GAMBLING BILL
SEWEL MEMORANDUM

Motion

1. The motion to be put to the Parliament is:

"That the Parliament Agrees with the principle of including within the Gambling Bill provisions which confer powers on the Scottish Ministers, including powers to set fees and make regulations on the conditions to be attached to gambling premises licences and permits, and that those provisions should be considered by the UK Parliament".

Background

2. Following the Budd Report by an independent Gambling Review body in 2001, the UK Government set out proposals in "*A Safe Bet for Success*" for the comprehensive modernisation of the law on gambling. The draft Gambling Bill, which was published on 19 November 2003, takes forward those proposals and consolidates all GB gambling law into a single comprehensive piece of legislation. The Bill provides for the modernisation of the present gambling legislation but seeks to achieve a balance between deregulation of the industry and the need to reflect social responsibility. This is achieved through the relaxation of outdated controls, provision of greater choice for consumers and the provision of new protections for children and vulnerable adults from the risks intrinsic to gambling.

3. The Bill will establish a powerful new regulator, **the Gambling Commission**, to regulate commercial gambling. The Commission will be expected to exercise its functions under the Act in pursuit of the licensing objectives:–

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

4. The Gambling Commission will be responsible for issuing operating licences for those operating a range of gambling premises and personal licences for all those employed by or providing services to gambling operators. The Commission will issue statutory guidance to licensing authorities on the exercise of their premises licence functions. The Commission will monitor and inspect operations and will have enforcement powers. The Bill will also establish a Gambling Appeals Tribunal which will consider appeals against the Commission's licensing and enforcement decisions and against the decisions of local authorities. The Bill provides for the establishment of a single GB tribunal, who will sit in Scotland to deal with Scottish appeals. In Scotland, an appeal on a point of law can be made from the Tribunal to the Court of Session.

5. The Bill provides for local authorities in England and Wales, rather than magistrates as at present, to be responsible for the licensing of gambling premises. In Scotland at present responsibilities are split between Licensing Boards and local authorities.

6. Anyone wishing to operate commercial gambling will need -

- An operating licence, issued by the Gambling Commission;
- A premises licence or a permit issued by the licensing authority ; and possibly
- A personal licence, issued by the Gambling Commission.

Existing Devolved Powers

7. Only a very small proportion of gambling legislation is devolved. Existing devolved powers and powers exercisable by UK Ministers with the consent of Scottish Ministers are set out in the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968, the Local Government (Scotland) Act 1966 and the Lotteries and Amusements Act 1976. Both local authorities and Licensing Boards have power to issue a range of gambling permits and licences. The fees for those permits and licences are set by Scottish Ministers. In addition, Scottish Ministers have power to set regulations governing the conditions for granting and renewing casino and bingo club licences as well as regulations on opening hours.

Proposed Devolved Powers

8. Under the new proposals, Scottish Ministers will have power to set fees for all premises licences and permits which are to be issued in Scotland. Those fee setting powers are slightly extended in line with the new range of licences. Scottish Ministers will continue to have power to set regulations governing the conditions which Licensing Boards may attach to bingo and casino premises licences and this will be extended to all types of premises licences. Scottish Ministers will also continue to have power to make regulations governing the restrictions on the opening hours of bingo premises and casinos. This too is extended to all types of premises. In addition, it has been agreed that the Gambling Commission will consult with Scottish Ministers before finalising its statutory guidance for licensing authorities in respect of premises licences.

9. This means, that in issuing premises licences and permits in Scotland, Licensing Boards will be required to have regard to the following:

- Statutory guidance issued by the Gambling Commission.
- The Licensing objectives:
  - the prevention of crime;
  - the fair and open conduct of gambling; and
  - the protection of children and vulnerable people from harm or exploitation.
- The authority or Board's own published policy statement.
- Mandatory and standard licence conditions set by Scottish Ministers.

10. In order to ensure that illegal gambling is dealt with robustly, the Gambling Commission will have power to report directly to the Procurator Fiscal in Scotland.

Casinos

11. The Bill also proposes changes in the legislation on the provision and operation of casinos. The UK Government recognises that new investment generated by casinos is welcome but proposals on casino size and numbers of gaming machines are also intended to take into account the need to retain the character of town centres and to reduce the risks of an

increase in problem gambling. There will be 3 sizes of casino – small, large and regional (resort) casinos. At present casinos may only be established in permitted areas which are defined in regulations by Ministers. This power is to be discontinued and in common with UK Ministers, Scottish Ministers will no longer have power to determine the areas where casinos may be located. However, in a statement in response to the first Report of the Joint Scrutiny Committee, the UK Government confirmed their intention to allow local authorities (Licensing Boards in Scotland) to consider, as part of the three-yearly review of their licensing policy, whether they wish to licence any or further casino premises in their area. It will be necessary for authorities to have grounds on which to conclude there would be a detrimental effect in permitting further casinos.

12. On 16 November 2004 Richard Caborn (Minister at the Department for Culture, Media and Sport) made a statement to the House of Commons in which the UK Government announced that the number of regional casinos in the first phase will be limited to 8. This 'cap' includes Scotland but assurances have been given that any decision to locate one of those 8 in Scotland will only be taken in consultation with Scottish Ministers.

13. Planning is a devolved matter and we do not consider the introduction of the Gambling Bill will require a change in primary Planning legislation. The Executive accepts that national planning policy should, where it is appropriate, deal with casinos. There could be scope to clarify planning policy in respect of casinos as part of the forthcoming review of NPPG 8: *Town Centres and Retailing*, by extending the current definition of leisure developments. We envisage a draft Scottish Planning Policy being issued for consultation with all parties, including planning authorities, in early 2005. We shall also keep in touch with ODPM who are proposing to set up a working group to help inform development of planning guidance in England.

Removing the Restriction on Live Entertainment in Casinos

14. In Scotland, the provision of live entertainment in casinos is prevented by section 6 of the Gaming Clubs (Licensing) (Scotland) Regulations 1969, which require Licensing Boards when granting or renewing a licence to impose a restriction 'limiting the purposes for which the relevant premises may at any time be used to purposes other than dancing and the provision of music or entertainment by persons actually present and performing' This restriction was removed in England and Wales by The Gaming Clubs (Licensing) (Amendment) Regulations 2002. We believe that this restriction should now be removed in Scotland. This will be achieved by the revocation of the Gaming Act 1968 by the Gambling Bill. This means that, in future, casinos will apply to provide entertainment under the application for a liquor licence. The Licensing Board will be empowered to attach suitable local conditions to the licence.

Content of the Bill Relating to Devolved Powers

15. **Annex A** provides an explanation of the key devolved powers set out in the relevant clauses of the Bill.

Consultation

16. The majority of the consultation has been conducted by DCMS and two Westminster Joint Committees have also scrutinised a draft Bill. Joint Committee Reports were published

on 7 April 2004 and 22 July 2004. The UK Government published its response on 14 June 2004 and 22 September 2004. However, since the draft Bill scrutinised by the Westminster Parliament did not include provisions relating to Scotland, the Scottish Executive conducted a short additional consultation exercise on the proposals for Devolved Powers. The paper was sent to 146 stakeholders and 45 responses were received from a range of interests. The responses have been published on the Scottish Executive website and a factual analysis of those responses is attached for information at **Annex B.**

Financial Implications

17. There are no major resource or financial implications in Scotland. Local authorities and Licensing Boards already have licensing functions for gambling under present legislation and this is funded by the licence fee set by Scottish Ministers. The Scottish Executive will work closely with DCMS on implementation arrangements in Scotland.

Conclusion

18. The large majority of policy in this area is reserved and it is therefore for the Westminster Parliament to legislate for Scotland. Within the new framework the powers available to Scottish Ministers will remain broadly the same with extensions of those powers as appropriate (and as set out above) to reflect the new system. The power that is being removed (to determine the permitted areas for casinos) is also being removed from UK Ministers and is more than compensated by the new power given to Licensing Boards to decide at local level not to licence casinos in their area.

29 November 2004

ANNEX A

DEVOLVED ASPECTS OF THE GB GAMBLING BILL

Clause 2

1. Defines 'licensing authority', which in Scotland will be the Licensing Board. Other references throughout the Bill to 'licensing authority' may be read as Licensing Board.

Clause 24(4)

2. Sets out that the Gambling Commission, before issuing guidance to local authorities on how they should carry out their premises licensing function, will consult the Scottish Ministers.

Clause 25

3. Places a duty on the Gambling Commission to provide a copy of any advice offered to the Secretary of State to the Scottish Ministers.

Clause 26

4. Clarifies that for Scotland the Gambling Commission is empowered to report directly to the Procurator Fiscal but may not institute criminal proceedings in Scotland.

Clause 141

5. This clause gives power to the Lord Chancellor to establish a legal assistance scheme in relation to the new Gambling Appeals Tribunal. This tribunal will hear appeals against the Gambling Commission's decisions. In Scotland, it is intended that assistance will be made available through the legal aid scheme.

Clause 143(2)

6. Gives the Scottish Ministers power to make regulations governing the form and content of a premises licence. We envisage making regulations at the same time as UK Ministers to ensure a consistency of approach across the country

Clause 146

7. It is intended that this clause will include provision for business to be delegated to a member or members of the Licensing Board, a committee of the Board, the clerk or an assistant to the clerk. This is in line with current and proposed provisions for liquor licensing. The following categories of business are specifically exempt from delegation:

- Application for a premises licence
- Application for a variation of a premises licence
- Application for transfer of a licence
- Application for a provisional statement (provisional grant of a licence)
- Review of a premises licence

Clause 217 of the Bill also deals with delegation but does not extend to Scotland since it allows for a local authority in England and Wales to delegate to a licensing committee.

Clause 148

8. Sets out the relevant responsible authorities. For Scotland this covers the relevant parties including SEPA, local authorities and the Police.

Clauses 150 (making of an application), 151 (notice of application), 152 (period for making representations), 155 (grant of application), 156 (rejection of application).

Under the above clauses, Scottish Ministers are given the power to make the necessary regulations for Scotland.

Clause 157 (Resolution not to issue casino licences)

9. This clause gives licensing authorities power to decide whether to licence any or more casinos in their area. This power would be exercised in the preparation of the Gambling Bill policy statement. In Scotland the power will be exercised by Licensing Boards.

Clause 158

10. Deals with the mandatory conditions to be attached to a premises licence. Power is given to Scottish Ministers to set the mandatory conditions for Scotland.

Clause 159

11. Deals with the default conditions to be attached to a premises licence. Power is given to Scottish Ministers to set the default conditions for Scotland. The Licensing Board has discretion on whether to attach these conditions to a licence. It is intended that opening hours will be regulated under this provision

Clause 166

12. This clause cannot be applied to Scotland until the Private Security Industry Act 2001 is extended to Scotland. Appropriate amendments to the Gambling Bill will be made in due course. We intend to use the legislation which amends the PSIA 2001 to amend the Gambling Bill at the same time.

Clause 170 and 197

13. These clauses deal with the setting of the premises licence fee. Scottish Ministers are given the power to set fees centrally in Scotland by regulations. This differs to the position in England and Wales where fees are to be set by local authorities within centrally set fee bands. However, in Scotland, we consider that fees may be set at a suitable level within a coherent national framework.

Clause 253

14. Defines a 'miners' welfare institute'. Provision has been made with respect to Scotland to ensure that it covers the relevant categories of individuals who may be involved.

Clauses 267 and 268

15. It is intended that these clauses will include provision to give Scottish Ministers power to make regulations prescribing the procedure to be followed by public houses applying to provide additional category C or D gaming machines. The application is to be made as part of the application for a liquor licence or as a condition to be added to a liquor licence already held.

Clause 314

16. Relates to the enforceability of gambling contracts. In Scotland our courts interpretation of the common law (the *sponsiones ludicrae* rule) suggests that such debts are not in fact recoverable or enforceable in Scotland. This rule is very old (from about 1780) and derives from public policy seeking not to encourage gambling bets. To ensure a consistent GB policy on this issue, the Bill removes any doubt that such contracts will be enforceable in Scotland.

Clause 327(5)

17. Gives the Scottish Ministers power to make regulations governing the form of the policy statements that Licensing Boards will be required to make. This also extends to procedural issues including review and publication arrangements. The Secretary of State will appoint the day on which the first policy statements should take effect.

Schedule 10

18. This schedule sets out the detail in relation to the application for a club gaming or club machine permit. These permits are required where a club wishes to provide additional gaming facilities over and above those that are exempt . We considered whether additional gaming facilities in Scotland should be provided by way of the special club gaming or club machine permit (which is in line with the liquor licensing system in England and Wales) or applied for and licensed as a condition attached to the liquor licence (in keeping with our liquor licensing proposals for Scotland where clubs will be brought within the new single premises licence). This would only apply to clubs providing alcohol – others would still apply for a separate permit.

We have concluded that the granting of additional club gaming entitlements would, for administrative purposes, be better added as a condition to the liquor licence. Under the new liquor licensing regime, premises licences will licence the sale of alcohol in specified premises in accordance with conditions set out in an operating plan lodged with the premises licence application. If the application is accepted, the conditions – some permissive and some restrictive – are written into the premises licence Accordingly, under these proposals, the additional club gaming entitlements would be written in as permissive conditions in the premises licence. Dealing with these gaming entitlements under the licensing regime is largely a matter of administrative convenience because the basis on which any application for

them will be determined will be the same as in the Gambling Bill, namely in accordance with the gambling principles set out in the Gambling Bill and any other relevant considerations .

Schedule 10 will be amended during the passage of the Bill to reflect these arrangements for Scotland.

ANNEX B

ANALYSIS OF CONSULTATION ON DEVOLVED POWERS IN THE DRAFT GAMBLING BILL

Executive Summary

Forty-five responses were received to the consultation paper on "Devolved Powers in the Draft Gambling Bill" from a wide range of stakeholders.

Response rates across the questions varied, but in all cases a majority of consultees provided some comment or opinion. Overall, there were high levels of agreement with the proposals for the devolved elements of the reform of the gambling legislation. However, there were areas where there was less of a consensus and views tended to reflect the respondent's particular interests.

On **Question 1** there was considerable support for the proposal that the licensing of all gambling and gaming should be undertaken by Licensing Boards.

On **Question 2** more than half of the respondents suggested that the Scottish Environment Protection Agency (SEPA) should be added to the list of responsible authorities to be consulted in respect of premises licences. There were other suggestions which included local authority interests such as planning, building control, environmental health, education and children's services. There were also a small number of other suggestions which were outwith the scope of Scottish interests.

On **Question 3** the majority of the respondents were content with the proposed powers for Scottish Ministers. However, there were concerns about how the level of fees would be set. Several trade respondents also wanted to see a consistency of approach on licence conditions across Great Britain and standardised application forms.

On **Question 4** views from those respondents who answered the question were split. 40 per cent considered that additional gaming facilities for clubs (over and above those that are exempt) should be licensed by a special club gaming or club machine permit and 60 per cent considered that licensing should be by way of a condition attached to a single premises licence.

On **Question 5** the majority of those who did respond considered that objections should be allowed if additional gaming facilities for clubs were provided by way of a condition attached to the single premises licence.

On **Question 6** two thirds of the respondents were content with the definitions used in the draft Bill for Scottish clubs but the rest considered that the definition should be more restrictive. There was specific concern about the scope of the definition of miners' welfare institutes.

On **Question 7** there was considerable agreement that the restriction on entertainment in casinos in Scotland should be removed. However, Licensing Boards' agreement was based on their ability to attach suitable conditions under the single premises licence to reflect local concerns.

Introduction

The draft GB Gambling Bill provides for the modernisation of the present gambling legislation but seeks to achieve a balance between deregulation of the industry and the need to reflect social responsibility. Most of the present gambling legislation is reserved but Scottish Ministers may exercise certain powers. This includes power to set fees for a range of permits and licences, to set regulations governing the conditions for granting and renewing casino and bingo club licences as well as regulations on opening hours.

Whilst there has been significant consultation on the UK Government's proposals, we were not able to include Scottish clauses in the draft Bill published by the UK Government. We therefore decided to issue a short supplementary consultation paper to outline the proposed powers for Scottish Ministers, to bring those proposals to the attention of interested parties and to invite views.

The Consultation Paper was issued to 146 interested stakeholders including local authorities, Licensing Boards, those involved in the provision of gambling, their associations and legal advisors, registered clubs, religious organisations and charitable groups.

Forty-five responses were received from a range of stakeholders who can be categorised as follows:

Police – 2
Clubs (representative organisations) - 2
Legal interests – 2
Gambling operators and gambling industry trade associations – 14
Other trade associations - 1
Local Authorities and Licensing Boards - 21
Conference centres – 1
Football clubs - 1
Scottish Executive agencies - 1

There were varying levels of responses across the questions. Overall there were high levels of agreement with the proposals for the devolved elements of the reform of the gambling legislation. However there were areas where there was less of a consensus and views tended to reflect the respondent's particular interests.

The nature of responses varied widely. Many respondents did not provide views on all of the seven questions and some respondents raised issues outwith the parameters of the consultation. Often consultees did not give a clear indication of whether they agreed with the question or not and instead discussed the matter in more general terms. A small number of consultees provided just one word responses, whereas others submitted detailed discussion.

By the very nature of consultation exercises such as this one, the numbers who chose to comment on individual questions varied. Where definite responses to specific questions are identifiable, figures are provided for positive, negative, no comment or no response to that particular question.

Consultation exercises such as this are not numerically representative, but aim to elicit the views and experiences of a wide range of stakeholders. Any interpretation of the proportion of responses in agreement or disagreement must be undertaken with caution. Given the small number of responses, it would not be generally appropriate to present the result in percentage terms.

Responses

Question 1: Do you agree that all gambling licensing and permits should be the responsibility of Licensing Boards once the Gambling Bill becomes law?

34 respondents agreed, 5 disagreed and 3 had no comment.

Most of the respondents, which included all of the local authority and Licensing Boards who responded, considered that it was sensible to have one body dealing with all licensing applications, that this would benefit both applicants and staff and that this should be the Licensing Board. Some of the gambling operators and trade organisations dissented on the basis that this may result in Licensing Boards overruling the purpose of the legislation.

Question 2: Should any additional "responsible bodies" be included in the Bill to cover specific Scottish interests?

22 respondents suggested additional "responsible authorities", 13 considered that the list was comprehensive, 4 had no comment and 4 did not respond to the question.

The main recommendation was that the Scottish Environmental Protection Agency (SEPA) should be included in the list. A small number also recommended that, if Licensing Boards were to be responsible for dealing with all licensing, the relevant local authority should be added as a "responsible authority", to ensure that the various departments such as planning, building control, environmental health, education and children's services could be consulted. There were a small number of other suggestions but these did not come within the scope of Scottish interests.

Question 3: Do you have any comments on the proposed powers for Scottish Ministers and/or the Scottish issues attached?

30 respondents made comments on the proposed powers, 3 had no comments and 6 made no response to the question.

Most of the comments concerned the setting of premises licence fees. Local authority and licensing board stakeholders considered that they should be able to set

fees locally to ensure that the fees covered costs. The gambling business and trade stakeholders considered that fees should be consistent across the UK.

There were also comments on the need for clarification of the responsibilities of the proposed liquor licensing standards officers as regards premises who provide both liquor and gambling facilities.

There were a small number of requests for clear guidance from the Scottish Executive.

Responses from gambling operators, trade organisations and the Law Society all questioned Scottish Ministers having power to set standard and mandatory conditions that might therefore differ from conditions set in England and Wales. They felt that this could restrict operational freedom. This was in contrast to several Licensing Boards who were seeking more power to set conditions locally.

Gambling operators, trade organisations and the Law Society also argued that application forms should be issued in standard format nationally.

Several responses asked for guidance on how planning issues would be handled in Scotland.

Question 4: For clubs, should additional gaming facilities (over and above those that are exempt) be licensed by a special club gaming or club machine licence or should they be licensed as a condition attached to a single premises licence?

11 respondents considered that additional gaming facilities should be licensed by way of a special club gaming or club machine licence, 17 considered that facilities should be by way of a condition attached to the single premises licence, 13 had no comments or made no response to the question. One organisation representing a range of clubs responded to this question.

The majority of stakeholders including local authorities, Licensing Boards, gambling operators and trade organisations considered that additional gaming facilities should be licensed as a condition attached to the single premises licence. The club representative organisation agreed. This was considered to make more sense as clubs were likely to have to submit operating plans for a single premises licence under the proposed liquor licensing legislation and this would ensure a consistent standard, allow Licensing Boards to take gambling issues into consideration when considering liquor licence applications and reduce the need for double licensing.

Some of the gambling operators and trade organisations expressed disquiet about the special dispensation given for clubs.

Question 5: If the latter, should those entitlements be subject to a process that allows objections to be made?

23 respondents considered that objections should be allowed, 3 considered that objections should not be allowed and 18 either did not respond or had no comment.

Most respondents considered that any additional gaming facilities should be open to challenge by interested parties.

Question 6: Do you have any comments on the suitability of the definitions used in the draft Bill for Scottish clubs?

18 respondents were content with the definitions, 9 wished the definitions to be made more restrictive and 12 had either no comment or did not respond to the question.

Whilst most respondents considered that the definitions were comprehensive, some considered that more restrictive conditions were required. It was also suggested that the definitions should tie in with the proposed definitions in the Licensing (Scotland) Bill.

It was suggested that a club should have to provide evidence that it meets the definition eg provide details of its constitution, management and rules of operation.

There was a particular request that the definition of a miners' welfare club be amended for Scotland in line with the constitution of Scottish miners' welfare clubs.

Question 7: Should we remove the restriction on entertainment in casinos by revoking the relevant part of the existing Scottish regulations?

30 respondents considered that the restriction should be removed, 4 thought it should be retained and 9 either did not respond or had no comment on the question.

The majority of those who did respond, which included three of the four Licensing Boards within the present casino permitted areas, considered that the restriction should be removed. Licensing Boards were generally content to allow entertainment on the basis that they would be entitled to set conditions to reflect local concerns. There was also a request that statutory guidance be provided to ensure there is uniformity across Scotland.

Gambling operators and trade organisations made the point that the removal of the restriction in England and Wales has not resulted in any problems and that under the proposals for the new large casinos there will be provision for entertainment, sport and leisure facilities in non-gambling areas.

Casino Policy

Eight Licensing Boards and local authorities expressed views on the additional policy subsequently announced by the UK Government that, in England & Wales, licensing authorities (district, county & borough councils) should have power to decide <u>whether</u> to licence any or more casinos in their area. This power would be exercised in the preparation of the policy statement. All felt that this policy should be decided by Licensing Boards in Scotland.

Conclusions

Most respondents appeared to be broadly content with the proposed devolved powers for Scotland as set out in the paper. There was considerable support for the proposal that all gambling licensing in Scotland should in future be undertaken by Licensing Boards and for the removal of the restriction on live entertainment in casinos.

Gambling trade organisations, gambling operators and the Law Society considered that to ensure national consistency of approach, Scottish Ministers should not have the power to set standard and mandatory conditions. However, Licensing Boards took the opposing view and some would seek more power to set local conditions.

Opinion was divided on how the provision of additional gaming facilities for clubs should be licensed and on the question of how licence fees should be set. Some Licensing Boards and local authorities considered that they should be provided with power to set fees locally to cover costs but business and trade stakeholders considered that there should be consistency in the level of fees throughout the UK.