to be that a bet is made whenever something of value is staked or put at risk between two parties with reference to some existing or possible fact, occurrence or outcome. This is consistent with subsecs. 9(2) and 9(3), which specify that

- (2) A transaction that relates to the outcome of a race, competition or other event or process may be a bet within the meaning of subsection (1) despite the facts that
 - (a) the race, competition, event or process has already occurred or been completed, and
 - (b) one party to the transaction knows the outcome.
- (3) A transaction that relates to the likelihood of anything occurring or not occurring may be a bet within the meaning of subsection (1) despite the facts that
 - (a) the thing has already occurred or failed to occur, and
 - (b) one party to the transaction knows that the thing has already occurred or failed to occur .

The definition of **pool betting** that is set out in subsec. 12(1) may be of comparative interest:

- betting is pool betting if made on terms that all or part of winnings
- (a) shall be determined by reference to the aggregate of stakes paid or agreed to be paid by the persons betting,
 - (b) shall be divided among the winners, or
 - (c) shall or may be something other than money .

It is of relevance to note that the concept of **winnings** , as used in the definitions of a stake and of pool betting , is itself defined as follows in subsec. 353(1):

winnings , in relation to a bet, means anything won, whether in money or in money s worth .

Sec. 16 makes specific provision for forms of gambling that can *prima facie* be characterised as both casino gaming and betting. Subsec. 16(2) envisages that this could be the case of pool betting and stipulates that it is to be treated as betting, rather than as casino gaming. Subsec. 16(3) stipulates that anything else which could be characterised in both of these ways is inversely to be treated as casino gaming, rather than as betting.

Sec. 18 makes specific provision for forms of gambling that can *prima facie* be characterised as both lotteries and betting. It is a simplified, two-step version of the allocation rules as between lotteries and casino gaming⁸⁸⁹. Thus, subsec. 18(2) stipulates that arrangements which qualify as private, charitable or sales promotional lotteries under Schedule 11 (and will be considered below), are to be treated as lotteries and not as betting. Any relevant

⁸⁸⁷ This again defines some of the boundaries of the private, charitable and sales promotional activities which may lawfully be conducted without a license and will therefore be dealt with under points 2.8. and 2.9. of this section.

⁸⁸⁸ This section, point 2.3.

⁸⁸⁹ Refer above, this section, point 2.3.

arrangement which is not allocated as a result of the first step, is to be treated as betting by virtue of subsec. 18(3).

Finally, it should be noted that **spread betting** is entirely excluded from the scope of the Gambling Act 2005, by virtue of sec. 10. This refers to regulated activity within the meaning of sec. 22 of the Financial Services and Markets Act 2000 . That regulated activity includes⁸⁹⁰ the grant and acceptance of

rights under -

- (a) a contract for differences; or
- (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in -
 - (i) the value or price of property of any description; or
 - (ii) an index or other factor designated for that purpose in the contract .

It is apparently accepted⁸⁹¹ that spread betting falls within one or more of those categories, along with hedge and futures contracts and entirely speculative insurance arrangements. These matters are currently and will continue for the foreseeable future to be supervised by the British Financial Services Authority (FSA), rather than by the Gambling Commission.

2.6. Bingo

No general definition of **bingo** is provided by British law, except for the following entirely tautologous statement in subsec. 353(1) of the Gambling Act 2005:

bingo means any version of that game, irrespective of by what name it is described .

2.7. Media Gambling Services

We are not aware of any definition of media gambling services in British law.

2.8. Sales Promotions

The Gambling Act 2005 does not provide any definition of sales promotions or of promotional gambling. However, given that sales promotions which involve elements of chance and winning usually take the form of prize competitions, it is pertinent to quote sec. 339:

Participating in a competition or other arrangement under which a person may win a prize is not gambling for the purposes of this Act unless it is

- (a) gaming within the meaning of section 6,
- (b) participating in a lottery within the meaning of section 14, or
- (c) betting within the meaning of sections 9 to 11 .

Thus, **prize competitions** may freely be offered, in order to promote the sale of goods or services or for other reasons, as long as those competitions do not fall within the scope of the definitions of any of the main types of gambling regulated by the Act. The definitions of lotteries and of betting, in particular, contain somewhat complicated elements designed to distinguish between *bona fide* prize competitions and disguised lotteries or betting arrangements. These elements focus on the requirement to make a payment as a

⁸⁹⁰ By virtue of subsec. 85(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, S.I. 2001/544

⁸⁹¹ Refer to para. 61 of the official *Explanatory Notes to the Gambling Act 2005*.

precondition of participation in the competition and on the degree to which the winners of the competition are determined by chance.

As concerns lotteries, subsec. 14(5), which has been set out above⁸⁹², provides that a **skill or knowledge test** which actually prevents participation by hardly anyone who wishes to participate, or would prevent hardly any participant from winning, is to be ignored when determining whether the results of the competition are determined wholly by chance. It is envisaged⁸⁹³ that this principle will be applied to particular cases having regard to the characteristics of the persons who would wish to participate. Thus, a business that wishes to launch a lawful sales promotion aimed at children could require answers to much simpler questions than those that would have to be posed by a business that wishes to launch a lawful sales promotion aimed at readers of a professional development magazine, if the business wished to avoid the need to apply for a lottery license. As businesses in fact often find it unattractive to impose skill or knowledge tests which a large number of potential customers are unable to pass, they tend to present their sales promotional competitions as free to participants. Given the financial incentive of businesses to introduce an element of disguised payment, subsec. 14(6) and Schedule 2 to the Gambling Act 2005 provide detailed rules for determining when participants are required to pay in order to have a chance of winning. Thus, subpara. 2(c) of Schedule 2 specifies that **payment** includes

paying for goods or services at a price or rate which reflects the opportunity to participate

para. 3 specifies that it is irrelevant to whom the payment is made or to whose benefit it accrues and paras. 6 and 7 deem requirements to pay in order to determine whether a prize has been won, or to collect a prize won, respectively, to be equivalent to a requirement to pay up front in order to have a chance of winning. Para. 5 specifies that, where participants are required to incur postal or telecommunications charges at a normal rate, which does not reflect the opportunity to enter a lottery, then this does not constitute a requirement of payment to enter the competition. Para. 8, finally, authorises prize competitions potential participants in which are offered a choice between paying for entry and making a (postal or telephone) communication which is no more expensive or onerous than the payment option, as long as

- (c) the choice is publicised in such a way as to be likely to come to the attention of each individual who proposes to participate, and
- (d) the system for allocating prizes does not differentiate between those who participate by paying and those who participate by sending a communication.

As concerns betting, sec. 11 of the Gambling Act 2005 envisages that some prize competitions will involve the participants guessing facts or the outcome of events of the sort which are often the subject of betting and deems such competitions to constitute betting if the participants are required to make a payment, on the reasoning⁸⁹⁴ that the elements of **prediction** and **wagering**, being the essence of betting, are both present:

- (1) a person makes a bet (despite the fact that he does not deposit a stake in the normal way of betting) if
 - (a) he participates in an arrangement in the course of which participants are required to guess any of the matters specified in section 9(1)(a) to (c),
 - (b) he is required to pay to participate, and
 - (c) if his guess is accurate, or more accurate than other guesses, he is to

⁸⁹² This section, point 2.2.

⁸⁹³ Refer to para. 73 of the official *Explanatory Notes to the Gambling Act 2005*.

⁸⁹⁴ Refer to para. 64 of the official *Explanatory Notes to the Gambling Act 2005*.

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- (i) win a prize, or
 - (ii) enter a class among whom one or more prizes are to be allocated (whether or not wholly by chance.
- (2) In subsection (1) a reference to guessing includes a reference to predicting using skill or judgment .

Subsec. 9(1) has been quoted above⁸⁹⁵. Subsec. 11(3) and Schedule 1 to the Act define the element of **payment** in virtually the same terms as are used in respect of lotteries. Business wishing to offer promotional prize competitions that involve participants guessing in much the same way as bettors, but do not wish to apply for a betting operator's license, are therefore effectively permitted to do so as long as they do not require participants to make payments which are wholly or partly referable to the purchase of a chance of winning.

2.9. Charitable Gambling

Although the term is not formally defined there, the Gambling Act 2005 contains a number of provisions from which it is possible to distil a definition of the concept of charitable gambling .

Under Part 14 of the Gambling Act 2005, it is permissible to offer both **prize gaming** and **equal chance gaming** on a **non-commercial** basis without having to obtain a license. The first of those types of gaming is defined in sec. 288:

- Gaming is **prize gaming** for the purposes of this Act if neither the nature nor the size of a prize played for is determined by reference to
- (a) the number of persons playing, or
 - (b) the amount paid for or raised by the gaming .

The definition of the second of those types of gaming has been set out above⁸⁹⁶. Principles for determining when gaming of any type can be said to be **non-commercial** , are set out in sec. 297:

- (1) gaming is non-commercial if it takes place at a non-commercial event (whether as an incidental activity or as the principal or only activity).
- (2) An event is non-commercial if the arrangements for the event are such that no part of the proceeds is to be appropriated for the purpose of private gain.
- (3) For the purposes of subsection (2) the proceeds of an event are
 - (a) the sums raised by the organisers (whether by way of fees for entrance or for participation, by way of sponsorship, by way of commission from traders or otherwise), minus
 - (b) amounts deducted by the organisers in respect of costs reasonably incurred in organising the event .

The key concept within those principles is that of **private gain** , which is to be understood, by virtue of subsec. 353(1), in the manner set out in the last subsection of sec. 19:

- (3)The provision of a benefit to one or more individuals is not a provision for the purpose of private gain for the purposes of this Act if made in the course of the activities of a society that is a non-commercial society by virtue of subsection (1)(a) or (b) .

⁸⁹⁵ This section, point 2.5.

⁸⁹⁶ This section, point 2.3.

That subsection in turn provides that:

- (1) a society is **non-commercial** if it is established and conducted
 - (a) for charitable purposes,
 - (b) for the purposes of enabling participation in, or of supporting, sport, athletics or a cultural activity, or
 - (c) for any other non-commercial purpose other than that of private gain .

For the definition of **charitable purposes** , subsec. 19(2) refers, in the cases of England and Wales, to the general law governing charities, and in the case of Scotland, to the legislation governing income tax.

In the result, gambling is acceptable under the Gambling Act 2005 as **charitable gaming** if it takes the form of either prize gaming or equal chance gaming and if all of the proceeds are attributed to an organism that exists for the exclusive purpose of supporting charity, sport or cultural activities.

3. Taxes

3.1. General

The British government has not yet announced the rates of taxation that will apply to revenue generated by gambling services permitted under the Gambling Act 2005. The following rates are those applicable under the existing rules governing gambling in Great Britain.

On the other hand, the British government has announced that it expects the British gambling industry to voluntarily contribute to research into and prevention and treatment of problem gambling. If the annual contributions to the fund to be established for this purpose do not attain £3 million (approx. 4.3 million), the government will impose a levy for this purpose, additional to the taxes that will be payable in any case, and provision has been made in sec. 123 of the Gambling Act 2005 for the imposition of such a levy.

3.2. Lotteries

Lottery exercise duty is payable, under subsec. 25(1) of the Finance Act 1993, at the rate of 12% of the total amount received by lottery promoters from the sale of lottery tickets or chances. However, promoters of all of the private, charitable and local government lotteries that are currently permitted to operate alongside the British national lottery are exempted from payment of lottery excise duty by subsec. 24(4) of the same Act. Sec. 8 of the Lottery Duty Regulations 1993 provides that, where any lottery within the framework of the National Lottery is promoted by an independent operator pursuant to an agreement with the exclusive licensee, it is the exclusive licensee that will be liable to pay duty. In the result, this tax is paid only by the monopoly operator of the British national lottery and is administratively referred to as national lottery duty .

It may be noted that licensing fees are payable, under the National Lottery (Licence Fees) Order 2001, by both the monopoly operator of the British national lottery and any other party that it agrees to permit to promote lotteries within the framework of the British lottery, for the issuances of their general licences and for licences to promote specific lotteries. The sums paid as national lottery license fees in each of the last five years are substantial (between

£316 000 and £820 000, or approx. 458 000 and 1 190 000), but amount to only about one tenth of 1% of the amounts paid in respect of lottery excise duty⁸⁹⁷.

The promoters of the private, charitable and local government lotteries currently permitted to operate alongside the British national lottery are also required to pay licensing fees. However, these are also of negligible economic importance, given that the highest fee is £4 810 (approx. 7 070), payable for the registration of a lottery scheme adopted by a public interest society or local government authority and permitting the sale of lottery tickets of up to £2 million (approx. 2 940 000) by virtue of sec. 11 of the Lotteries and Amusements Act 1976. The same is true of the licensing fees payable by casino, gambling machine, betting and bingo service providers, so these fees will not be mentioned separately below.

3.3. Casino Gaming

Gaming duty is payable by suppliers of casino gaming services under subsec. 11(2) of the Finance Act 1997, as most recently substituted by sec. 6 of the Finance Act 2005, at the following percentage rates on the amounts of gross gaming yield corresponding to each rate, in so far as a supplier has actually generated that yield:

| | | | |
|-------|------------------|------------|---------------------|
| 2.5% | on the first | £ 534 500 | (approx. 750 000) |
| 12.5% | on the next | £1 186 500 | (approx. 1 750 000) |
| 20% | on the next | £1 186 500 | (approx. 1 750 000) |
| 30% | on the next | £2 078 000 | (approx. 3 000 000) |
| 40% | on the remainder | | |

3.4. Machine Gambling

The legislative provisions governing liability to pay gaming machine license duty, set out in secs. 21 through 26 of the Betting and Gaming Duties Act 1981, as substantially amended by sec. 17 and Schedule 2 of the Finance Act 2000, are very complicated, because they apply to all kinds of amusement machines, including video game and pinball machines the results of play on which depend on skill as well as chance. However, the only machines of real interest for the purposes of this Study are the machines which are classified by subsec. 23(3) of the Betting and Gaming Duties Act 1981 as Category E machines, namely those which accept stakes of more than 10 pence (approx. 15 cent) and offer prizes that can exceed £15 (approx. 22) in cash or value. Taking the figure which appears in the bottom, right-hand corner of the table which was substituted into subsec. 23(2) by sec. 17 of the Finance Act 2004, we conclude that the licensed operator of a real gaming machine is required to pay a lump sum of £1 915 (approx. 2 800) annually by way of gaming machine license duty.

3.5. Betting

General Betting Duty is payable for the most part at the rate of 15% of net stake receipts, being the total amount staked by punters with the betting operator liable to pay duty during a particular period, less the total winnings which the operator is obliged to pay out to those punters in respect of bets that they have won. That general principle is set out in sec. 2 of the Betting and Gaming Duties Act 1981, as substituted by para. 1 of Schedule 1 to the Finance Act 2001. A lower percentage rate is applicable by virtue of sec. 3 of the Betting and Gaming Duties Act 1981, as substituted, to net stake receipts generated by provision of spread betting services, namely 3% in respect of financial spread bets and 10% in respect of other

⁸⁹⁷ The figures were provided by Mr. Adam Cooper on behalf of the British Department of Culture, Media and Sport, in Annex A to a letter addressed to the Institute on 7 June 2005.

spread bets. Operators of betting exchanges are obliged by sec. 5AB of the Betting and Gaming Duties Act 1981, inserted by sec. 7 of the Finance Act 2003, to pay general betting duty at the standard rate of 15%, but on the gross amount of commission or other charges which they receive from persons who bet on their exchanges, whether received by way of deduction from winnings or otherwise. Although the Finance Act 2004 now distinguishes between pool betting on horse and dog races, to which general betting duty applies, and other pool and totalisator betting, to which pool betting duty applies, both duties are payable at the standard rate of 15% and the differences lie only in the exact details of calculation of the tax base. The only general exception to liability to duty applies in respect of on-course betting ; by virtue of subpara. 4(1)(b) and subsec. 12(4A) of the Betting and Gaming Duties Act 1981, inserted by sec. 15 of the Finance Act 2004, duty is not payable at all on bets made between persons physically present at horse or greyhound race meetings in Great Britain.

Licensed bookmakers who offer fixed-odds betting services in respect of horseracing in Great Britain are also required to pay, in addition to the betting duty, a specific Horserace Betting Levy on the profits generated by such betting. This is based upon sec. 27 of the Betting, Gaming and Lotteries Act 1963 and on the Horserace Betting Levy Acts 1969 and 1981. The practical details are however, determined annually by the Horserace Betting Levy Board and are currently set out in its *44th Levy Scheme 1st April 2005 to 31st March 2006*. Those details are quite complex, but may be reduced to the following essentials:

- bookmakers who essentially operate from betting shops or who operate betting exchanges pay 10% of their profits from betting on British horseracing;
- bookmakers who operate exclusively on racecourses pay 6% of their profits
- those percentages are reduced in the case of bookmakers who generate cash turnover on such betting of less than £75 000 (approx. 109 000) per annum, in the same proportion as the turnover is less than £75 000 (approx. 109 000), and in the case of bookmakers who take bets exclusively in respect of trotting and point-to-point events , to a nominal sum;
- bookmakers who offer spread betting services pay 2% of their profits from such betting on British horseracing.

3.6. Bingo

Bingo Excise Duty is payable, under subpara. 17(1)(b) of the Betting and Gaming Duties Act 1981, as substituted by sec. 9 of the Finance Act 2003, on net receipts (total receipts minus winnings paid out) at the rate of 15%.

II. LISTING**A) LEGISLATION ENACTED****a) Federal****1. General**

Gambling Act 2005
Gaming Act 1968
Gaming Act 1845
City of London Police Act 1839
Metropolitan Police Act 1839, sections 28 and 44

Gaming Act 1968 (Variation of Fees) Order 2003
Gaming Act 1968 (Variation of Fees) (England and Wales) Order 2005
Gaming Act (Variation of Fees) Order 2004
Gaming Act (Variation of Fees) (England and Wales and Scotland) Order 2002
Amusements with Prizes (Variation of Monetary Limits) Order 2001
Amusements with Prizes (Variation of Monetary Limits) Order 1999
Gaming (Records of Cheques and Debit Card Payments) Regulations 1997

2. Lotteries

Enterprise Act 2002, Part 8
National Lottery Act 1998
National Lottery etc. Act 1993
Finance Act 1993, Part I, Chapter II
Lotteries and Amusements Act 1976, Part I

New Opportunities Fund (Specification of Initiative) Order 2005
Lotteries (Gaming Board Fees) Order 2005
Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003
Lotteries (Variation of Monetary Limits) Order 2002
National Lottery (Licence Fees) Order 2001
New Opportunities Fund (Specification of Initiatives) Order 2001
New Opportunities Fund (Specification of Initiatives) Order 1999
Apportionment of Money in the National Lottery Distribution Fund Order 1999
National Lottery (Imposition of Penalties and Revocation of Licenses) Procedure Regulations 1999
New Opportunities Fund (Specification of Initiatives) Order 1998
Lotteries (Prizes and Expenses: Variation and Prescription of Percentage Limits) Order 1997
Lotteries (Amendment) Regulations 1996
National Lottery etc. Act 1993 (Amendment of Section 23) Order 1996
Lottery Duty (Instant Chances) Regulations 1995
National Lottery Regulations 1994
Lotteries Regulations 1993
Lottery Duty Regulations 1993
Lotteries (Registration Authority Fees) Order 1991
Lotteries (Variation of Monetary Limits) Order 1989

Directions issued by the Secretary of State to the National Lottery Commission⁸⁹⁸
Conditions subject to which the Licence to Run the National Lottery dated 27 January 2002 is granted⁸⁹⁹
Management Information and Reporting Requirements⁹⁰⁰
National Lottery Commission Regulatory Imperatives⁹⁰¹

3. Casino Gaming

Gaming (Amendment) Act 1990
Gaming (Amendment) Act 1982
Gaming Act 1968, Part II and Schedule 2

Gaming Duty (Amendment) Regulations 2004
Money Laundering Regulations 2003, reg. 8
Gaming Clubs (Licensing) (Amendment) Regulations 2003
Gaming Clubs (Licensing) (Amendment) Regulations 2002
Gaming Clubs (Bankers Games) (Amendment) (No 2) Regulations 2002
Gaming Clubs (Charges) (Amendment) Regulations 2002
Gaming Clubs (Hours and Charges) (Amendment) (No 2) Regulations 2000
Gaming Clubs (Hours and Charges) (Amendment) Regulations 2000
Gaming (Small Charges) Order 2000
Deregulation (Casinos) Order 1999
Gaming Duty Regulations 1997
Deregulation (Casinos and Bingo Clubs: Debit Cards) Order 1997
Deregulation (Casinos) Order 1997
Gaming Clubs (Bankers Games) Regulations 1994
Gaming Clubs (Hours and Charges) (Amendment) Regulations 1988, reg. 2

⁸⁹⁸ Sec. 11 of the National Lottery etc. Act 1993, as amended and extended by the National Lottery Act 1998, permits the British government Minister (the Secretary of State) responsible for the National Lottery to issue directions to the National Lottery Commission on any subject, but in particular as concerns the issuance of licenses and the conditions under which such licenses are to be held. Such directions have in fact been issued by various Secretaries of State for Culture, Media and Sport, were last revised on 24 June 2005 and are publicly available in electronic form at http://www.natlotcomm.gov.uk/uploadedfiles/Directions_from_June_05.pdf

⁸⁹⁹ The sole licence issued under sec. 5 of the National Lottery etc. Act 1993 is subject to a long list of detailed conditions. Together with the formal terms of the licence, these are publicly available in electronic form at http://www.natlotcomm.gov.uk/uploadedfiles/Section_5_licence_as_at_25_July_2005.pdf The conditions under which licenses to operate particular lotteries have been issued pursuant to sec. 6 of the National Lottery etc. Act 1993 are also publicly available. As these conditions are very voluminous and apply only to individual lotteries, all of which are operated by the holder of the sole licence issued under sec. 5, we do not mention them individually in this report.

⁹⁰⁰ Paragraph 30 of the conditions attached to its license issued under sec. 5 of the National Lottery etc. Act 1993 requires the operator with exclusive rights to run the United Kingdom's national lottery to provide various types of management information to the National Lottery Commission. Details of the information to be provided and of the way in which it is to be provided are specified by the National Lottery Commission in this document, which was last revised in March of 2005. It appears that these specifications have not been made publicly available, but Camelot Group plc. has provided us a copy.

⁹⁰¹ The National Lottery Commission has formulated a list of results which must be achieved in order to fulfil various obligations that are imposed on the holder of the exclusive license to run the UK's national lottery. A failure to achieve any of these results will be treated by the Commission as a serious, rather than a trivial, breach of the licensee's obligations. The list is publicly available in electronic form at http://www.natlotcomm.gov.uk/Licencing/content_regulation_imperatives_home.asp

Gaming Clubs (Hours and Charges) Regulations 1984
Gaming Act (Registration under Part II) (Amendment) Regulations 1976, reg. 3
Gaming Charges Regulations 1973, reg. 2
Gaming Clubs (Permitted Areas) Regulations 1971
Gaming Clubs (Permitted Areas) (Scotland) Regulations 1971
Gaming Clubs (Prohibition of Gratuities) Regulations 1970
Gaming Clubs (Licensing) Regulations 1969
Gaming Act (Registration under Part III) Regulations 1969
Gaming Act (Registration under Part II) Regulations 1969

4. Machine Gambling Outside Casinos

Gaming Act 1968, Part III and Schedules 7 and 9

Regulatory Reform (Gaming Machines) Order 2003
Deregulation (Bingo and Other Gaming) Order 2002
Amusement Machine Licence Duty (Medium-Prize Machines) Order 2001
Gaming Machines (Maximum Prizes) Regulations 2001
Gaming Act (Variation of Monetary Limits) (No 2) Order 2001
Gaming Act (Variation of Monetary Limits) Order 2001
Gaming Act (Variation of Monetary Limits) Order 1999
Amusement Machine Licence Duty (Monetary Amounts) Order 1998
Amusement Machine Licence Duty (Small-Prize Machines) Order 1998
Gaming Machines (Maximum Prizes) Regulations 1998
Gaming Act (Variation of Monetary Limits) (No 2) Order 1998
Gaming Act (Variation of Monetary Limits) (No 2) Order 1997
Amusement Machine Licence Duty (Amendment) Regulations 1997
Deregulation (Gaming Machines and Betting Office Facilities) Order 1996
Amusement Machine Licence Duty (Special Licences) Regulations 1996
Betting and Gaming Duties Act 1981 (Monetary Amounts) Order 1995
Amusement Machine Licence Duty Regulations 1995
Gaming Act (Variation of Monetary Limits) (No 2) Order 1995
Gaming Act (Variation of Monetary Limits) (No 3) Order 1992

5. Betting

Betting and Gaming Duties Act 1981
Horserace Betting Levy Act 1981
Horserace Totalisator and Betting Levy Boards Act 1972
Horserace Betting Levy Act 1969
Finance Act 1966, sec. 6
Betting, Gaming and Lotteries Act 1963, Part I and Schedules

General Betting Duty (Amendment) Regulations 2004
General Betting Duty (Amendment) Regulations 2003
Horserace Betting Levy (Bookmakers Committee) Regulations 2003
Betting, Gaming and Lotteries Act 1963 (Schedule 4) (Amendment) Order 2002
Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
General Betting Duty Regulations 2001
Licensed Betting Offices (Amendment) Regulations 1997
Deregulation (Betting Licensing) Order 1997
Deregulation (Betting and Bingo Advertising etc.) Order 1997
Deregulation (Gaming Machines and Betting Office Facilities) Order 1996

Betting, Gaming and Lotteries Act 1963 (Schedule 4) (Amendment) Order 1995
Licensed Betting Offices (Amendment) Regulations 1995
Dog Racecourse Totalisator Regulations 1995
Licensed Betting Offices (Amendment) Regulations 1993
Betting, Gaming and Lotteries Act 1963 (Schedule 4) (Amendment) Order 1986
Licensed Betting Offices Regulations 1986
Betting Levy Appeal Tribunal (England and Wales) (Amendment) Rules 1982
Betting (Licensing) Regulations 1963
Betting Levy Appeal Tribunal (England and Wales) Rules 1963
Betting Levy (Particulars of Bookmakers Permits) Regulations 1961
Betting (Licensing) Regulations 1960
Betting (Bookmakers Agents) Regulations 1960

6. Bingo

Bingo Act 1992
Gaming (Bingo) Act 1985
Gaming (Amendment) Act 1980
Gaming Act 1968, Part II and Schedule 2

Gaming (Bingo) Act 1985 (Fees) (Amendment) Order 2005
Betting and Gaming Duties Act 1981 (Bingo Prize Limit) Order 2004
Bingo Duty Regulations 2003
Gaming (Bingo) Act (Variation of Monetary Limit) Order 2002
Deregulation (Bingo and Other Gaming) Order 2002
Gaming Clubs (Multiple Bingo) (Amendment) Regulations 2002
Deregulation (Betting and Bingo Advertising etc.) Order 1997
Deregulation (Casinos and Bingo Clubs: Debit Cards) Order 1997
Gaming (Bingo) Act (Fees) (Amendment) Order 1995
Gaming Clubs (Multiple Bingo) Regulations 1986
Gaming (Bingo) Act (Fees) Order 1986

7. Media Gambling Services

Lotteries and Amusements Act 1976, section 14

8. Sales Promotional Gambling

Lotteries and Amusements Act 1976, section 14

9. Charity Gambling

Lotteries Regulations 1993
Exempt Entertainments (Variation of Monetary Limit) Order 1993

b) Provincial**1. General****i) Northern Ireland**

Betting and Gaming (Northern Ireland) Order 2004

Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985

Magistrates Courts (Betting, Gaming, Lotteries and Amusements) (No. 2) (Amendment) Rules (Northern Ireland) 2004

Gaming (Variation of Monetary Limits) Order (Northern Ireland) 2003

Gaming (Variation of Monetary Limits) Order (Northern Ireland) 2001

Gaming (Variation of Monetary Limits) Order (Northern Ireland) 1999

Gaming (Variation of Monetary Limits) Order (Northern Ireland) 1998

Gaming and Amusements with Prizes (Variation of Monetary Limits) Order (Northern Ireland) 1996

Magistrates Courts (Betting, Gaming, Lotteries and Amusements) (No. 2) Rules (Northern Ireland) 1987

ii) Gibraltar

Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

2. Lotteries**i) Northern Ireland**

National Lottery Act 1998

National Lottery etc. Act 1993

Finance Act 1993, Part I, Chapter II

Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, Part IV

National Lottery (Licence Fees) Order 2001

New Opportunities Fund (Specification of Initiatives) Order 2001

New Opportunities Fund (Specification of Initiatives) Order 1999

Apportionment of Money in the National Lottery Distribution Fund Order 1999

National Lottery (Imposition of Penalties and Revocation of Licenses) Procedure Regulations 1999

New Opportunities Fund (Specification of Initiatives) Order 1998

National Lottery etc. Act 1993 (Amendment of Section 23) Order 1996

Lottery Duty (Instant Chances) Regulations 1995

National Lottery Regulations 1994

Lottery Duty Regulations 1993

ii) Gibraltar

Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

3. Casino Gaming

i) Northern Ireland

Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, Part III, Chapters I and V

ii) Gibraltar

Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

4. Machine Gambling Outside Casinos

i) Northern Ireland

Betting and Gaming (Northern Ireland) Order 2004, sections 8 and 9
Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, Part III, Chapter III

Gaming Machine (Form of Amusement Permit) Regulations (Northern Ireland) 2004
Gaming (Bingo (Amendment) and Gaming Machine (Registered Clubs)) Regulations (Northern Ireland) 1999, reg. 3
Gaming Machine (Prescribed Licensed Premises) Regulations (Northern Ireland) 1998

ii) Gibraltar

Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

5. Betting

i) Northern Ireland

Betting and Gaming (Northern Ireland) Order 2004, sections 3, 4, 5 and 6
Horse Racing (Northern Ireland) Order 1990
Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, Part II

Bookmaking (Forms of Licences) Regulations (Northern Ireland) 2004
Bookmaking (Licensed Offices) Regulations (Northern Ireland) 2004
Horse Racing (Charges on Bookmakers) Order (Northern Ireland) 2003

ii) Gibraltar

Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

6. Bingo

i) Northern Ireland

Betting and Gaming (Northern Ireland) Order 2004, section 11
Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, Part III, Chapter II

Gaming (Bingo) Regulations (Northern Ireland) 2003
Gaming (Bingo) (Amendment) Regulations (Northern Ireland) 2001, reg. 3

ii) Gibraltar

Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

7. Media Gambling Services

i) Northern Ireland

Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, article 168

ii) Gibraltar

Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

8. Sales Promotional Gambling

i) Northern Ireland

Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, article 168

ii) Gibraltar

Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

9. Charity Gambling

i) Northern Ireland

Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, Part IV

ii) Gibraltar

Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

B) DRAFT LEGISLATION**a) Federal****1. General**

The British government will have to formulate and introduce a very large number of regulations and orders (subsidiary legislation) before the Gambling Act 2005 can come fully into force. As far as we are aware, it has not yet prepared any drafts of that legislation and none has been laid before the British Parliament for approval or annulment.

2. Lotteries

National Lottery Bill 2005

3. to 9.

No other draft legislation affecting gambling is currently before the British Parliament.

b) Provincial

We are not aware of any draft Northern Irish legislation concerning gambling. Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

C) SELF-REGULATION

1. General⁹⁰²

ARGO Social Responsibility Code⁹⁰³
iGGBA Code of Conduct⁹⁰⁴

2. Lotteries

Codes of Practice and Strategies devised by Camelot Group plc.⁹⁰⁵

Under 16s Strategy
Excessive Play Strategy
Vetting Code
Camelot Code
Whistleblowing Policy
Advertising and Sales Promotion Code
Player Guide
Independent Section 6 Strategy
Code of Practice on Top Prize Management

The Lotteries Council Code of Conduct⁹⁰⁶

⁹⁰² It is appropriate to include under this heading two self-regulatory instruments promulgated by the Remote Gambling Association (RGA). Membership of that organisation is in principle open to any supplier of remote gambling services who operates wholly or partially from at least one Member State of the European Economic Area, from the Channel Islands or from the Isle of Man; refer to <http://www.rga.eu.com/> However, the RGA is based in London and its membership is still largely British. The activities of the RGA cannot be allocated to any particular market sector, as its predecessor organisations basically represented the online betting and online casino industries, while operators supplying any type of gambling services by remote means are eligible for membership of the RGA.

⁹⁰³ The Code is available in electronic form at <http://www.argo.org.uk/rga-reports.html> via a link entitled, ARGO agrees a Social responsibility Code of Conduct for members . It was originally formulated by the Association of Remote Gambling Operators (ARGO). With effect from 1 August 2005, ARGO merged with the interactive Gaming, Gambling and Betting Association (iGGBA) to form the Remote Gambling Association (RGA). The RGA is still in the process of formulating its own self-regulatory instruments and thus provisionally applies the instruments adopted by its predecessor organisations.

⁹⁰⁴ The Code is available in electronic form at <http://www.argo.org.uk/rga-reports.html> via a link entitled, iGGBA Code of Conduct . For its origins and current status, refer *ibid*.

⁹⁰⁵ The operator with exclusive rights to run the United Kingdom s national lottery is required, by paragraphs 9, 10, 23 and 33 of and schedule 4 to the conditions attached to its license issued under sec. 5 of the National Lottery etc. Act 1993, to prepare a number of defined strategies and codes of practice, to submit them to the National Lottery Commission for approval and then to apply them. Some of these instruments, for example the Advertising and Sales Promotion Code, would presumably also apply to the activities of any independent operator licensed under sec. 6 of the National Lottery etc. Act 1993 to operate lotteries within the framework of the national lottery; refer below, section III. Barriers a) Panorama 2. Lotteries. The codes and strategies listed here are those copies of which the operator has supplied to the Institute. It appears that these are the instruments which the operator is required by the license conditions to make available to the public. Thus, we do not dispose of a copy of the personnel security code of practice required by para. 23. Similarly, we have not been provided with copies of codes which the operator has voluntarily prepared, for instance the Government Relations Code of Practice mentioned in para. 4.10 of the Camelot Code.

⁹⁰⁶ The Code is available in electronic form at http://www.lotteriescouncil.org.uk/public_docs/Code%20of%20Conduct.doc The Lotteries Council represents operators, other than the exclusive

3. Casino Gaming

BCA Code of Conduct⁹⁰⁷

BCA Code of Best Practice on Gaming and Social Responsibility⁹⁰⁸

Gaming Board Guidelines for the Casino Industry⁹⁰⁹

4. Machine Gambling Outside Casinos

BACTA Division 1 Code of Practice⁹¹⁰

BACTA Division 2 Code of Practice

BACTA Division 3 Code of Practice

BACTA Division 4 Code of Practice

BACTA Section 16 Code of Practice

BACTA Machine Guidelines 2005

BACTA s New Guidelines on AWP

BACTA Machine Guidelines 2005

5. Betting

BETA Code of Practice for Betting Exchanges⁹¹¹

6. Bingo

British bingo operators have not adopted any self-regulatory norms.

National Lottery licensee, which are licensed to supply lottery services in the United Kingdom. These are essentially charitable and public interest bodies; refer below, section III. Barriers a) Panorama 2. Lotteries.

⁹⁰⁷ All members of the British Casino Association (BCA) are obliged to respect its code of conduct. The BCA claims that its membership equates to over 90% of UK casinos. We do not presently have access to this code of conduct, as it is available on the BCA's website (<http://www.britishcasinoassociation.org.uk>) to BCA members only and the BCA has not yet responded to our stakeholder consultation enquiries.

⁹⁰⁸ All members of the British Casino Association (BCA) are obliged to respect this Code in addition to the BCA code of conduct. We do not presently have access to the body of this Code; only its Appendix B is available on the BCA's website (<http://www.britishcasinoassociation.org.uk>) and the BCA has not yet responded to our stakeholder consultation enquiries.

⁹⁰⁹ These Guidelines are published by the Gaming Board for Great Britain in electronic form at <http://www.gbgb.org.uk/bcaguides.htm>. They do not have the force of law, but all members of the BCA (refer to the two previous footnotes) are required to adhere to them. We therefore list the Guidelines in this Report as being self-regulation instruments.

⁹¹⁰ The British Amusement Catering Trade Association (BACTA) is the umbrella trade body representing manufacturers and wholesale suppliers of gambling machines, retail level operators of gambling machines and the owners of gaming machine arcades in Great Britain. The various codes and guidelines listed under this point are referred to on the BACTA website (<http://www.bacta.org.uk>), but are available to members only. The BACTA has not yet responded to our stakeholder consultation enquiries, so we do not presently have access to its codes and guidelines.

⁹¹¹ The code of practice incumbent upon members of the Betting Exchange Trade Association (BETA) has been approved by the British government's Department of Culture, Media and Sport. It is available in electronic form at <http://www.betfair.com/aboutus/CodeOfPractice.do>. Although betting exchange services are by their technological nature essentially provided in remote form and membership of BETA is apparently open to all betting exchange operators, the five operators currently providing such services in the Internal Market are all based in the United Kingdom. We therefore include this self-regulatory instrument in the present national legal report.

7. Media Gambling Services

British suppliers of media gambling services have not adopted any self-regulatory norms.

8. Sales Promotional Gambling

British suppliers of sales promotional gambling services have not adopted any self-regulatory norms.

9. Charity Gambling

The Lotteries Council Code of Conduct⁹¹²

⁹¹² The Code is available in electronic form at http://www.lotteriescouncil.org.uk/public_docs/Code%20of%20Conduct.doc The Lotteries Council represents operators, other than the exclusive National Lottery licensee, which are licensed to supply lottery services in the United Kingdom. These are essentially charitable and public interest bodies; refer below, section III. Barriers a) Panorama 2. Lotteries.

D) JURISPRUDENCE**a) Federal****1. General**

Victor Chandler International Ltd. v. H.M. Customs and Excise, [2000] 1 Weekly Law Reports 1296 (Court of Appeal of England and Wales)

Director of Public Prosecutions v. Essoldo Circuit (Control) Ltd, [1966] 1 Law Reports, Queen s Bench 799 (High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court)

Earl of Ellesmere v. Wallace, [1929] 2 Law Reports, Chancery 1 (High Court of Justice of England and Wales, Chancery Division)

2. Lotteries

R. v. National Lottery Commission, ex parte Camelot Group plc, [2001] Entertainment and Media Law Reports 43 (High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court)

R. v. Secretary of State for the Home Department, ex parte Lottery in Liechtenstein Foundation and The International Electronic Fundraising Company plc (Millions 2000), [1999] 3 Common Market Law Reports 304 (High Court of Justice of England and Wales, Queen s Bench Division)

Express Newspapers plc. v. Liverpool Daily Post and Echo plc, [1985] 1 Weekly Law Reports 1089 (High Court of Justice of England and Wales, Chancery Division)

Imperial Tobacco Ltd. v. Attorney-General, [1981] Law Reports, Appeal Cases 718 (House of Lords)

Readers Digest Association Ltd. v. Williams, [1976] 1 Weekly Law Reports 1109 (High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court)

Singette v. Martin, [1971] Law Reports, Appeal Cases 407 (House of Lords)

Taylor v. Smetten, (1883) Law Reports, 11 Queen s Bench Division 207 (High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court)

3. Casino Gaming

R. v. Gaming Board for Great Britain, ex parte Kingsley, (unreported judgment of Justice Jowitt of the High Court of Justice of England and Wales, Queen s Bench Division, on 11 January 1996)

R. v. Knightsbridge Crown Court, ex parte International Sporting Club (London) Ltd, [1982] Law Reports, Queen s Bench 304 (High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court)

R. v. Gaming Licensing Committee, ex parte Gala Leisure Ltd, [1976] 1 Weekly Law Reports 1109 (High Court of Justice of England and Wales, Queen s Bench Division)

Rogers v. Secretary of State for the Home Department, Gaming Board for Great Britain v. Rogers, [1973] Law Reports, Appeal Cases 388 (House of Lords)

R. v. Gaming Board for Great Britain, ex parte Benain and Khaida, [1970] 2 Law Reports, Queen s Bench 417 (Court of Appeal of England and Wales)

Gala Casinos and Stanley Casinos v. City of Glasgow Licensing Board, [2002] Licensing Law Reports 317 (Court of Session)

4. Machine Gambling Outside Casinos

R. (on the application of Spearing) v. London Borough of Hammersmith and Fulham, and Ablethird Ltd, [2002] Licensing Law Reports 401 (High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court)

R. v. Burt & Adams Ltd, [1998] 2 Weekly Law Reports 725 (House of Lords)

R. v. Liverpool Crown Court, ex parte Luxury Leisure Ltd, The Times, 26 October 1998 (Crown Court, Divisional Court and Court of Appeal of England and Wales)

Marinello v. Chief Constable of Lothian and Borders Police, [1997] Scots Law Times (1) 93 (Sherrif s Court)

Chief Constable Tayside v. Dundee Snooker Centre, 1987 Scots Law Times 5465 (Sherrif s Court)

Chief Constable Strathclyde v. Pollokshaws Road Snooker Centre, 1977 Scots Law Times 72 (Sherrif s Court)

Seay v. Eastwood, [1976] 1 Weekly Law Reports 1117 (House of Lords)

R. v. Herrod, ex parte Leeds City District Council, [1976] Law Reports, Queen s Bench 540 (Court of Appeal of England and Wales)

Walters v. Chief Constable of Nottingham, (unreported judgment of the Crown Court on 4 October 1975)

Tehrani v. Rostron, [1972] 1 Law Reports, Queen s Bench 182 (Court of Appeal of England and Wales)

Cronin v. Grierson, [1968] 2 Law Reports, Appeal Cases 895 (House of Lords)

5. Betting

Windsors (Sporting Investments) Ltd. v. Oldfield; Boulton v. Coral Racing Ltd, [1981] 2 All England Law Reports 718 (High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court)

Seay v. Eastwood, [1976] 1 Weekly Law Reports 1117 (House of Lords)

Dunsford v. Pearson, [1970] 1 All England Law Reports 282 (High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court)

Roy William Robinson Ltd. v. Cox, (1968) 112 Solicitors Journal 860, 67 Local Government Reports 188 (High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court)

Wilson v. Danny Quastel (Rotherhithe) Ltd, [1966] 1 Law Reports, Queen s Bench 125 (High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court)

Heaney v. Smith, [1964] 1 All England Law Reports 336 (Crown Court), affirmed by the Divisional Court on an appeal reported at [1964] 2 All England Law Reports 342

Charles v. Smith, (1963) 107 Solicitors Journal 94

6. Bingo

Rogers v. Secretary of State for the Home Department, Gaming Board for Great Britain v. Rogers, [1973] Law Reports, Appeal Cases 388 (House of Lords)

R. v. Gaming Board for Great Britain, ex parte Benain and Khaida, [1970] 2 Law Reports, Queen s Bench 417 (Court of Appeal of England and Wales)

R. v. Manchester Crown Court, ex parte Cambos Enterprises Ltd, a 19?? decision of the High Court of Justice of England and Wales, Queen s Bench Division, Divisional Court, subsequently reported in [2001] Licensing Law Reports 351

7. Media Gambling Services

Express Newspapers plc. v. Liverpool Daily Post and Echo plc, [1985] 1 Weekly Law Reports 1089 (High Court of Justice of England and Wales, Chancery Division)
News of the World Ltd. v. Friend, [1973] 1 All England Law Reports 422 (Court),

8. Sales Promotional Gambling

Imperial Tobacco Ltd. v. Attorney-General, [1981] Law Reports, Appeal Cases 718 (House of Lords)
ITP London Ltd. v. Winstanley, [1947] Law Reports, King s Bench 422 (High Court of Justice of England and Wales, King s Bench Division, Divisional Court)

9. Charity Gambling

Camille and Henry Dreyfus Foundation Inc. v. Inland Revenue Commissioners, (1955) 36 Tax Cases 126

b) Provincial

We are not aware of any important Northern Irish jurisprudence concerning gambling. Information concerning the legal and regulatory framework governing gambling in Gibraltar was not received in time for inclusion in this Draft Report, but will be included in our Final Report.

III. BARRIERS

a) Panorama

1. General

All of the five types of **gambling** (lotteries, casino games, machine gambling, betting and bingo) included within the scope of our Study are **permitted by the Gambling Act 2005, subject to a requirement** (not totally without exceptions) **that the operator have been granted a license by the British authorities**. Under section 33, it is a criminal offence, punishable by a fine and/or imprisonment, for any person to provide facilities for gambling without being licensed to do so.

Gambling operating licenses are to be issued by the Gambling Commission, a largely independent statutory authority which is to take over the functions of the existing Gaming Board for Great Britain. When exercising this competence, or carrying out any of its other functions, the Commission is required by sec. 22 of the Gambling Act 2005 to permit gambling, in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives. **The licensing objectives are defined** by sec. 1 as:-

- (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.

Sec. 70 sets out in general terms the matters to which the Gambling Commission is to have regard when considering applications for licenses. These are, in addition to the licensing objectives, essentially the suitability of the applicant, defined to include his personal integrity, his and his employees competence to operate the type of gambling in question and his and his associates financial and other circumstances, as well as the suitability of any gambling machines and equipment which the applicant proposes to use as part of his intended gambling operation. None of these criteria distinguish between British applicants and applicants established in other EU Member States or anywhere else for that matter. Furthermore, sec. 72 expressly instructs the Commission not to take into account whether a particular type of gambling would be suitable to the circumstances of any particular part of Great Britain or whether there may be unmet demand for a particular type of gambling service. It is essentially on the basis of those criteria that the number of British licenses to provide gambling services is restricted under the existing legislation⁹¹³. **The prima facie effect of the Gambling Act 2005 is therefore to allow for the issuance of as many licenses as there are qualified applicants from anywhere in the European Union.**

As concerns practical implementation of the statutory principles, sec. 23 requires the Gambling Commission to issue a formal statement of the procedure which it will follow in determining license applications and of the matters which it will take into consideration. It has been said⁹¹⁴ that the Gaming Board for Great Britain currently takes into consideration **the residence of a foreign applicant in Great Britain**. If that consideration were to be included in the sec. 23 statement when that is issued by the Gambling Commission, it would be difficult to avoid the conclusion that applicants who are domiciled or established outside the UK and do not wish to reside there will find it significantly more difficult than British

⁹¹³ Refer to para. 231 of the official *Explanatory Notes to the Gambling Act 2005*.

⁹¹⁴ Refer to Harris, J. & Hagan, J, *Guide to the Gambling Bill* (London, 2004), p. 17, para. 76.

applicants to obtain a gambling license. That would objectively constitute a barrier to the free movement of gambling services into the UK.

Ten different categories of licenses are listed in subsec. 65(2) of the Gambling Act 2005: three for different kinds of betting, three in respect of machine gambling, one each in respect of lotteries, casino gambling and bingo and one permitting the manufacture, supply, installation and/or adaptation of software for use in electronic gambling equipment. The effect⁹¹⁵ of subsec. 67(1) is that each one of these licenses can be issued as a remote operating license or as a license to operate in premises in the traditional manner. Subsecs. 67(2) and (3) specify that **no license may permit the operation of both remote gambling and gambling in premises. In the result, 20 different categories of license may be issued under the Gambling Act 2005.** This is not to say that an applicant cannot apply for more than one type of license at a time and indeed, sec. 68 expressly provides that premises-based casino, betting and bingo licenses bring with them the right to operate gambling machines and that premises-based casino licensees automatically have the right to offer betting on the outcome of virtual games, races, competitions or events.

The technology which may be employed by holders of remote operating licenses is listed in subsec. 4(1) of the Gambling Act 2005 as being the **internet, telephone, television, radio or any other form of telecommunications technology.** The appropriate British government minister is in addition given the power to make regulations specifying whether or not gambling by means of any particular system or method of communication is to be treated as remote gambling. **No limits are directly placed by the Gambling Act 2005 on the geographical location of persons to whom the holder of a remote operating license may offer or supply gambling services.** However, sec. 44 permits the British government, subject to a vote of approval in each House of Parliament, to designate any foreign country or place as a **prohibited territory** and to specify the penalties that may be incurred by anyone who commits the criminal offence of inviting or enabling a person in a prohibited territory to participate in remote gambling. It is as yet unclear whether the British government will actually make use of that provision.

Where a potential operator of gambling services does not wish to provide them remotely, on the other hand, he will have to acquire at least one **premises license in addition to his operating license(s)**, unless he offers only lottery services. Part 8 of the Gambling Act 2005 provides for the issuance of premises licenses in respect of casinos, bingo facilities, machine gambling centres and betting shops. This function is to be exercised by the licensing committees of elected local government authorities (sec. 2 defines a licensing authority). These committees are required by subsec. 153(1) to comply with the licensing objectives, with the Codes of Practice and Guidance to local government that the Gambling Commission is required by secs. 24 and 25 respectively to issue and with the statements of policy principles for licensing of gambling premises that local government bodies are required by sec. 349 to formulate, publish and review every three years. **Subsec. 153(2) expressly instructs licensing committees not to take into account whether there may be unmet demand for a particular type of gambling service.**

Neither the local government statements of policy principles, nor the Gambling Commission Guidance or Codes of Practice with which those statements must comply, have been drafted as yet. It is not impossible that they will contain elements that formally or effectively hinder gambling operators who are domiciled, resident or established in other EU Member States in obtaining licenses to offer traditional gambling services in premises located in particular local government areas. There is however, no reason to consider *a priori* that that will be the case.

⁹¹⁵ Refer to para. 212 of the official *Explanatory Notes to the Gambling Act 2005*.

2. Lotteries

The rather oddly named National Lottery etc. Act 1993, as amended by the National Lottery Act 1998, makes provision for a national lottery of the United Kingdom. This legislation permits the National Lottery Commission to issue two kinds of licenses, one for running the National Lottery and the other for promoting lotteries as part of the National Lottery. By virtue of subsec. 5(2) of the National Lottery etc. Act 1993, **only one entity may be licensed to run the national lottery at any one time**. The function of this licensee is effectively to coordinate the operation of different lotteries offered within the scope of this legislation, because subsec. 6(2) requires a separate license to be issued in respect of each specific lottery offered and sec. 20 specifies that promotion of a lottery includes the conduct of that lottery. The legislation does not directly place any restrictions on the number or identity of the person(s) who may be licensed to promote such lotteries, but subsec. 1(3) of the National Lottery etc. Act 1993 provides that, **if a lottery is to be promoted by someone other than the entity licensed to run the national lottery, it will only be lawful if it is promoted in pursuance of an agreement that has been made between that body and the lottery's promoter or proposed promoter**. At the present time, Camelot Group p.l.c. holds the sole license to run the UK National Lottery and all of the issued licenses to promote various lotteries (including EuroMillions) as part of the UK National Lottery. Between 1998 and 2001, one promotion license was in fact issued to a separate entity, namely a subsidiary of Vernons Pools Ltd, which is one of the main British providers of pool betting services, in particular football pools. The licensee did not apply to renew this license when it lapsed⁹¹⁶.

The Gambling Act 2005 provides for the new Gambling Commission to be able to issue **lottery operating licenses**, by virtue of subpara. 65(2)(j) and **remote lottery operating licenses**, when that clause is read together with sec. 67, which at first sight appear to be equivalent to the licenses available in other sectors of the market for gambling services. However, subsec. 98(1) specifies that such licenses **may only be issued to non-commercial societies and to local authorities**. As has been explained above⁹¹⁷, a society is deemed to be non-commercial if it operates for purposes other than the generation of private gain, in particular for charitable purposes or for supporting sport or cultural activities. While charitable gambling will be considered in detail below⁹¹⁸, it suffices to note here that the effect of this provision is to preclude any profit-oriented enterprise, whether British or not, from obtaining a lottery operating license. In respect of the local authorities which can apply for lottery operating licenses, subsec. 98(7) defines them as exclusively those local government entities which have been established by legislation in England, Scotland or Wales.

The combined effect of these provisions is that **a single enterprise enjoys a legislative monopoly over the provision of large scale commercial lotteries in the United Kingdom. Although other enterprises have the legal right to propose to conduct such lotteries, the monopolist retains the option of refusing to agree to any such agreement**. This monopoly is backed by the criminal law, as offences will continue to be committed under the Gambling Act 2005 by persons who, in Great Britain, advertise or offer to sell tickets in lotteries which are not licensed under that Act or under the National Lottery etc. Act 1993, even if the lottery is authorised by the laws of another EU Member State. Sec. 258 makes it a criminal offence to promote a lottery, unless a lottery operating license has been issued in respect of that lottery, the lottery falls within one of the exempted classes of small-scale private, charitable or customer lotteries, or the lottery falls within the framework of the National Lottery. Sec. 252 defines promotion to encompass anything that might be

⁹¹⁶ Refer to Monkcom, S.P. (Ed), *Smith and Monkcom's Law of Betting, Gaming and Lotteries* (London, 2nd ed. 2001), pp. 747-748, para. C17.20.

⁹¹⁷ Section I, point 2.9.

⁹¹⁸ This section, point 9.

considered to involve making the arrangements for a lottery, including the offer of or the actual sale or supply of lottery tickets. Sec. 259 makes it a criminal offence to facilitate a lottery by advertising it, printing promotional materials for it or printing tickets in it, subject to the same exceptions as appear in sec. 258. Sec. 265, which defines the territorial application or international reach of these provisions in rather convoluted terms, is intended to have the effect⁹¹⁹ that an offence is committed if any tickets in an unauthorised lottery are sold in Great Britain, or if anyone in Great Britain is in possession of such tickets (whether physically or through remote gambling equipment situated in Great Britain) with the intention of selling them to participants in Great Britain. On the other hand, printers or distributors who honestly believed that they were preparing tickets for purely foreign lotteries would not be incriminated.

Special arrangements have been made for the benefit of small businesses, societies and private groups that wish to run small lotteries. Sec. 258, in conjunction with sec. 252, makes it a criminal offence to promote a lottery, unless the person in question holds a lottery operator's license or is employed by a such a person or by the National Lottery, or unless the lottery in question is an exempt lottery within the meaning of Schedule 11 to the Gambling Act 2005. Schedule 11 makes provision for incidental charity lotteries, for lotteries open only to persons who all live or work on the same premises or who all belong to some group or society which was not established for the purpose of gambling (so-called private lotteries), for lotteries which cannot generate proceeds of more than £20 000 (approx. 29 000) for registered societies, and for **customer lotteries**. **According to subpara. 20(1) of Schedule 11, the latter may only be promoted by persons who occupy business premises located in Great Britain and tickets may only be sold to the customers of that business while they are present on the premises.** The commercial interest of such a lottery is limited, as draws may not occur more than once a week, participants cannot win anything worth more than £50 (approx. 73) and the promoter, under para. 21, has no right to make any profits from the lottery. It would not be of much use as a sales promotional tool, given that every participant is required by subpara. 26(c) to pay for each ticket before it may be issued to her. To the extent that British businesses may wish to provide this kind of lottery service to customers however, Part 3 of Schedule 11 overtly imposes a barrier against its provision by businesses established in other Member States to their British customers. This is **reinforced by para. 22, stipulating that advertising for a customer lottery may be displayed and/or distributed only on the promoter's premises any may not be sent out to customers.**

The legal position in Northern Ireland is quite similar. Under Part IV and in particular art. 131 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, **the only lawful lotteries are those promoted within the framework of the British National Lottery, private lotteries and lotteries run for the benefit of registered charitable or other societies of public interest in Northern Ireland.** It may be noted, in addition, that only residents of Northern Ireland are permitted to act as external consultants or managers who run lotteries on behalf of such societies. Art. 140 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 makes it a criminal offence to act in this manner without holding a lottery certificate. Such certificates may be issued, under paras. (4) and (5) of art. 141, only to natural persons who have been resident in Northern Ireland for at least twelve months prior to making an application for a certificate and to corporations which are registered as Northern Irish companies and all of the directors of which have been resident in Northern Ireland for at least twelve months prior to making an application for a certificate.

Finally, it is worth noting that subsec. 2(1) of the Lotteries and Amusements Act 1976 and para. (1) of art. 132 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 currently permit persons in Great Britain and Northern Ireland respectively to

⁹¹⁹ Refer to paras. 645 and 646 of the official *Explanatory Notes to the Gambling Act 2005*.

bring into those jurisdictions tickets in and advertisements of lotteries authorised to be promoted in other Member States of the European Union, as well as to send the proceeds of sale and any related documents to other Member States of the European Union. The Gambling Act 2005, on its face, will repeal the former provision, but not the latter. Thus, when the Gambling Act 2005 enters into force, it will introduce an additional barrier in Great Britain only, unless some kind of saving is made by regulations or commencement orders promulgated under that Act.

3. Casino Gaming

The first three subsections of section 175 of the Gambling Act 2005 contain **numerical limitations on the issuance of premises licenses for the supply of traditional casino gambling services**. These limitations were not foreseen by the draft legislation introduced into Parliament, but were added as a political compromise permitting the enactment of the legislation before the dissolution of Parliament in advance of a general election.

By virtue of subsecs. 175(1), 175(2) and 175(3), the numerical limitations are to apply by reference to three categories of casinos, namely regional casinos, large casinos and small casinos. According to subsec. 7(5), the characteristics of casinos which fall into each of these categories, as well as of casinos which are too small to be eligible for any license, are to be defined by subsidiary legislation requiring approval by parliamentary resolutions. This subsidiary legislation has not been promulgated yet, but the British government has published details of its intentions in this regard⁹²⁰.

Small casinos must offer at least 500 square metres of table gaming space and at least 250 square metres of additional, non-gambling space for the use of customers. They will also be permitted to offer betting services and some gambling machines⁹²¹.

Large casinos must offer at least 1 000 square metres of table gaming space and at least 500 square metres of additional, non-gambling space for the use of customers. They will also be permitted to offer betting and bingo services and a somewhat larger number of gambling machines⁹²².

Regional casinos must offer at least 1 000 square metres of table gaming space, at least 2 500 square metres of additional gambling floor space and at least 1 500 square metres of additional, non-gambling space for the use of customers. They will also be permitted to offer betting and bingo services and an exponentially greater number of gambling machines⁹²³, by reason of which they are popularly referred to as super casinos. Their official denomination as regional casinos refers to the policy of the British government to require applicants for licenses to operate such casinos to propose a large number of leisure and cultural activities for both local residents and visitors, in addition to gambling services, and to formulate a strategy for supporting the macro-economic regeneration of the disadvantaged areas in which they are expected to be located.

⁹²⁰ In chapter 4 of the *Gambling Act Regulatory Impact Assessment* prepared by the Department for Culture, Media and Sport, which is available in electronic form at http://www.culture.gov.uk/global/publications/archive_2005/gamblingact2005ria.htm

⁹²¹ Refer below, this section, point 4.

⁹²² Refer below, this section, point 4.

⁹²³ Refer below, this section, point 4.

Secs. 7 and 175 give the impression that the total number of casinos to be permitted to operate in Great Britain⁹²⁴ will not exceed 17 (one regional, eight large and eight small casinos). The truth, however, is that **all of the existing 137 British casinos, most of which are too small to qualify even for a small casino operating license under sec. 65 of the Gambling Act 2005, will be permitted to continue to operate for as long as they continue to qualify for licenses under the existing British gambling legislation.** Sec. 358 permits the government, when formulating the commencement orders which will bring different provisions of the Gambling Act 2005 into force at different times, to bring particular provisions into force for certain purposes only and to make transitional provision for particular matters pending the entry into force of the applicable provisions of the Act. Para. 2 of Schedule 18, through a reference in subsec. 358(3), specifically permits commencement orders to provide that existing licenses should be treated as though they were issued under the Gambling Act 2005 and thus amounts to a grandfather clause⁹²⁵. Para. 3 specifically permits such orders to disapply the minimum floor space requirements for casinos in respect of premises that currently is use as casinos. The stated⁹²⁶ policy of the British government is to allow existing casino licenses to continue in effect under (or despite) the Gambling Act 2005 and thus to recognise a fourth class of casino license, namely one issued under the Gaming Act 1968.

It should be noted, on the other hand, that sec. 166 of the Gambling Act 2005 permits elected local government bodies to resolve not to issue any (further) premises licenses for the supply of casino gaming services. The effect of this provision is that, although traditional casino operating licenses will be valid for the whole of Great Britain, **licensees could be effectively prevented from offering casino services in particular cities, towns or districts.** Such a resolution would have to be taken by the local authority as a whole and cannot be delegated to its licensing committee. It would have effect for three years at most, but could be periodically renewed by further resolutions. At present, there is no indication of whether any and if so how many local government bodies will choose to make use of this option. If the option is actually exercised, it will effectively prevent the supply of traditional casino gaming services in the relevant local government areas. It is therefore listed in this report as a potential barrier to free movement of gambling services.

Casino gaming is entirely prohibited in Northern Ireland. This is the effect of Chapter I of Part III of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985. In particular, art. 55 prohibits the playing of games involving a banker or games which for any other reason cannot be classified as equal chance gaming⁹²⁷, except on private occasions in residential premises. The prohibition is reinforced by **criminal offences which are committed by anyone who advertises the availability of gaming on premises located in Northern Ireland or the availability of facilities enabling people in Northern Ireland to stake money or anything valuable on gaming in Northern Ireland or anywhere else.** The effect of that provision is prevent the advertisement in Northern Ireland of both premises-based and remote gaming services offered by operators established in other Member States of the European Union.

⁹²⁴ And indeed in the United Kingdom as a whole, given that casinos are not permitted in Northern Ireland.

⁹²⁵ This is noted in para. 875 of the official *Explanatory Notes to the Gambling Act 2005*.

⁹²⁶ In para. 4.42 of the *Gambling Act Regulatory Impact Assessment* prepared by the Department for Culture, Media and Sport.

⁹²⁷ These are the essential elements of the definition of casino gaming in British law; refer above, section I, point 2.3.

4. Machine Gambling Outside Casinos

The Gambling Act 2005 does not directly impose any barriers to the free movement of machine gambling services. As the relevant provisions of the Act and the British government's published policies concerning machine gambling are mainly concerned with restricting the availability of gambling machines to licensed premises and to restricting the number of machine of different classes which may be located in individual premises of various classes, however, **any barriers in the way of foreign operators who wish to obtain premises licenses in Great Britain would indirectly impact on the free movement of machine gambling services.** That effect is most unlikely to be offset by the theoretical availability under secs. 65 and 67 of remote gaming machine general operating licenses. Given the major regulatory effort which has been dedicated to restricting the availability of physical gaming machines in Great Britain, it would be completely counterproductive to issue licenses to provide the same gambling services by electronic means.

This is particularly true of the highest turnover gambling machines, which are permitted to be physically located in casinos only. Thus, sec. 172 and in particular subsec. 172(3) of the Gambling Act 2005 specifies that Category A gaming machines may only be operated in a regional casino, which may operate 25 times as many machines as the number of gaming tables which it operates, but in no case more than 1 250 machines. Under subsecs. 172(3) and 172(4) and the British government's published⁹²⁸ intentions as to the gaming machine policy which will be implemented in the regulations that must be made under sec. 236, defining the various categories and sub-categories of permitted gambling machines, Category B1 gaming machines may be operated only in casinos. Large and small casinos may operate only five times and two times as many of such machines as the number of gaming tables which they respectively operate, but in no case more than 150 or 80 machines respectively. It is presently intended⁹²⁹ to define a Category B1 gaming machine as one which accepts a stake of no more than £2 (approx. 3) on any one game and on which no more than £4 000 (approx. 5 800) may be won in any one game. A Category A gaming machine is intended⁹³⁰ to be defined as one accepting unlimited stakes and offering potentially unlimited winnings. Furthermore, **the only operators who are permitted by sec. 244 to offer linked jackpots are the holders of casino premises licenses and they may link only those machines which are located on the same premises.** It must be concluded that the barriers to supply of casino gaming services that have been described above⁹³¹, have a directly proportional impact on the ability of potential operators to supply commercially lucrative machine gambling services in Great Britain.

The supply of high turnover machine gambling services in Northern Ireland is entirely prohibited. Chapter III of Part III and in particular arts. 106 and 108 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, as amended by art. 8 of the Betting and Gaming (Northern Ireland) Order 2004, allows gambling machines to be operated only in licensed bingo clubs, bookmaking shops and other licensed premises, as well as in amusements arcades and at travelling fairs, subject to the restrictions that a stake on a single game cannot exceed 30 or 50 pence (approx. 45 or 75 cent), depending on the type of machine in question, and that prizes cannot exceed £8 (approx. 12) and £25 (approx. 36) respectively. These provisions prevent gaming machine operators, whether

⁹²⁸ In chapter 2 of the *Gambling Act Regulatory Impact Assessment* prepared by the Department for Culture, Media and Sport, which is expressly referred to in para. 588 of the official *Explanatory Notes to the Gambling Act 2005*.

⁹²⁹ Refer to the *Gambling Act Regulatory Impact Assessment*, *ibid*, and particularly to the table set out after para. 2.13.

⁹³⁰ *Id.*

⁹³¹ This section, point 3.

resident or established in Northern Ireland, other parts of the United Kingdom or other Member States of the European Union, from offering high stakes and high prize machine gambling services in Northern Ireland.

It may be noted, in addition, that only residents of Northern Ireland are permitted to sell or otherwise supply gambling machines to operators located there, as well as to provide maintenance services for those machines. Paras. (1) and (4) of art. 81 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 makes it a criminal offence for anyone to supply a gaming machine, or to agree to provide maintenance services in respect of the essential mechanism inside such a machine, unless that person holds a gaming machine certificate or a gaming machine permit. Such certificates and permits may be issued, under paras. (4) and (5) of art. 84, only to natural persons who have been resident in Northern Ireland for at least twelve months prior to making an application for a certificate or permit and to corporations which are registered as Northern Irish companies and all of the directors of which have been resident in Northern Ireland for at least twelve months prior to making an application for a certificate or permit.

5. Betting

Provision is made by Part 5 and in particular sec. 94 of the Gambling Act 2005 for the **continuation, during a transitional period, of an existing barrier specific to the supply of pool betting services in respect of horseracing in Great Britain**. Sec. 94 foresees the issuance of a specific horse-race pool betting operating license which is to be treated for the purposes of section 33 as if it were a pool betting operating license authorising the provision of facilities for horse-race pool betting. Those sections effectively permit the **continuance of an exclusive license to carry on pool betting business (in any form) in connection with horse races on approved horse racecourses which is to be issued by the currently existent Gaming Board for Great Britain under subpara. 8(1)(a) of the Horserace Betting and Olympic Lottery Act 2004**. That legislation, which will survive the coming into force of the Gaming Act 2005, was enacted *inter alia* to permit the privatisation of the Horserace Totalisator Board (the Tote) by means of a sale to a trust in the interests of the British horseracing industry. The Tote currently holds the exclusive statutory right to offer pool betting services in respect of the results of horse races in Great Britain and is required to dedicate its profits to the encouragement of horse breeding, the advancement of veterinary science and the improvement of horse racing generally⁹³². So as to strike a balance between the desire to permit free competition in the betting market, on the one hand, and the desire to secure funding for the horseracing industry out of the proceeds of a commercially viable pool betting operation, the British government intends to extend the legislative monopoly in this field for a transitional period, during which the new racing industry trust will be able to prepare itself for the rigours of free competition⁹³³. Subsec. 8(2) of the Horserace Betting and Olympic Lottery Act 2004 accordingly states that **the exclusive license will be valid for seven years only, unless it is revoked earlier in consequence of a Ministerial direction** under subsec. 8(7) and subsec. 8(11) states that it may not be renewed.

Another specific transitional barrier is imposed, by sec. 180 of the Gambling Act 2005, to the supply of pool betting services in respect of greyhound racing. That section provides that holders of betting premises licenses may only offer pool bets in respect of the

⁹³² Under subsec. 24(1) of the Betting, Gaming and Lotteries Act 1963

⁹³³ In Annex A to a letter addressed to the Institute on 7 June 2005 on behalf of the British Department of Culture, Media and Sport, Mr. Adam Cooper stated that the government aims to honour the historic link between the Tote and horseracing, and in an effort to ensure that pool betting remains as a viable alternative to fixed odds betting, the Tote will be granted an exclusive license to carry on pool betting for seven years following the sale.

result of any greyhound race if they have made an arrangement with the operator of the greyhound racing track. Subsec. 180(4) is a sunset clause providing that that barrier and any equivalent condition which may be found in betting premises licenses, shall cease to have effect as of 1 January 2013. Subsec. 180(2) makes provision for the barrier to be removed earlier by ministerial order, but it is stated⁹³⁴ British government policy that the track operators pool betting monopoly at dog tracks will remain until 31st December 2012 .

Only residents of Northern Ireland are permitted to provide fixed-odds betting services in Northern Ireland. Art. 6 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 makes it a criminal offence for anyone to act as a bookmaker without having a bookmaker's license. Such licenses may be issued, under paras. (5) and (6) of art. 7, only to natural persons who have been resident in Northern Ireland for at least twelve months prior to making an application for a license and to corporations which are registered as Northern Irish companies and all of the directors of which have been resident in Northern Ireland for at least twelve months prior to making an application for a license. This constitutes a legal barrier to the supply in Northern Ireland of fixed-odds betting services by betting operators resident or established in other Member States of the European Union. An exception is specifically made in para. (7) of art. 6 for persons who hold bookmaker's licenses under the equivalent legislative provisions of the Republic of Ireland.

6. Bingo

Bingo in Great Britain will be regulated entirely within the framework of the Gambling Act 2005. Our analysis of that legislation is that it imposes no barriers to the supply of bingo services in Great Britain, in the sense of preventing operators established in other Member States of the European Union from obtaining licenses to provide bingo services in Great Britain or of making it substantially more difficult for such operators to obtain such licenses than for British operators to obtain them.

Only residents of Northern Ireland are permitted to provide commercial bingo services in Northern Ireland. Chapters I and II of Part III and in particular art. 76 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 makes it a criminal offence to offer commercial bingo services other than on the premises of a bingo club for which a gaming license has been issued. Such licenses may be issued, under paras. (5) and (6) of art. 61, only to natural persons who have been resident in Northern Ireland for at least twelve months prior to making an application for a license and to corporations which are registered as Northern Irish companies and all of the directors of which have been resident in Northern Ireland for at least twelve months prior to making an application for a license. This constitutes a legal barrier to the supply in Northern Ireland of commercial bingo services by bingo operators resident or established in other Member States of the European Union.

7. Media Gambling Services

The examples of media gambling services which have thus far been brought to our attention all take the form of prize competitions⁹³⁵. Where participants in a prize competition are required to directly or indirectly pay for the right to participate, it is possible that the

⁹³⁴ In para. 5.43 of the *Gambling Act Regulatory Impact Assessment* prepared by the Department for Culture, Media and Sport.

⁹³⁵ Para. 8.3 of the *Gambling Act Regulatory Impact Assessment* prepared by the Department for Culture, Media and Sport states that [p]rize competitions today are an important source of revenue for the media sector including television and mobile phone companies . Refer also to para. 8.9.

competition will be classified by the Gambling Act 2005 as a lottery⁹³⁶. The provider of media gambling services of that type would need to obtain a lottery operating license so as to avoid the risk of criminal prosecution, but such licenses cannot be issued to media publishers⁹³⁷.

It is however, quite easy to avoid a media prize competition being classified as a lottery, namely by designing the process of selecting winners, or the initial process of eliminating some participants, to depend upon something other than pure chance. This is the essence of what is defined in the previously quoted⁹³⁸ sec. 14 of the Gambling Act 2005 as not being a lottery. It should be remembered however, that subsec. 14(5) requires one to ignore questions, tests or exercises which are so simple that they actually do not exclude any significant proportion of participants or would-be participants. That hurdle is quite clearly taken by media prize competitions which require entrants to correctly complete a serious crossword puzzle, or to answer difficult questions of specific or general knowledge. We accordingly conclude that British law does not impose barriers to the supply of the media gambling services that are currently offered to readers, viewers or listeners.

Para. (1) of art. 168 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, which substantially restricts the supply of sales promotion services in Northern Ireland⁹³⁹, may also apply to the supply of media gambling services. It expressly applies to prize competitions conducted in or through any newspaper, but also to those conducted in connection with any trade or business, which may encompass media services other than newspapers. On the other hand, that provision expressly permits prize competitions where winning depend[s] to a substantial degree on the exercise of skill. That constitutes a safe harbour for the media gambling services that are currently on offer.

8. Sales Promotional Gambling

It has been noted above⁹⁴⁰ that sales promotions usually take the form of prize competitions and that the Gambling Act 2005 specifies that prize competitions do not constitute gambling under British law (and are therefore free of all the regulatory restrictions applicable to gambling services), unless they are individually to be characterised as gaming, betting, or lotteries within the legislative meanings given to those terms. It has also been noted that the Gambling Act 2005 envisages that sales promotional prize competitions will often amount to disguised lotteries or disguised betting and therefore carefully draws the boundaries between prize competitions on the one hand and lotteries and betting on the other hand, in terms of payment by participants and in respect of lotteries only, in terms of the skill or knowledge required as a prerequisite to participation⁹⁴¹. In particular, **if purchasers of the promoted goods or services are asked to buy them at a (relatively high) price or rate which reflects the opportunity to participate in the sales promotion and are not obtrusively given the option of free participation, by making a (postal or telephone) communication which is no more expensive or onerous than the payment option, then secs. 9 and 14, in conjunction with Schedules 1 and 2 to the Gambling Act 2005, require the promotion to be treated in law as a lottery or as betting**, depending on the nature of the other conditions of entry. Thus, if the paying participants are required to guess some fact or occurrence or the result of some race, competition or other process, the

⁹³⁶ Refer in particular to paras. 8.10 and 8.11 of the *Gambling Act Regulatory Impact Assessment* prepared by the Department for Culture, Media and Sport.

⁹³⁷ Refer below, this section, point 8.

⁹³⁸ Under point 2.2. of section I, above.

⁹³⁹ Refer below, this section, point 9.

⁹⁴⁰ Section I, point 2.8.

⁹⁴¹ Refer to paras. 8.12 *et seq.* of the *Gambling Act Regulatory Impact Assessment* prepared by the Department for Culture, Media and Sport.

promotion will qualify as betting and the promoter will commit criminal offences under sec. 33 and perhaps also sec. 37, unless he has been issued a betting operator's license. If, on the other hand, the paying participants are required to do nothing more than give their contact details, or state some obvious or well known fact, the promotion will qualify as a lottery and the promoter will need to apply for a lottery operating license under Part 11 of the Gambling Act 2005.

According to its terms of reference, the present Study must take account of sales promotions where participation is exclusively linked to purchase. This does not necessarily imply that the purchase price has been increased to take account of the purchaser's acquisition of the chance to win a promotional prize. To the extent that there is no such price uplift and participants are not directly or indirectly required to make any other payment beyond the cost of a normal telephone call or postal stamp, the promotion will be treated in British law as a real prize competition to which the restrictions of gambling regulation do not apply.

On the other hand, **the terms of reference do include within the scope of sales promotions, cases in which the purchase price has been increased to reflect the chance of winning a promotional prize.** To be able to determine whether any barrier to the free movement of gambling services is imposed by British law under these conditions, it is necessary to distinguish between two further scenarios.

The first is where participants in this type of competition are also required to guess some little known fact or occurrence or the result of some race, competition or other process in order to obtain a chance of winning. In that scenario, the promotion will be treated in British law as betting and the promoter will need to obtain a betting operator's license under the Gambling Act 2005 or face criminal prosecution. This is equally true of British and foreign sales promoters however, and the legislation does not contain indication that it will be substantially more difficult for foreign applicants to succeed in obtaining a general betting operating license. We must accordingly conclude that no barrier is imposed in this scenario.

The second (and in reality more likely) scenario is **where paying participants are required to do nothing more, other than to give their contact details, or perhaps to state some well known fact or obvious characteristic of the goods or services being promoted.** In that scenario, **the promotion will be treated in British law as a lottery and the promoter will need to obtain a lottery operator's license under the Gambling Act 2005 or face criminal prosecution.** It has been explained above⁹⁴² that licenses to operate lotteries will only be available to British charities, to British local government authorities, to the sole operator of the British National Lottery and to persons who have contracted with that sole operator. **Business enterprises (whether established in the United Kingdom or in another Member State of the European Union) which might wish to offer promotional competitions in respect of their goods or services, do not fall into any of these categories.** The relevant provisions therefore have the effect of completely preventing the supply in Great Britain of sales promotion services falling within this scenario and we must conclude that they constitute a barrier to that extent.

The restrictions imposed by the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 on sales promotion services offered in Northern Ireland are more extensive. Para. (1) of art. 168 makes it **unlawful to conduct any prize competition in which success does not depend to a substantial degree on the exercise of skill.** This is certainly true of promotional competitions the participants in which are required only to give their contact details, or perhaps to state some well known fact or obvious characteristic of the goods or services being promoted. Subpara. 168(1)(a) expressly includes within the scope of the prohibition, those competitions in which participants are required to forecast future results

⁹⁴² This section, point 2.

or events or to guess the results of events which have already occurred but are not yet generally known (which competitions would be classified as betting under the Gambling Act 2005). Whether or not participants are required to pay in order to have a chance of winning is irrelevant in Northern Ireland. Although para. 168(1) specifically applies to competitions that are conducted in connection with the sale of any article to the public, it also expressly applies to those conducted in connection with any trade or business, an expression that **would seem to be wide enough to cover sales promotions in respect of services as well. The result is a complete barrier to the supply of the most popular type of sales promotion services in Northern Ireland.**

9. Charity Gambling

Charity gambling, together with gambling services offered by and for the benefit of organisations exclusively concerned with the promotion of sporting and/or cultural activities, is dealt with in British law as gambling promoted by non-commercial societies. The definition which is provided for that expression in the Gambling Act 2005 has been set out above⁹⁴³. It does not contain any geographical or national restriction on the societies in question. Instead, the definition refers in subsec. 19(2), for the further identification of **societies with charitable purposes**, to

- (a) purposes which are exclusively charitable according to the law of England and Wales, and
- (b) in relation to Scotland, purposes which are charitable purposes only (that expression having the same meaning as in the Income Tax Acts).

It is therefore necessary to refer, in the first instance, to the **English law of charities**. Most institutions established for exclusively charitable purposes are required by the Charities Act 1993 to register with the Charity Commission. Subsec. 4(1) of that Act creates an irrebuttable presumption that every institution so registered is a charity for as long as it remains registered. **There is no inverse presumption that an unregistered institution is not a charity, but such institutions need to prove their charitable status wherever it is relevant, for example when applying for a gambling license or permit.** Registration therefore carries considerable practical advantages with it. Although this is not expressly stated therein, **the Charity Commission interprets⁹⁴⁴ various provisions of the Charities Act 1993 to mean that it can only register institutions which are governed by English law and which operate principally in England and Wales⁹⁴⁵.** Charities which operate in and under the laws of other Member States of the European Union are accordingly precluded from obtaining these practical advantages.

In the second instance, it is necessary to refer to **Scottish income tax law**. The relevant provisions are secs. 505 and 506 of the Income and Corporation Taxes Act 1988. The former

⁹⁴³ Section I, point 2.9.

⁹⁴⁴ Refer to para. 65 on p. 17 of the Charity Commission's information booklet, CC21 Registering as a Charity, available in electronic form on the Commission's website at <http://www.charity-commission.gov.uk/Library/publications/pdfs/cc21text.pdf>

⁹⁴⁵ For example, sec. 80 makes special provision for the Charity Commissioners to control certain Scottish charities that are managed or controlled wholly or mainly in or from England or Wales as if these were charities within the meaning of the Act. Similarly, Subsec. 96(1) defines a charity to mean any institution which is subject to the control of the High Court in the exercise of the court's jurisdiction with respect to charities. Under general principles of jurisdiction in private international law, the High Court of England and Wales has no control over charities (or other juridical persons) which are not established according to English law, do not maintain substantial assets in England and Wales and do not conduct their principal activities there.

sets out the exemptions from liability to income and other taxes which are available to charities in respect of income to be applied to charitable purposes. The latter circuitously defines a charity as any body of persons or trust established for charitable purposes only. Determination of the charitable status of organisations is governed in Scotland by Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. Subsec. 1(7) specifies that **relief under sec. 505 of the Income and Corporation Taxes Act 1988 may be accorded only to bodies which are either established under Scots law or are wholly or mainly managed in Scotland. Bodies which come within the second limb of the statutory test are nevertheless recognised and registered as Scottish charities only if they are established in some other part of the United Kingdom and are subject to the jurisdiction of British courts**⁹⁴⁶. Although recognition for tax purposes is not constitutive of charitable status in Scotland, subsec. 2(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 states that any body which is not so recognised shall not be entitled to represent itself or hold itself out as a charity. It is therefore **quite unlikely that a society would be recognised as charitable for the purposes of gambling regulation unless and until it has obtained recognition for tax purposes and a charity established outside the United Kingdom would find this very difficult to obtain.**

We conclude that, although the Gambling Act 2005 does not expressly preclude charities established in other EU Member States from taking advantage of its provisions concerning non-commercial gambling, it is in fact much more difficult for such charities to take advantage of those provisions than it is for British charities to do so. **British law concerning the definition of charitable purposes therefore constitutes an effective barrier to the free movement of charity gambling services.**

⁹⁴⁶ This was laid down in the case of Camille and Henry Dreyfus Foundation Inc. v. Inland Revenue Commissioners, (1955) 36 Tax Cases 126, and is repeated in Black, R. (Gen. Ed), *The Stair Memorial Encyclopaedia of the Laws of Scotland*, Vol. 3, Title Charities, para. 1167, making reference to an informational booklet which was published by the Inland Revenue, but has since been withdrawn.

b) Table

A) LEGISLATION ENACTED

| Applicable Laws and specifically relevant provisions | Barriers to the Free Movement of Gambling Services | Justifications for Continuation of Barriers |
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| <p>National Lottery etc. Act 1993, subsection 5(2) (in conjunction with subsection 5(1)) “Only one body may be licensed [to run the National Lottery] at any one time”.</p> <p>National Lottery etc. Act 1993, subsection 1(3) (in conjunction with subsections 1(1) and 2(1)) “[A lawful lottery forming part of the National Lottery] must be promoted or proposed to be promoted –</p> <p>(a) by the body licensed to run the National Lottery under section 5, or</p> <p>(b) in pursuance of an agreement that has been made between that body and the lottery’s promoter or proposed promoter”.</p> <p>Gambling Act 2005, subsection 98(1) “A lottery operating license may be issued only to</p> <p>(a) a non-commercial society</p> <p>(b) a local authority, or</p> <p>(c) a person proposing to act as external lottery manager on behalf of a non-commercial society or a local authority”.</p> <p>Gambling Act 2005, section 258 (extract) “(1) A person commits an offence if he promotes a lottery unless – ... (b) the lottery is an exempt lottery ... (2) (a) he holds an operating license ... [or]</p> | <p>Only one license is available for the exploitation of the British National Lottery. The licensee enjoys a discretion as to whether or not to agree to permit other operators to promote commercial lotteries within the framework of the national lottery. Licenses to operate large-scale lotteries outside the framework of the national lottery may be issued only to organisations with non-commercial aims and to local government authorities in Great Britain. As a result, the holder of the sole national lottery license is accorded a legislative monopoly over the operation of large-scale commercial lotteries in Great Britain. This is reinforced by criminal offences which would be committed by anyone who, in Great Britain, advertised or sold tickets in a foreign lottery, including one authorised to operate in another Member State</p> | <p>This restriction is needed in order to maximise total revenues raised for the support of good causes. To permit numerous operators to offer commercial lotteries would result in numerous small prize pools that are less attractive to players than the larger prize pools which can be offered by a monopoly operator.</p> |

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| <p>(4) (c) ... the arrangement to which the charge relates was a lottery forming part of the National Lottery".</p> <p>Gambling Act 2005, section 259 (extract) "(1) A person commits an offence if he ... (2) (c) advertises a specified lottery".</p> <p>Gambling Act 2005, subsection 265(1) "This Part applies to anything done in relation to a lottery – (a) in Great Britain, or (b) by the provision of, or by means of, remote gambling equipment situated in Great Britain".</p> | | |
| <p>Gambling Act 2005, Schedule 11, paragraph 20 (extract) "(1) A lottery is exempt if – (a) it is promoted by a person ('the promoter') who occupies premises in Great Britain in the course of a business ('the business premises'), (b) no ticket in the lottery is sold or supplied to a person except at a time when he is on the business premises as a customer of the promoter ..."</p> | <p>Customer lotteries can lawfully be offered by persons who have not obtained a gambling operator's license. However, such lotteries must operate entirely on business premises located in Great Britain. Businesses established in other Member States normally do not maintain premises in Great Britain. This requirement is accordingly a barrier to the provision of lottery services to customers by businesses operating outside the United Kingdom.</p> | <p>No justifications have been formally or obviously offered for the continuation of this barrier.</p> |
| <p>Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985: Article 131 states that lotteries, other than those authorised by Part IV of the Order or by subsection 2(1) of the National Lottery etc. Act 1993, are unlawful;</p> | <p>Licenses to operate large-scale lotteries outside the framework of the national lottery may be issued only to Northern Irish organisations with non-commercial aims. As a result, the holder of the sole national lottery license is accorded a legislative monopoly over the operation of large-scale commercial lotteries in Northern Ireland.</p> | <p>No justifications have been formally or obviously offered for the continuation of this barrier.</p> |

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| <p>Article 132 makes it a criminal offence to prepare, advertise, sell tickets or distribute winnings in an unlawful lottery;</p> <p>Article 133 permits small lotteries to be run incidentally to “exempt entertainments” other than for private gain;</p> <p>Article 134 permits private lotteries;</p> <p>Articles 135 to 139 lay down the conditions under which registered societies may offer lotteries.</p> | | |
| <p>Gambling Act 2005, section 175 (extract)</p> <p>“(1) No more than one casino premises license may have effect at any time in respect of regional casinos.</p> <p>(2) No more than eight casino premises licenses may have effect at any time in respect of large casinos.</p> <p>(3) No more than eight casino premises licenses may have effect at any time in respect of small casinos”.</p> | <p>The revised British legislation is drafted in such a way as to initially retain a precise and low numerical limitation on the issuance of licenses to operate traditional “land-based” casinos. Even if license applicants domiciled in other EU Member States were to have just as much chance of obtaining licenses as UK-domiciled applicants, it is unlikely that a license will be available for every qualified applicant. This provision accordingly constitutes at least a potential barrier to free movement of casino gambling services to the UK.</p> | <p>Casino gambling entails a higher incidence of problem gambling among players than many other types of gambling services. In addition, a proliferation of casinos would increase the risks of illegal gambling, criminal infiltration and money laundering. It is therefore appropriate to maintain a strict limit on the number of casinos permitted to operate in Great Britain.</p> |
| <p>Gambling Act 2005, section 166 (extract)</p> <p>“(1) A licensing authority may resolve not to issue casino premises licences.</p> <p>(2) In passing a resolution under subsection (1) a licensing authority may have regard to any principle or matter.</p> <p>(3) A resolution under subsection (1) –</p> <p>(a) must apply to the issue of casino premises licenses generally,</p> <p>(b) must specify the date on which it takes effect,</p> | <p>A person licensed to operate a traditional casino in Great Britain is also required to obtain a casino premises license from the local government authority responsible for the place at which the casino premises are proposed to be located. Local government authorities are accorded a statutory option to refuse to issue any casino premises licenses. Although it is not yet clear whether that option will actually be exercised in respect of any cities or towns where licensees actually wish to operate casinos, the provision clearly constitutes a potential barrier to the supply</p> | <p>Local communities should be permitted to decide for themselves whether or not they wish casinos to be located in their areas.</p> |

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| <p>(c) may be revoked by a further resolution, and (d) shall lapse at the end of the period of three years beginning with the date on which it takes effect (without prejudice to the ability to pass a new resolution)".</p> | <p>of casino gambling services in particular geographical areas.</p> | |
| <p>Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, article 55 (extract) "(1) ... no gaming shall take place where any one or more than one of the following conditions is fulfilled – (a) the game involves playing or staking against a bank, whether the bank is held by one of the players or not; (b) the nature of the game is such that the chances in the game are not equally favourable to all the players; (c) the nature of the game is such that the chances in it lie between the player and some other person, or (if there are two or more players) lie wholly or partly between the players and some other person, and those chances are not as favourable to the player or players as they are to that other person".</p> | <p>Commercial casino gaming in Northern Ireland is entirely prohibited.</p> | <p>No justifications have been formally or obviously offered for the continuation of this barrier.</p> |
| <p>Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, paragraph 130(1) (extract) "Except as provided by this Article, no person shall issue, or cause to be issued, any advertisement – ... (c) inviting the public to subscribe any money or money's worth to be used in gaming whether in Northern Ireland or elsewhere, or to apply for information about facilities for</p> | <p>The advertisement in Northern Ireland of both premises-based and remote gaming services offered by operators established in Great Britain or in other Member States of the European Union is a criminal offence. This is an indirect barrier to the supply of gaming services in Northern Ireland by such operators.</p> | <p>No justifications have been formally or obviously offered for the continuation of this barrier.</p> |

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| <p>subscribing any money or money's worth to be so used, and ... any person who contravenes this paragraph shall be guilty of an offence".</p> | | |
| <p>Gambling Act 2005, section 172 (extract) "(3) A casino premises license for a regional casino using at least 40 gaming tables shall by virtue of this section authorise the holder to make gaming machines available for use on the premises provided that – (a) each gaming machine is of Category A, B, C or D ... (4) A casino premises license for a large casino using at least one gaming table, or for a regional casino using fewer than 40 gaming tables, shall by virtue of this section authorise the holder to make gaming machines available for use on the premises provided that – (a) each gaming machine is of Category B, C or D ... (5) A casino premises license for a small casino using at least one gaming table shall by virtue of this section authorise the holder to make gaming machines available for use on the premises provided that – (a) each gaming machine is of Category B, C or D ..."</p> | <p>Only the holders of British casino licenses will be permitted to operate commercially lucrative, high turnover machine gambling services in Great Britain. This does not directly appear from the terms of the Gambling Act 2005, but British government policy statements indicate that this will be the effect of subsidiary legislation to be enacted under that Act. To the extent that the Act contains barriers to the supply of casino gambling services (refer above, this section), these provisions will introduce equivalent barriers to supply of high turnover machine gambling services in Great Britain.</p> | <p>The operation of gambling machines offering very high payouts and the possibility of rapidly repeated play entails a high risk of inducing players to gamble excessively and compulsively. Social policy considerations therefore warrant tight restrictions on the operation of such machines, both in numerical terms and in terms of their location and accessibility.</p> |
| <p>Gambling Act 2005, section 244 (extract) "(1) A person commits an offence if – (a) he makes a gaming machine ('the first gaming machine') available for use by another, and (b) the amount or value of a prize available through use of the first gaming machine is or may be wholly or partly determined</p> | | |

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| <p>by reference to use made of another gaming machine ('the linked gaming machine').</p> <p>(2) But subsection (1) does not apply where –</p> <p>(a) the person who makes the first gaming machine available for use is the holder of a casino premises license, and</p> <p>(b) the first gaming machine and the linked gaming machine are situated on the same premises.</p> | | |
| <p>Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, as amended by the Betting and Gaming (Northern Ireland) Order 2004:</p> <p>Article 95 makes it a criminal offence to use a gaming machine other than in registered clubs, licensed bingo clubs, premises licensed to serve alcohol, licensed bookmaking offices, amusement arcades and at travelling fairs, or to allow a gaming machine to be used at such premises or fairs if it was supplied by someone who did not hold a gaming machine certificate or permit issued under article 84;</p> <p>Article 106 fixes at 50 pence the maximum amount which may be staked on one game on a machine in a registered club and permits the maximum prize value to be fixed by regulations;</p> <p>Article 108 fixes at 30 pence (approx. 45 cent) the maximum amount which may be staked on one game on a machine in other premises or at fairs and fixes the maximum prize values at £25 (approx. €36) in respect of machines on premises licensed to serve alcohol and at £8 (approx. €12) in respect of other machines.</p> | <p>The supply of high turnover machine gambling services in Northern Ireland is entirely prohibited. The relevant legislative provisions prevent gaming machine operators, whether resident or established in Northern Ireland, other parts of the United Kingdom or other Member States of the European Union, from offering high stakes and high prize machine gambling services in Northern Ireland.</p> | <p>No justifications have been formally or obviously offered for the continuation of this barrier.</p> |

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| <p>Gambling Act 2005, section 94 (extract)</p> <p>“(1) This section applies to a pool betting operating license which provides for this section to apply.</p> <p>(2) The holder of a license to which this section applies may in writing authorise a person to provide facilities for horse-race pool betting.</p> <p>(3) An authorisation under subsection (2) shall be treated for the purposes of section 33 as if it were a pool betting operating license authorising the provision of facilities for horse-race pool betting”.</p> <p>Gambling Act 2005, section 33 (extract)</p> <p>“(1) A person commits an offence if he provides facilities for gambling ...</p> <p>(2) Subsection (1) does not apply to any activity by a person if –</p> <p>(a) he holds an operating license authorising the activity, and</p> <p>(b) the activity is carried on in accordance with the terms and conditions of the license”.</p> <p>Horse Race Betting and Olympic Lottery Act 2004, section 8 (extract)</p> <p>“(1) The Gaming Board shall, if the Secretary of State so requires, issue to the successor company a license (referred to in this Part as ‘the exclusive license’) granting the successor company the right –</p> <p>(a) to carry on pool betting business (in any form) in connection with horse races on approved horse racecourses ...</p> <p>(2) The exclusive license shall, unless revoked under subsection (7), have effect for the period of seven years beginning with the</p> | <p>The Horse Race Totalisator Board currently enjoys an exclusive right to offer pool betting services in respect of the results of horse races in Great Britain. While the British government wishes to privatise the Board, it also wishes the successor enterprise to benefit from the same exclusive right during a transitional period. Legislation therefore provides for this clear barrier to supply of betting services to continue in effect during seven years.</p> | <p>The British horseracing industry depend to some extent for its financial viability on the proceeds of monopoly pool betting services supplied by the Tote. If large commercial betting companies were immediately permitted to offer pool bets on the results of horse races, this source of income for the industry might seriously diminish. Although the Tote is to be privatised by sale to a trust for the interests of the horseracing industry, its exclusive rights will therefore be continued during a transitional period, enabling its successor to prepare for the rigours of competition.</p> |
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| <p>date of issue.</p> <p>... (5) While the exclusive license has effect – ... (b) a person other than the successor company may not do anything that the successor company is authorised to do by the exclusive license, except in accordance with an authorisation [from the successor company]”.</p> | | |
| <p>Gambling Act 2005, section 180 (extract) “(1) A betting premises license in respect of premises other than a dog track shall by virtue of this section be subject to the condition that pool bets may not be accepted in reliance on the license in respect of dog racing other than in accordance with arrangements made with the occupier of the dog track on which the racing takes place. ... (4) This section shall cease to have effect at the end of 31st December 2012 ...”</p> | <p>Operators of greyhound racing tracks in Great Britain currently enjoy an exclusive right to offer pool betting services in respect of the results of races on their tracks. This clear barrier to supply of betting services will continue to have a legislative foundation until the beginning of 2013. However, it will apply only to the supply of pool betting services from physical premises and will therefore not affect holders of remote pool betting operating licenses.</p> | <p>Operators of British greyhound racing tracks depend on the proceeds of pool betting services for their financial viability. Once large betting companies are permitted to offer more attractive pool bets on the results of greyhound races, this source of income for track operators will seriously diminish. The exclusive rights of track operators will thus be continued during a transitional period, enabling them to develop alternative sources of income.</p> |
| <p>Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, article 7 (extract) “(5) Subject to paragraphs (6) and (7), the following persons shall be disqualified for obtaining or holding a bookmaker’s license – (a) a person under the age of 21; (b) a person who does not ordinarily reside in Northern Ireland; (c) a person who has ordinarily resided in Northern Ireland for less than 12 months before making an application for the</p> | <p>Only residents of Northern Ireland are permitted to provide fixed-odds betting services in Northern Ireland. This constitutes a legal barrier to the supply in Northern Ireland of fixed-odds betting services by betting operators resident or established in other Member States of the European Union.</p> | <p>No justifications have been formally or obviously offered for the continuation of this barrier.</p> |

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| <p>grant of a bookmaker's license;</p> <p>(d) a body corporate which is not registered under the Companies Acts (Northern Ireland) 1960 to 1983 or which is not an existing company within the meaning of those Acts.</p> <p>(6) For the purposes of paragraph (5) a reference to a person, where that person is a body corporate, shall be construed as a reference to the directors of that body corporate".</p> | | |
| <p>Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, article 61 (extract)</p> <p>"(5) Subject to paragraph (6), the following persons shall be disqualified for obtaining or holding a bingo club license –</p> <p>(a) a person under the age of 21;</p> <p>(b) a person who does not ordinarily reside in Northern Ireland;</p> <p>(c) a person who has ordinarily resided in Northern Ireland for less than 12 months before making an application for the grant of a bingo club license;</p> <p>(d) a body corporate which is not registered under the Companies Acts (Northern Ireland) 1960 to 1983 or which is not an existing company within the meaning of those Acts.</p> <p>(6) For the purposes of paragraph (5) a reference to a person, where that person is a body corporate, shall be construed as a reference to the directors of that body corporate".</p> | <p>Only residents of Northern Ireland are permitted to provide commercial bingo services in Northern Ireland. This constitutes a legal barrier to the supply in Northern Ireland of such services by bingo operators resident or established in other Member States of the European Union.</p> | <p>No justifications have been formally or obviously offered for the continuation of this barrier.</p> |

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| <p>Gambling Act 2005: Sec. 339 states that a prize competition does not constitute gambling unless it is to be qualified as gaming, as betting or as a lottery;</p> <p>Subsecs. 11(3) and 14(6), by reference to Schedules 1 and 2, specify that, where participants are required to buy a product or service at a higher price and are not offered an easily accessible option of free participation, they are deemed to pay for a chance to win a prize;</p> <p>Subsecs. 14(2), 14(3) and 14(5) provide that, where prizes are allocated among paying participants purely by chance, including where paying participants are asked to answer obvious or extremely simple questions, the arrangement is to be treated as a lottery;</p> <p>Sec. 258 makes it a criminal offence to promote a lottery, other than small (private or local) "exempt" lotteries or lotteries forming part of the National Lottery, unless the promoter holds a lottery operating license;</p> <p>Subsec. 98(1) permits lottery operating licenses to be issued only to charitable, cultural and sporting organisations and to British local government authorities.</p> | <p>Where a sales promotion takes the form of a prize competition, participants are required to directly or indirectly pay for the chance of winning a prize and there is no requirement that potential participants exercise a real degree of skill or guess some little known fact or future outcome, then the competition constitutes a lottery according to British law and the promoter requires a license in order to avoid criminal prosecution. However, lottery operating licenses cannot be issued to the type of business enterprises which would want to offer sales promotions. The relevant legislative provisions therefore constitute a barrier to the supply in Great Britain of sales promotion services taking the form of paying prize competitions, for example where the price of the product or service is raised so as to amount to payment for the right to participate.</p> | <p>This prohibition is needed to provide collateral reinforcement of the monopoly rights held by the sole operator of the British National Lottery in respect of the supply of commercial lottery services (refer above, this point). In the absence of this barrier, it would be possible for enterprises to offer commercial lotteries disguised as sales promotions. The justification is therefore the same as that given for the existing barrier to supply of commercial lottery services.</p> |
| <p>Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, article 168 (extract)</p> <p>"(1) ... it shall be unlawful to conduct in or through any newspaper, or in connection with any trade or business or the sale of any</p> | <p>The most popular type of sales promotion services, namely those which do not require participants to pass any serious test of skill, cannot lawfully be offered at all in Northern Ireland.</p> | <p>No justifications have been formally or obviously offered for the continuation of this barrier.</p> |

III. BARRIERS Table

LEGISLATION ENACTED

UNITED KINGDOM

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| <p>article to the public –</p> <p>(a) any competition in which prizes are offered for forecasts of the result either -</p> <p>(i) of a future event; or</p> <p>(ii) of a past event the result of which is not yet ascertained, or not yet generally known;</p> <p>(b) any other competition in which success does not depend to a substantial degree on the exercise of skill”.</p> | | |
| <p>Charities Act 1993, section 80 and subsection 96(1) (by implication)</p> <p>Law Reform (Miscellaneous Provisions) (Scotland) Act 1988, subsection 1(7) (extract)</p> <p>“ ... ‘recognised body’ means any body to which the Commissioners have given intimation ... that relief will be due under section 505 of the Income and Corporation Taxes Act 1988 in respect of income of the body which is applicable and applied to charitable purposes only, being a body –</p> <p>(a) which is established under the law of Scotland; or</p> <p>(b) which is managed or controlled wholly or mainly in or from Scotland ...”</p> | <p>Provision is made in the Gambling Act 2005 for charitable and other societies to be permitted to offer certain gambling services. For the definition of “charitable purposes”, reference is made to the law governing charities. This makes it practically very difficult for charities established under the laws of other Member States and operated principally in other Member States, to obtain recognition as charities in Great Britain. The relevant rules of British charity law therefore effectively constitute a barrier to the supply of charity gambling services in the United Kingdom.</p> | <p>No justifications have been formally or obviously offered for the continuation of this barrier.</p> |

B) DRAFT LEGISLATION

The draft legislation currently before the British Parliament does not threaten to impose any further barriers to the free movement of gambling services or to the establishment in the United Kingdom of gambling service suppliers originating from other Member States.

C) SELF-REGULATION

None of the self-regulatory norms in force in the United Kingdom constitute barriers to the free movement of gambling services or to the establishment in the United Kingdom of gambling service suppliers originating from other Member States.

D) JURISPRUDENCE

| Court Decisions and specifically relevant passages | Barriers to the Free Movement of Gambling Services | Justifications for Continuation of Barriers |
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| <p><u>Camille and Henry Dreyfus Foundation Inc. v. Inland Revenue Commissioners</u>, (1955) 36 Tax Cases 126</p> <p>Holding – a charitable organisation can only be registered and recognised as a charity in the United Kingdom if it is established under British law and is subject to the jurisdiction of British courts.</p> <p>This jurisprudence contributes to the barrier to charity gambling services which has been set out above⁹⁴⁷.</p> | <p>Provision is made in the Gambling Act 2005 for charitable and other societies to be permitted to offer certain gambling services. For the definition of “charitable purposes”, reference is made to the law governing charities. This makes it practically very difficult for charities established under the laws of other Member States and operated principally in other Member States, to obtain recognition as charities in Great Britain. The relevant rules of British charity law therefore effectively constitute a barrier to the supply of charity gambling services in the United Kingdom.</p> | <p>No justifications have been formally or obviously offered for the continuation of this barrier.</p> |

⁹⁴⁷ This section, under “a) Panorama 9. Charity Gambling” and “b) Table A) Legislation Enacted”.