

**MODERNISING JERSEY'S GAMBLING LEGISLATION**

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**Presented to the States on 10th December 2002  
by the Gambling Control Committee**

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**STATES OF JERSEY**

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## MODERNISING JERSEY'S GAMBLING LEGISLATION

### PURPOSE OF THIS REPORT

Since taking office in the spring of 2001, the present Gambling Control Committee has gained States' approval for a number of amendments to legislation related to Licensed Betting Offices in an attempt to bring the legislation in this specific area into line, as far as possible, with best practice in other jurisdictions. It has also made significant progress in investigating the potential for extending the U.K. National Lottery to the Channel Islands (in conjunction with the Guernsey authorities) and is currently undertaking cost/benefit analyses of proposals for legislative changes that would be necessary to permit internet gambling and casinos. These issues must be examined very carefully before taking further action in order that the potential opportunities and threats can be properly assessed. This report seeks, therefore, to better inform the Economic Development Committee should it so choose to bring forward 'in principle' propositions to the States in the future.

It is clear that a complete review of Jersey's gambling legislation is necessary. It will be seen that the main thrust of this report is to recommend that Jersey's legislation is in line with that of the U.K. as far as it is appropriate to do so.

The functions of the Gambling Control Committee will be transferred to the Economic Development Committee in December 2002. The Committee, in publishing this report, is outlining its recommendations following the publication of the U.K. Gambling Review. The intention is to inform the future Economic Development Committee, and the States, of its views on the appropriate way ahead for Jersey. The Committee hopes that the Economic Development Committee will take its views into consideration when developing its strategy for the gambling industry.

### BACKGROUND

Jersey's gambling legislation dates back to the Gambling (Jersey) Law 1964. Although there have been amendments since then, particularly in the last year or so, designed to update the legislation, it cannot be doubted that a complete overhaul of our gambling laws is long overdue.

The Gambling Control Committee, as presently constituted, took office in March 2001. The newly elected Committee expressed its intention to progress, as a matter of urgency, a number of legislative amendments which had been in the pipeline for some time. This aim has been achieved. Alongside this, the Committee stated at the outset its' intention to put in train a review of Jersey's gambling legislation as a whole, and with particularly urgent attention being given to three specific issues -

- internet gambling;
- casino;
- National Lottery.

#### Recommendation 1

The Gambling Control Committee has identified a number of overall objectives, which it hopes will form the framework for discussion by the new Economic Development Committee. The objectives can be summarised as follows -

- to ensure that gambling is safe, not only for those who take part in it, but also in the way that it impacts on society in general;
- to ensure that gambling must be conducted fairly, remain free of criminal influence and infiltration;
- to ensure that any gambling is operated within a regulatory framework that offers protection for children and vulnerable adults.

The Committee wants to see a successful gambling industry; one that is able to respond rapidly and effectively to technological and customer-led developments in both the domestic and global market place, building on the Island's existing reputation for quality and integrity. For this reason, the Committee recommends that all gambling proposals should recognise and take account of the potential for abuse (albeit by a minority) and be linked to appropriate safeguards designed to provide support to those who fall prey to gambling addiction.

### THE CURRENT LAW

There is a general recognition in Jersey that our gambling legislation is in serious need of reform. It is fragmented and complicated, and hard for the general public to understand. The legislation is also rigid in that a good deal of detail is set out in regulations and so cannot readily be altered to take account of changed circumstances. The law has failed to keep up with technological advances and does not make provision for gambling on the internet or through interactive television.

Perhaps the most fundamental factor is that the 1964 legislation was enacted in an era when gambling was generally frowned upon and so the legislation is strictly prohibitive in nature.

The experience of the officers of the Gambling Control Committee is that most people do not know what controls on gambling exist. Many believe that our legislation mirrors that of the U.K. and significant resource is devoted each year to explaining the quite substantial differences. This can cause confusion and adds further weight to the compelling arguments for deregulation in many areas. That is not to say, however, that Jersey should fall blindly into line with other jurisdictions and the Committee respects the views of those Islanders for whom growth in gambling represents a worrying phenomenon.

This is borne out by experience from around the world that has suggested that over-enthusiastic deregulation can cause real social and economic problems from which it is hard to rein back. Gambling clearly has characteristics which make it unusually open to the risk of abuse and exploitation, and attractive to those who have insufficient knowledge of or respect for the laws of probability or a predisposition to addiction. Thus while gambling is a pleasurable leisure pursuit for many, it is also a source of great concern and hardship for the minority - and their families.

For that reason, the Committee has been guided in its recommendations by three over-arching principles -

- gambling should be crime-free, honest and well-regulated;
- players should know what to expect and be confident that they will not be exploited; and
- there should be adequate protection for children and vulnerable persons.

In this, the Committee has considered the recent proposals brought forward in the U.K., as well as in Guernsey, the Isle of Man and other jurisdictions. In some cases, just as elsewhere, Jersey's law imposes some unnecessary and unrealistic controls but also ensures too little protection in other areas.

It will be readily appreciated that a complete modernisation of Jersey's gambling law will be a significant task. The purpose of this report is to bring to the attention of the States and the public of the Island the need for such a process to be undertaken and to provide the Economic Development Committee<sup>[1][1]</sup> with a framework to enable it to take this forward.

## **A NEW APPROACH TO GAMBLING**

There have been significant technological advances in the gambling industry since the current legislative framework was developed in the 1960s. This trend will continue and it is important that our laws are sufficiently flexible to cope with this. It is important to realise that Jersey is not unique in having to face up to this situation. Other jurisdictions have historically placed amendment to gambling legislation low on the list of priorities and Jersey is further constrained by the already high demands placed on States' resources. What should be avoided, however, is further piecemeal and *ad hoc* amendment that does not examine the Island's gambling activities in all its levels.

### **Recommendation 2**

The Gambling Control Committee considers that Jersey should consolidate all gambling legislation into a single Law covering all categories of gambling activity<sup>[2][2]</sup>. The Law should be up to date, simple to understand and sufficiently flexible to meet changing circumstances without the need for frequent amendment. It should provide a more flexible framework within which appropriate adjustments can be made by subordinate legislation. The processes must be transparent and fair and the legitimate interests of all parties must be taken fully into account.

## **GOOD REGULATION**

The Gambling Control Committee has examined best practice with regard to regulation in other jurisdictions and has identified key factors that there are central to good regulation, namely -

- transparency - people should be able to access and understand processes and procedures;
- accountability - those taking part in both the undertaking and regulation of gambling activity should be answerable for their actions;
- proportionality - regulation should be in keeping with the nature of the activity and not disproportionate;
- consistency - application of standards should be uniform;
- targeting - action should ideally be intelligence led with a consistent and regular inspection regime.

Regulation in Jersey is currently achieved through the Gambling Control Committee, the courts and the police. Globally, there has been a general move away from this process of regulation, towards the adoption of a single body responsible for monitoring, regulating, licensing and in some instances, prosecuting gambling activity. Jurisdictions such as South Africa, Australia and closer to home, Alderney, have all moved to create Gaming or Gambling Commissions. The States of Guernsey has also begun to move in this direction.

**Recommendation 3**

The Committee recommends creating a single body, known as the Jersey Gambling Commission, to take over all regulatory functions, including licensing and regulating bookmakers and all other suppliers of commercial gambling.

A Jersey Commission would control entry to the industry, issuing operators' and personal licences on the basis of an assessment of honesty, competence and financial means. It would have powers to impose penalties on licensed operators.

**Recommendation 4**

The Committee recommends that there are standard procedures for making and processing applications and that applicants have a clear understanding of how and when decisions are taken. There should be statutory rules covering -

- the form of application;
- notice of hearings;
- conduct of hearings;
- the right to hear and comment on objections in good time;
- notification of decisions and reasons for refusal;
- time limit for decisions;
- the right of appeal.

The Gambling Commission will be responsible for inspecting licensed gambling premises to ensure that licensed activities are being conducted fairly and for investigating and taking action against illegal gambling. In carrying out these functions, the Commission will work closely with the States of Jersey Police and Customs and Excise.

There must be a right of appeal against Commission decisions, both in terms of matters of law and in relation to the merits of the particular case. Whether such appeals should be to a specific Tribunal or through the Courts system is something that needs to be given further consideration.

**Recommendation 5**

The Gambling Control Committee considers that the Jersey Gambling Commission as independent regulator would have powers and responsibilities similar to those proposed for the U.K. Commission and in existence elsewhere. The regulator would have to be appropriately resourced to be effective. It could therefore operate on a net running costs basis, funded by licence fee income. The Committee recommend that the new Economic Development Committee should explore the possibility of using the expertise and resources already to be found within other jurisdictions.

**BENEFITS FOR CONSUMERS AND BUSINESS**

The challenge will be to strip out the irrelevant controls from the present outdated legislation without jeopardising the three key objectives of -

- doing what is necessary to keep crime out;
- protecting the vulnerable; and
- ensuring that gambling products are fair to the consumer.

A modern approach to gambling in the Island should be based on best practice elsewhere. Jersey cannot afford to be out of step with what is happening throughout the developed world. The present legislation in Jersey is based on the premise that all forms of gambling are illegal except those that are specified in law as being legal. This inevitably causes confusion - especially if the laws do not keep pace with developments.

In an Island the size of Jersey, a dedicated independent regulator should be able to ensure that illegal gambling activities are prevented from operating and, in cases where any such illegal operation is uncovered, to ensure that the perpetrators are punished in accordance with the law. The Commission would be expected to make recommendations to the Economic Development Committee for further amendments to legislation, as and when required.

It will be important to remove the present confusing range of restrictions on advertising and promoting gambling products. They should be more visible and accessible and be offered within a fairer and more competitive operating environment. In order to ensure that these principles are achieved, the Committee recommend that the new Economic Development Committee considers working closely with the industry to develop a code of conduct to ensure that advertising is honest and fair and does not exploit children or vulnerable adults.

One area that the States might care to examine in more detail is the issue of legal enforcement of gambling debt. The Committee recommends that that all gambling debts should be enforceable in law in the same way as other consumer contracts. This will enable gambling operators to sue those placing bets and also those placing bets to sue the operators.

**Recommendation 6**

The Gambling Control Committee considers that a professional and properly resourced Jersey Gambling Commission should become responsible for advising the Economic Development Committee regarding amendment to the Gambling Law as well as working in partnership with the industry to create standards on advertising, harm reduction and other issues.

### Gaming machines

The issue of gaming machines has been a cause of particular concern in Jersey, largely because of the mix of terms widely in use. The position concerning 'amusement with prizes' (AWP) machines in Jersey was particularly confused until Amendments to the Regulations were made during 2002 which allowed specific gaming machines to be installed in Licensed Betting Offices only, thus clarifying the current position<sup>[3][3]</sup>.

In the U.K. all machines which offer prizes for stakes are classified as gaming machines. The AWP in the U.K. pays out up to £25 for a 30p stake - in Jersey this is now classified as a gaming machine. Movement in the U.K. and in other jurisdictions may assist on these issues<sup>[4][4]</sup>. The nature of developments in the U.K. (see Appendices) has helped shape the Committee's views as nearly all the gaming machines in Jersey will originate from the U.K. and as a captive market (insofar as there is no local machine manufacturing), the Committee believe it is appropriate to take account of the U.K. position in this respect.

There is also new range of machines (fixed-odds betting machines) which are not classed as gaming machines and there are no legal limits on stakes and prizes. New legislation must take these into account.

The primary reason for general concern, however, which is one the Gambling Control Committee takes most seriously, is that repetitive and compulsive playing of gaming machines can cause real damage, particularly to children. While the intention is to create an environment in which there is more choice for adults and new opportunities for business, this must be within a regulatory framework that offers better protection for children and other vulnerable people.

The issue of prizes offered by machines must also be carefully considered. In the past, operating companies have approached the Committee with requests for increases in allowable prize money. The Committee believes that this *ad hoc* system is unsatisfactory and recommends that this be undertaken by an independent, professional and neutral body fully aware of and responsive to the potential for harm and its social consequences. The Committee believes that such a body would be a Jersey Gambling Commission.

#### Recommendation 7

The Gambling Control Committee considers that Jersey legislation concerning gaming machines should be flexible and appropriate and that it should be capable of matching developments in the U.K. not least with regard to best practice in the area of harm reduction.

### Casinos

The States have considered proposals to allow casino operations in Jersey on several occasions, the most recent being in 1996, which was narrowly defeated. Much of the anti-casino feeling over the years has been based on religious or social concerns. That notwithstanding, there is also the question of whether there is sufficient significant economic benefit to the Island to be derived from casinos in relation to the resources required to operate them and to regulate their operation. A cost/benefit study is currently being prepared in order that should the Economic Development Committee decide to bring an 'in principle' proposition to the States, they will have the relevant background information.

The Committee has noted the U.K. government's view that there should be wide-ranging deregulation of casinos and accepts that it is essential that British casinos retain their high reputation for honesty and integrity, and that they remain free from money-laundering and other financial crime. The question of casinos in Jersey, however, is more complex, not least because of the disproportionate interest that it might attract internationally and the possible adverse affects that this could have.

That being said, the Committee recognises that Casinos are operated in many jurisdictions all over the world and can bring considerable benefits to an economy. In line with E.U. controls over money-laundering, a system of positive identification for all casino visitors would need to be introduced. The value of economic diversification, wealth creation and greater opportunities in the labour market are thus not lost on the Committee, but these would need to be balanced by an integrated harm reduction and addiction strategy paid for by the industry itself.

#### Recommendation 8

With regard to the issue of a casino operating in Jersey, the Committee recommends that -

- if the cost/benefit analysis currently being undertaken shows that there are significant benefits which outweigh potential risks and costs;

- if the international attention that a casino might attract was not considered to be detrimental to the Island's good name and high reputation in the financial world;
- and provided that there was proven to be an effective regulatory regime in operation,

the Gambling Control Committee recommends that the Economic Development Committee bring forward an 'in principle' proposition to allow a full debate by the States on the 'Casino Issue'.

## Bingo

In Jersey, only non-commercial bingo is allowed. The current regulations make provision for private bingo<sup>[5][5]</sup> and public bingo. Both types of bingo may be conducted only by registered societies operating under a permit, and are designed so that the whole proceeds of the gaming, including any admission fees, are devoted to the provision of prizes, and to purposes of the society. In the case of public bingo, the operator must make a detailed return to the Gambling Control Department stating all fees, expenses, proceeds, prizes and the purposes to which the proceeds were applied.

As a general rule, these proceeds are put to club or charitable use and the Committee is mindful, should the law on bingo be changed that charities should not be unduly disadvantaged in their fundraising. However, the Committee accepts that charities are not entitled to privileged protection but recommend that any proposed change in the law would be dealt with in a sufficiently sensitive manner to ensure that charities that relied on bingo activities for their fundraising were given a reasonable amount of time to modify or vary their fundraising activity.

It is expected that any future commercial bingo will be greatly influenced by the nature of the game in neighbouring jurisdictions<sup>[6][6]</sup>, not least because these places contribute the vast bulk of our visitor numbers. For that reason the Committee recommends that consideration is given to developments elsewhere.

The aim of any future measures, therefore, should be to provide greater choice and enjoyment for players, as well as more options for the industry in designing bingo games and meeting the requirements of their customers.

### Recommendation 9

The Gambling Control Committee considers that, if there is sufficient demand, bingo should be permitted in Jersey, subject to proper regulation by the proposed Gambling Commission and subject to a reasonable notice being given to charities that currently rely on bingo as one of their main fundraising events. The Committee recommends that the future Economic Development Committee gives consideration to the potential negative impact on current charitable fundraising activities by the enactment of this legislation and recommends that the Economic Development Committee explore ways in which that might be off-set.

## Betting

The States has recently passed legislation allowing for the use of the U.K. totalisator in Jersey and considers that the rules in relation to other types of betting should be fair and reasonable and that they should be clearly displayed where betting takes place. This is in the interests of the industry and the playing public. There should be adequate redress, through the courts, in the event of disputes concerning the terms on which bets are accepted and settled.

The Committee is mindful that different betting shops and different types of race operate under different rules. This can be confusing and has resulted in a number of complaints to the officers of the Committee. While the overwhelming majority of these complaints are settled to the satisfaction of all parties, the Committee is mindful that careful thought should be given to the introduction of a more homogeneous set of rules and recommends that a consultation process with the industry be established to that effect.

Jersey, as many know, allows the importation for racing of horses from the U.K. and many people watch with interest developments in that jurisdiction. The U.K. proposes to consider a recommendation that rules which restrict charges for the entry of bookmakers to racecourses should be abolished<sup>[7][7]</sup>.

The position in Jersey in relation to betting is similar, but with the added peculiarity that Jersey has its own set of rules, which differ in some respects from those of the United Kingdom. With regard to racecourses, there is no restriction on the fee for admission, solely the proviso that all bookmakers be charged the same fee. This ensures the course owner can achieve a market rate of entry, while ensuring a level playing field for all bookmakers who wish to attend the race meeting.

### Recommendation 10

The Gambling Control Committee considers that the law relating to betting in Jersey should be broadly in line with that

of the U.K. so that -

- where practical, there is one consistent set of rules;
- equality of access to track events by bookmakers is maintained;
- in the event of dispute, both parties can appeal to the Gambling Commission as a neutral arbiter.

## Lotteries

In Jersey, the future of the Channel Islands Lottery is key to the approach that should be taken towards lotteries generally.

Our legislation is designed to protect the position of the Channel Islands Lottery while making provision for private and society lotteries. The legislation allows for lotteries to occur that are incidental to an event, but these may not be for private gain and tickets may only be sold during the event in question. Clubs and societies may run their own lotteries, but these are subject to receiving a permit from the Gambling Control Department. While there is no restriction on the price of a ticket, the Regulations state that unless 40% of the takings are returned as prizes, the maximum number of tickets issued and the minimum value of prizes must be printed on each ticket. The position in Jersey is thus generally in advance of that in the United Kingdom.

Apart from the National Lottery, the position in the U.K. is similar and they will continue to provide for four types of lotteries -

- small lotteries - e.g. school sports days, fetes;
- private lotteries - confined to a club or workplace;
- society lotteries - including charity lotteries and sports club lotteries; and
- local authority lotteries.

Commercial lotteries will not be permitted - but it will be permissible for commercial operators to manage society, private or other lotteries on behalf of a club or charity on an expenses basis.

One area that the future Economic Development Committee may care to consider is the issue of Online lotteries - online gaming is considered more fully in the following sections. Online lotteries are currently not legal in Jersey, although they are in the U.K. Developments there indicate that they will continue to be allowed and that consideration is being given that there is no need for restriction in the kind of premises (including pubs) on which lottery terminals may be located. However, the frequency of draws should be no more than one a day and there should be effective safeguards in place (including payment controls) to prevent children under 18 from using them.

The Committee is not presently convinced that private lottery terminals in pubs is appropriate for Jersey, both because of the possible effect on the Channel Islands Lottery and because of the relative ease with which minors could gain access to them. This area should thus be kept under review.

### Recommendation 11

The Gambling Control Committee considers that Jersey's lotteries legislation should be kept under review. The special need of charities within the Island is recognised and the Committee hopes that in the event of the Channel Islands Lottery being discontinued, that the States would allocate some part of any fees or Impôts so generated for charitable use.

## THE CHANNEL ISLANDS LOTTERY AND THE NATIONAL LOTTERY

The Channel Islands Lottery is operated by the Gambling Control Committee in conjunction with the Guernsey Gambling Control Committee by virtue of the Gambling (Channel Islands Lottery) (Jersey) Regulations 1975, made under Article 3 of the Gambling (Jersey) Law 1964, as amended.

Sales of C.I. Lottery tickets in both Islands have declined significantly since the launch of the U.K. National Lottery in the mid-1990s<sup>[8][8]</sup>. Although sales picked up a little in 2001 because of the combined efforts of the newly formed Gambling

Control Committee and the Guernsey Committee, sales in 2002<sup>[9][9]</sup> are 5% down on 2001 in Jersey and 7.6% down in Guernsey. At present, the combined sales of both Islands are dipping ever closer to the 80,000 per draw mark - a level below which it becomes unviable to the sales agents. Nevertheless, some £217,000 was donated from lottery profits in 2001 to the Association of Jersey Charities. The trend concerning the decline in C.I. Lottery sales suggests strongly that a large number of C.I. residents are purchasing National Lottery tickets by various means. This view seems to be widely accepted in the Islands.

Recognising the perilous nature of the C.I. Lottery's viability, the present Gambling Control Committee opened

discussion, along with its Guernsey counterparts, with the U.K. authorities, to assess the possibility of extending the National Lottery to the Islands. Useful discussions have been held at senior officer level with the Lord Chancellor's Department, H.M. Treasury, H.M. Customs and Excise and the Department for Culture, Media and Sport, as well as with senior officials of the National Lottery Commission (the regulator) and Camelot (the operator). The nature and extent of the legislative changes required in the Islands and in the U.K. have now been defined. However, there are some issues of a constitutional nature that need to be addressed before any firm decisions can be taken about extending the National Lottery to the Islands.

The National Lottery is the only large-scale lottery permitted in the U.K. Since its launch in 1994, it has raised more than £11 billion for a wide variety of good causes and the U.K. government is anxious not to make legislative changes that might damage its continued success. It has therefore decided not to accept the Review Body's recommendation to remove existing restrictions on bookmakers offering bets on National Lottery results. For similar reasons, the government intends to protect the National Lottery's monopoly by retaining restrictions on annual sales and prize limits for society lotteries. The C.I. Lottery is similarly protected in the Islands.

Ideally, the Gambling Control Committee would like to see the C.I. Lottery continue until it is established finally whether or not the National Lottery will be extended to the Islands. If agreement on an extension were to be achieved with the U.K. authorities, the C.I. Lottery will be terminated. A significant revenue stream from lawful National Lottery sales in the Islands can be expected, although the Islands will not be able to benefit directly from 'good causes' money raised through sales. It is the hope of the Committee that in this case, a proportion of the Impôts so generated might be allocated for charitable purposes. If, on the other hand, the C.I. Lottery becomes unviable before any decision is reached on the National Lottery, or if it is decided that the National Lottery will not be extended to the Islands, then local charities will not continue to receive the current donations currently running at more than £200,000 a year.

#### **Recommendation 12**

The Gambling Control Committee believes that the National Lottery could and should be extended to the Islands. A significant revenue stream from lawful National Lottery sales in the Islands can be expected, although the Islands will not be able to benefit directly from 'good causes' money raised through sales. The Committee recommends that a proportion of the Impôts so generated might be allocated for charitable purposes.

#### **Pools**

As Jersey operates within the same pools competitions as the U.K. the experience of that jurisdiction is directly relevant. Research suggests that they will be allowed to have online entries and they should be allowed to operate through shops, which should be able to pay out winnings to the same levels as the National Lottery. Pools competitions will be able to offer unlimited rollovers. The Gambling Control Committee sees no reason why players of the pools in Jersey should be disadvantaged from those playing in the same game in the U.K. and indeed, could do nothing to prevent online access in any event. For that reason the Committee considers that legislation relating to the pools should be in line with those proposed for the U.K.

#### **Recommendation 13**

The Gambling Control Committee considers that legislation relating to pools competitions should be in line with those proposed for the U.K. namely -

- allow online entries;
- allow operation through shops; and
- allow unlimited roll-overs.

#### **Online gambling**

Online gambling operations are illegal in Jersey. The officers of the Committee have held extensive discussions over the past year with colleagues in Great Britain, Guernsey, Alderney and the Isle of Man regarding the whole ambit of online gambling. Discussions have also taken place with the Law Officers of the Crown, Financial Services Commission and various relevant States Departments. While it is recognised that online gambling is worthy of significant concern, it is also accepted that it is now a fact of modern life and to that end the continued prohibition of online gambling by Jersey consumers is an entirely unrealistic objective.

Consumers already have access to a wide range of overseas-based internet sites offering casino and machine-type games as well as those offering gambling products based on fixed-odds betting but which have many features of gaming.

There is obvious concern that online gaming presents opportunities for under-age gambling, as well as money laundering by international criminals. This second threat is the most real for the Island as legalisation would present an opportunity for criminal activity, whereas underage gaming is sadly not prevented by the current legislation.

The Committee notes that there will be a general move across the European Union towards legalising the provision of the full range of online gambling services including gaming. Considerable support for this proposal has been noted by the Committee, not only from those who would be seeking to take advantage of the commercial opportunities that would be created, but also from those who are concerned about the rapid proliferation of potentially under-regulated, non-E.U. gambling sites.

There is some evidence that there is a potentially vast international market for which gambling operators based in the E.U. will compete<sup>[10][10]</sup> and that this presents an opportunity for gambling operators to establish the full range of sites licensed and located in the U.K. under the watchful regulation of the Gambling Commission. Some of our direct competitors have already chosen to move in this direction, most notably in Alderney and the Isle of Man and have used the income thus generated to secure the majority of their Commissions' funding.

If Jersey is to move in this direction there are a number of hurdles that will have to be overcome. One is to ascertain the size of the market. Another is to ensure an effective regulatory regime whilst other issues include possible economic harm and ensuring that juveniles cannot gain access. Ultimately, a move towards online gaming must entail a total revision of the present law.

#### **Recommendation 14**

The Gambling Control Committee has sought advice from various Jersey authorities in order to gauge feeling concerning the balance between any risk posed by online gambling to Jersey's reputation as a well-regulated international finance centre on the one hand and the potential economic benefits on the other. The Committee has maintained a neutral stance and feels unable to make a positive recommendation in this regard until the results of a cost/benefit analysis currently being undertaken are made available.

#### **Prize competitions**

The situation in Jersey regarding prize competitions is quite different than in the U.K. While Britain allows a mixed game of skill and chance, Jersey has consistently advocated that to fall outside of the gaming prohibition, a game must be entirely skill based. A mixed game, involving skill and chance, is therefore prohibited. This difference has and is causing the Gambling Control Committee some difficulties, as it is responsible for enforcing a part of the law that many Islanders now see as being redundant and unnecessary.

It is recommended, therefore, that competitions be defined more precisely and operated within tighter regulatory limits. The objective should be to remove the potential for operators to circumvent the principle that lotteries should not be run for commercial gain whilst, at the same time, ensuring that companies' ability to undertake genuine and harmless sales promotions is not adversely affected.

#### **Recommendation 15**

The Gambling Control Committee recommends that prize competitions be defined more precisely and operated within tighter regulatory limits and that developments in the U.K. should be monitored closely.

#### **GAMBLING-RELATED CRIME**

Gambling-related crime must be the subject of determined and effective preventative and significant punitive measures. This is in the interests of consumers and the legitimate gambling industry itself. However, the very nature of gambling, with its free movement of large amounts of money, has always been an obvious target for criminals. If the future Economic Development Committee decides to pursue a programme of deregulating the gambling industry, this Committee recommends that it place at the highest priority the protection of Jersey's reputation by ensuring a high level of regulation and effective prosecution of gambling-related crime. The Gambling Control Committee recommends that there are appropriate barriers to entry for those wanting to join the industry and also effective mechanisms for policing new and existing gambling operations.

#### **Recommendation 16**

The Gambling Control Committee considers that the establishment of the Jersey Gambling Commission as independent regulator will be the appropriate way forward for Jersey in order to ensure that consumers are adequately protected and also that Jersey's reputation does not suffer as a result of gambling-related crime.

The Gambling Control Committee recommends the development of a Jersey Gambling Commission that will -

- have statutory gateways to access and share information with other enforcement agencies at home and abroad;
- have access to criminal records;
- apply a 'fit and proper' test (including any necessary financial checks) for anyone (including the owners and directors of companies) seeking to take out an operating or personal licence. This will include bookmakers, pools promoters and the operators of adult gaming centres and bet exchanges within the

same licensing regime as any future casino and bingo operators;

- have enhanced powers of entry, seizure and search for specified Gambling Commission staff; and
- have the ability, in collaboration with the police and other law enforcement agencies, to investigate and bring proceedings in connection with illegal gambling activity.

The Committee recommends that measures must be put in place to prevent all forms of gambling from being used for money laundering purposes.

The Commission will also be expected to work closely with industry representatives and sporting regulators to ensure, in their mutual interests, that both betting and the growing number of sports associated with it are free from corruption and crime.

## THE SOCIAL IMPLICATIONS

The Committee recognises that expectations and standards in society change over time and that the general prohibition explicit in the Jersey Law may not now reflect a society where many people enjoy responsible social gambling. As has been previously stated, this is reflected in the miscomprehension regarding prize competitions, as well as sitting uncomfortably with the Committee's own duty to promote gambling through the Channel Islands Lottery.

The Committee considers that the law should no longer incorporate or reflect any assumption that gambling is an activity that is objectionable. It is considered an important industry in its own right, meeting the legitimate desires of many millions of people and providing many thousands of jobs.

However, it is also recognised that gambling presents particular risks to children and the vulnerable, which other forms of leisure do not. So, whilst the Committee proposes a morally neutral stance to be taken in the law, nevertheless it recommends that proper controls and protections for those who may be or already have been damaged should be provided.

The Committee is of the view that in any society there will always be a small amount of people who suffer addictions and considers its' position to be in-line with current States policy on harm reduction. The Committee is of the view that excessive controls could make matters worse by encouraging the growth of illegal gambling. The Committee recommends that the law be written in such a way as to demand the highest standards of social responsibility from the industry, and that the regulatory controls in place are able to be adjusted as necessary in the light of experience.

### Recommendation 17

The Committee recognises that gambling presents particular risks to children and those vulnerable to addiction and recommends -

- a set of statutory safeguards governing specific gambling activities; and
- a commitment by all licensed gambling operators to conduct their business in a way which is socially responsible.

The Committee would thus expect that a suitably appointed and resourced Jersey Gambling Commission will be expected to issue formal codes of practice in relation to social responsibility which should become part of the conditions of operating licences. These codes are to cover such issues as -

- the avoidance of encouragement to children to gamble;
- provisions for players to bar themselves from gambling;
- the display of clear information about the probabilities of winning and losing; and
- the provision of information to customers about problem gambling and what people who think they might need help should do.

These codes would apply to all forms of gambling, including if made lawful, online and interactive television gambling. The Jersey Gambling Commission should be responsible for ensuring compliance with the codes and also for monitoring the social impact of the increased access to gambling products and services, which the new legislation would bring.

### Protecting children

It is an offence for young persons under the age of eighteen to gamble and for adults to allow them to do so.

**Recommendation 18**

The Committee recommends that should the States decide to modernise the law to allow for greater access to and provision of gambling activity, other measures to protect children will have to be included. Such measures might be, but are not limited to -

- greater emphasis, in conjunction with other States' Departments and organisations such as Gamcare and the independent Gambling Trust on education and awareness programmes for children;
- specific provisions in advertising codes of practice to prevent children being targeted;
- incorporation into licensing provisions of existing voluntary codes of conduct, such as those aimed at preventing children accessing family arcades during school hours, making them legally enforceable; and
- proximity to a school, for example, to be a relevant consideration in the recommendation to the Licensing Authority of premises licence applications.

**Prevention and treatment**

The Committee considers that the Economic Development Committee, in partnership with the future Education, Sport and Culture and Health and Social Services Committees, should examine international research including that of the U.K. Review Body into the causes of problem gambling and into effective methods of counselling or treatment intervention.

It is also recognised that more research is required into helping people whose gambling is becoming or has already become a problem - what kinds of advice, counselling or treatment work best for which kinds of people. The most serious cases of problem gambling involve crossing the borderline of mental disorder and the Committee considers that mental health services must be adequately resourced in order to offer assessment, appropriate support and treatment to those with severe problems.

The Committee believes that a *quid pro quo* will have to take place between the States and the gaming industry so that the taxpayer is not made liable for any increases in health care provision that might ensue. The Committee notes with interest the U.K. Government decision that the gambling industry should establish and fund an independent trust both to commission research into the prevention and treatment of problem gambling and to support treatment which does not engage the NHS. Leading companies and trade associations have already set up a trust with a budget of £0.8 million with a target of £3 million at current prices.

**Recommendation 19**

The Gambling Control Committee considers that the research already being carried out in the U.K., together with the research which is to be carried out in the future, will be of enormous benefit to Jersey in assessing risk, in putting into place appropriate measures for protecting children and in ensuring that there are adequate programmes for the prevention and treatment of problem gambling. The Committee also considers that a programme of local research must be undertaken.

**Recommendation 20**

The Gambling Control Committee considers that the modernisation of Jersey's gambling legislation could produce significant additional revenue to the States, but accepts that research suggests that in all probability there will be negative consequences, not least a rise in addiction.

**POLICY CO-ORDINATION****Recommendation 21**

The Gambling Control Committee recommends that the Economic Development Committee should work particularly closely with the Health and Social Services, Home Affairs, Education, Sport and Culture and Finance and Economics Committees when taking forward any proposals for significant changes to the gambling legislation.

**THE FUTURE**

There is no doubt that a major overhaul of Jersey's legislation presents a significant challenge. Government must engage the public and all relevant bodies in a full consultation process before finalising any firm proposals.

It is clear that the Economic Development Committee will need to dedicate human and financial resources to these proposals should it choose to take them forward.

**Recommendation 22**

The Gambling Control Committee endorses completely the view that the law should no longer incorporate or reflect any

assumption that gambling is an activity which is objectionable and which people should have no encouragement to pursue. It is considered an important industry in its own right, meeting the legitimate desires of many people in the Island. It also strongly endorses the view that appropriate measures should be taken to protect children and other vulnerable persons.

## SUMMARY OF PROPOSALS

### **Recommendation 1**

The Gambling Control Committee has identified a number of overall objectives, which it hopes will form the framework for discussion by the new Economic Development Committee. The objectives can be summarised as follows -

- to ensure that gambling is safe, not only for those who take part in it, but also in the way that it impacts on society in general;
- to ensure that gambling must be conducted fairly, remain free of criminal influence and infiltration;
- to ensure that any gambling is operated within a regulatory framework that offers protection for children and vulnerable adults.

The Committee wants to see a successful gambling industry; one that is able to respond rapidly and effectively to technological and customer-led developments in both the domestic and global market place, building on the Island's existing reputation for quality and integrity. For this reason, the Committee recommends that all gambling proposals should recognise and take account of the potential for abuse (albeit by a minority) and be linked to appropriate safeguards designed to provide support to those who fall prey to gambling addiction.

### **Recommendation 2**

The Gambling Control Committee considers that Jersey should consolidate all gambling legislation into a single Law covering all categories of gambling activity<sup>[11][11]</sup>. The Law should be up to date, simple to understand and sufficiently flexible to meet changing circumstances without the need for frequent amendment. It should provide a more flexible framework within which appropriate adjustments can be made by subordinate legislation. The processes must be transparent and fair and the legitimate interests of all parties must be taken fully into account.

### **Recommendation 3**

The Committee recommends creating a single body, known as the Jersey Gambling Commission, to take over all regulatory functions, including licensing and regulating bookmakers and all other suppliers of commercial gambling.

### **Recommendation 4**

The Committee recommends that there are standard procedures for making and processing applications and that applicants have a clear understanding of how and when decisions are taken. There should be statutory rules covering -

- the form of application;
- notice of hearings;
- conduct of hearings;
- the right to hear and comment on objections in good time;
- notification of decisions and reasons for refusal;
- time limit for decisions;
- the right of appeal.

### **Recommendation 5**

The Gambling Control Committee considers that the Jersey Gambling Commission as independent regulator would have powers and responsibilities similar to those proposed for the U.K. Commission and in existence elsewhere. The regulator would have to be appropriately resourced to be effective. It could therefore operate on a net running costs basis, funded by licence fee income. The Committee recommend that the new Economic Development Committee should explore the possibility of using the expertise and resources already to be found within other jurisdictions.

### **Recommendation 6**

The Gambling Control Committee considers that a professional and properly resourced Jersey Gambling Commission

should become responsible for advising the Economic Development Committee regarding amendment to the Gambling Law as well as working in partnership with the industry to create standards on advertising, harm reduction and other issues.

**Recommendation 7**

The Gambling Control Committee considers that Jersey legislation concerning gaming machines should be flexible and appropriate and that it should be capable of matching developments in the U.K. not least with regard to best practice in the area of harm reduction.

**Recommendation 8**

With regard to the issue of a casino operating in Jersey, the Committee recommends that -

- if the cost/benefit analysis currently being undertaken shows that there are significant benefits which outweigh potential risks and costs;
- if the international attention that a casino might attract was not considered to be detrimental to the Island's good name and high reputation in the financial world;
- and provided that there was proven to be an effective regulatory regime in operation,

the Gambling Control Committee recommends that the Economic Development Committee bring forward an 'in principle' proposition to allow a full debate by the States on the 'Casino Issue'.

**Recommendation 9**

The Gambling Control Committee considers that, if there is sufficient demand, bingo should be permitted in Jersey, subject to proper regulation by the proposed Gambling Commission and subject to a reasonable notice being given to charities that currently rely on bingo as one of their main fundraising events. The Committee recommends that the future Economic Development Committee gives consideration to the potential negative impact on current charitable fundraising activities by the enactment of this legislation and recommends that the Economic Development Committee explore ways in which that might be off-set.

**Recommendation 10**

The Gambling Control Committee considers that the law relating to betting in Jersey should be broadly in line with that of the U.K. so that -

- where practical, there is one consistent set of rules;
- equality of access to track events by bookmakers is maintained;
- in the event of dispute, both parties can appeal to the Gambling Commission as a neutral arbiter.

**Recommendation 11**

The Gambling Control Committee considers that Jersey's lotteries legislation should be kept under review. The special need of charities within the Island is recognised and the Committee hopes that in the event of the Channel Islands Lottery being discontinued, that the States would allocate some part of any fees or Impôts so generated for charitable use.

**Recommendation 12**

The Gambling Control Committee believes that the National Lottery could and should be extended to the Islands. A significant revenue stream from lawful National Lottery sales in the Islands can be expected, although the Islands will not be able to benefit directly from 'good causes' money raised through sales. The Committee recommends that a proportion of the Impôts so generated might be allocated for charitable purposes.

**Recommendation 13**

The Gambling Control Committee considers that legislation relating to pools competitions should be in line with those proposed for the U.K. namely -

- allow online entries;
- allow operation through shops; and
- allow unlimited roll-overs.

**Recommendation 14**

The Gambling Control Committee has sought advice from various Jersey authorities in order to gauge feeling concerning the balance between any risk posed by online gambling to Jersey's reputation as a well-regulated international finance centre on the one hand and the potential economic benefits on the other. The Committee has maintained a neutral stance and feels unable to make a positive recommendation in this regard until the results of a cost/benefit analysis currently being undertaken are made available.

**Recommendation 15**

The Gambling Control Committee recommends that prize competitions be defined more precisely and operated within tighter regulatory limits and that developments in the U.K. should be monitored closely.

**Recommendation 16**

The Gambling Control Committee considers that the establishment of the Jersey Gambling Commission as independent regulator will be the appropriate way forward for Jersey in order to ensure that consumers are adequately protected and also that Jersey's reputation does not suffer as a result of gambling-related crime.

The Gambling Control Committee recommends the development of a Jersey Gambling Commission that will -

- have statutory gateways to access and share information with other enforcement agencies at home and abroad;
- have access to criminal records;
- apply a 'fit and proper' test (including any necessary financial checks) for anyone (including the owners and directors of companies) seeking to take out an operating or personal licence. This will include bookmakers, pools promoters and the operators of adult gaming centres and bet exchanges within the same licensing regime as any future casino and bingo operators;
- have enhanced powers of entry, seizure and search for specified Gambling Commission staff; and
- have the ability, in collaboration with the police and other law enforcement agencies, to investigate and bring proceedings in connection with illegal gambling activity.

The Committee recommends that measures must be put in place to prevent all forms of gambling from being used for money laundering purposes.

The Commission will also be expected to work closely with industry representatives and sporting regulators to ensure, in their mutual interests, that both betting and the growing number of sports associated with it are free from corruption and crime.

**Recommendation 17**

The Committee recognises that gambling presents particular risks to children and those vulnerable to addiction and recommends -

- a set of statutory safeguards governing specific gambling activities; and
- a commitment by all licensed gambling operators to conduct their business in a way which is socially responsible.

The Committee would thus expect that a suitably appointed and resourced Jersey Gambling Commission will be expected to issue formal codes of practice in relation to social responsibility which should become part of the conditions of operating licences. These codes are to cover such issues as -

- the avoidance of encouragement to children to gamble;
- provisions for players to bar themselves from gambling;
- the display of clear information about the probabilities of winning and losing; and
- the provision of information to customers about problem gambling and what people who think they might need help should do.

These codes would apply to all forms of gambling, including if made lawful, online and interactive television gambling. The Jersey Gambling Commission should be responsible for ensuring compliance with the codes and also for monitoring the social impact of the increased access to gambling products and services, which the new legislation would bring.

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## The U.K. context

The U.K. government, through the Department for Culture, Media and Sport (DCMS), had already appointed the Gambling Review Body (GRB), under the chairmanship of Sir Alan Budd, to undertake a comprehensive scrutiny of gambling and its regulatory framework in order to bring U.K. law up-to-date. The GRB published its report in the summer of 2001 and the DCMS published its response to this report in March 2002. That response sets out the British government's vision for a modern regulatory system for the gambling industry and is based on the GRB's recommendations as well as the ideas, comments and concerns expressed during the consultation period. The Isle of Man has already taken forward an extensive modernisation programme for its gambling legislation and has a Gambling Commission which regulates the operation of casinos, licensed betting offices, the registration of pool betting promoters, gaming machines, lotteries and online gambling.

## U.K. gaming machine proposals

The U.K. government envisages three classifications of machines -

- (a) casino slot machines - allowed only in casinos and offering unlimited prizes and no statutory limit on the size of the stake;
- (b) jackpot machines - with a maximum prize of £500 for a £1 stake; and
- (c) all other gaming machines - with a maximum prize of £25 for a 50p stake.

In the U.K., premises which are licensed for gambling or for the sale of alcohol, or are bona fide members' clubs, will be able to install AWP machines as a result of their licensed or club status. Local authorities will be allowed to retain discretion as to whether or not to allow AWP machines in other premises.

However, gaming machines will only be allowed in defined categories of premises (or designated areas within premises) to which children are not allowed, whether or not accompanied by an adult. It is considered that, to make an exception for accompanying adults would open the door to erosion of the controls which gambling operators might have limited means to prevent.

So, gaming machines in the U.K. will be permitted only in premises that are licensed specifically for gambling - casinos, bingo clubs, betting shops and adult gaming centres - arcades from which children are barred and which will be brought clearly within arrangements for licensing and inspecting gambling premises to ensure proper adherence to regulation and the associated safeguards.<sup>[12][12]</sup>

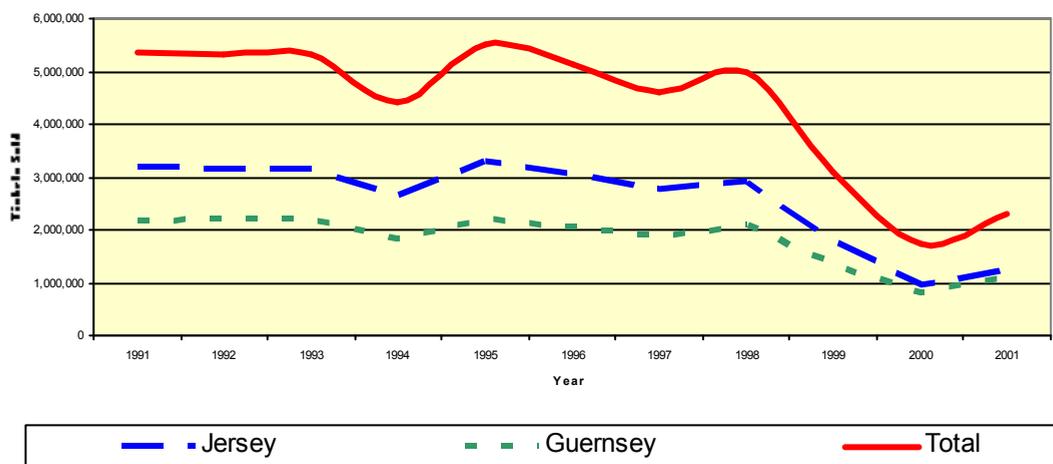
At present, it is thought that there will be no upper limit on the number of machines in casinos but the U.K. government is considering some form of relationship between the number of machines and the number of gaming tables. In other premises licensed for category (b) machines (jackpot machines) the upper limit will be four<sup>[13][13]</sup>; but bingo clubs and adult gaming centres can add category (c) machines subject to a local authority determining a maximum number.

Category (c) machines will continue to be allowed in adult-only areas of family entertainment centres that are licensed for gambling, or in premises which are licensed for the consumption of alcohol - but subject to a new condition either that children are excluded from the premises or that the machines are positioned in an area of the premises to which children do not have access.<sup>[14][14]</sup> AWP machines will be allowed without such restrictions.

Bona fide members' clubs will continue to be permitted up to three category (b) jackpot machines with a maximum stake of £1 and a top prize of £250, or, alternatively, up to three category (c) machines. All machines must be kept in a clearly identified area of the club and children must not be able to play them.



## Appendix 2: Channel Islands Lottery Sales



[1][1] The functions of the Gambling Control Committee are to be transferred to the Economic Development Committee in December 2002.

[2][2] Excluding the Channel Islands Lottery.

[3][3] The Gambling (Gaming and Lotteries) (Amendment No. 14) (Jersey) Regulations 2002.

[4][4] These proposals will draw a clear distinction between gaming machines and those which are essentially amusement machines that offer small monetary prizes. The U.K. government proposes a new definition of AWP machines which would include machines with a maximum stake of 10p and a maximum prize of £5, whether in cash or equivalent. These stakes and prizes will be frozen for the indefinite future. Many of these machines are in family entertainment centres and in places freely used by children.

[5][5] "Private bingo" means games of bingo played only as an event or incident of an event attended only by members of a registered society and bona fide guests of such members.

[6][6] In the U.K., prize bingo takes place in both bingo clubs and arcades. In the former, it is the filler in intervals between main stage cash bingo games. In the latter it provides a complementary product to the gaming and amusement machines. The intention is to abolish the statutory distinction between cash and prize bingo in bingo clubs so that all games take place under the same set of regulations and controls. In arcades, which are family entertainment centres, and seaside arcades, the £25,000 top prize limit for cash bingo will be retained but the £30 limit on a single game stake will be removed.

[7][7] Currently, a bookmaker can be asked to pay no more than five times the relevant entrance fee. Whilst this restricts the freedom of the racecourse and track owners to charge a market rate it also ensures that bookmakers are not denied access simply through a high entry price and plays a part in ensuring competitive on-course betting. The U.K. will, however, abolish the demand test for licensed betting offices.

[8][8] See Appendix 2.

[9][9] Up to Draw 9 on 25th July 2002.

[10][10] Estimated at some £10 billion worldwide by 2005.

[11][11] Excluding the Channel Islands Lottery.

[12][12] Jersey legislation does not currently permit casinos, bingo clubs or adult gaming centres.

[13][13] To be kept under review.

[14][14] The U.K. government is separately modernising the alcohol and public entertainment laws.