

Carran, M. (2013). Regulation of adolescents' gambling – too narrow approach. Public Law and Social Human Rights, 153(11), pp. 43-58.



**CITY UNIVERSITY  
LONDON**

[City Research Online](#)

**Original citation:** Carran, M. (2013). Regulation of adolescents' gambling – too narrow approach. Public Law and Social Human Rights, 153(11), pp. 43-58.

**Permanent City Research Online URL:** <http://openaccess.city.ac.uk/3096/>

### **Copyright & reuse**

City University London has developed City Research Online so that its users may access the research outputs of City University London's staff. Copyright © and Moral Rights for this paper are retained by the individual author(s) and/ or other copyright holders. All material in City Research Online is checked for eligibility for copyright before being made available in the live archive. URLs from City Research Online may be freely distributed and linked to from other web pages.

### **Versions of research**

The version in City Research Online may differ from the final published version. Users are advised to check the Permanent City Research Online URL above for the status of the paper.

### **Enquiries**

If you have any enquiries about any aspect of City Research Online, or if you wish to make contact with the author(s) of this paper, please email the team at [publications@city.ac.uk](mailto:publications@city.ac.uk).

Margaret Carran,  
Lecturer at City University, London  
PhD Candidate at Queen Mary University, London

The vast variety of contrasting regulatory approaches towards gambling across different jurisdictions has one common element – the need to protect minors from gambling related harm. Most jurisdictions, including UK attempt to achieve that by making minors’ gambling illegal and by imposing criminal sanctions on commercial providers who permit or invite adolescents to play. Despite those legislations, prevalence rates indicate that large number of minors does in fact participate in gambling activities including those that are unlawful for their age.

The paper demonstrates that the relative ineffectiveness of the prohibitions of gambling by minors in England and Wales results from the lack of cohesion within the applicable legal regime. It is notoriously difficult, but not impossible; to change social norms by legal means. This can only be achieved by targeted and coordinated approach toward an identified problem but no such consistent message can be found within UK gambling legislation. The paper challenges the effectiveness of criminal sanctions for regulatory gambling offences due to its inherent nature and the existence of easy to satisfy defences. Secondly, the paper argues that regulating gambling “*stricto-sensu*” only while leaving unregulated activities that may constitute entry points towards gambling and otherwise stimulating demand cannot be truly effective in protecting minors from gambling related harms.

---

The regulatory framework for gambling for England and Wales has undergone a substantial overhaul with the introduction of the Gambling Act 2005<sup>1</sup>. Most provisions came into force in September 2007 and almost overnight amended the nature of gambling from a permitted but non-stimulated and discouraged activity to a regulated but commercially promoted entertainment offered on an unrestricted<sup>2</sup> competitive basis. As of June 2012 there were 3066 gambling operators licenced in UK with many more being able to attract UK customers from “White Listed” jurisdictions.<sup>3</sup> It is no longer considered to be a “vice” but a legitimate entertainment that only requires control in order to ensure adequate levels of customers’ protection and to prevent the development of higher levels of crime, problem gambling or social disorders. The increased potential for such risks materialising as a result of the expected wide expansion of gambling opportunities was recognised by the legislator<sup>4</sup> and it was explicitly acknowledged that certain groups of people may be particularly vulnerable to gambling related harm. In line with the existing psychological evidence which highlights that the risk of harm suffered by adolescents is three to four times higher than it is the case with adults<sup>5 6</sup> and that “early onset in gambling participation is the most likely predictor of problem gambling in future”<sup>7</sup> children are specifically singled out as a group that deserves specific protection. The Act prominently (in s.1) charges the Gambling Commission, which took over from the Gaming Board as a corporate body to regulate the gambling industry, to issue appropriate licences and to ensure compliance with the licensing objectives of the Act<sup>8</sup>, with the task of developing an appropriate strategy to ensure that children are not harmed or exploited by gambling. The Commission was granted wide regulatory, investigatory and enforcement powers<sup>9</sup> and the controlling role of the police was reduced to superficial levels. However, the Commission can only act within the framework of their primary duties stated in ss.22 (a) & (b) which are “to pursue, and whenever appropriate to have regard to, the licensing objectives, and to **permit gambling**, in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives”. This overriding duty to promote the gambling industry sits uneasily with their role as the regulator and enforcer of the law. Commercial demands normally advocate the expansion of opportunities but this is largely incompatible with the social protection’s needs that usually desire the exact opposite. This article intends to demonstrate that the narrowness of the protective provisions aimed at minors’ protection and the overall facilitating nature of the Act makes the achievement of one of its explicitly stated objective very difficult<sup>10</sup>.

---

<sup>1</sup> Further referred to as “the Act”

<sup>2</sup> S.72 GA 2005 removed the demand test so saturation of the market is no longer a valid reason to refuse a licence.

<sup>3</sup> White listed jurisdictions have a right to advertise their services to UK consumers.

<sup>4</sup> Miers D. (2011), “From Constraint to Competition: 50 Years of Change in British Gambling Policy”, *Gaming Law Review and Economics*, Vol.15 No.3.

<sup>5</sup> Hayer T., Griffiths M. & Meyer G.(2005). Chapter 21: The prevention and treatment of problem gambling in adolescents. In Gullotta T.P. & Adams G, (Eds). *Handbook of adolescents’ behaviour problems: Evidence-based approaches to prevention and treatment*, pp.467-486. New York: Springer

<sup>6</sup> Fisher S.E. (1999) “A prevalence study of gambling and problem gambling in British adolescents”, *Addiction Research* 7, 509-538

<sup>7</sup> Messerlian C. et al, (2004) “Gambling, Youth and the Internet: Should we be concerned?”, *The Canadian Child and Adolescent Psychiatry Review*, February (13):1

<sup>8</sup> The licensing objective of the Act are listed in s.1 of the GA2005 and are a) to prevent gambling from being a source of crime or disorder or being used to support crime; b) to ensure that in a fair and open way and c) to protect children and other vulnerable persons from being harmed or exploited by gambling.

<sup>9</sup> Black J. (2007), “Tension in the Regulatory State”, *P.L.*2007, Spr.58-73, p.2

<sup>10</sup> *Ibid*, ref. 8.

The legislation perceives most types of gambling to be an adult entertainment. It is therefore a criminal offence under the Gambling Act 2005 for any person “to invite, cause or permit a child or young person to gamble”<sup>11</sup>, to permit or invite to enter gambling premises<sup>12</sup> or to employ a child or young person in establishments where gambling takes place.<sup>13</sup> Anyone found in contravention of those provisions may be liable, on a summary conviction, to an imprisonment of up to 51 weeks or a fine not exceeding level 5 on a standard scale or both<sup>14</sup>. The current standard scale of fines for England and Wales has been set by s.17 of the Criminal Justice Act 1991. Level 5 fines represent the highest financial penalty permitted on summary conviction and amounts to £5000 for convicted adults and £1000 for a person under the age of 17. The sale of national lottery tickets to a minor under the age of 16 is prohibited independently by the National Lottery etc Act 1993 and National Lottery Regulation of 1994. Failure to comply with this prohibition may attract either a fine, on a summary conviction, up to the maximum statutory level or an imprisonment, on indictment, of up to two years, or both.<sup>15</sup> For the purpose of the Gambling Act a child is defined as anyone under the age of 16 and a young person under the age of 18 but over the age of 16. A child cannot incur criminal liability for any involvement in gambling but a young person will commit an offence if he attempts to participate in restricted gambling, enters gambling premises or is employed in a gambling establishment<sup>16</sup>. If a child or a young person succeeds at gambling and this comes to the attention of the operator no winnings may be pay out<sup>17</sup> but any money advanced must be returned to the minor<sup>18</sup>. Failure to comply with this provision is also a criminal offence.<sup>19</sup>

The apparent strong legislative message, under the threat of criminal sanctions, that children should not be involved in gambling does not appear to have corresponding social reinforcement. Gambling is popular amongst all strata of the society<sup>20</sup> and many parents consider it to be an acceptable form of family entertainment.<sup>21</sup> The majority do not view gambling as a serious youth issue<sup>22</sup> and many children receive lottery tickets/scratch-cards as presents from family members<sup>23</sup>. Children’s attitudes often imitate those of their carers so it comes as no surprise that, according to the existing prevalence studies, a large proportion of adolescents do engage in gambling with or without parental knowledge. Griffiths<sup>24</sup> cites results from the national survey conducted by MORI in 2006 which indicated that 73% of 12-15 years old have gambled at least once in the past. 54% of those minors were playing on fruit machines, some of which are legal for children in UK and 37% participated in private betting for money which is unregulated but 28%

---

<sup>11</sup> S.46 (1)

<sup>12</sup> S.47 (1)

<sup>13</sup> S.51 (1)

<sup>14</sup> S.62

<sup>15</sup> S.13(2) of the National Lottery etc Act 1993

<sup>16</sup> Ss. 48(1); 49 & 55(4) respectively.

<sup>17</sup> S.83(1)b

<sup>18</sup> S.83(1)a

<sup>19</sup> S.58

<sup>20</sup> Jawad C. & Griffiths S. (2010), “Taming of the casino dragon”, *Community, Work & Family*, Vol.13, No.3, August 2010, pp.329-347

<sup>21</sup> Felsher J.R. et al (2003), “Parental Influences and Social Modelling of Youth Lottery Participation”, *Journal of Community & Applied Social Psychology*, 13:361-377

<sup>22</sup> Derevensky J.L. et al, (2009) “Parental Attitudes towards gambling: results from national Canadian Study” presented at the NCPG Conference in Singapore, August 2009.

<sup>23</sup> Derevensky J.L. et al, (2004), “Adolescent Problem Gambling: Legislative and Policy Decisions”, *Gaming Law Review*, Vol.8 No.2.

<sup>24</sup> Griffiths M. et al, “Adolescent gambling in Great Britain”, *Education Today*, Vol.58, No.1

played on scratch-cards and 13% played in betting shops which is unlawful. More recently, IPSOS MORI's British Survey of Children<sup>25</sup> conducted in 2008-2009 on behalf of the National Lottery Commission indicated that, during the seven days preceding the survey, 21% of children within the same age range were involved in some type of gambling activity where they actually spent money. Buczkiewicz et al<sup>26</sup> focused on minors playing fruit machines and found that "*at least two-thirds of adolescents play fruit machines at some point in their adolescent lives and one third of adolescents will have played fruit machines in the last month*". If it accepted, as it is acknowledged by the legislator, that early participation in gambling and wide exposure to gambling opportunities contribute to the development of gambling related problems amongst adolescents, such a social attitude should clearly be considered unwelcome.

In government's defence, it may be argued, that the use of criminal sanction to suppress undesirable behaviour should be sufficient to undermine such a position; it may be further claimed that there isn't much more that the legislator can do in circumstances where a total generic prohibition of a particular activity is undesirable. The fallacy of this argument should not need exposing. A close analysis of the legal framework, looked at holistically, demonstrates that the law in fact actively encourages positive social attitudes towards gambling without providing sufficient effective counterchecks. The use of criminal sanction to support regulatory prohibition offers a weak foundation in the absence of further re-enforcing factors. Although common in legislative prose, enforcement proceedings<sup>27 28</sup> of regulatory offences are infrequent and generally ineffective at amending social norms. The regulatory offences under the Gambling Act are wide in scope but are subject to the defence of due diligence<sup>29</sup> whereby anyone charged will not be liable if he proves that he "*took all reasonable steps to determine the individual's age and he reasonably believed that the individual is not a child or young person*". This differs from the offence of selling national lottery ticket to a child which was held in *Harrow London Borough Council v Shah*<sup>30</sup> to attract strict liability because "*the offence of selling a lottery ticket to an under-age person ... was not of a truly criminal nature, but related to an issue of social concern, namely gambling by minors, where strict liability would encourage greater vigilance against the commission of offences*". The removal of strict liability has not rendered them "truly criminal" as they continue to be seen as "*mala prohibita*" rather than "*mala per se*"<sup>31</sup> not only by the general public but by the regulator itself<sup>32</sup>. The availability of the defence also causes an important shift in focus from ensuring that minors are not permitted to gamble to focusing on having robust age-verification procedures which over time may produce different results. This shift can already be seen in the Licence Conditions and Codes of Practice issued by the Gambling Commission which provides extensive guidance as to what procedures the operators should adopt to ensure compliance. Within the online

---

<sup>25</sup> Between the age of 12 and 15 years with a very small minority aged 11.

<sup>26</sup> Buczkiewicz M. et al "Adolescent attitudes towards gambling: some preliminary findings", Tacade, International Gaming Research Unit, Nottingham Trent University.

<sup>27</sup> Ibid, ref. 3

<sup>28</sup> Littlewood M. (2011), "Gambling and regulation: why there is nothing to fear from liberalisation", IEA Economic Affairs, March.

<sup>29</sup> S.63

<sup>30</sup> [2000] 1 W.L.R.83

<sup>31</sup> Winterscheid J.F. (1977) "Victimless crimes: The threshold question and beyond", Notre Dame Lawyer, Vol.52:995 1976-1977

<sup>32</sup> In their own words Gambling Commission takes a "facilitative rather than disciplinary approach" towards enforcement – author's own conversation with the representative.

environment the Code gives operators 72 hours to complete age-verification process, during which time an unverified person, who could be a minor, is permitted to gamble<sup>33</sup>. Furthermore, the Code allows operators to delegate age-verification to third parties. Not only does it allow such delegation to take place under a contract e.g. with an age-verification solution provider<sup>34</sup> but it also permits reliance on third parties' age-verification procedures without their explicit consent e.g. by relying on age-verification carried out by credit card issuers. The Code does not have statutory force but it can be submitted in evidence during any prosecution or other civil procedures and the court is required to take it into account, if relevant, when considering any particular case<sup>35</sup> and the operators, understandably, work within the Code's guidance and not with direct reference to primary legislation. Those inconsistencies have not, as yet, been tested in courts. To date the author was unable to find any reported prosecution under Part IV of the Act. The official registers of regulatory sanctions imposed on operators by the Gambling Commission lists only three incidents of penalised non-compliance by operators with social responsibility code<sup>36</sup> and only one warning against a personal licence holder for allowing his children onto the casino premises<sup>37</sup>. This is so despite the fact that mystery shopping exercise conducted by the Gambling Commission itself in May 2009 on betting shops produced a 98% rate of non-compliance.<sup>38</sup> This particular mystery shopping exercise targeted establishments previously identified as failing in social responsibility measures but it also demonstrated the lack of enforcement proceedings even against known "offenders". Further tests carried out in betting shops in December 2009<sup>39</sup> and in adult gaming centres<sup>40</sup> in June 2010 showed improvements but still no full compliance. The mystery shopping exercise carried out for online providers in July 2009 produced more optimistic results<sup>41</sup>. Only 4.7% of operators have procedures which were identified as being potentially vulnerable to minors' attempting to play.<sup>42</sup> Author's own mystery shopping exercise carried out in August 2012 found that 12 out of 102 website created an account despite child's date of birth being entered on the registration form but no attempt to deposit funds using pre-paid credit Mastercard; pre-paid Visa credit card and pre-paid Visa debit card were successful. Nevertheless; the above demonstrates that having robust age-verification procedures is something less than being required to positively ensure that minors don't gamble. The State must be careful not to lose respect for the law by over-

<sup>33</sup> Although the person is not able to withdraw any funds, s/he is allowed to play.

<sup>34</sup> Such as Experian; Group GB or NetIdMe or others

<sup>35</sup> S.24(9) GA 2005

<sup>36</sup> Gambling Commission Regulatory Sanction Register – Operators Licences March 2012, retrieved from [www.gamblingcommission.gov.uk/licensing\\_compliance\\_enfo/regulatory\\_action.aspx](http://www.gamblingcommission.gov.uk/licensing_compliance_enfo/regulatory_action.aspx) in June 2012. The reasons given are generic which means it is impossible to determine whether those sanctions relate to breaches of the provisions relating to minors' protection or to breaches of other aspects of social responsibilities.

<sup>37</sup> Gambling Commission Regulatory Sanction Register – Personal Licences May 2012, retrieved from [http://www.gamblingcommission.gov.uk/licensing\\_compliance\\_enfo/regulatory\\_action.aspx](http://www.gamblingcommission.gov.uk/licensing_compliance_enfo/regulatory_action.aspx), June 2012,

<sup>38</sup> Press Release "Mystery Shopping tests continue", 31/07/2009. A 17 year old was able to place a bet over the counter in 98 out of 100 betting shops.

<sup>39</sup> Press release, "Under age gambling in betting shops – operators face further tests" 3/12/2009. 74% of Ladbroke betting shops prevented a young person from placing a bet; 68% by William Hill operators, 63% Tote, 60% Betfred & 57% Gala Coral.

<sup>40</sup> Press Release: "Monitoring under-age gambling in adult gaming centred", 15 June 2010. 41 out of 57 Talarius centres prevented an under-aged person from gambling; 24 out of 37 NOL operators and 12 out of 15 Cashino Gaming.

<sup>41</sup> Gambling Commission; "Online Mystery Shopping Programme", Information Note, July 2009 retrieved from [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk) in October 2012

<sup>42</sup> 2.5% were identified as inconclusive and 2.2% had weaknesses.

criminalisation<sup>43</sup> or by adopting too strict enforcement<sup>44</sup> but a criminal law confined exclusively to statute books does not influence social behaviour either.

The limited influence of the offences under the Gambling Act 2005 on social attitudes stems not only from the under-enforcement of the law but also from the scope of the provisions themselves. The offences are seen as being directed at the gambling providers and no responsibilities are explicitly allocated to parents and carers. There is no proxy offence whereby an adult commits an offence if he purchases gambling products on behalf of a minor.<sup>45</sup> In practice it is very unlikely for any adult to play e.g. roulette, slot machines or poker on behalf of the minor but one can easily envisage an older sibling or even a parent purchasing a scratch-card, lottery ticket or a betting slip for or together with a child. Such activities are nearly impossible to control but proxy offences could help with education and raising general awareness. There is no requirement for regular awareness sessions in schools and other educational establishments; in fact schools often, perhaps inadvertently but nevertheless actively promote gambling activities by organising school lottery funds; raffles and other draws. Furthermore, the Act only places restrictions on activities that are within the statutory definition of gambling<sup>46</sup> and that are specifically prohibited<sup>47</sup>. The key components of gambling are: an element of a chance and the possibility of winning a prize. A game will be a game of chance, regardless of any risk of loss to the player, even if it involves “both an element of chance and an element of skill; an element of chance that can be eliminated by superlative skill and a game that is presented as involving an element of a chance”<sup>48</sup> but it excludes sport<sup>49</sup>. The definition of “an element of chance” is expansive. It is the meaning of a “prize” that is restrictive. For the purpose of gaming it means “*money or money’s worth*”<sup>50</sup> and “includes both a prize provided by a person organising gaming and winnings of money staked”<sup>51</sup>. Money’s worth, within the context of gambling, has always been construed narrowly. It simply means “the equivalent of money”<sup>52</sup> and for example it will not include any compensation that may be given for losing a bet<sup>53</sup> or a mere right to play again. This means that games that do not involve any potential winnings; gambling activities within video or computer games, social gaming on Facebook as well as free practice games on real gambling sites do not constitute gambling in law. Yet, for children the financial rewards are not necessary as their primary motivations appears to be fun and entertainment, the relief of boredom<sup>54</sup>, excitement and risk taking rather than pure monetary gains<sup>55</sup>. Stand-alone gambling games (slot machines, roulette and cards) rated only 12+ or unrated are plentiful in shops

---

<sup>43</sup> Ashworth A. (2008), “Conception of over-criminalisation”, *Ohio State Journal of Criminal Law*, Vol.5:407, pp.407-425

<sup>44</sup> Barnett J.M. (2002), “The Rational Under-enforcement of Vice Laws”, 54 *Rutgers L.Rev.*423 2001-2002, pp.426-486

<sup>45</sup> Similar to the purchase of alcohol on behalf of a minor - S.149(3) of the Licensing Act 2003

<sup>46</sup> Ss.3&6-9

<sup>47</sup> Miers D.(2003) “Gambling in Great Britain: Implementing a Social Responsibility Agenda” *Gaming Law Review and Economics*, Vol.12, No.6

<sup>48</sup> S.6(2)(a)

<sup>49</sup> S.6(2)(b)

<sup>50</sup> S.6(5)(a)

<sup>51</sup> S.6(5)(b)

<sup>52</sup> [1999] 1 A.C. 247

<sup>53</sup> [2011] UKFTT 325 (TC).

<sup>54</sup> Giocopassi D.et al (2006), “Motives and Methods of Under-Age Casino Gamblers”, *J.Gambl.Stud* 22:413-426

<sup>55</sup> Deakin J.et al (2004), “Risk taking during decision-making in normal volunteers changes with age”, *Journal of the International Neuropsychological Society*, 10, 590-598

as well as on i-tunes and other internet gaming sites.<sup>56</sup> Gambling activities are incorporated within otherwise non-gambling games such as Fluff Friends<sup>57</sup> played by girls as young as five where betting on rabbit racing allows players to win in-game money. Such playing does not involve taking any financial risks or rewards and there is no conclusive proof that it contributes to the development of gambling problems. However, children are stimulated and excited by those games and they may become attracted to gambling before they are legally able to do so<sup>58</sup>. There is also a risk that such risk-free games may contribute towards the development of incorrect perceptions such as a belief that gambling skills may be improved with persistent practice<sup>59</sup> or they may misunderstand the actual probabilities of success or randomness of events.<sup>60</sup> This may be due to the general lack of mathematical understanding or due to practice demos' misrepresentations of the actual odds of winning.<sup>61</sup> Gambling is also frequently glamorised in movies, commercial advertisements and there is a wide range of gambling shows broadcasted on national television and marketed as family entertainment<sup>62</sup>. The Gambling Act may not be the appropriate vehicle for regulating those areas but no balancing legislation is available. Video and movies are subject to the Video Recording Act 1984<sup>63</sup> and need to be classified by the British Board of Film classification before they can be released to the general public. When making the assessment the BBFC considers the overall context of the movie and has "special regards" to scenes or themes that are likely to cause harm. Strong language, violence, sexual human activities, criminal activities, horrific behaviour or incidents or the use of illegal drugs are listed but gambling is not expressly stated under this guidelines as having any potential to cause harm. Accordingly, in the period between April 2011 and May 2012 no warning of gambling activities were issued to consumer on any film, DVDs, video games or live event<sup>64</sup>. Video games were normally exempt from classification. This was partially amended by s.40 of the Digital Economy Act 2010 which extended the legal requirement for classification of any video games that is suitable for viewing only by those 12 years old and over but it still leaves a large number of games outside its regulatory scope. Those games follow the voluntary self – regulation system under the Pan European Game Information (PEGI). Their code explicitly lists gambling as one of the facts that is taken into account when classifying video game but it does not suggest any removal of gambling activities. Furthermore; non-commercial gaming or betting, certain family orientated gambling events, some forms of amusement machines are excluded from the restriction. National lottery and football pools are legal for anyone over the age of 16 which can be justified by their low addictive properties. However, despite extensive psychological evidence that places "fruit machines" amongst the most addictive form of gambling<sup>65</sup> England is the only jurisdiction in the world that continues to allow children

<sup>56</sup> See e.g. WildTangent

<sup>57</sup> Griffiths M. & Parke J.(2010), "Adolescent gambling on the internet: a review", *Int.J.Adolesc.Med. Health*; 22(1):58-75

<sup>58</sup> *Ibid*, ref.59

<sup>59</sup> Delfabbro P.et al (2009), "Is Video-Game Playing a Risk Factor for Pathological Gambling in Australian Adolescents?", *J Gambl Stud*, 25:391-405

<sup>60</sup> Delfabbro P.et al (2009), "Knowledge and Beliefs about gambling in Australian Secondary School Students and their Implication for Educational Strategies", *J Gambl Stud* 25:523-539

<sup>61</sup> Sevigny S.et al (2005) "Internet gambling: misleading pay-out rates during the "demo" period", *Computers in Human Behavior* 21 pp.153-158

<sup>62</sup> E.g. "Deal or no Deal"

<sup>63</sup> As amended. The Video Records Act 2010 effected no change to any substantive provisions.

<sup>64</sup> Data taken from BBFC website.

<sup>65</sup> Parke, J & Griffiths, M (2006), "The Psychology of the Fruit Machine: The Role of Structural Characteristics (Revisited)", *Int. J.Ment.Health.Addict* 4:151-179



of any age to legally play on category D machines as defined by s.3 of the Categories of Gaming Machine Regulation 2007<sup>66</sup>. Their main characteristics are low stakes/charges (between 10 pence and £1) and low maximum prizes (up to £50 worth of non-monetary prize). The stakes are low but they are not sufficiently different from other gambling products to justify a distinction on financial grounds<sup>67</sup>. Lottery and scratch-cards may be purchased for £1 only; the stakes on sports betting can be as low as £1 per bet and 10 pence for single online casino games. Financial considerations are relative according to the child's age and means and the House of Lord<sup>68</sup> in *R v Burt and Adams Ltd*<sup>69</sup>, when interpreting similar provision under s.34(3) of the Gaming Act 1968, confirmed that the limits on stakes and prizes refer to "any one game". This means that there is nothing stopping a minor from spending the whole day in an amusement arcade and accumulating substantial combined winnings or incurring combined losses.

Finally, demands can be further stimulated by commercial advertisements. The Secretary of State may devise regulations to control commercials but they have not yet been made. Advertisements are powerful and more so for those who already have problem with gambling<sup>70</sup> and although children are savvy customers they are still particularly susceptible to the commercials' influence<sup>71</sup>. The industry voluntarily restricted itself by developing the Gambling Industry Code for Socially Responsible Advertising. The code reinforces the law by directing the industry not to use youth themes or other features that may be particularly attractive to adolescents and not to broadcast before the watershed of 9pm. However, this rule is relaxed during transmissions of live sport entertainment. This is understandable from the industry perspective but sporting events feature on mainstream television frequently and watching them is seen as popular family activity. This result in increased minors' exposure to the advertisements thus further promoting the appeal of gambling to all.

The general philosophy of the legislation is to "create a more open and competitive gambling sector" as well as to give "better choice for consumers and enhanced opportunities for business in UK and abroad".<sup>72</sup> This philosophy is not easily reconciled with the opposing licencing objective to protect minors and it may be argued that they are overridden by the social and economic factors. Pathological gambling is a progressive disorder so any potential problems stemming from the inconsistency in the legislative message may not as yet be apparent but as Crawford and Gerald<sup>73</sup> succinctly put it "it is difficult to tell children that gambling is potentially addictive and harmful behaviour, whilst allowing them to legally do so and also exposing them to television adverts saying the opposite". Although the gambling industry is taking their social

---

<sup>66</sup> As amended by The Categories of Gaming Machine (Amendment) Regulation 2009.

<sup>67</sup> Miers D.(2007) "A British view of European Gambling Regulation"; Chapter in "The Regulation of Gambling: European and National Perspective", edited by Alan Littler and Cyrille Fijnaut; Martinus Nijhoff Publishers,

<sup>68</sup> Now the Supreme Court.

<sup>69</sup> [1999] 1 A.C.247

<sup>70</sup> Valentine G. & Hughes K.; "New Forms of Participation: Problem Internet Gambling and the Role of the Family"; retrieved from [www.lssi.leeds.ac.uk/project/5](http://www.lssi.leeds.ac.uk/project/5) in November 2011

<sup>71</sup> "Letting Children be Children" Report of an Independent Review of the Commercialisation and Sexualisation of Childhood by Reg Bailey, retrieved in June 2012 from: <https://www.education.gov.uk/publications/.../Bailey%20Review.pdf>

<sup>72</sup> Ibid, ref.47.

<sup>73</sup> Moodie C.& Hastings G. (2008), "Gambling with the future of young people", *Addiction Research & Theory*, Vol.16, Issue 2, pp.107-110

responsibilities very seriously for which they should be praised, they are commercial players and as such they also are taking the advantage of all market opportunities available. It is up to the government to acknowledge the inconsistencies between law's rhetoric and practical implications and to develop appropriate strategies before the issue becomes a real public health problem.

## Bibliography

- Gambling Act 2005
- National Lottery etc Act 1993
- National Lottery Regulation 1994
- Categories of Gaming Machine Regulation 2007
- Categories of Gaming Machine (Amendment) Regulation 2009
- Video Recording Act 1984 & 1993
- Video Records Act 2010
- Criminal Justice Acts 1988 & 1991
- Public Order Act 1994
- *Aspinalls Club Ltd v Revenue and Customs Commissioners* [2011] UKFTT 325 (TC)
- *Harrow London Borough Council v Shah* [2001] 1 W.L.R.83
- *R v Burt and Adams Ltd* [1999] 1 A.C. 247
- Ashworth A. (2008), "Conception of overcriminalization", *Ohio State Journal of Criminal Law*, Vol.5:407, pp.407-425
- Barnett J.M. (2002), "The Rational Underenforcement of Vice Laws", 54 *Rutgers L.Rev.*423 2001-2002, pp.426-486
- Black, J. (2007), "Tension in the regulatory state", *P.L.*2007, Spr, 58-73
- Buczkiewicz M.et al "Adolescent attitudes towards gambling: some preliminary findings", *Tacade, International Gaming Research Unit, Nottingham Trent University.*
- Deakin, J.et al (2004), "Risk taking during decision – making in normal volunteers changes with age", *Journal of the International Neuropsychological Society*, 10, 590-598
- Delfabbro P.et al (2009), "Knowledge and beliefs about gambling in Australian Secondary School Students and their Implication for Educational Strategies", *J Gamb Stud* 25:523-539
- Delfabbro P.et al (2009), "Is Video-Game Playing a Risk Factor for Pathological Gambling in Australian Adolescents?", *J Gamb Stud*, 25:391-405
- Derevensky J.L.et al (2009) "Parental Attitudes towards gambling: results from national Canadian Study" presented at the NCPG Conference in Singapore, August.
- Derevensky J.L.et al, (2004), "Adolescent Problem Gambling: Legislative and Policy Decisions", *Gaming Law Review*, Vol.8 No.2.
- Felsher J.R.et al (2003), "Parental Influences and Social Modelling of Youth Lottery Participation", *Journal of Community and Applied Social Psychology*, 13:361-377
- Fisher, S.E. (1999) "A prevalence study of gambling and problem gambling in British adolescents", *Addiction Research* 7, 509-538
- Giocopassi, D.et al, "Motives and Methods of Under-Age Casino Gamblers", *J Gamb Stud* (2006) 22:413-426
- Griffiths M.et al "Adolescent gambling in Great Britain", *Education Today*, Vol.58, No. 1
- Griffiths M. & Parke, J (2010) "Adolescent gambling on the internet: A review", *Int J Adolesc Med Health*; 22(1): 58-75

- Hayer T. et al. (2005). Chapter 21: The prevention and treatment of problem gambling in adolescents. In Gullotta T.P. & Adams G, (Eds). Handbook of adolescents' behaviour problems: Evidence-based approaches to prevention and treatment, pp.467-486. New York: Springer
- Jawad C. & Griffiths, S "Taming of the casino dragon", Community, Work & Family, Vol.13, No.3, August 2010, 329-347
- Littlewood M. (2011), "Gambling and regulation: why there is nothing to fear from liberalisation", IEA Economic Affairs, March.
- Messerlian C. et al, (2004) "Gambling, Youth and the Internet: Should we be concerned?", The Canadian Child and Adolescent Psychiatry Review, February (13):1
- Miers D. (2011), "From Constraint to Competition: 50 Years of Change in British Gambling Policy", Gaming Law Review and Economics, Vol.15 No.3.
- Miers D. (2007), "A British view of European Gambling Regulation"; Martinus Nijhoff Publishers, Leiden/Boston, p.90-121
- Miers D. (2003), "Gambling in Great Britain: Implementing a Social Responsibility Agenda", Gaming Law Review and Economics, Vol.12, No.6, 2003.
- Parke, J & Griffiths, M (2006), "The Psychology of the Fruit Machine: The Role of Structural Characteristics (Revisited), Int. J Ment Health Addict 4:151-179
- Sanders T and Soothill K, (2011); "The Policing of Pleasure: What kind of police service do we want"; The Police Journal, Vol.84.
- Sevigny S. et al (2005) "Internet gambling: misleading payout rates during the "demo" period", Computers in Human Behavior 21 pp.153-158
- Valentine G & Hughes K.; "New Forms of Participation: Problem Internet Gambling and the Role of the Family".
- Winterscheid J.F. (1977), "Victimless crimes: The threshold question and beyond", Notre Dame Lawyer, Vol.52:995 1976-1977
- IPSOS MORI Prevalance Study of Gambling 2010
- Gambling Commission Press Release, "Under-age gambling in betting shops – operators face further tests", 3/12/2009,
- Gambling Commission Press Release, "Monitoring under-age gambling in adult gaming centred", 15/06/2010.
- Gambling Commission Press Release "Mystery Shopping tests continue", 31/07/2009.
- Gambling Commission Regulatory Sanction Register - Operators Licences March 2012.
- Gambling Commission Regulatory Sanction Register 29<sup>th</sup> May 2012.
- Letting Children be Children" Report of an Independent Review of the Commercialisation and Sexualisation of Childhood.