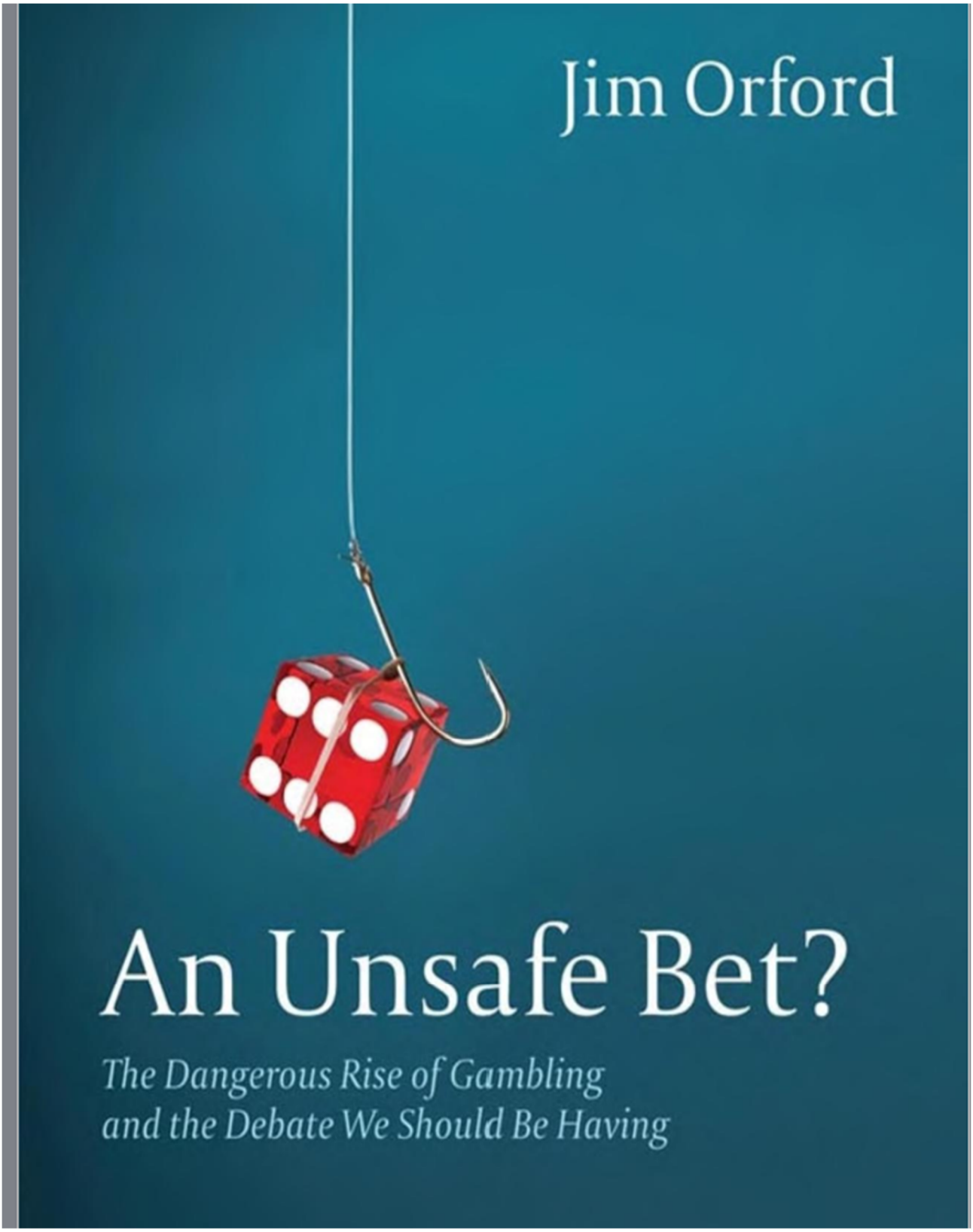

Jim Orford
An Unsafe Bet?
The Dangerous Rise of Gambling
and the Debate We Should Be Having

An Unsafe Bet?

The Dangerous Rise of Gambling and the Debate We Should be Having

Jim Orford

Alcohol, Drugs, Gambling & Addiction Research Group
School of Psychology, The University of Birmingham, Edgbaston,
Birmingham B15 2TT, UK

WILEY-BLACKWELL

A John Wiley & Sons, Ltd., Publication

DraftKings, Ex. 1058, p. 2
DK Crown Holdings v. Diogenes, IPR2023-00268

This edition first published 2011
© 2011 John Wiley & Sons Ltd

Wiley-Blackwell is an imprint of John Wiley & Sons, formed by the merger of Wiley's global Scientific, Technical, and Medical business with Blackwell Publishing.

Registered Office
John Wiley & Sons Ltd, The Atrium, Southern Gate, Chichester, West Sussex, PO19 8SQ, UK

Editorial Offices
The Atrium, Southern Gate, Chichester, West Sussex, PO19 8SQ, UK
9600 Garsington Road, Oxford, OX4 2DQ, UK
350 Main Street, Malden, MA 02148-5020, USA

For details of our global editorial offices, for customer services, and for information about how to apply for permission to reuse the copyright material in this book please see our website at www.wiley.com/wiley-blackwell.

The right of Jim Orford to be identified as the author of this work has been asserted in accordance with the UK Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, except as permitted by the UK Copyright, Designs and Patents Act 1988, without the prior permission of the publisher.

Wiley also publishes its books in a variety of electronic formats. Some content that appears in print may not be available in electronic books.

Designations used by companies to distinguish their products are often claimed as trademarks. All brand names and product names used in this book are trade names, service marks, trademarks or registered trademarks of their respective owners. The publisher is not associated with any product or vendor mentioned in this book. This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold on the understanding that the publisher is not engaged in rendering professional services. If professional advice or other expert assistance is required, the services of a competent professional should be sought.

Library of Congress Cataloging-in-Publication Data

Orford, Jim.
An unsafe bet? : the dangerous rise of gambling and the debate we should be having / Jim Orford.
p. cm.
Includes bibliographical references and index.
ISBN 978-0-470-66119-2 (cloth) – ISBN 978-0-470-66120-8 (pbk.) 1. Gambling.
2. Compulsive gambling. I. Title.
HV6710.O74 2010
363.4'2–dc22 2010027834

This book is published in the following electronic formats: eBook [9780470973066]; Wiley Online Library [9780470972977]; ePub [ISBN- TBC]

A catalogue record for this book is available from the British Library.

Typeset in 10/12pt Minion by Aptara Inc., New Delhi, India.
Printed in [Country]

01 2011

DraftKings, Ex. 1058, p. 3
DK Crown Holdings v. Diogenes, IPR2023-00268

Contents

Preface		vii
Section I:	**Gambling is Growing**	**1**
1.	The Extraordinary International Growth of Gambling	3
2.	The Rise of Gambling in Britain	17
Section II:	**Gambling is Dangerous**	**45**
3.	Gambling Addiction	47
4.	Modern Addiction Theory Applied to Gambling	71
5.	Does the Fault Lie in the Person or in the Product?	96
Section III:	**Gambling is Controversial**	**121**
6.	Discourses of Gambling: Eleven Ways of Talking About the Subject	123
7.	Public Attitudes Towards Gambling Are Negative	147
8.	The Costs and Benefits of Gambling for Society: A Hotly Contested Subject	159
Section IV:	**Gambling Expansion is Not Being Challenged**	**171**
9.	Governments Are Complicit in Supporting the Interests of the Gambling Industry	173

DraftKings, Ex. 1058, p. 4
DK Crown Holdings v. Diogenes, IPR2023-00268

10. Trapped: The Disempowering Effects of Failure to Challenge the Growth of Gambling 198

11. Conclusions and Recommendations: The Debate We Should be Having 222

Sources 236

References 259

Index 273

DraftKings, Ex. 1058, p. 5
DK Crown Holdings v. Diogenes, IPR2023-00268

way. The response to falling sales is inevitably to devise new games, invent ones that may be more attractive and to make it possible to play NL games more frequently. This runs the risk of converting what was intended as a harmless form of leisure pursuit, initially sold to the nation as 'tasteful and beyond reproach'[6] and hardly 'gambling' at all, into something that begins to have some of the characteristics of 'harder' forms of commercial gambling.[7] A second, mid-week, Lotto draw was introduced in February 1997, and a further game, *Thunderball*, arrived in June 1999, weekly to start with and then bi-weekly from October 2002. Further games such as *Hotpicks* and *Daily Play* followed. *Lotto Extra* allows jackpot prizes that are not won to rollover to increase the size of the jackpot prize the following week (up to a maximum of £50 million after which it must be shared out to second prize winners). *Instants*, renamed *Scratchcards* in 2003, has included well over a hundred different games with several on the market at any one time.[8]

The effect of the NL on the rest of the gambling industry was overwhelmingly one of stimulation: to use an expression employed by a number of commentators, the effect was one of 'ratcheting-up' gambling across the board.[9] This effect might have been anticipated but was not. According to David Miers, another of Britain's law professors who has made a special study of gambling, the government failed to recognise the implications of its 'promotion of a national and massively advertised new gambling opportunity offering prizes far in excess of those available elsewhere'. The effect was that other sectors of the commercial gambling market were driven to seek the same relaxations of the rules under which they were operating.[10]

In the last years of the century regulations were eased in almost all gambling sectors. The Gaming Board, which seems to have had a very comfortable relationship with the gambling industry in those years, generally agreed with everything that was being proposed. In the betting sector, for example, Sunday racing with on- and off-course betting was introduced, the provision of non-alcoholic drinks and snacks in betting shops was permitted for the first time and betting shop windows were now allowed to be clear and to display advertising. Particularly significant were moves towards the diversification of forms of gambling allowed in betting offices – not just an increase in the range of sporting events on which it was possible to bet, but also the permitting of jackpot gaming machines and fixed odds betting games.[11]

In the casino sector changes were introduced that made application for casino membership easier. Opening hours and hours during which alcoholic drinks could be sold were extended. Some limited advertising in newspapers, magazines and elsewhere, giving factual information about casinos, was permitted. Significant was the fact that debit cards could now be used for purchasing tokens. Other important changes were those that extended the variety of forms of gambling available, often in a way that was likely to increase the dangerousness of gambling.[12] 'Casino stud poker' and 'super pan 9' were new games introduced in 1995, and at the turn of the century other games were being proposed such as 'casino brag' (a three-card game played against the bank), 'big six' (a spin-the-wheel game) and 'sicbo' (in which betting takes place on

DraftKings, Ex. 1058, p. 6
DK Crown Holdings v. Diogenes, IPR2023-00268

the outcome of three dice being thrown). Other variations being proposed included a simplified version of roulette, a change to the layout of the dice table to allow additional bets and an accumulator jackpot feature to be added to casino stud poker. Even more significant was the proposal for electronic terminals for playing roulette positioned away from the table where the game was being played. The permitted number of jackpot slot machines allowed in a casino was also increased.[13] But it was also clear that the casino sector aspired to much greater things, including a much larger number of gambling machines – which in casinos in other countries such as France and the USA were considerably more profitable than the casino table games themselves – and the much greater development of the casino as a leisure centre with a wide range of entertainment and dining facilities alongside the gambling.[14]

At the same time the gaming machine sector was itself proposing changes; for example, to remove the requirement that machines could only accept payment for a single play, that machines be allowed to accept bank notes and cards, and removal of the requirement that a machine pay out before accumulated winnings could be replayed.[15] In the bingo sector, also, there were changes in the direction of derestriction – for example, the use of debit cards, abolition of controls on amounts that could be charged per two-hour period, abolition of the requirement to give licensing justices 14 days notice of any alterations to charges, permission for bingo clubs to install both low stake/low prize gambling machines and up to four jackpot machines, an extension of Sunday opening hours, and a permitted increase in maximum bingo prizes including removing limits on prizes for 'multiple bingo' (played across the country at several clubs simultaneously).[16] Unlike the bingo sector, which thrived in the years following the inauguration of the NL,[17] the football pools, with its long-held monopoly as a popular, long-odds form of gambling, declined markedly in popularity after the start of the NL, despite also succeeding in arguing for some changes in the direction of liberalisation such as a reduction in permitted age of participation to 16, newsagents being allowed to collect stakes and the introduction of jackpots and rollovers.[18]

The final decades of the twentieth century, and particularly the final years of the last decade, were ones in which the growth aspirations of the gambling industry were greatly encouraged by government inclinations in the direction of deregulation and the competitive stimulation provided by the start up of the NL. Underlying all the individual pieces of deregulation was the emerging philosophy that the way gambling was provided should be according to free market principles and it was that philosophy that governed the thinking of the Gambling Review Body which reported in 2001. That represented a complete turnaround in the official way of thinking about gambling that had previously prevailed. The view that had taken shape throughout the twentieth century, and which was finally enshrined in the successful 1968 Act, was that gambling should be permitted but not encouraged. It was acknowledged that there was a certain demand for gambling and that it was sensible that the demand should be met and that it was not wise to try to prohibit gambling altogether. At the same time, gambling promoters were not allowed to stimulate demand, for example

DraftKings, Ex. 1058, p. 7
DK Crown Holdings v. Diogenes, IPR2023-00268

by advertising or by setting up gambling facilities where there was no existing evidence of demand. A key principle was that gambling should only be meeting 'unstimulated demand', and proposals for new casinos and bingo clubs would be denied unless they could provide evidence of demand – the so-called 'demand test'. Casinos, for example, were only allowed in certain 'permitted areas' – 52 of them, each with 1969 populations over 125,000 – and if one already existed in an area it was unlikely that any proposal for another would be successful.[19]

The Gaming Board responded to the change in government thinking and pressure from the industry for deregulation by agreeing to depart from the previous rules. In 1994 the Board referred to the strict regulations they were operating under as 'outdated, intrusive and unnecessary'[20] and in 1999 it agreed to change its policy of objecting to the award of a new casino licence in a permitted area where another casino already existed.[21] Professor Miers made a very significant remark, and one with which the present author agrees, when he wrote that these very significant changes were '. . . not driven by any perceived substantial change in the level of consumer demand, but by supply-side self-interest'.[22] It was in that changed climate that the Home Office in 1999 asked for a complete review of gambling in Britain and for recommendations for legislative changes. The latter, it was understood, would be in a derestricting direction.

The 2001 report of the Gambling Review Body: gambling firms hit the jackpot

The Gambling Review Body, as it was termed, reported in July 2001, not to the Home Office which had set it up, but to the Department for Culture, Media and Sport (DCMS).[23] It made no fewer than 176 separate recommendations. The report had been eagerly awaited by everyone with a professional interest in gambling in Britain, and it was generally assumed that its recommendations would shortly enter into law, as indeed turned out to be the case. Under the chairmanship of Sir Alan Budd, a former senior Treasury civil servant and known freemarket sympathiser, it had been asked to take a thorough new look at all aspects of gambling (except the NL which the government protects from market forces). The switch of lead government department while the review was being carried out, from the Home Office, with its concern with crime and regulation, to DCMS, responsible for sport and leisure, was itself a good illustration of the profound change in government thinking about gambling.[24]

Almost all the recommendations of the review were in the direction of removing restrictions on gambling and it was widely recognised in the press for what it was. *The Daily Express* described it as a 'radical overhaul' and a 'sweeping aside of restrictions', *The Daily Telegraph* a 'liberalisation', and *The Guardian* the 'first big shake-up since 1968, lifting many restrictions'. *The Independent* suggested the report read like a 'bookie's wish list', and a report in *The Mirror* stated 'Gambling firms hit the jackpot yesterday'. The Chief Executive of *Gala Leisure*,

DraftKings, Ex. 1058, p. 8
DK Crown Holdings v. Diogenes, IPR2023-00268

quoted in *The Daily Mail*, saw the report as providing a 'terrific opportunity' which would end 'ludicrous anomalies'. In the same paper the Managing Director of *Leisure Parcs* was reported as saying, 'This is about unlimited stakes and prizes. You could walk in off the street and £1 could make you millions'.

The list of new freedoms for gambling promotion suggested by the review report was a long one. It included the abolition of the previous restriction of casinos to a limited number of permitted areas and the abolition of the rule that a new member of a casino was required to wait 24 hours before playing. A greater variety of games would be permitted in casinos and bingo halls, and bingo would also be allowed unlimited stakes and prizes and multiple games and rollovers. Perhaps most significant of all were the recommendations that the advertising of gambling would be permitted and that the prohibition on British-based online gambling sites should be removed. But the vision that excited most press attention at the time was that Britain might, under the new proposals, become for the first time host to Las Vegas-style casino gaming resorts, later to be termed 'regional casinos'. The existing law, which tightly constrained where a casino might be opened and what activities were permitted within it, did not permit that kind of place, containing both casino table games and rows of gambling machines which offer unlimited prizes – a type of machine not then permitted in the UK – as well as a range of other entertainment, dining, drinking and other facilities. The papers were full of the prospect that Blackpool on the north-west coast would be the first such resort in Britain. Almost all of them referred to the town, some at great length, often accompanied by photographs, drawings or cartoons depicting the iconic Blackpool tower and the seafront and proposed casino developments such as Pharaoh's Palace. The town was said to have been in decline for some years, with a high rate of unemployment, a slump in the hotel trade and an increase in drunkenness and crime generally. In *The Independent* a local council spokesperson was quoting as saying that it was 'the only solution to hauling Blackpool out of its downturn'.

In fact, change in British gambling policy had been continuously taking place throughout the twentieth century. Broadly speaking the change had been from one in which the anti-gambling movement was powerful at the beginning of the century to one in which liberalisation was predominant by the century's end.[25] Although any attempt to divide a whole century of policy change into discrete stages is bound to be an over-simplification, the century and a bit between the Street Betting Act of 1906 and the present day may conveniently be thought of as containing three fairly distinct periods in British gambling policy – see Table 2.1. Although some forms of gambling were legal in the first period, off-course cash race betting, betting offices and large public lotteries were illegal and this period was one that had many elements of prohibition where gambling was concerned. The 1960 Betting and Gaming Act brought a decisive end to that phase and Britain entered the second period, one characterised by a policy under which gambling was permitted, tolerated but not encouraged. Exactly when that gave way to the present era of liberalisation is a matter for debate but many believe that it was the National Lottery Act of 1993 which gave official blessing to gambling as a thoroughly approved of form of leisure activity – although

DraftKings, Ex. 1058, p. 9
DK Crown Holdings v. Diogenes, IPR2023-00268

Table 2.1 Three phases of British gambling policy, 1906–2007

Phase 1 – Partial prohibition, gradually challenged		
1906	Street Betting Act	Acceptance of bets on streets and in other public places made illegal
1923	Select Committee on Betting Duty	Accepted the principle of legal, regulated gambling; concluded a betting tax was practicable
1933	Royal Commission on Lotteries and Betting	Argued that prohibitions on gambling should be minimal but thought betting offices should remain illegal
1934	Betting and Lotteries Act	Legalised private and small public lotteries
1951	Royal Commission on Betting, Lotteries and Gaming	Recommended that bookmakers could accept cash bets in licensed premises; but that gaming machines be illegal
1956	Small Lotteries and Gaming Act	Introduced societies' lotteries for charitable or sporting purposes
Phase 2 – Gambling permitted, tolerated, but not encouraged		
1960	Betting and Gaming Act	Legalised almost all forms of gambling including commercial gaming clubs, licensed betting offices, and gambling machines in a wide variety of venues
1968	Gaming Act	Brought in controls on casinos; established the Gaming Board
1975	Lotteries Act	Allowed local authorities to conduct good cause lotteries
1978	Royal Commission on Gambling	Recommended the setting up of a National Lottery; and removal of some of the restrictions on betting offices
Phase 3 – The era of gambling liberalisation		
1993	National Lottery Act	Made provision for the setting up of a National Lottery (which begins operating in 1994)
2001	Gambling Review Body reported to the Department for Culture, Media and Sport	Recommended abolishing the principle of unstimulated demand for casinos and other gambling establishments; the legalising of larger prizes; tighter controls on machines; and the setting up of a Gambling Commission
2002	Department for Culture, Media and Sport publishes its proposals for liberalisation in *A Safe Bet for Success*	
2005	A new Gambling Act is passed	
2007	The new Act comes fully into effect	

DraftKings, Ex. 1058, p. 10
DK Crown Holdings v. Diogenes, IPR2023-00268

Table 2.2 Gambling machines allowed in Britain under the 2005 Gambling Act (as at January 2010)[32]

Category	*Maximum stake*[a]	*Maximum prize*[a]	*Allowed in*
A	Unlimited	Unlimited	Regional casino[b]
B1	£2	£4,000	Any casino
B2[c]	£15 per stake £100 per game	£500	Any casino Betting premises[d]
B3	£1	£500	All the above Bingo premises[e] Adult gaming centres[e]
B4	£1	£250	All the above Clubs and institutes[f]
C	£1	£70	All the above Pubs and bars[g] Licensed family entertainment centres[h]
D	10p[i]	£5[i]	All the above Unlicensed family entertainment centres and travelling fares[j]

[a] Maximum stakes and prizes are not fixed in the Act but can be changed in regulations set by the Secretary of State
[b] At the time of writing no regional casino has been authorised in Britain
[c] Formerly known as Fixed Odds Betting Terminals (FOBTs)
[d] A total of four machines allowed of any category B2 to D
[e] A total of four machines of categories B3 and B4 allowed plus any number of C and D
[f] A total of three machines allowed of any category B4 to D
[g] A total of two machines of categories C or D plus more by permit only
[h] Any number of machines of categories C and D allowed
[i] Non-cash stakes and prizes of slightly higher values are also allowed
[j] Any number of category D machines allowed

been incidental to the main business being conducted, such as takeaway food shops, mini cab and taxi offices and other non-arcade and unlicensed premises, they remain in other places where gambling is not the main business, such as motorway service and train stations, and, most significantly, in public houses.[30] Contrary to two of the principles expounded in the Gambling Review Report, the report did not recommend the removal of gambling machines from pubs. This is out of line with the Gambling Review Body's principle that opportunities to mix gambling and the consumption of alcohol on the same premises should be kept as few as possible, and certainly contrary to their desire to minimise what it called 'ambient gambling', that is gambling incidental to the main activities conducted on the premises in question. Social clubs are another site of controversy. Responding to great pressure from such clubs, many of them party political ones, the government overruled the Gambling Review Report

DraftKings, Ex. 1058, p. 11
DK Crown Holdings v. Diogenes, IPR2023-00268

recommendation and allowed machines in clubs to have jackpots of £250.[31] In general the move has been in the direction of allowing a larger number of machines, and machines of higher category.

Machine categories D, B2 and A deserve special note here. Category D machines have been one of the most controversial aspects of the 2005 legislation for the simple reason that Britain, uniquely amongst countries that have a systematic set of gambling regulations in place, continues to allow children of any age to play such machines. Britain stands entirely alone on this. Not surprisingly, therefore, the Gambling Review Body (GRB) expressed great unease on this issue. Being persuaded that machine gambling could be particularly dangerous for young people, their inclination was clearly to prohibit all kinds of machines for under 18 year olds.

> Although we have concluded that children should be at liberty to enter, what we have termed, family entertainment centres, we remain uneasy about encouraging children to gamble. Most will come to no harm, but some will. . . if we were creating the regulations for the first time, we would certainly recommend that no gaming machines should be played by under 18s[33]

They were doubtful about the argument put forward by the British Amusement Catering Trades Association (BACTA), who represent gambling machine manufacturers, that banning under 18s from playing arcade machines would have a devastating effect on the seaside resort business. Nor did they accept the argument of BACTA and others that low stake/low prize machines were trivial and should not be regarded as gambling at all. In the end, however, the GRB, by their own admission subjected to considerable pressure by the gambling industry which was particularly desperate to retain its profits from seaside arcades, drew short of prohibiting children from gambling in certain arcades or parts of arcades – often, but not only, at the seaside.

In fact, their final recommendation ran counter to another of their basic principles, that gambling should be restricted to people of 18 years of age or over (16 in the exceptional case of lotteries). It has been argued by the gambling industry, and was accepted as part of the government's thinking, that category D machines can be distinguished from other categories of machine. In fact until recently – and still colloquially – they were not referred to as gambling machines at all but rather as one class of 'amusements with prizes'! The distinction really does not stand up to scrutiny. A category D machine is in all essential respects just like any other gambling machine except for its lower maximum stakes and prizes. It is unlikely to be the absolute size of stakes and prizes that is of importance since what appears to an adult to be a small stake or prize is likely to be seen very differently by a child or by a young person on a very small income from pocket money or a part-time job. Referring to category D or low stake/low prize machines as 'amusements' and the arcades in which they are situated as 'family entertainment centres' relies on and helps to perpetuate confusion between play, which is at worst harmless and at best enhancing of

DraftKings, Ex. 1058, p. 12
DK Crown Holdings v. Diogenes, IPR2023-00268

child development, and exposure to a potentially dangerous activity which constitutes a threat to development.

At the other end of the scale, category A machines do not yet exist at all in Britain. With unlimited stakes and prizes, they would be introduced into Britain for the first time and would be confined to the so-called 'regional casinos'. Regional casinos would be casinos on the Las Vegas model, of a kind yet unknown to Britain, and which turned out to be the single most controversial aspect of the Gambling Bill (see below). At the time of writing the decision has been taken not to go ahead with any such facility for the time being. Those concerned about problem gambling are therefore much relieved that the line has for the moment been held against the introduction of category A machines.

Fixed odds betting machines and the changed nature of betting shops

Category B2 is a new one which became necessary as a result of one of the most recent innovations on the British gambling scene. In fact it is a good example of how the gambling industry is always trying to think up something new and attractive, in the process setting a further challenge for the gambling regulators. When the Gambling Review Body was deliberating at the turn of the century this type of machine was a newcomer. Officially known then – and still referred to by most people – as fixed odds betting terminals (FOBTs) or fixed odds betting machines (FOBMs), they started to appear in high street betting shops. They are machines on which can be played fixed odds and betting games. Some of the first such games offered in betting shops looked very much like lotteries, and *Camelot* raised objections. In fact, unlike a lottery, the size of winnings is fixed and is not dependent on the number of winning players.[34] FOBMs can now offer a variety of pure-chance games including virtual forms of bingo and what look just like casino games, such as roulette. Hence casino operators also raised objections. As a result they are now regulated as if they were gambling machines – which of course they are – and under the new regulations a betting office is allowed to install four gambling machines in total, including any FOBMs. Because of their large maximum stake of £100 they might be seen as lying somewhere between machine categories A and B,[35] and have now officially been categorised as B2 machines. The Department for Culture, Media and Sport has recognised that they 'risk seriously increasing problem gambling'.[36] The view of Mike Atherton, journalist and former test cricketer, in his well-informed book *Gambling*, is that FOBMs '. . . have changed the face of high-street bookmaking. They have enabled the bookie to bypass laws that for years prevented them from hosting casino-style games'.[37] By redesignating FOBMs as B2 category gambling machines, and withdrawing initial objections to the siting of them in betting shops, the government and its gambling regulator have legitimised this new form of gambling and contributed to its normalisation as part of the accepted, modern gambling scene. This is a perfect example of how gambling opportunities have snowballed. It was argued that they were not offering casino games because they were machine controlled; also fixed odds

DraftKings, Ex. 1058, p. 13
DK Crown Holdings v. Diogenes, IPR2023-00268

and a large maximum stake made it look as if they were suitable for a venue previously dedicated to horse race and other sports betting. The fact of the matter is that they have been responsible for one of the shifts in the direction of mixing different forms of gambling and increasing the scope of gambling forms available at a single location.

As previously mentioned, betting offices had already been allowed to extend the sports and other events on which they could lay bets, to use the telephone and internet to receive bets, to provide commentaries on sporting events from around the world, to advertise more freely and to modernise their premises. The 2005 Act formalised these changes by bringing bookmakers under the statutory regulator, the new Gambling Commission, for the first time; by abolishing the demand criterion for setting up new betting shops; and permitting evening opening, up to 10.00 pm, throughout the year (this had been allowed for the summer months for some years).[38] All of which was likely to 'facilitate increased spend from existing gamblers and attract new gamblers'.[39]

Casinos

Although the new regime has liberalised gambling across the board, it is the opening up of possibilities for new casinos that has aroused most media attention and controversy. Table 2.3 describes the three types of casino that could be licensed under the 2005 Act (plus those licensed earlier). In fact, although the third type is referred to as 'small', most British casinos in existence prior to 2005 were smaller still. Under a provision of the Act they will be allowed to continue to operate but such casinos would not be granted a licence if they were newly trying to start up now.[40] The minimum size requirements for new casinos

Table 2.3 Types of casino that can be licensed in Britain under the 2005 Gambling Act[41]

Regional casino Must have a minimum of 40 gaming tables and will be permitted 25 machines for each gaming table available for play i.e. a machine/table ratio of 25:1. Will need 50 tables to qualify for the maximum allowed 1250 machines.
Large casinos Must have at least one gaming table. Permitted five machines for each gaming table available for play, i.e. a machine/table ratio of 5:1. Will need 30 tables to qualify for the maximum allowed 150 machines.
Small casinos Must have at least one gaming table. Will be permitted two machines per gaming table available for play, i.e. a machine/table ratio of 2:1. Must have 40 tables to qualify for the maximum allowed 80 machines.
Existing '1968' casinos (i.e. licensed under provisions of the earlier, 1968, legislation) Allowed no more than 20 category B machines. No machine/table ratio applies. Can opt to have no category B machines but unlimited category C and D machines.

DraftKings, Ex. 1058, p. 14
DK Crown Holdings v. Diogenes, IPR2023-00268

reflects the anxiety that continues to be felt about the danger of proliferation of large numbers of small casinos, as happened in the 1960s prior to the passing of the 1968 Gaming Act.

Specifications of the ratio of gambling machines to tables for playing casino games such as roulette and blackjack are a prominent feature of the new casino licensing requirements, as Table 2.3 clearly shows. The reason for that is straightforward. In the well-known large casino resorts around the world – such as Las Vegas in the USA, Sun City in South Africa, in Macao in east Asia, on the Queensland coast in Australia, and in some other European countries – gambling machines, numbering in their hundreds, greatly outnumber gaming tables and are much the more profitable. These casinos are of a type sometimes referred to as 'international-style' casinos, of a kind hitherto quite unknown in Britain.[42] Although the 120 or so existing casinos is a larger number than existed in almost all other European countries, the British casinos were very different kinds of establishments, more in the nature of private clubs catering to a small specialised market.[43] Outside of the few relatively opulent London casinos catering largely for rich overseas visitors, the clientele of most British casinos was said by the 1978 Royal Commission – perhaps complacently – to be made up of local people 'who play for comparatively modest stakes in comparatively modest surroundings'.[44]

The three types of casino now to be permitted therefore represent a compromise between the introduction of a completely free market and a wish to preserve something of the previous, rather unique British approach. In the event, opposition to what the government was proposing has, at least for the moment, limited the change still further. In order to pass the Act in the 'wash-up' period just before the 2005 general election, the government was forced to restrict the number of regional casinos to a maximum of eight (the extraordinary original suggestion had been for 40) and finally to just one, plus an 'initial limit' of eight 'large' and eight 'small' casinos.[45] The government had also had to agree to set up an independent Casino Advisory Panel to advise where the 17 new casinos should be located. It was the location of the proposed single regional casino that proved most controversial and embarrassing to the government. The Millennium Dome in London was one of the 27 applicants. The government was finally forced to concede, under the Freedom of Information Act, that prominent members of the government had been meeting with a US businessman who had a stake in the Dome and who also had business dealings with one of the members of the Casino Advisory Panel. In the end, instead of recommending the Dome, or the seaside town of Blackpool, long considered the front runner with a strong case on the grounds of need for regeneration (one of the selection criteria), the panel recommended Manchester City Council's proposal to site the regional casino in a relatively poor part of inner Manchester, one of Britain's very largest provincial cities. This brought down a storm of criticism from many sources, including the Bishop of Manchester, predicting that the personal, family and community harms would outweigh any gains for Manchester and its people. The ability to monitor the social and economic impacts was a second criterion for selection of a location for the regional casino,

DraftKings, Ex. 1058, p. 15
DK Crown Holdings v. Diogenes, IPR2023-00268

a ticket for a real lottery, and (ii) playing a *virtual* game such as poker or roulette or playing a virtual gaming machine on the internet. The former was mostly perfectly legal prior to the 2005 Act. It is the latter – internet gambling on virtual games – that has been so controversial and the regulation of which is particularly problematic. It is generally agreed that the opportunities for fraud are so great that some form of regulation that protects the public is essential. What particularly exercised the Gaming Board and the British Government as the twentieth century reached its close was the march that was being stolen in this field by other jurisdictions, such as those in the Caribbean, notably Antigua, the states of Australia, Gibraltar, the Isles of Man and Alderney in the UK, South Africa, parts of Canada, and elsewhere, which permitted internet gambling sites to operate based in their countries.[60] For those countries it could be seen as a kind of cyber-tourism,[61] whereas for countries like Britain it seemed to represent a threat to its own nationals from lax regulation and, perhaps bearing most heavily, loss of potential British business opportunity, tax revenue and export earnings. The Gaming Board put the marketplace argument clearly in their report for the year 2000[62]:

> . . . there is a need to act quickly if a valuable commercial opportunity is not to be missed for ever. Such a missed opportunity would conflict with the government's stated aim of making Britain a leader in e-commerce.

The Gambling Review Body was particularly challenged by the question of online gambling. Overall their view was that it '. . . should be seen as just another way of delivering a service',[63] and they recommended that it should be licensed and regulated by the new Gambling Commission. It did recommend that players should be carefully identified to prevent under-age playing and money laundering, that players should be enabled to set maximum stakes and limits, and to self-ban (self-banning or self-exclusion is discussed more fully in Chapter 3), and that clocks and counting systems should be regularly and clearly displayed on the screen in order to keep players informed of how long they had been playing and how much they had won or lost. But at the end of the day the government's decision to permit internet virtual gambling from UK-based sites for the first time, under the 2005 Act, '. . . is as much to do with enhancing its own financial position as it is with protecting the uninitiated or the vulnerable from compromising their own'.[64]

In practice, because virtual remote gambling is a global industry, whether operators will choose to site themselves in Britain or elsewhere, and whether players will choose to use British-based sites or others, is difficult to predict. The operators will doubtless be looking to balance the credibility that might come with Gambling Commission licensing and freedom to advertise in Britain against the cost and burden of conforming to regulations plus the level of taxation being imposed on them.[65] It has been suggested that operators might be looking for a tax rate of around 2–3% rather than the 15% actually set by the March 2007 budget.[66] The latest information available to me when writing this book was for 2007–8, showing that most virtual internet gambling sites available

DraftKings, Ex. 1058, p. 16
DK Crown Holdings v. Diogenes, IPR2023-00268

to British citizens were based elsewhere, particularly in the small Channel Island of Alderney, in Gibraltar, on the Isle of Man and in Malta.[67]

Where the internet site is based is probably of less interest to players themselves. What is clear are the enormous number of internet gambling sites now available and their ease of access for anyone who has an internet connection at home, including sections of the population – including women and young people – who might not have been attracted to the places where gambling had been available in the past.[68] As Mark Griffiths, the UK's leading authority on internet gambling and on gambling amongst young people, puts it, now 'everyone has a casino in the home'.[69] If the aim of the British Government, when it decided to go for the most liberal option of legalising all internet gambling for British operators and players, was to make sure that Britain was at the forefront of the expansion of online gambling, then it appears to be succeeding. According to one review published in 2007, just over 100 online gambling sites were operating in the UK, a number only exceeded by Costa Rica, Antigua and Barbuda, Kahnawake Mohawk Territory in Quebec, Curacao and Gibraltar. The highest volume of online transactions was recorded in the UK.[70] A report by the Department for Culture, Media and Sport in 2006 estimated that there were approximately a million regular online gamblers in Britain, making up nearly one third of Europe's 3.3 million regular online gamblers.[71] Again, one of the special concerns is the ease of access for children and young people. One study, published in 2004, of 30 UK internet gambling providers, found that only half made meaningful efforts to verify a player's age.[72] Another found that a 16 year old with a debit card was able to place bets online on 30 out of 37 UK sites that were tested.[73] A survey, reported in 2007, of over 8,000 12–15 year olds, reported that 8% had played the National Lottery game on the internet. Some had played free games that were available online, but 18% reported that the system allowed them to register, 16% played with their parents, 10% had used a parent's online National Lottery account with the parent's permission, and 7% had used a parent's account without permission.[74] There are the same difficulties in regulating internet-provided gambling as there are with other potentially dangerous internet offerings such as internet pornography[75] and there is similar concern about lack of responsible practices.[76]

Spread betting

Spread betting is a special case. It is another late twentieth-century newcomer which illustrates yet again the rapidly changing nature of gambling and the dangers and uncertainties associated with the expansion of gambling. At the same time it illustrates something else, which is the ever-present question about what constitutes gambling and what distinguishes one form of gambling from another. The question arises in the case of spread betting because, although in recent variants involving betting on all manner of sporting events, it is without doubt gambling, its origins lie in stock market trading. Whether the latter itself constitutes gambling has always been an interesting question, and to most

DraftKings, Ex. 1058, p. 17
DK Crown Holdings v. Diogenes, IPR2023-00268

people the answer has been that most of the time it is not – although opinions on that may have changed as more and more evidence of rash and irresponsible financial trading becomes public. But in 1974 a former merchant banker set up *IG Index* (IG standing for Investors Gold) which in effect enabled punters to bet on whether the price of gold would rise or fall. What was offered was not a fixed-odds bet but rather a *spread* bet. The example Atherton gives is *IG Index* offering gold at 150–155 per ounce (the US dollar price of gold). If the gambler decides to buy (go long) at £10 for every one dollar movement, £10 would be made for every rise in price above 155, but £10 would be lost for every fall in price below 155. If the decision, on the other hand, was to sell (go short) at £10, then £10 would be made for every one dollar movement below 150 and £10 lost for every rise in price above 150.[77] It can be seen from that simple example that the wider the 'spread' offered, the less advantageous it is to the gambler. More importantly it can be seen that, unlike what happens in all other forms of gambling, where the player loses no more than the stake, in spread betting wins and losses are determined by the degree to which the player gets the bet right or wrong. Not only did other firms, such as *City Index* and *Cantor Index*, join *IG Index*, with more and more people betting on the stock markets in this way, but *Sporting Index*, offering spread betting on sport, followed shortly,[78] and even *Spreadfair*, the spread betting version of *Betfair*.[79] Cricket is an ideal sport for spread betting because of the wide variation in the number of runs that a team might score in an innings or the number of runs that can be scored by an individual batsman. But in practice the possibilities are endless – it is possible to bet on the number of corner kicks, minutes elapsing before the first goal or the number of yellow cards shown in a football match, or indeed on any countable variable pertaining to any sport.[80]

In law, unlike all other forms of commercial gambling, spread betting is a contract for differences and, if conducted commercially, is a 'contractually based investment'. Despite the inroads it has made in the world of sports betting, and reflecting its origins in stock market trading, it is regulated by the Financial Services Authority under the Financial Services and Markets Act 2000, and is completely outside the 2005 Gambling Act and regulation by the Gambling Commission.[81]

Other lotteries

One of the things that makes gambling such as fascinating field of study, but which at the same time makes it over-complicated for the public to understand and treacherous for the unwary, is its diversity. One of the odd corners of the British gambling field, for example, consists of the rules governing what gambling games can be played in pubs, with what stakes and for what prizes – of renewed interest since the rise in popularity of poker. Another relates to the kind of lotteries, other than the NL, that are permitted in law. One of the intriguing aspects here is the way in which the law has struggled with the distinctions between lotteries, which are defined as games of pure chance and where the size of winnings depends on the number of winners

DraftKings, Ex. 1058, p. 18
DK Crown Holdings v. Diogenes, IPR2023-00268