EXPLANATORY MEMORANDUM TO

THE GAMBLING ACT 2005 (GAMING TABLES IN CASINOS) (DEFINITIONS) REGULATIONS 2009

2009 No.1970

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make provision in respect of the definition of "gaming table" for the purposes of section 172(3) to (5) of the Gambling Act 2005 ("the Act"), and define the circumstances in which a gaming table is to be treated as being used in a casino for the purposes of those subsections.

2.2 These Regulations derive from proposals by the Secretary of State for Culture, Media and Sport which were the subject of a public consultation from 23 February to 15 May 2009 ("Consultation on Premises Licence Regulations under Section 172(6) (Gaming Tables) February 2009").

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Act established a new system of regulation of all gambling in England, Wales and Scotland (with very limited application to Northern Ireland), other than the National Lottery and spread betting. The Act introduced a new regulator for gambling, the Gambling Commission ("the Commission"), and a new licensing regime for commercial gambling. As part of the licensing regime, the Act provides for three mains types of permission: operating and personal licences which are issued by the Commission, and premises licences which are issued by licensing authorities. In England and Wales, local authorities are the licensing authorities under the Act and in Scotland they are licensing boards.

4.2 The Act established three new categories of casino: regional, large and small casinos. The Act also introduced separate kinds of premises licence for each of these categories of casino, and prescribes the number and categories of gaming machines that are authorised to be made available by a holder of each of the different types of casino premises licences. This is set out in section 172(3) to (5) of the Act.

4.2.1 A casino premises licence for a regional casino using at least one gaming table shall authorise the holder to make gaming machines available for use on the premises provided that each gaming machine is of categories A to D, and the number of gaming machines is not more than 25 times the number of gaming tables used in the casino and that there are no more than 1,250 gaming machines.

4.2.2 A casino premises licence for a large casino using at least one gaming table shall authorise the holder to make gaming machines available for use on the premises provided that each gaming machine is of categories B to D, and the number of gaming machines is not more than five times the number of gaming tables used in the casino and that there are no more than 150 gaming machines.

4.2.3 A casino premises licence for a small casino using at least one gaming table shall authorise the holder to make gaming machines available for use on the premises provided that each gaming machine is of categories B to D, and the number of gaming machines is not more than twice the number of gaming tables used in the casino and that there are no more than 80 gaming machines.

4.3 These Regulations set out the definitions needed to enable the limit of the number of gaming machines described above to be determined in individual cases. These Regulations are the first occasion on which the Secretary of State has used the power in section 172(6) of the Act.

4.4 These Regulations provide as follows:

4.4.1 Regulation 1 introduces a new definition of a wholly automated gaming table. This is defined as an apparatus that is designed or adapted to enable individuals to play a real (as defined in section 353(1) of the Act) game of chance (as defined in section 6 of the Act) where the design or adaption of the apparatus is such that the apparatus is not required to be controlled or operated by an individual employed or concerned in arranging for others to play the game, and the apparatus is not designed or adapted for use in connection with a game the arrangements for which are controlled or operated by an individual.

4.4.2 Regulation 2 excludes a wholly automated gaming table from the description of a gaming table for the purpose of section 172(3) to (5) of the Act. This has the effect of ensuring that a wholly automated gaming table cannot be included in the number of gaming tables used in a casino for the purpose of determining the number gaming machines which the holder of a casino premises licence can make available for use (as described in paragraph 4.2 above).

4.4.3 Regulation 3 also introduces a requirement as to what constitutes a gaming table for the purpose of section 172(3) to (5) of the Act. This regulation states that a gaming table is to be treated as being used in a casino at a particular time only if it is being used to play a casino game at that time or it is available at that time to be used for that purpose. This has the effect of ensuring that e.g. a real game of equal chance (as defined in section 8 of the Act) played on a table cannot be included in the number of gaming tables used in a casino for the purpose of determining the number gaming machines which the holder of a casino premises licence can make available for use (as described in paragraph 4.2 above).

5. Territorial Extent and Application

5.1 These Regulations extend to England and Wales, and to Scotland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The Act created new categories of casino, comprising one regional, eight large and eight small casinos. The Government announced on 26 February 2008 that it would not proceed

with a regional casino. A key aspect of these categories of casino is their enhanced gaming machine entitlement, with numbers of gaming machines capped by section 172(3) to 172(5) of the Act. The Act also set out a ratio to determine the number of gaming machines a holder of casino premises licence can make available for use. Broadly, this is as follows:

Category of casino	Ratio – tables: machines	Maximum number of machines
Large	1:5	150
Small	1:2	80

7.2 For this purpose, section 172(6) of the 2005 Act gives the Secretary of State power to define a gaming table and – in relation to gaming tables - specify the purpose, circumstances and extent of their use.

7.3 The Government's policy towards these new categories of casino is that they should offer a balanced mix of real gaming tables and gaming machines. While they should not be required to offer only gaming tables, gaming tables should remain core to the casinos' offer. The Government considers that it would be undesirable for them to offer only or predominantly gaming machines and other automated equipment – in effect creating a wholly automated casino environment. A balanced offer means that customers can make a choice about whether to play on gaming tables which are more social in nature, as opposed to gaming machines and other automated gaming equipment where there is less potential for human interaction and which tend to be more repetitive in nature. This general approach follows from Parliament's intention as expressed in section 172 of the Act.

7.4 From 23 February to 15 May 2009, the Government consulted on a number of options to establish a definition of what would constitute a gaming table and define how this should be treated in terms of "being used" or "being available to be used" for the purposes of the table:machine ratio in section 172(3) to 172(5) of the Act.

- ***Consolidation***

7.5 Not applicable. These Regulations do not consolidate any legislation. The Department does not intend to amend these Regulations at this time, but will keep the position under review.

8. Consultation outcome

8.1 Responses to the consultation were unanimous in their view that certain elements of the Government's proposals would be extremely difficult for casino operators to implement and administer. In particular, the proposed requirement that a gaming table not count for the purposes of the ratio unless it was being used, or available to be used within a reasonable time upon request, was thought to be insufficiently flexible to meet the industry's business models.

8.2 After further discussions with industry, the Commission and local government the Government decided to revise its approach. With a view to establishing the ratio as a basis for ensuring new casinos offer a genuine mix of real gaming tables and gaming machines, the Government decided that the ratio could be enforced simply by reference to the availability for use of a gaming table, without further specifying the conditions for determining when the table could be said to be so available. It was concluded that the criterion that a table be available to be used for playing casino games should be sufficiently clear and robust to prevent abuse of the ratio and to enable the Commission and licensing authorities to enforce compliance.

8.3 The remainder of the Government's proposals were broadly accepted and have not been changed as a result of the consultation.

8.4 A summary of responses to the consultation is attached at Annex A.

9. Guidance

9.1 The Government will discuss with the Commission whether further guidance to licensing authorities will be necessary.

10. Impact

10.1 A Final Impact Assessment is attached to this memorandum at Annex B.

10.2 There will be no impact on charities or voluntary bodies. In relation to the impact on business, these Regulations will not impose any increased costs on the industry.

10.3 In line with OFT guidance, we have considered whether the new proposal would directly or indirectly limit the number or range of operators and suppliers, and we have concluded that it would not. Existing levels of competition will be maintained.

11. Regulating small business

11.1 The measure would have no adverse impact on small business.

12. Monitoring & review

12.1 The implementation of these proposals will be monitored by licensing authorities and the Commission by means of the licence and permits application process, and through the Commission's ongoing monitoring and enforcement functions.

13. Contact

Alistair Boon at the Department for Culture, Media and Sport (tel: 020 7211 6486 or email: alistair.boon@culture.gsi.gov.uk) can answer any queries regarding the instrument.

GAMBLING ACT 2005: CONSULTATION ON PREMISES LICENCE REGULATIONS UNDER SECTION 172(6) (GAMING TABLES)

Background

The Gambling Act 2005 created several new categories of casino and provided for up to 8 large and 8 small casinos. A cornerstone of government policy towards these new casinos is to ensure they offer a balanced mix of real table gaming and machine gaming. It would be undesirable for them to offer only or predominately gaming machines and other automated equipment – in effect creating a wholly automated casino environment.

Therefore, the 2005 Act sets a strict limit on the number of gaming machines which may be offered, laying down a ratio governing how many machines a casino can make available to customers by reference to the number of gaming tables it has in use. To underpin this ratio, section 172(6) of the 2005 Act allows the Secretary of State to define what constitutes a gaming table and, if necessary, specify the purposes, circumstances and extent of its use in relation to the ratio.

On 23 February 2009 the government published a consultation document outlining a number of options for regulations under section 172(6) of the 2005 Act. The consultation closed on 15 May 2009. A total of 8 responses were received. Of these 7 were from existing or potential casino operators and 1 was a collective response from the network of local authorities awarded new casino licences under the 2005 Act.

The views of these organisations are summarised below, followed by an analysis section and key points emerging from the consultation.

Summary

There were 8 responses in total, received from the following organisations:

Aspers Group Ltd	(AG)
Business in Sport and Leisure	(BISL)
Casino Operators Association UK	(COA)
Gala Coral	(GC)
Local Authority Casino Network	(LACN)
National Casino Industry Forum	(NCIF)
The NEC Group	(NEC)
Rank Group	(RG)

Question 1: do you agree that "gaming table" should only include tables used for "real" gaming?

AG	Agreed, but argued that semi-automated tables, terminals for automated play on live bankers games taking place in the casino and poker tables (when they were supervised by casino staff) should also be included in the definition of "gaming table".
BISL	Agreed, but argued that the government should revisit the definition as the proposals made no allowance for card room tables offering equal chance poker.
COA	Agreed
GC	Agreed but argued that games of equal chance, such as poker, should also be excluded.
LACN	Disagreed. Argued that the definition would present too much of an administrative and economic burden to operators and seriously limit the regeneration potential of the new casinos to local authorities.
NCIF	Agreed but argued that government needed to revisit the rationale for excluding poker/card room games.
NEC	No opinion
RG	Agreed to a certain extent, arguing that government needed to revisit its rationale for excluding poker tables from the table to machine ratio.

Question 2: do you agree that semi and wholly automated gaming tables should not be included under the definition of "gaming table"?

AG	Agreed that wholly automated gaming tables should be excluded, but that semi automated tables should be included.
BISL	Agreed in relation to wholly automated tables but argued that semi and automated tables should still be able to be located in table gaming areas.
COA	Agreed that wholly automated tables should not be included in the definition, but argued that semi automatic games should not be excluded as they were "live" games being dealt by a dealer.
GC	Agreed that wholly automated tables should be excluded.
LACN	Disagreed. Argued that such a definition would present too much of an administrative and economic burden to operators and seriously limit the regeneration potential of the new casinos to local authorities.
NCIF	Agreed to a certain extent, but government should consider including automated games in the ratio at some stage because i) automated machines may in the future embrace all forms of table games ii) the Gaming Board/Gambling Commission and courts had accepted in the past that 8 automated terminals (of any type) had constituted 1 roulette table.
NEC	No opinion
RG	Agreed in relation to wholly automated tables but argued that semi and automated tables should still be able to be located in table gaming areas.

Question 3: do you agree that Option 1B is the best way forward? If not, would you prefer the Department's second choice – Option 3B?

AG	Disagreed. Neither option were financially viable.
BISL	Disagreed with both options. Both would lead to unsustainable staff costs and would be prejudicial to customers if it meant machines had to be turned on or off at certain times. It would also be difficult to regulate and monitor. BISL supported the principle of option 3B but believed there should be a minimum of 5 tables instead of 10.
COA	Agreed. COA did not support alternative options put forward by prospective operators of the 16 new casinos as it felt such a move would be detrimental to existing casinos situated in areas affected

	by the new casinos.
GC	Disagreed with option 1B as this would not give operators the flexibility to manage staff according to customer demand. It would also compromise the aesthetic of new casinos with darkened or cordoned off areas. Option 3B would give the necessary flexibility to operators.
LACN	Disagreed – did not support either option. Argued that to require operators to make staff available to operate tables when there was no demand for them would be an unjustifiable burden. The network felt that government's objectives as stated in the consultation document could be achieved through licensing conditions and codes of practice instead.
NCIF	Disagreed. Neither option was economically viable. Staff costs would be unsustainable and would negatively impact on the ability of casino operators to provide for customer service/choice.
NEC	Disagreed with both options as they would impose unrealistic operating constraints and costs on large casinos.
RG	Disagreed with both options. Both would lead to unsustainable staff costs and would be prejudicial to customers if it meant machines had to be turned on or off at certain times. It would also be difficult to regulate and monitor. BISL supported the principle of option 3B but believed there should be a minimum of 5 tables instead of 10.

Question 4: do you agree that the Department should continue to monitor this area of policy (circumstances in which a number of tables can be treated as if they were a single gaming table), but that no regulations are necessary for the time being?

AG	No opinion.
BISL	Agreed. However, it was important that operators seeking to bid for a Small or Large casino had complete clarity in order to prepare viable business plans and designs.
COA	Agreed, but argued the ordinary meaning of gaming table should be sufficient.
GC	Disagreed. It was essential for clear and transparent guidance to be formalised by way of regulations to prevent conflicting views.
LACN	Agreed. Regulatory goals could be achieved through licensing conditions and codes of practice and/or guidance to local authorities relating to casino design and supervision.

NCIF	Agreed. A clear and simple solution was required that could be clearly and easily understood by operators and regulators.
NEC	Agreed
RG	Agreed. However, it was important that operators seeking to bid for a Small or Large casino had complete clarity in order to prepare viable business plans and designs.

Analysis

Question 1: do you agree that "gaming table" should only include tables used for "real" gaming?

Total Replies: 8

Agree: 6	Disagree: 1	No opinion: 1

Question 2: do you agree that semi and wholly automated gaming tables should not be included under the definition of "gaming table"?

Total Replies: 8

Agree: 6	Disagree: 1	No opinion: 1

Question 3: do you agree that Option 1B is the best way forward? If not, would you prefer the Department's second choice – Option 3B?

Total Replies: 8

Agree: 1	Disagree: 7	No opinion: 0

Question 4: do you agree that the Department should continue to monitor this area of policy (circumstances in which a number of tables can be treated as if they were a single gaming table), but that no regulations are necessary for the time being?

Total Replies: 8

Agree: 6	Disagree: 1	No opinion: 0

Alternative/Additional Suggestions

Several responses put forward a counter-proposal to the options consulted on. They proposed that for a gaming table to qualify towards the table to machine ratio:

- It should be located on the gaming floor in the table gaming area and physically capable of being used e.g. floats (on table or ready), signage, chairs, CCTV/Audio, working condition;
- There should be evidence that the tables are used if demand for table gaming exists and whatever the number of tables and machines provided in the appropriate ratio, all machines so provided may be in operation if no less than 5 of the tables provided are open or are immediately available for use.
- The use of gaming machines should also be directly supervised by a member of staff who has been specifically trained to supervise the responsible use of gaming machines.

Key Points

Definition of "gaming table"

The majority of responses agreed that the definition should only include tables used for real gaming and exclude wholly automated gaming. However, there was a clear consensus that government should reconsider its position on semi-automated tables.

A significant number of responses also argued that the government should revisit its rationale for excluding poker tables from the definition and the gaming table to gaming machine ratio calculation. There were a number of reasons for this:

- It was inconsistent that the new casinos licenses were allowed to offer card room games, including poker, in the gaming machine area but not include them in the ratio calculation;
- Times had changed, with more customers wanting to play poker in casinos. By making such facilities available casinos were simply responding to customer demand;
- The announcement as part of the 2009 Budget to apply gaming duty to poker and other card room games meant that poker tables would now have to pay the same duty as casino tables and thus compete for space in premises;
- Inclusion in the ratio calculation did not necessarily have to be on 1-1 parity with gaming tables. It could perhaps be on a ratio of 5 poker tables equating to 1 gaming table.

Rules setting out when a gaming table is to be treated as being used in a casino

The majority of responses argued that Government's preferred option (1B) and its second choice (3B) would significantly undermine the commercial viability of the new casino licences and make it extremely difficult for the Gambling Commission to monitor and regulate the proposed regulations.

A fundamental concern was how availability for use "within a reasonable period of time" would be defined. Operators saw this as realistically meaning 10 to 15 minutes. This meant that casino staff sufficient to operate a full complement of gaming tables would need to be available, either waiting by a table or in a staff room "on call", even if there was no demand from customers for multiple gaming tables e.g. during quiet period of the day such as afternoons or early evening. This would impose unsustainable staff costs on potential operators of the new licences.

A significant number of responses pointed out the fact that operators would not, realistically, dedicate valuable floor space of a new business to simply use it as a depository for "token" tables in order to enable them to operate their full gaming machine entitlement.

Several responses also made the point that casinos had uneven demand profiles. The demand profile for casino table games did not necessarily correlate to that for gaming machines. They argued that both of the options consulted on would not give operators the flexibility they needed to manage casino staff in accordance to changes in customer demand. Both options would impose unnecessarily burdensome restrictions that could require operators to switch gaming machines on and off at certain times of the day depending on levels of demand. This would present significant technical and administrative difficulties as well as being off-putting to customers.

Some of the responses expressed concerns about the potentially negative effect of the consultation's options on existing casinos originally licensed under the Gaming Act 1968. They supported the principles of the proposals and outlined instead a modified version of option 3B whereby a minimum of 5 gaming tables, rather than 10, in operation. Only 1 response fully agreed with the government's proposals.

Some interesting points were made by the 16 local licensing authorities awarded the new casino licenses under the 2005 Act. They noted that the key inducement for casino operators to bid for the new licenses was the enhanced gaming machine entitlements. Therefore, the realisation of any regenerative benefits to their local communities from the new licences depended on operators being convinced that they were worth bidding for. On this basis the licensing authorities felt it was crucial to the process that any definitions put in place by

government avoided imposing unnecessary economic and administrative burdens, beyond those necessary to uphold the licensing objectives.

The licensing authorities were critical of all of the proposed options, particularly the potential for operators to have to make staff available to operate gaming tables when there was no demand for them. They felt this would be an unjustifiable burden and argued that the objectives set out in the consultation could be achieved instead through licensing conditions and codes of practice.

Summary: Intervention & Options

Department /Agency:	Title:	
Department for Culture, Media and Sport	**Gambling Act 2005: Section 172(6) definition of gaming table in casinos**	
Stage:	**Version: 2**	**Date: July 2009**

Related Publications:
The Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007
The Categories of Casino Regulations 2008
The Gambling (Geographical Distribution of Large and Small Casino Premises Licences) Order 2008

Available to view or download at:

Contact for enquiries: Alistair Boon (DCMS) **E-mail:** alistair.boon@culture.gov.uk

What is the problem under consideration? Why is government intervention necessary?

The Act created new categories of casino, comprising one regional, eight large and eight small casinos. The Government announced on 26 February 2008 that it would not proceed with a regional casino.

A key aspect of these categories of casino is their enhanced gaming machine entitlement, with numbers of gaming machine capped by section 172(3) to 172(5) of the Act. The Act also set out what is effectively a ratio to determine the number of gaming machines a holder of casino premises licence can make available for use. Broadly, this is as follows:

Category of casino	Ratio – tables: machines	Maximum number of machines
Large	1:5	150
Small	1:2	80

For this purpose, section 172(6) of the Act makes provision to define a gaming table and specify – in relation to gaming tables - the purposes, circumstances and extent of their use.

The first of the 16 licensing authorities permitted to issue casino premises licences under the Act will

What are the policy objectives and the intended effects?

Government's policy towards casinos is that they should offer a balanced mix of real table gaming and machine gaming. Casinos should not be required to offer only table games, but table games should remain core to their offer. The Government considers that it would be undesirable for casinos to offer only or predominantly gaming machines and other automated equipment – in effect creating a wholly automated casino environment. A balanced offer means that customers can make a choice whether to play table games which are more social in nature, as opposed to gaming machines and other automated gaming equipment where there is less potential for human interaction and which tend to be more repetitive in nature. This general approach was confirmed by Parliament in the enactment of section 172 of the Act.

The Government also wants to ensure operators do not seek to increase artificially the number of gaming machines which they are entitled to offer customers, for example by including in a casino significant numbers of real gaming tables which are never used.

What policy options have been considered? Please justify any preferred option.

The Government is keen to find a formula which balances the need to ensure new casinos offer a genuinely balanced mix of real table gaming and gaming machines, as intended by the Act, with practical operational concerns. These proposed Regulations should be read alongside related requirements contained in The Gambling Act 2005 (Mandatory and Default Conditions)(England and Wales) Regulations 2007 and The Categories of Casino regulations 2008.

During the course of developing the current proposals, the Government considered whether additional regulations might be needed to address potential abuses of the table:machine ratio. It considered, for example, whether it might be necessary to introduce regulations relating to:

- the minimum number of players which tables can accommodate;
- the minimum size of tables; or
- the minimum footprint for tables.

These would have ensured that operators could not seek to increase artificially the number of gaming machines they were entitled to offer by offering a large number of very small tables, or placing tables in positions which would render them incapable of use. However, the Government concluded that the minimum table gaming area requirements and the requirement for there to be adequate space around tables were already sufficient to prevent potential abuse of this sort.

From 23 February to 15 May 2009, the Government consulted on a number of options to establish a definition of what would constitute a gaming table and define how they should be treated in terms of "being used" or "available to be used" for the purposes of the table:machine ratio. The key tenets of the proposals were:

- To count towards the ratio a gaming table had to be either being used for playing casino games or available to customers to use for that purpose;
- A gaming table would be treated as being "available to be used" as long as it was physically able to be used by customers upon request and within a reasonable period of time from that request.

Responses to the consultation were unanimous in their view that both the Government's preferred option and second choice would be extremely difficult for casino operators to implement and administer. This included the 16 licensing authorities awarding the new licences. Particular concerns highlighted were:

- Both options would impose unsustainable staff costs on operators by effectively requiring them to operate a full complement of gaming tables at any given time, even during quiet periods of the day when there may be no demand for table gaming;
- Both options would also impose unnecessary administrative burdens by requiring operators to switch gaming machines on and off at various times of the day depending on levels of demand for gaming tables.

Having considered the consultation responses and discussed the issues further with industry representatives and the Commission, the Government has now revised its approach to regulation on this issue. It intends to:

- Introduce these Regulations to define gaming tables in the new categories of casino, as suggested in the February consultation paper;
- But not pursue regulations to create a statutory definition of when a table is "being used" or "available to be used".

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The provision and use of casino gaming tables, and the appropriate ratio of gaming machines, will be monitored by the Commission, the regulator for and the government's advisor on gambling. We will ask them to report to us if there is any evidence that tables are not being provided in accordance with the regulations that are made or if the gaming table:gaming machine ratio is not being adhered to.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Gerry Sutcliffe

.....Date: 16 July 2009

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS

One-off (Transition) **Yrs**

£ None

Average Annual Cost (excluding one-off)

£ None

Description and scale of **key monetised costs** by 'main affected groups'

Competitions for new casino premises licences will commence later this year. The proposed regulations will put in place a definition of what constitutes a gaming table. They should not cause operators to incur any additional costs over and above those that they would incur anyway in developing and running a large or small casino.

Total Cost (PV) **£ None**

Other **key non-monetised costs** by 'main affected groups'

Under section 172(6) of the Act the number of gaming machines operators of new casinos can offer customers will be determined by the number of real gaming tables used in the same casino.

BENEFITS

ANNUAL BENEFITS

One-off **Yrs**

£ Not known

Average Annual Benefit (excluding one-off)

£ Not known

Description and scale of **key monetised benefits** by 'main affected groups'

The government's revised approach will avoid imposing unsustainable staff costs on operators. The proposed regulations ensure that casinos will offer a balanced mix of real table gaming and machine gaming, but still give them the flexibility to manage staffing levels according to fluctuations in customer demand.

Total Benefit (PV) **£ Not Known**

Other **key non-monetised benefits** by 'main affected groups'

These regulations will avoid imposing unnecessary administrative burdens on the new casinos, for example requiring operators to switch gaming machines on and off at various times of the day depending on levels of demand.

Key Assumptions/Sensitivities/Risks

Groups concerned about problem gambling may argue that these new casinos could contribute to an increase in the risk of problem gambling. During the passage of the Gambling Bill in Parliament, the Government gave an undertaking that the social and economic impact on local communities of all new casinos permitted under the Act would be closely monitored. Also, the new casinos will be subject to strict new requirements in terms of social responsibility based upon evidence of the risks faced by gamblers. These will include requirements to make available to customers information about responsible gaming and where to find help for gambling problems, and to have in place procedures for monitoring for the signs of problem gambling and taking action where appropriate.

Price Base Year	Time Period Years	**Net Benefit Range** (NPV)	**NET BENEFIT** (NPV Best estimate)
		£ N/A	**£ N/A**

What is the geographic coverage of the policy/option?	Great Britain
On what date will the policy be implemented?	2nd quarter 2009

Which organisation(s) will enforce the policy?			Local authorities (premises licenses) Gambling Commission (operating licences)	
What is the total annual cost of enforcement for these organisations?				
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			n/a	
What is the value of the proposed offsetting measure per year?			£ n/a	
What is the value of changes in greenhouse gas emissions?			£ n/a	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro **none**	Small **none**	Medium **none**	Large **none**
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of £	Decrease of £	**Net Impact**	**£** None

Key: **Annual costs and benefits: Cons**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The regulations proposed in the February 2009 consultation were intended to ensure that casino operators made gaming tables available to be used in accordance with the gaming table: gaming machine ratios as set out in section 172 (4) and (5) of the Act:

- *s.172(4) a large casino using at least 1 gaming table may make gaming machines available for use so long as the number of machines is not more than 5 times the number of gaming tables used in the casino, and is not more than 150;*
- *s.172(5) a small casino using at least 1 gaming table may make gaming machines available for use so long as the number of machines is not more than twice the number of gaming tables used in the casino, and is not more than 80.*

Therefore, in a large casino 30 gaming tables would have to be used on the premises in order for the maximum entitlement of 150 gaming machines to be available; in a small casino 40 tables would have to be used in order for the maximum entitlement of 80 gaming machines to be available.

Public Consultation

In the consultation, the Government's preferred option (1B) was intended to avoid implementing a restrictive and burdensome regime on operators. The simplest approach to regulation would have been to say that a gaming table was only being used in a casino at any time if at that time casino gaming was taking place at the table. However, the Government recognised that it would be impractical for operators to have to turn machines on and off depending on whether customers were at any particular moment playing at a table. It felt that to stipulate that all tables in a large or small casino had to be open and staffed continually would be impractical, burdensome and commercially unviable, particularly outside of peak hours.

The Government saw its preferred option as offering the most straightforward interpretation of "a table being available to be used". By requiring gaming tables to be available to be used within a reasonable period of time of a customer's request, rather than requiring them to be immediately available to be used, it hoped this would provide operators with a flexible approach that would allow them to respond to fluctuations in demand for tables throughout the day. This approach was intended to negate the need for operators to require staff to be standing by tables at all times, while at the same time being straightforward enough for the Commission and licensing authorities to monitor and enforce.

The majority of responses to the February consultation disagreed with the Government's preferred option (1B) and its second choice (3B). They argued that either option would in actual fact undermine the commercial viability of the new casino licences and be extremely

difficult for the Commission to monitor and regulate. A number of fundamental points were common across the responses:

Staffing Costs

Casino operators were hugely concerned at how a gaming table's availability to be used "within a reasonable period of time" would be defined. They argued that in the context of an operational casino, customers would define "a reasonable period of time" as realistically meaning 10 to 15 minutes. Anything longer than this would cause concerns about levels of customer service. The obvious implication of this was that casino staff sufficient to operate a full complement of gaming tables would have to be available, either waiting by a table or in a staff room "on call", even if there was no demand from customers for multiple gaming tables. For example, while many existing casinos will have all of the gaming tables in use in the evenings, the peak time of demand, they often operate with just one or two open at the very start of the day.

The operators argued that the Government's proposals would impose unsustainable levels of staff costs on them. The National Casino Industry Forum (NCIF) submitted figures to illustrate this. For example:

Currently, a typical large London casino might employ around 244 staff, incurring staff costs of around £7,170,000 per annum. This assumes a casino that contains 35 gaming tables and is open 24 hours, with an average of 15 tables open over a 24 hour period. The staff costs cover gaming managers, pit bosses, dealer/inspectors, dealers, cashiers, receptionists, slot technicians and security.

The NCIF argue that, based on these figures, to staff 40 gaming tables the casino would need to recruit another 26 staff (dealers/inspectors and dealers), thus raising staff costs to around £7,853,000 per annum, an increase of £683,000 per annum.

However, only 1 of the new casinos will be based in London. The NCIF figures show that casinos outside of London will incur higher costs. For example:

Currently, a small provincial casino might employ around 84 staff, incurring staff costs of around £1,983,000 per annum. This assumes a casino with 21 gaming tables and is open 18 hours, with an average of 7 tables open over a 24 hour period. The staff costs cover gaming managers, pit bosses, dealer/inspectors, dealers, cashiers, receptionists, slot technicians and security.

Based on these figures, the NCIF argue that a new casino in a provincial city/town would need to recruit an additional 54 staff (dealers/inspectors and dealers) to cover 40 tables, thus raising staff costs to around £2,900,000 per annum, an increase of £917,000 per annum. This would increase further if the casino was to become a 24 hour operation.

Administrative Burdens

It should be noted that a significant number of those responding made the point that it will be more expensive to operate a small casino with 40 gaming tables and 80 gaming machines than a large casino with 30 tables and 150 machines. Given that in prime locations in London existing large casinos have on average around 30 tables available to meet demand at any given time they argue that it is unlikely that any

of the new casinos will achieve these levels of business in order to sustain the increases in staffing and costs outlined above.

The majority of responses also made the point that casinos had uneven demand profiles. The demand profile for casino table games did not necessarily correlate to that for gaming machines. They argued that both of the options consulted on would not give operators the flexibility they needed to manage casino staff in accordance with changes in customer demand. Both options would impose unnecessarily burdensome restrictions that could require operators to switch gaming machines on and off at certain times of the day depending on levels of demand. This would present significant technical and administrative difficulties to operators, as well as being off-putting to customers.

The operators argued that it would be unrealistic to turn off a proportion of gaming machines, when the mix of machines included different game types, stake levels and prize limits. They made the point that existing casinos do not usually offer £4,000 jackpot machines alone, as smaller jackpots that pay out more frequently can also be popular - a mix of different types of gaming machines, games, stakes and prize limits is the commercial norm. This does raise the issue of whether it is realistic or not to expect operators to either select machines to turn off, or staff unwanted tables at quiet times of the day in order to keep machines turned on. It is not unreasonable to expect a business to want to offer to customers a full mix of machines, stakes and games at all times, even if there are few customers on the premises at the time. It also raises the possibility of establishing a perverse incentive whereby if faced with choosing between machines to switch off operators may well leave on only the highest staking machines.

Licensing Authorities

The views of operators were echoed by the 16 licensing authorities permitted to grant casino licences under the Act. They argued that, in their opinion, the practical application of the government’s proposals went too far in imposing requirements on operators in order to regulate the table to machine ratio.

The licensing authorities pointed out that it was reasonable to expect the enhanced gaming machine benefits offered by the new categories of casino, and the potential profits, would be a key inducement for operators to bid for the new licences. While they understood the Government’s rationale for regulating, they thought it was important that regulation was not at the cost of imposing unnecessary burdens on operators. They felt that to require operators to have staff available to operate tables when there was no known demand for them would impose an unjustifiable burden. This would impact on not only on profit margins, but also on the funds that would then be available for regeneration, one of the key benefits envisaged by government of the new casinos (paragraph 5(3)(a) of Schedule 9 to the Act states that benefit to the licensing authority’s area will be the test for grant of a licence at stage 2 of the licensing process).

The 16 licensing authorities argued that staffing of a casino was a commercial matter for operators and should not be subject to overbearing regulation. They felt that the Government’s policy rationale - to ensure the new casinos offered a balanced mix of real table gaming and machine gaming would be more effectively implemented through the premises licensing process and conditions on licences.

Revised Approach

Having considered all responses to the consultation, the government accepts that the practical reality of implementing regulations defining the concepts of “being used” and “availability to be used” of gaming tables could result in placing hugely restrictive burdens on operators and undermining the commercial viability of the new categories of casinos, in particular small casinos. Therefore, it has reconsidered its approach to regulation.

The Government will introduce regulations to define gaming tables in new casinos, as proposed in the February consultation, but it will not pursue regulations to create a statutory definition of when a table is “being used” or “available to be used”. Instead, it will rely on section 172 of the Act as the basis for regulating the gaming table: gaming machine ratio. In light of the consultation responses and further discussions with industry stakeholders, local government and the Commission, the government thinks that the ratio, as a basis for ensuring the new casinos offer a genuine mix of real table gaming and gaming machines, can be enforced without the need for further legislation. Section 172 of the Act should alone be robust enough to prevent operators abusing the ratio and clear enough for the Commission and licensing authorities to enforce on the basis of the natural and ordinary meaning of the term ‘in use’. There are only 16 premises where the definition will apply, which will not be difficult to monitor by Commission and licensing authority compliance officers.

The regulations to define what will constitute a gaming table for the purposes of the ratio will be unchanged from the February consultation. It will rely on the natural and ordinary meaning of the term, which the government thinks is understood by the industry and casino users alike to a sufficient degree so as to make such a definition robust. However, wholly automated gaming tables and equal chance gaming tables (e.g. poker) will be excluded from the ratio calculation. The Government’s overall aim remains to ensure that casinos offer a balanced mix of real tables and machine gaming and this approach would be undermined if wholly automated tables and equal chance poker tables (which are essentially unsupervised) were allowed to count for the purposes of the ratio.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	N/a	No
Sustainable Development	N/a	No
Carbon Assessment	N/a	No
Other Environment	N/a	No
Health Impact Assessment	Yes	Yes
Race Equality	N/a	No
Disability Equality	N/a	No
Gender Equality	N/a	No
Human Rights	Yes	Yes
Rural Proofing	N/a	No

Results of the specific impact tests are set out below.

Competition assessment

The proposed regulation will not have a direct impact on competition between the 16 new casinos, and existing casinos. The number of gaming tables and, contingent on this, the number of gaming machines that the new casinos will be able to make available are fixed in the provisions of the Act. The proposal is intended to set out the basis on which tables need to be made available for a casino operator to be able to make the maximum permitted number of gaming machines available. It does not affect the number of tables or maximum number of gaming machines that can be made available. The mix and number of tables and machines provided will be for each operator's own commercial decision.

Small Firms

Small firms will also be able to tender for the work generated by the development and operation of the new casinos.

Legal Aid

No impact.

Sustainable Development

No impact.

Carbon Assessment

No impact

Other Environment

No impact.

Health Impact Assessment

An assessment of the social and economic impact of the 8 large and 8 small casinos permitted under the Act will be conducted when the first of the new casinos has been trading for at least three years. The new casinos are not likely to be trading before 2010 or 2011 at the earliest. It is expected that the assessment will be completed in 2014.

The new casinos will be subject to strict new requirements in terms of social responsibility based upon evidence of the risks faced by gamblers. These will include requirements to make available to customers information about responsible gaming and where to find help for gambling problems, and to have in place procedures for monitoring for the signs of problem gambling and taking action where appropriate. These new requirements are likely to reduce the potential for adverse health impacts.

Race Equality

No impact.

Disability Equality

No impact.

Gender Equality

No impact.

Human Rights

The provisions of the Order are compatible with the European Convention on Human Rights.

Rural Proofing

No impact.