Local Government and Regeneration Committee

Inquiry into fixed odds betting terminals
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Local Government and Regeneration Committee

The remit of the Committee is to consider and report on a) the financing and delivery of local government and local services, and b) planning, and c) matters relating to regeneration falling within the responsibility of the Cabinet Secretary for Infrastructure and Capital Investment.

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Note: The membership of the Committee changed during the period covered by this report, as follows:
Jayne Baxter (Lab, Mid Scotland and Fife) joined the Committee on 2 September 2015, replacing Alex Rowley (Lab, Cowdenbeath)
George Adam (SNP, Paisley) joined the Committee on 5 November 2015, replacing Clare Adamson (SNP, Central Scotland)
Introduction

1. The Scotland Bill, introduced to the House of Commons on 28 May 2015, seeks to make a number of amendments to the Scotland Act 1998 and devolve further powers to the Scottish Parliament.

2. In the UK Parliament, the Bill has completed its passage through the House of Commons and is, at the time of the Committee’s agreement of this report (9 December 2015), under consideration at Committee Stage in the House of Lords. It is expected that the Bill will complete its passage through the UK Parliament in the first months of 2016.

3. In the Scottish Parliament, the lead committee considering the provisions of the Scotland Bill is the Devolution (Further Powers) Committee which will report to Parliament on the Bill and make a recommendation with regard to any legislative consent memorandum which may be laid with regard to the Bill.

4. This Committee reports to the Devolution (Further Powers) Committee, as well as the wider Parliament, in order to help inform its scrutiny of the Scotland Bill.

Our report

5. This report starts with some background to fixed odds betting terminals (FOBTs) and the current regulatory regime. It will then go on to consider, first, the question of whether FOBTs are a problem on the high street and, as some suggest, akin to the ‘crack cocaine’ of gambling or whether they are just harmless entertainment enjoyed by many.

6. Second, our report will consider the various solutions put forward to address this perceived problem. We will consider the provisions as set out in the Scotland Bill, as well as those set out in previous amendments to the Bill. We will also consider whether devolving all powers relating to gambling and betting would be the best solution.

7. Third, we will consider whether the Scottish Government could better utilise existing powers to address this problem in some way.

8. We report as follows—

Background

The Scotland Bill

9. Following the referendum on Scottish independence in September 2014, the UK Government established the Smith Commission to “oversee the process to take forward the devolution commitments on further powers for the Scottish Parliament”. ¹
10. Recommendation 74 of the Smith Commission report proposed that “the Scottish Parliament will have the power to prevent the proliferation of Fixed-Odds Betting Terminals”. Responsibility for betting, gaming and lotteries is currently reserved to the UK Parliament under schedule 5 of the Scotland Act 1998.

11. On 28 May 2015, the Scotland Bill was introduced to the House of Commons by the UK Government to give effect to the Smith Commission report. Clause 45 of the Bill sought to give effect to recommendation 74 by making an exception to the reserved powers set out in Schedule 5—

> In the case of a betting premises licence under the Gambling Act 2005, other than one in respect of a track, the number of gaming machines authorised for which the maximum charge for use is more than £10 (or whether such machines are authorised).

12. Clause 45 also proposed the appropriate amendments to the Gambling Act 2005 to reflect Scottish Ministers assuming these powers. In addition, it stated that “amendments made by this section [clause 45] do not apply in relation to a betting premises licence issued before this section comes into force”. This means that these powers could not be used to limit the number of these gaming machines authorised under existing licences.

13. During the Bill’s consideration by the House of Commons, amendments were lodged by Alastair Carmichael MP to extend the provision to all gaming machines authorised under a betting premises licence, except in respect of a track, and to delete the sub-clause which restricted the new power to new licences only. These amendments were not successful.

14. Due to amendments agreed to earlier parts of the Bill during its passage through the House of Commons, the relevant provisions were contained in clause 49 when the Bill moved to the House of Lords.

Fixed odds betting terminals

15. Fixed odds betting terminals, commonly referred to as FOBTs, were introduced in 2001 into licensed betting premises. FOBTs are gaming machines that allow players to bet on the outcome of various games and events with fixed odds returns. The most commonly played game is roulette, but other games include bingo, simulated horse and greyhound racing and a range of slot machine games.

16. FOBTs have become controversial because a player can stake up to £100, with a gap of 20 seconds between games. The Campaign for Fairer Gambling pointed out that a player can, therefore, stake up to £300 a minute. Glasgow City Council has established the average spend on betting in Glasgow is £12 every 35 seconds. William Hill stated that the average UK bet is £14.80.
The Gambling Act 2005

17. FOBTs were initially unregulated but this changed when the Gambling Act was passed in 2005 (and came into effect in 2007). Under section 236, the UK Government categorised all gaming machines into A, B, C and D and further divided B machines into four sub-categories. FOBTs were categorised as B2 machines. The maximum stake for other B category machines is £2.

18. The Gambling Act 2005 also made provisions relating to the number of gaming machines the holders of licensed premises could make available. Only the holders of a betting premises licence (licensed betting premises and tracks) and casino licences can make B2 machines available. Up to four B2 machines are permitted under a betting premises licence. The number of B2 machines which can be authorised under a casino licence varies depending on the size of the casino.8

19. Our inquiry heard evidence suggesting that there are around 839 B2 machines in licensed betting premises in Glasgow, 421 in Edinburgh, 320 in North Lanarkshire and 316 in South Lanarkshire.9 There are 10 B2 machines in the 14 casinos in Scotland.10 The Committee did not receive any information about the number of B2 machines made available at tracks.

The Devolution (Further Powers) Committee interim report


21. In its report, the Devolution (Further Powers) Committee acknowledged that it “has not taken any detailed oral evidence on this issue” but concluded “at this stage, the Committee questions whether the draft clause, as currently written [to limit the number of FOBT machines for new licences only], gives any meaningful effect to the Smith Commission proposals in this area”.12

22. In the Scottish Government’s response to the report, dated 7 June 2015, it argued that clause 45 “would not amount to a meaningful devolution in practical terms and would therefore be at odds with the intention of the Smith Commission”.13

23. On 23 June 2015, the Secretary of State for Scotland wrote to the Devolution (Further Powers) Committee stating that—

> The [UK] Government has interpreted this [Smith Commission Recommendation 74] to mean an increase in the number of FOBTs authorised by a betting premises licence and therefore the clause applies the power to new premises only. It will enable Scottish Parliament and the Scottish Ministers to vary the number of FOBTs authorised by a betting premises licence.14
24. Following the publication of the Devolution (Further Powers) Committee report, the Local Government and Regeneration Committee agreed to undertake a short inquiry into the provisions as it is likely any new devolved powers relating to FOBTs would come within the Committee’s remit.

25. As part of its inquiry, the Committee issued a call for written evidence and posted an online questionnaire on its web pages. The Committee received 36 written submissions and 31 people responded to the on-line questionnaire. All the written submissions, the SPICe summary of the written evidence and SPICe summary of the questionnaire responses are available on the Committee’s web pages.\(^\text{15}\) The Committee then took oral evidence; first in a round-table format with representatives from the retail betting industry, local authorities and campaign groups on 11 November 2015 and then from Scottish Government officials on 18 November 2015. The Committee thanks those who took the time to either respond to the call for written evidence and online questionnaire or to give oral evidence.

The problem - are FOBTs the ‘crack cocaine of gambling’ or harmless entertainment?

26. We heard a lot of evidence suggesting that FOBTs are highly addictive and more likely than other gambling products to lead to problem gambling or addiction, leading some critics to refer to FOBTs as the ‘crack cocaine of gambling’. Many commented this had wider implications for families, local communities and society more generally. In his written submission, Colin Ross, an ex-bookmaker, claimed—

> What we are seeing in the past few years is current and massively damaging to our country, dramatically changing the face of our gambling culture and replacing it with devastation, huge social problems, unsafe high streets and betting shops that have lost their appeal to the many thousands of regular punters who formed the culture Scotland had.\(^\text{16}\)

27. A number of local authorities’ submissions expressed concern over the clustering of licensed betting premises over a small area. Glasgow City Council suggested the existing limit of four B2 machines per shop may be a factor behind the clustering of licensed betting premises in Glasgow as “there is an obvious incentive for the gambling industry to maximise the number of machines available to customers”\(^\text{17}\). Highland Licensing Board highlighted a “particular part of Inverness, which incidentally is close to an area of social deprivation, [where] there are now three betting premises within 200m of each other, each with entitlement to make up to four FOBTs available for use. Each of them has elected to use their full entitlement, giving a total of 12 FOBTs within a 200m radius.”\(^\text{18}\)
28. Some of the responses to our online questionnaire anecdotally suggest that using FOBT machines can lead to some financial, social and health problems. Comments included—

> The worst harm I have suffered has come from using my debit card on FOBTs. When my daily cash withdrawal limit from ATM has been exceeded, I can go into any bookmakers and use my debit card on a FOBT without any limits. This has often resulted in me losing control and spending everything in my account.

> Just get rid of the things I’d rather be dead given the financial hole I’m in now

> A thoroughly enjoyable leisure activity. A view shared by many of my friends.

> I would say that FOBTs are an example of what is called a Skinner Box. They exert a form of behavioural conditioning on their operants. From watching people play these, whilst at the same time watching people bet horses, greyhounds and football, I can safely say that they are completely different forms of gambling. FOBTs seem to encourage addiction to a much greater extent. I would therefore argue that there is a need for separating the premises on which sports betting and casino betting occur.

29. The Campaign for Fairer Gambling referred to secondary research on the 2007 British gambling prevalence survey which found that FOBTs are “the only form of gambling that is statistically significantly associated with disordered gambling, and more so than any other type of gambling”. It also referred to secondary research on the 2010 British gambling prevalence survey which found that “40% of FOBT profits come from people who are either problem gamblers or at-risk gamblers”. It concluded that “it is the type of gambling that problem and at-risk gamblers do the most and that they lose the most on”.19

30. We also heard from representatives from the casino industry who consider FOBTs to be a form of ‘hard gambling’ and unsuitable for the unsupervised licensed betting premises environment. The National Casino Forum told us—

> The interaction between the customers, the managers and the staff who are there to supervise the play of the machines and any problems that may arise from the way in which certain individuals gamble is on a completely different level [to that provided in a betting shop environment]. We have a mandatory self-exclusion scheme for all National Casino Forum members, and it is independently audited. The evidence is that it is almost totally observed. … Within casinos, all the safeguards are there, and the matter is treated with the seriousness that it deserves. The level of manpower and supervision is the key thing.20
31. The Chief Executive of the Hippodrome Casino in London expressed the view—

"it is impossible that there is no problem associated with the machines. To prove that definitively would be like the debate about whether there was a causal link between smoking and lung cancer, which went on for years while everyone knew that it was a problem".21

32. Councillor Rooney from Glasgow City Council, which has carried out a significant amount of work relating to the number and effects of FOBTs around the city, argued the evidence on FOBTs was unclear and concluded—

The honest response to the question that has been asked is that we do not really know. That is why, in our cross-party work in Glasgow, we have called for a commission to get the independent evidence that we all require for a committed position one way or the other. We believe that that would allow a firm policy to be put in place that would assist in supporting those who wish to gamble, but that would also ensure that we protect those who are vulnerable and have the sorts of problems and issues that have been mentioned.

It is clear that there are significant differences with FOBTs. The amount that is bet and gambled on them is greater than the combined total for any other form of gambling. It is important to remember that more is being gambled on these machines than on horse racing and football coupons.22

33. Other evidence, including from the retail betting industry, challenged the suggestion that players of FOBTs are exposed to an additional risk to problem gambling and addiction. They argued the causes of a gambling addiction are more complex and multi-layered than resulting from the introduction of one type of gambling product. The Association of British Bookmakers (ABB) stated in its written evidence—

we believe gaming machines pose no greater risk than any other gambling product. Problem gambling is specific to the person and not to any one product. Rates of problem gambling are shown to be highest amongst customers who participate in seven or more activities a year and lowest amongst those who take part in only one.23

34. Many submissions suggested research by the Responsible Gambling Trust, published in December 2014, did not find a causal link between gambling machines and problem gambling.24 Many also referred to the prevalence studies which show that problem gambling levels have remained relatively stable at 0.6-0.9% of the adult population between 2000 (before FOBTs were introduced) and 2010.

35. During oral evidence, the representative from William Hill reinforced static gambling levels, arguing "we are clear as an industry that FOBTs are not a
specially addictive product but any gambling product has the capacity to cause harm to a relatively small minority of individuals”. He went on to say—

"We firmly believe that problem gambling is about the person, not the produce, and we think that if Scotland is to fashion a sensible harm-reduction policy on problem gambling, it must not concentrate on a single product in a single sector. Instead, it needs to take a co-ordinated view on all gambling products." 25

36. Written submissions from the retail betting industry highlighted work it has done to try to minimise the risk of problem gambling and addiction by introducing the ABB Code for Responsible Gambling in 2014. This sets out a number of player control measures, such as the ability for players to set their own time and spend limits at the outset of play and the £50 stake measure which requires stakes of over £50 to be paid over the counter or via an account. In addition, four of Britain’s leading gambling companies – William Hill, Ladbrokes, Coral and Paddy Power – created the Senet Group in September 2014 in response to public concerns on gambling, and gambling advertising in particular.

37. During oral evidence, representatives from the retail betting industry spoke further about the work being done across the industry relating to ‘harm reduction’ and promoting ‘self-regulation’ as a way of identifying and supporting players most at-risk.

38. In response to the point put forward by representatives from the casino industry about casinos being a more suitably supervised environment for FOBTs (paragraph 30), the representative from William Hill said—

"Monitoring and supervision are as strong in the betting industry as they are in the casino sector or any other sector. I do not contend that we are any better or any worse, but the idea that we are less supervised or that regulation is lighter in the betting industry is a complete misconception." 26

39. Other witnesses felt that this was not a fair comment and argued the environment of a licensed betting premises – often with one member of staff, sometimes restricted to working in ‘a protective cage’ during the evenings – was not appropriate. Hippodrome Casino concluded “that interaction just doesn’t happen, so saying that it does is just more of that smokescreen”. 27

40. The representative from William Hill spoke about the self-exclusion policy operated by bookmakers. Other witnesses were sceptical about the efficacy of self-regulation and Hippodrome Casino referred to the Gambling Commission’s statistics which stated that the number of people self-excluding had increased over recent years from 20,000 to 28,000 but that there had been 21,000 breaches. 28 One of the comments provided on the Committee’s on-line questionnaire was “I became addicted to these and I’ve lost thousands, I self
excluded from all the shops in my area, this didn’t work they still let me in. I am now with gam care and looking to see a hypnotherapist.”

41. William Hill also referred to the £50 stake measure (paragraph 36). The witness argued this provided an additional level of supervision, allowing staff to monitor those playing significant stakes.

42. Other witnesses at the meeting, however, argued the requirement to register for an account and loyalty cards were being used by bookmakers to promote betting. The Chief Executive from Hippodrome Casino told us he had registered for an account as M Mouse and D Duck and was “bombarded daily with adverts, offers and pressure to spend money”.29 The British Amusement Catering Trade Association (BACTA) claimed that bookmakers have used contact information to send text messages such as ‘Big men bet big’.30 The Campaign for Fairer Gambling stated that “bearing in mind that the Government introduced the measure on the assumption that people who were betting more than £50 a spin were more likely to be the players who were experiencing the most harm, it is slightly irresponsible, to say the least, to start bombarding those players with text message marketing.”31

43. When asked about how the retail betting industry could harness technology to help it support problem gamblers and addicts, William Hill highlighted the work being done to “develop technological solutions to identify harmful patterns of play and be able to react with those customers and help them to change their behaviour. That is in its infancy, but it is happening, it is meaningful and it is working.”32

44. Other witnesses were less enthusiastic about technological advances providing a short term solution. The Campaign for Fairer Gambling told us this algorithm is “probably about 10 years away” and Hippodrome Casino stated “problem gambling and an algorithm: it is a lovely nirvana. It is a very nice way of pushing the problem down the line for another five or 10 years.”33

45. We are alarmed by the statistics about the speed of play and maximum stake involved with FOBT games and note in particular the views expressed by the casino industry that it considers FOBTs to be a form of hard gambling. We are also shocked by some of the evidence from people who play FOBTs about the impact this has had on them and their family, particularly noting some of the comments made on the online questionnaire.

46. Notwithstanding only having undertaken a short inquiry, we are of the opinion that FOBTs are a particularly addictive gambling product and we can see a strong case for arguing that FOBTs should be banned from licensed betting premises.

47. In addition, we call on the retail betting industry to increase its efforts to harness technology to identify harmful patterns of play and better support for problem gamblers and addicts.
48. We believe there is sufficient evidence and concern about FOBTs to suggest a need for more definitive research to inform this debate. We note, and agree with, Glasgow City Council’s suggestion that independent research be undertaken to establish a ‘committed position’. We strongly recommend an independent panel be commissioned to undertake this research.

49. We believe such research is imperative and fundamental to any future policy making in relation to FOBTs and it is only with independent research that governments can formulate a policy to regulate FOBTs and other gambling products.

50. Without the research, and within the scope of this short inquiry, we cannot take a definitive view on the measures a policy for FOBTs should contain and what action governments should take to ensure play remains enjoyable and safe. We took evidence on a range of potential measures, however, and set out our initial views in the remainder of this report.

The solution (1) – devolution of further powers to the Scottish Parliament

Clause 49 – the power to limit the number of FOBT machines in new premises

51. We considered the proposal in the Scotland Bill for powers to limit the number of FOBT machines in new licensed premises (see paragraphs 11 and 12 for a fuller explanation).

52. Those who argue FOBTs lead to problem gambling and addiction supported this proposal.

53. Written evidence from bookmakers, however, was less supportive. William Hill cautioned—

> It would be naïve to think that restricting regulated supply of a popular gambling product would choke off demand. We would simply see the demand for higher stake digital gaming machines being provided by illegal operators in unsafe environments. Neither could it be assumed that the majority of the customers would substitute back into over-the-counter products.34

54. Many of the submissions from bookmakers stressed how crucial FOBTs are to the profitability of licensed betting premises and suggested limiting their numbers could cause shop closures. Ladbrokes argued “while there is no evidence that restrictions of one product would impact on problem gambling levels there is clear evidence that licensed betting premises would be significantly impacted by the loss of B2 content”.35 Paddy Power Plc stated that FOBTs contribute 42% towards overall profit in Scotland36 and William Hill advised they represent 40% revenue in Scotland.37 Glasgow City Council told us B2 machines generate annual profits in excess of £1.5b (or more than £47,000 from each machine).38
The retail betting industry stressed licensed betting premises closures would threaten the 7,000 staff employed in licensed betting premises across Scotland and the £11,000 business rates per shop and £115m in tax revenue. They also argued reducing the numbers of machines would risk “customer displacement to non-regulated environments.”

55. Paddy Power Plc (a relative newcomer to the retail betting market in Scotland) argued in its submission that “restriction would represent an unlawful barrier to entry and expansion to the UK retail betting market” by creating a two-tier industry, with established licensed betting premises with their existing licence permitting up to four machines and those with licences authorised under the amended Gambling Act 2005.

56. In both its written and oral evidence, the Law Society of Scotland (LSS) raised what it felt was a ‘constitutional difficulty’ which would arise under the Bill whereby some premises with FOBTs would be regulated by Scottish Ministers and other premises where FOBTs and all other gaming machines would be regulated by UK Ministers. As a consequence, LSS supported amendments to allow the provision to apply to all machines and all licences. During oral evidence, LSS advised—

There is a perceived issue with having some premises that are licensed in Scotland controlled by one part of the law, which might be from Westminster, and other machines or premises in Scotland being controlled by other law that might arise as a result of the Scotland Bill. The Law Society’s position is that that is a constitutional problem because it creates a situation whereby we could have premises next door to each other that were regulated under separate areas of law, which would not be good.

57. We note the comments made by bookmakers that FOBTs contribute approximately 40% towards their profits. Taking this into account, we understand why bookmakers are concerned any limits on the numbers of FOBTs would reduce their profits and, potentially, lead to some shop closures.

58. We agree with representations that the Scotland Bill would prevent new bookmakers from entering the marketplace on the same footing as existing bookmakers and, thus, create an ‘un-level playing field’.

59. We share the concerns highlighted by the Law Society Scotland about the regulatory confusion which would arise if different betting premises licences were regulated by the Scottish or UK governments, depending on whether they were authorised before, or after, the Scotland Bill came into force.

60. We have already stated that we see a strong case for banning FOBT machines in licensed betting premises. We believe limiting the number of FOBT machines being made available under a betting premises licence in
the future would have a very limited impact given the number of existing FOBTs.

61. For these reasons, we are not satisfied the provisions contained in the Scotland Bill represent meaningful devolution of effective powers to the Scottish Parliament. We believe these provisions would only create an unequal market place and regulatory confusion between new and existing betting premises licence holders. We are agreed these powers would not enable the Scottish Government and local authorities to address the number of, and potential harm caused by, FOBTs.

House of Commons amendments – power to limit the number of all machines authorised under all betting premises licences

62. In our call for evidence, we also consulted on the (subsequently unsuccessful) amendments. These amendments provided that the Bill should apply to all gaming machines authorised under a betting premises licence (except in respect of a track). They also proposed that the power should extend to existing licences. (See paragraph 13 for a fuller explanation.)

63. Many of the smaller bookmakers expressed significant concerns about the implications of such a change to their licence terms. Odds and Evens Ltd highlighted the concerns felt by smaller retail operators, stating “this would see our small family business placed in peril as the use of machines is a central part of our business and it would be a real blow if we lost the right to use FOBTs”. Many argued—

- These proposals suggest that Scotland could be given powers which would mean our existing gaming machines entitlements could be removed at the whim of our local licensing board. It seems to us to be disproportionate and against the ideas of natural justice … especially in the absence of any evidential test. 42

64. There was little support for the provisions to apply retrospectively amongst the respondents from the larger bookmakers. The ABB stated in written evidence that, with such a power, the “future of the betting shop on the high street would be severely jeopardised”. 43 William Hill stated such a provision would not be justified by the evidence and that it “is neither reasonably proportionate nor objectively justifiable”. Ladbrokes called it a “disproportionate and unfair mechanism”. 44 The majority of these submissions repeated the argument set out at paragraph 54 regarding the challenging economic conditions and concern that any reduction in revenue from FOBTs could close licensed betting premises.

65. Paddy Power Plc, and LSS raised additional concerns about whether such a provision contravened operators’ right to possession under the European Convention of Human Rights, arguing that a licence constitutes a possession. They also questioned whether such a restriction would contravene articles 49
(freedom of establishment) and 56 (freedom to provide services) of the Treaty on the Functioning of the European Union (Treaty of Rome).

66. A number of respondents to this inquiry indicated their support for retrospective application. Glasgow City Council considered, without retrospective application, “limiting the restrictions to only new licences does nothing to address how more than 800 FOBTs already in place throughout Glasgow are played, or by whom”.45 The Campaign for Fairer Gambling agreed with this point, stating that “a retrospective power has the potential to create a more level playing field”.46

67. In the time between receiving written evidence and taking oral evidence, the House of Commons considered and rejected these amendments. As a consequence, we did not pursue this further during oral evidence.

68. We note the extension of the provisions to all gaming machines made available under a betting premises licence would not make a substantial difference as the concerns mainly relate to FOBT machines.

69. We support the principle that the Scotland Bill provisions should apply to existing betting premises licences. As noted earlier, we believe there are already too many FOBT machines in Scotland. This provision would have given the Scottish Parliament real and effective legislative powers to address this.

70. Accordingly, we conclude that the Scotland Bill should be amended to ensure the provisions also apply to existing licences.

Powers to limit the number of all gaming machines under all betting and gambling licences

71. Although the Committee did not ask for comments relating to the devolution of all powers in relation to gaming machines, it was raised in some submissions.

72. In relation to extending the limit to all FOBT machines made available under other licences (as set out at paragraph 18, only licensed betting premises, tracks and casinos can currently make FOBTs available), the written responses from bookmakers were supportive, arguing that, if the policy aim is to reduce the number of FOBTs, then the provision should extend beyond licensed betting premises. In its written evidence, however, the National Casino Forum argued it would be “inappropriate” for the provision to be so extended, given there are only 10 FOBTs machines across the 14 casinos in Scotland. Its main concern was this would create a situation of “dual regulation, a potentially untidy and confusing administrative outcome”.47

73. Significant concerns were raised by those companies holding an operating licence for premises containing gaming machines other than FOBTs, such as adult gaming centres (usually known as arcades) or family entertainment centres. They were concerned the number of gaming machines they are authorised to make
available could be limited and this could affect their businesses as these premises typically rely entirely on gaming machines for their revenue.

74. When they gave oral evidence, Scottish Government officials re-affirmed Scottish Ministers’ view “the regulation of gambling more broadly and not just FOBTs is the power that should be devolved to Scotland, which would give us the ability to consider the issues, do the necessary research, do the necessary development work and make the regulation as effective as possible”.48

75. We note the Scottish Government's position that all gaming and betting powers should be devolved to the Scottish Parliament.

76. Our inquiry was focused on the Scotland Bill provisions and it did not consult on this particular issue, so we are not able to provide detailed comments on this approach.

77. We agree, however, that devolution of this policy area would enable the Scottish Parliament to develop a strategic approach to betting and gambling. A holistic approach is essential; having piecemeal powers will inevitably result in displacement and render any policy incoherent.

Changes to FOBT machines

78. Those who argued FOBT machines pose a higher risk to players agreed that changes to the machines, such as reducing the maximum stake and the time between spins, were essential.

79. In its written submission, Glasgow City Council detailed its work in establishing a cross party Sounding Board on the impact of FOBTs in Glasgow. The group recommended a total of 18 actions and argued neither the UK Government proposal set out in clause 45 nor the Scottish Government position “meets or makes significant progress towards any of these”. It goes on to say—

There has been no obvious consideration of public health – including the impact of FOBT stakes, prizes and the duration and speed of play in terms of gambling behaviour, problem gambling, addiction, health and harm. Neither provision considers the current regulatory framework nor how it could be improved or supplemented. There is no attempt to understand the impact of problem gambling and how it may relate to a range of issues; including poverty and both physical and mental health.49

80. The Campaign for Fairer Gambling, Hippodrome Casino and the BACTA argued a reduction of the maximum stake to £2 per spin would significantly reduce the harm and crime caused by FOBTs and the powers to regulate the size of the stakes should also be devolved to Scottish Ministers. During oral evidence, the Campaign for Fairer Gambling stated—
The £100 stake facilitates harm, as it allows a user to stake up beyond their means. If they are starting to chase their losses, or if they win a bit and become desensitised to lower stakes, the range from £1 to £100 means that they can stake up from what is affordable in the first instance to an unaffordable level. That is why we are campaigning for a reduction in the maximum stake.\(^5\)

81. It later added—

There is a combination of factors including the staking range of £1 to £100; the roulette content, which is addictive anyway but is made to play five times faster than in a casino; and the fact that it is a solitary activity. A range of factors makes the FOBT a particularly harmful product. Reducing the stake would limit that harm.\(^5\)

82. We agree a reduction to the stakes and increase of the time between games would help alleviate the damaging effects of FOBTs for some players. We recognise this is beyond the scope of the Scotland Bill but draw governments’ attention to this issue for consideration when making future betting and gambling policy.

The solution (2) - maximising existing powers devolved to the Scottish Parliament

83. Over the course of its short inquiry, we considered whether there are ways in which authorities in Scotland can tackle some of the issues which have arisen in relation to FOBTs using existing powers.

Powers to inspect licenced betting premises and review licences

84. The Gambling Act 2005 created a co-regulatory structure for the licensing and regulation of gambling, shared between the Gambling Commission and licensing authorities (licensing boards in Scotland).

85. Licensing boards have broad discretion to regulate the local provision of gambling and they have powers to, amongst others, review premises’ licences and attach conditions or revoke them. In doing so, licensing boards should be mindful of, amongst others, the licensing objectives (relating to preventing crime, fairness, protecting children and vulnerable people) and the licensing authority’s statement of licensing policy. This licensing policy can reflect local issues, priorities and risks and underpin its approach to local regulation.\(^5\)

86. The Gambling Act 2005 provides that ‘officers’ of licensing authorities will have the power to supervise compliance with the Act and inspect and review premises. Unlike in England and Wales, however, licensing standards officers in Scotland are local authority employees and, therefore, many argue they cannot fully exercise the powers nominally granted to them in the Gambling Act 2005.
87. As evidence of this, the Gambling Commission states in its written evidence the amount of inspection, compliance and enforcement activities undertaken by licensing standards officers “remains low in comparison to that in England and Wales”.53

88. An amendment was lodged during consideration of the Scotland Bill in the House of Commons but was not voted on. A similar amendment has been lodged for consideration by the House of Lords at Committee Stage but this had not been considered by the time of we considered of this report.

89. A number of written submissions highlighted this issue and suggested that it was a drafting error which would be “relatively minor and straightforward” to change. The Gambling Commission believe this change would “deliver a much improved shared regulation environment by ensuring more effective gambling compliance and enforcement, as well as better protecting vulnerable groups in Scotland from the risk of gambling related harm”.54

90. During oral evidence, the LSS also considered this drafting error should be addressed, stating—

that would allow local government officers to be trained appropriately in relation to the 2005 Act and to conduct enforcement and compliance activity. … Since that time [the Gambling Act 2005 came into effect], I understand that there has been one review of a gambling licence. That suggests that there is a wide misunderstanding – or perhaps fear – of the gambling law by licensing authorities in Scotland.

91. LSS added—

The existing provisions for review allow licensing boards to call in a licence if someone alleges that harm is occurring or that there is a problem. As I said, in my experience – although I might be wrong – there has been only one such hearing across the 32 licensing boards since 2007. I put that down to local government officers’ lack of ability to conduct enforcement and compliance processes. Unfortunately, we can amend that only by having Westminster amend the Gambling Act 2005.”55

92. We were advised Scottish Ministers had raised this issue with UK Ministers and that “the UK Government has expressed a willingness [to address this] but, as yet, there has been no sign of the work being undertaken”.56

93. On the broader point, the Scottish Government argued it did not think licensing boards’ licensing policy would be an effective tool to limit the number of licensed betting premises —

On the more fundamental question about how far these policies can be used to tackle the specific problem of FOBTs, I am aware of a case in England in which a council – I think it was Newham London Borough
Council – tried to prevent a betting shop from being opened on public health grounds, but my recollection is that the council lost that on appeal. I come back to the point that boards feel that the legislation circumscribes what action they can take."

94. When asked about the level of information and guidance given to licensing boards to use their powers to restrict the number of licensed betting premises and FOBTs by the Scottish Government, officials answered that such information is not provided as this is a reserved issue.57

95. In supplementary evidence, the Gambling Commission highlighted its opinion that there are circumstances under which licensed standards officers in Scotland could be deemed to be ‘authorised persons’ under the Gambling Act 2005 and other local authority staff involved in the prevention of harm to human health, such as Environmental Health Officers, were already authorised persons. It stated that—

"The Commission is clear, despite inadequacies in the 2005 Act, that Licensing Boards in Scotland do have powers to regulate betting shops in Scotland, and indeed other types of gambling licensed premises by either using appropriately authorised licensing standards officers or by utilising other local authority staff who are authorised persons in their own right.58

96. We believe local government is the most appropriate level to take decisions about the right number of licensed betting premises in a community. Local authorities must be given greater powers to take these decisions.

97. In relation to using powers to inspect licences, we are disappointed no progress has been made in amending the Gambling Act 2005 to enable licensing standards officers in Scotland to gain entry and inspect licensing premises. Aside from our particular concern with FOBTs, this inspection function is a key provision of the Gambling Act 2005 and it should have been addressed as soon as it was identified. It is unacceptable that legislation cannot be fully enacted due to a drafting error. We expect the UK Government to progress this as soon as possible and the Scottish Government to maintain its pressure on the UK Government in this regard.

98. In relation to using powers to review licences, we accept this is not straightforward, given the perceived difficulties in inspecting licensed betting premises. We believe, however, that licensing boards need to take on a greater role in monitoring licensed betting premises and explore with the Gambling Commission how they can take ownership of this issue within their local communities.

99. In particular, the Committee notes the alternative solution proposed by the Gambling Commission and calls on local authorities and COSLA to work together to ensure licensing boards make use of it.
Powers over planning

100. Shop premises are categorised into various classes by the Town and Country Planning (Use of Classes) (Scotland) Order 1997. When a company or individual proposes using the shop premises for a purpose outwith this class, they must apply to the local authority planning authorities for permission where a material change of use is involved. Currently, licensed betting premises are in the ‘financial, professional and other services’ class.

101. This was raised with us as many felt it restricted local authorities’ ability to control the number of licensed betting premises in its area. Many suggested that creating a planning class category specifically for licensed betting premises would mean planning permission would have to be sought before any new licensed betting premises could be opened, except where a retail betting operator had taken over premises already in this class, that is, an existing licensed betting premises.

102. The Scottish Government announced it had decided against this course of action in February 2015 after it consulted on the Town and Country Planning (Use of Classes) (Scotland) Order 1997.

103. In written evidence, William Hill expressed its surprise that the Scottish Government’s consultation on planning had not led to licensed betting premises being given their own class for planning purposes, suggesting “it was a way of dealing with public concern about licensed betting premises clustering”. It concluded “we would respectively submit that if there was no evidence to support planning changes then there is little evidence to support other policy or legislative change”.

104. In its written evidence, Glasgow City Council argued Scottish Ministers should take “immediate steps to put licensed betting premises in a new planning class” to give councils the opportunity to consider all new applications or consider the approach taken by English authorities. Here, a broader retail class has been established and many premises previously categorised alongside licensed betting premises have been moved into this, thus reducing the number and type of premises that can be converted into a licensed betting premises without requiring planning consent.

105. We explored this issue further during oral evidence. Councillor Rooney from Glasgow City Council highlighted an example from his ward in Knightswood where there are 12 FOBT machines available to play in one row of shops as there are three bookmakers, each with their maximum of four FOBTs. He went on to state that—

>> We want to do whatever we can at local government level. We also require the support of governments at Scottish and UK level. We would like to have the powers at local government level to ensure that appropriate decisions are taken. There remain issues around the categorisation of
bookmakers to differentiate them from other categories, such as banks. I believe that we can address that and that we can do so quickly.  

106. He went on to argue—

I believe that local government is best placed to make decisions on planning matters associated with bookmakers and whether it is appropriate to grant planning. We see voids being replaced by bookmakers, despite the fact that there may already be one or more bookmakers in close proximity.

107. We raised this issue with Scottish Government officials. They stated—

An underlying point is that we feel that licensing is the more appropriate mechanism to deal with such things and that the question of whether a betting shop should be allowed should more naturally fall into licensing. However, we do not have the power in that regard. Mr Neil indicated to Parliament that we would look at amending the use classes order if we did not get from the UK Government the most effective powers on controlling payday lending and gambling.

108. Officials went on to state there is a different “mindset” between licensing and planning council authorities as “licensing is concerned with the typical licensing objectives of protecting public health, preventing criminality and reducing disorder, for example. Planning is very different.”

109. Following our meeting on 18 November 2015, we agreed to write to the independent Review of the Scottish Planning System to highlight this issue and ask it to consider if changes to the planning classes are required. We also wrote to all 32 licensing boards in Scotland to highlight the Review and the opportunity to make similar representations.

110. We recognise decisions taken at local level in relation to licensed betting premises are best taken by licensing boards. However, given the lack of devolved responsibility in relation to this issue, we believe it is incumbent to use all powers available.

111. We share local authorities’ frustrations that local government is prevented from using planning rules to restrict the number of licensed betting premises. We note the use of classes was consulted on in 2014 and believe the decision to make no change to the licensed betting premises class was unfortunate. It is our strong view that planning law should be amended to empower local authorities to control the number of licensed betting premises and, therefore, FOBTs in communities. We urge the Scottish Government to make the necessary changes to the use of classes order in early course.
112. We recommend the Scottish Government reconsider the issue of use of classes as soon as the Scotland Bill is passed. We have written to the Planning Review and encourage all licensing boards and other interested parties to do the same.

113. We note the Planning Review will likely publish its report in Spring 2016, too late for us to consider its conclusions and recommendations. In our legacy paper to our successor committee, however, we will recommend this issue be followed up with the Planning Review and Scottish Ministers.

2 Smith Commission. Scotland Act 1998 (c.46).
3 Scotland Bill.
7 A regional casino using at least 40 gaming tables can make FOBT machines available so long as the number is not more than 25 times the number of gaming tables/1250 machines; a large casino using at least 1 gaming table or a regional casino using fewer than 40 gaming tables can make FOBT machines available so long as the number is not more than 5 times the number of gaming tables/150 machines; and a small casino using at least 1 gaming table can make FOBT machines available so long as the number is not more than twice the number of gaming tables/80 machines (section 172, Gambling Act 2005).
8 Campaign for Fairer Gambling. Written submission (331KB pdf).
9 National Casino Forum. Written submission (159KB pdf).
12 Letter from the Deputy First Minister to the Convener, Devolution (Further Powers) Committee, dated 7 June 2015 (753KB pdf).
13 Letter from the Secretary of State for Scotland to the Convener, Devolution (Further Powers) Committee, dated 23 June 2015 (92KB pdf).
14 Inquiry into fixed odds betting terminals.
15 Colin Ross. Written submission. (10KB pdf).
16 Glasgow City Council. Written submission (234KB pdf).
17 Highland Licensing Board. Written submission. (124KB pdf).
22 Association of British Bookmakers. Written submission. (228KB pdf).
23 Responsible Gambling Trust, independent research programme into Category B gaming machines (single page summaries of the research reports).
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Inquiry into fixed odds betting terminals, 6th Report, 2015 (Session 4)

34 William Hill. Written submission (3144KB pdf)
35 Ladbrokes. Written submission (340KB pdf).
36 Paddy Power PLC. Written submission (333KB pdf)
37 William Hill. Written submission (109KB pdf)
38 Glasgow City Council. Written submission (234KB pdf)
39 Association of British Bookmakers. Written submission (228KB pdf)
40 Paddy Power PLC. Written submission (333KB pdf)
41 LGRC, Official Report, 11 November 2015, Col 25
42 Odds and Evens Ltd. Written submission. (342KB pdf)
43 Association of British Bookmakers. Written submission (228KB pdf)
44 Ladbrokes. Written submission (340KB pdf)
45 Glasgow City Council. Written submission (234KB pdf).
46 Campaign for Fairer Gambling. Written submission (331KB pdf)
47 National Casino Forum. Written submission (159KB pdf)
48 LGRC, Official Report, 18 November 2015, Col 36.
49 Glasgow City Council. Written submission (234KB pdf)
52 Gambling Commission. Written submission (197KB pdf).
53 Gambling Commission. Written submission (197KB pdf).
54 Gambling Commission. Written submission (197KB pdf).
56 LGRC, Official Report, 18 November 2015, Col 34.
58 Gambling Commission. Supplementary written submission (193KB pdf).
60 William Hill. Written submission (3144KB pdf)
61 Glasgow City Council. Written submission (234KB pdf)
64 LGRC, Official Report, 11 November 2015, Col 23
65 LGRC, Official Report, 18 November 2015, Col 32.
66 Letters from the Convener, Local Government and Regeneration Committee, to the Chair, Review of the Scottish Planning System (87KB pdf) and the 32 Scottish licensing boards (95KB pdf).