



Office of the
Deputy Prime Minister

Creating sustainable communities

Possible Changes to the Use Classes Order; Casinos

Consultation Paper

July 2005



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Deputy Prime Minister

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Consulting on the options

We would welcome your views on the options outlined in this paper. Our objective is to promote debate and to ensure that a wide range of views are taken into account before a final decision is taken on whether to amend the Use Classes Order (the UCO) in relation to casinos.

Any comments on the three options outlined below, or the Partial Regulatory Impact Assessment, and any questions about this consultation should be sent to the address below:

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Or, if you prefer, sent by e-mail to:
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The period of public consultation will last for 12 weeks and responses should be submitted to arrive before 21st October 2005.

It would be helpful if responses from representative groups could provide a summary of the people and organisations they represent.

A summary of responses to this consultation will be published by 21 January 2006 at the address below.

www.odpm.gov.uk/planning

All information in responses, including personal information, may be subject to publication or disclosure under freedom of information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

This consultation is being conducted in accordance with the Government *code of practice on written consultation*. The criteria are reproduced in Annex B of this consultation paper.

Use Classes Order and casinos consultation

Introduction

The *Town and Country (Use Classes) Order 1987* (the UCO) sets out classes of uses, changes within which do not require planning permission due to the similarity in their impact on local amenity, for example: traffic generation, noise, and visual appearance.

Casinos are currently classified as a D2 leisure use under the Use Classes Order. This means a D2 use could convert to casino use without the need for planning permission. Given the proposed changes to casino licensing and the new types and sizes of casinos that will be allowed under the *Gambling Act 2005*, the Government is considering whether such a classification remains the most appropriate.

This consultation seeks views on the classification of casinos within the Use Classes Order and particularly on the Government's preferred option of making casinos *sui generis* with permitted development rights to revert to D2 use.

The changes proposed within this document relate to England only. Matters in Wales and Scotland are for the relevant devolved administration.

Background

The Government's response to the First Report of the Joint Committee on the Draft Gambling Bill (Regional Casinos) September 2004 outlined the Government intention to initiate a review of the classification of casinos within the Use Classes Order. This was in response to the Joint Committee's support for the view that all casinos be made *sui generis* in order to prevent the conversion of existing D2 uses to casinos without the need for further planning permission and their recommendation that the Government should consult on whether a *sui generis* categorisation should apply to all casinos.

The Government's review of the classification of casinos within the Use Classes Order is now complete and the consultants employed to take the work forward have reported. The consultants have recommended a change to the classification of casinos within the Use Classes Order, but before making a final decision the First Secretary of State has decided to undertake this consultation exercise.

Current Policy

The UCO is a deregulatory mechanism. It is intended to permit and not restrict compatible land uses, thus freeing from planning control those changes of use of buildings or land for which there are no reasonable planning grounds to control. The UCO simply comprises a grouping of land uses into different groups or classes. It operates in parallel with the General Permitted Development Order and main Planning Act, such that change of use between different uses within the same Use Class is not development and does not require planning permission.

In the current version of the UCO, casinos are within the D2: *Assembly and Leisure* use class. As well as casinos, this class comprises cinemas, concert halls, bingo halls, dance halls, swimming baths, skating rinks, gymnasiums or areas for other indoor or outdoor sports or recreations (not involving motorized vehicles or firearms).

According to section 55 (2)(f) of the Town and Country Planning Act 1990, a change of use between two uses within the same class is not considered to be development.

This means that under rights afforded by the UCO, a cinema, concert hall, bingo hall, dance hall skating rink or similar recreational space can change use to a casino without constituting development. The same is true in reverse in that a casino can change to a cinema etc without the need for permission. This means that the current operation of the UCO allows some degree of flexibility to casino operators in terms of avoiding the full rigour of the planning system.

Our review has demonstrated that, outside of licensing controls, this flexibility in change of use is seen as a potential loophole in the control of casinos. There is a concern that planning controls, on their own, would not be strong enough to prevent proliferation or the location of casinos in unsuitable areas.

As well as classifying land uses into separate Classes, the UCO also lists a number of uses which do not fit into any Use Class. This list includes scrap yards, petrol filling stations, theatres and amusement arcades. Uses outside of the UCO are known as *sui generis* (of its own kind.) Unless specifically stated, *sui generis* uses have no rights under planning law to change to any other use without express planning permission.

The case for change

Our review indicated that the current land use impacts of the casino industry are minimal. Casinos are all located in tightly defined urban areas, all require membership, a twenty four hour 'cooling off' period after joining, and are generally relatively small and well run. There are no anti-social problems associated with alcohol in casinos. As a result, there are few examples of adverse land use impacts arising from casinos. Equally, there are few examples of positive land use benefits arising from casinos.

In the current regulatory system, and given there are few signs of either positive or negative land use impacts, the setting of casinos with the D2 use is thought appropriate. The impact of casinos under the new regulatory environment envisaged by the Gambling Act is however considered to be potentially very different with the new casinos becoming a unique type of development.

For example, our review into the likely nature of the new casinos highlighted a number of additional land use impacts. To begin with, they are likely to be very much larger than has been permitted before. This growth in scale, and the greater number of visitors, is seen as increasing the likelihood of land-use impacts. In addition, the Gambling Act enables casinos to operate as part of much larger, mixed use, leisure destination – particularly in the case of regional casinos. In such a case, the full impact of a casino will not just arise from the casino itself, but from a variety of other ancillary uses – such as restaurant, leisure complex, entertainment venue, and/or hotel.

Our review has highlighted the potential for additional land use impact arising from casino development under the terms of the Gambling Act. This is because individually the new regional casinos will be much larger than has been permitted before. Associated with the question of scale is how casinos will fit with other land uses.

Our review has highlighted concern over the proliferation of casinos. Given the current constraints within the Gambling Act, this concern has been addressed in the short term. However, if the Government moves to further deregulation once the impact of the first casinos has been identified the potential for proliferation would rear up again. Our review identified a belief that the new casino legislation would result in the proliferation of casinos and limited control over the gambling offer. It was also felt that this proliferation could undermine the potential for capturing regeneration benefits as businesses would simply convert an existing D2 use.

The positive regeneration benefits of all casinos, not just regional casinos, is recognised, as is the incentive to maximise the opportunity to capture them. One way to capture these benefits is via the planning system using Section 106 agreements. (In brief, these are binding agreements between councils and developers required to secure planning permission. They could take the form of, for example, infrastructure elements built as a part of the development; they can also be monetary.) Another way, possibly via competitive bidding, would be to promise regeneration benefits as part of a large scheme. However, whichever mechanism is followed, this could be undermined if individual operators were able to convert from a Class D2 use to a casino without the need to secure planning permission for a change of use. Simply put, if casino developers were able to operate without promising regeneration benefits, there would be little obvious incentive for promising them. It should be added, however, that the process of conversion itself (converting a cinema to a casino, for example), if it involves building works that affect more than just the interior of the building, may amount to a development requiring planning consent. This would be the case, even if the resulting development is within the same use class.

The proliferation of casinos in town centres – by the conversion of existing D2 uses – could also have a detrimental effect on the town centre with planners not having any powers to mitigate against such risks.

Within town centres, the impact of casino development will depend on the scale and size of a particular site, and on the ability of the town centre to absorb the effects of casino development. If the centre has spare capacity, such as car parking or suitable public transport, there is likely to be fewer adverse effects. However, if the location already has a paucity of such facilities, the adverse impact will be greater as those facilities will be ‘stretched’. Although, conversely, casino activity could improve

efficiency and/or profitability of these services – by, for example, increased (late-evening) use of car parks, increased patronage of night-buses etc – so that limited capability is increased to meet the new demand.

In terms of the impacts of casinos on public amenity, these could include increased noise, alcohol-induced anti-social behaviour, litter, and visual amenity. However, in the ODPM review of casinos, it was argued that although casinos could be open for 24 hours, this meant that there were no concentrated times for public entry or exit; people will be more inclined to drift in and out, although there was some concern that casinos might be prime candidates for ‘follow-on’ trade – that is, those who had been to cinemas, nightclubs or football matches might look to a casino as the next stop. Overall, however, whilst the overall view was that amenity impacts of individual casinos would not be significant – indeed, some stated that casinos had a ‘civilizing’ effect on the local community in encouraging older age groups to visit town centres – it was felt that the impact on amenity would make itself felt if there was a number or combination of casinos within a particular area.

Our review identified concerns over the possible loss of D2 uses if the UCO remains unchanged and there is a significant increase in the number of casinos. It was felt that that this could have a knock on effect for the character of town centres throughout Britain. This loss of other D2 uses could be contrary to many planning policies currently in place. Such D2 conversions could change the nature of the town centre with many established uses potentially disappearing – such as cinemas, bowling alleys and bingo halls. In the longer term this could undermine town centre vitality.

It is therefore the Government view that there is a case to change the use classes order in relation to casinos in order to counter proliferation; to enable the management of adverse impacts; to enable the capture of regeneration benefits for all casinos; to account for the uniqueness of casinos and to dispel uncertainty.

Options for change

Following its review of the classification of casinos within the Use Classes Order, ODPM has found that there is general support for changes to the classification of casinos within the Use Classes Order. This is for a variety of reasons:

- to control proliferation (in the longer term);
- to reflect the uniqueness of casinos as a planning land use following the Gambling Act;
- to manage uncertainty;
- to derive effective controls to mitigate against adverse planning impacts; and
- to allow for the capture of development benefits for the wider community (by removing permitted development rights).

Fundamentally the wish to change the Use Classes Order is based on the concern to prevent the development of a new breed of casinos ‘through the back door’ ie, via conversions from other Class D2 uses.

ODPM identifies three options for the future classification of casinos within the planning system:

- **Option 1:** No change – casinos should remain to be classified as a D2 leisure use within the Use Classes Order.
- **Option 2:** all casinos are treated as *sui generis* with no permitted development rights.
- **Option 3:** all casinos are treated as *sui generis* but permitted development rights are retained to allow a casino to switch to any Class D2 use without the need for express planning permission.

The Government believes that change to the classification of casinos within the Use Classes Order would create a degree of certainty and clarity for both the planning system and operators. No change is, of course, an option but it fails to address the concerns highlighted by our review of the current classification.

The Government's preferred option is option 3. Option 3 would alter the UCO so that casinos would be *sui generis* but that there would be limited permitted development right – the one way right under the GDPO to convert to any Class D2 use. It is the Government's belief that this option would best meet concerns about the value of an operator's asset base in the event that a new or enlarged casinos did not succeed. It would also go some way to ensuring that town centres remain vibrant should the new casinos fail as the sites could be quickly turned to other leisure uses.

Timing

The Government recognises that although the short term pressure to change the classification of casinos due to the risk of proliferation has been addressed by the limit on the numbers of the first casinos there is still a great deal of uncertainty for operators and for owner of D2 uses.

It is therefore the Government's intention to bring forward changes to the Use Class Order as soon as possible subject to the outcome of this consultation.

Questions

WHICH OPTION DO YOU PREFER?

Please indicate your preference by ticking the box provided.

Option 1: No change – casinos should remain to be classified as a D2 leisure use within the Use Classes Order.

- **I prefer this option:**

Option 2: All casinos are treated as *sui generis* with no permitted development rights.

- **I prefer this option:**

Option 3: All casinos are treated as *sui generis* but permitted development rights are retained to allow a casino to switch to any Class D2 use without the need for express planning permission.

- **I prefer this option:**

DO YOU HAVE ANY COMMENTS ON YOUR PREFERRED OPTION?

DO YOU HAVE ANY COMMENTS ON THE OTHER OPTIONS?

WOULD YOU PREFER AN ALTERNATIVE NOT SET OUT IN THIS PAPER? WHY?

DO YOU HAVE ANY COMMENTS ON THE PARTIAL REGULATORY IMPACT ASSESSMENT?

ANNEX A

Partial Regulatory Impact Assessment

1. Title of proposal:

Possible Changes to the Use Classes Order for Casinos

2. Purpose and intended effect of measure

(I) OBJECTIVE

To assess the effect of the proposals for removing casinos from the D2 use class, and determining whether casinos should benefit from permitted development rights.

(II) BACKGROUND

The Government set up an independent review of gambling law under the chairmanship of Sir Alan Budd in 1999 to consider the regulation of gambling. The Gambling Review Report (2001) made 176 recommendations for changes to the then current system of control. DCMS then consulted widely on the recommendations, including organising a series of meetings with stakeholders, such as regulators, industry representatives, local authorities, and representatives of faiths, childrens' and charitable organisations.

The Government published its response to the report in March 2002, accepting 157 of the Review body's 176 recommendations, with a further 10 subject to further consideration and consultation. It then published, in November 2003, a draft Gambling Bill to give effect to its proposals.

In September 2003, a Joint Committee of the House of Commons and House of Lords was appointed to scrutinise the draft Gambling Bill. That Committee reported in April 2004 and the Government responded on 14 June 2004. The Joint Committee was reconvened to consider the policy on regional casinos. The Committee reported again on 22 July 2004 and the Government responded to the Committee's second report on 22 September 2004.

The Government accepted 121 of the Joint Committee's 139 recommendations and also changed policy in a number of areas, which had the effect of reducing the proposed extension of consumer choice more severely than was proposed by the Joint

Committee. The resulting Bill was introduced into Parliament on 18 October 2004, re-introduced on 24 November 2004 and received Royal Assent on 07 April 2005.

The de-regulation of gambling in casinos should reflect the Government's general view that gambling should be regarded as a normal leisure activity which consumers may wish to enjoy. However, gambling is an activity that has inherent risks if pursued excessively. Casino gambling has features such as table-gaming as well as machine-gaming, each of which has its own very specific potential risks. Therefore, in order to meet the Government's wider objectives of safe enjoyment of gambling, the setting up and the operation of casinos will need to be subject to appropriate regulation, from both a licensing and planning perspective.

The changes to the planning regulation – aimed to control the number and location of casinos – is intended to facilitate the deregulation in the Gambling Act and put in place machinery to enable any regeneration benefits of the new casinos.

● The Planning System

Planning permission is required for material changes of use of buildings and land. However, certain uses of land are so similar, in planning terms, that there is no effective difference between them, and the requirement for planning permission for a change of use between such uses would be considered overly burdensome.

Therefore, in order to relieve the planning system of a large number of unnecessary applications, the *Town and Country Planning (Use Classes) Order 1987*, as amended, (the UCO) sets out classes of use, and provides that a move between uses within the same class is not development and therefore does not require planning permission. The *Town and Country Planning (General Permitted Development) Order 1995*, as amended, (the GPDO) provides further flexibility by classifying certain moves between the Use Classes as permitted development, which also does not require express planning permission.

The UCO classifications are based on uses which have similar implications for local amenity, when viewed in strict land use planning terms. Such criteria may include, for example, traffic and pedestrian movements, parking, noise, and the visual appearance of a building. The current UCO has four classifications, from A to D, which broadly cover high street, business, residential, and leisure uses.

Casinos are currently classified within use class D2: *Assembly and Leisure*. This means that casinos are permitted to change to other uses within the D2 class without the requirement for planning permission, and *vice versa*.

Some land uses are outside of the Use Classes Order altogether. Such uses are called *sui generis* (of its own kind) and are treated as a separate entity. Unless specifically stated in the GPDO, *sui generis* uses require planning permission for a change to any other use.

The casino industry in the UK is relatively small, although it employs some 11,700 and figures show £3.3 billion being paid in 'drop money' (money exchanged for gambling chips), with £129.5 million paid in duty.¹

¹ Figures from the Gaming Board Annual Report 2000/2001.

The casino industry currently consists of a three main operators which each run 30 or more casinos: Stanley Leisure Group plc (42 casinos in total, four in London); Rank Group plc (36 casinos in total, six in London); and Gala Group (30 casinos in total, five in London).² As there are only just over 130 trading casinos, in total, it is clear that the market is largely dominated by three operators, although it would not be true to say that any single operator was notably superior in this sense.

Furthermore, whilst many casino chains operate nationally, there do not appear to be high levels of substitution in either demand or supply. As might be expected, London has a large proportion of the total number of casinos, but outlets are not evenly spread throughout the rest of the country. The UK casino market can be said to be national, but may have characteristics which potentially indicate local and/or regional geographic market preferences in some areas.

Currently, of the 131 trading casinos (as at 31/3/03) the smallest have gambling floors of around 1,100 square feet; and 22 (16.8%) have less than 2,000 square feet of gaming floor. The vast majority of casinos, 97 (74%), have gaming floors of between 2,000 and 5,000 square feet. A further 10 (7.6%) have floors of between 5,000 and 10,000 square feet, while only one (0.7%) is larger than 10,000 square feet.

To put these figures into perspective, the smallest casino permitted under the *Gambling Act 2005* would be in excess of 8,000 square feet (approx 750m²) which is within the top 9% of the largest casinos currently. A large casino would require a minimum square footage of 1500m², or over 16,000 square feet, while the smallest regional casino, at 4000 m², equates to over 43,000 square feet, or approximately 0.99 of an acre.

However, in recent years, there has been a tendency towards larger casinos. Applications determined by the Gaming Board in the past 5 years show that the average size of casinos rose from 3,500 square feet in 1998/99 to 5,600 square feet in 2002/03, and over 8,000 square feet in 2003/04.

Approvals of casinos from Gaming Board	
Financial Year	Size of casino (sq. feet)
1998/99	3,500 sq. ft
1999/00	3,700 sq. ft
2000/01	5,100 sq. ft
2001/02	4,300 sq. ft.
2002/03	5,600 sq. ft.
2003/04	8,145 sq. ft.

Nonetheless, in the UK at present, there are no 'regional' casinos. The companies currently running such operations abroad are large, multinational companies, for example MGM-Mirage (United States) or Kerzner (South Africa).

² Figures from the Gaming Board Annual Report 2003/2004.

The (speculative) establishment of regional casinos in England is likely to come from these international operators, although, of course, current UK casino operators would not be prevented from entering the regional casino market.

For ease of reference, below is a table which illustrates the nature of the current UK casino market.

CASINO INDUSTRY Ownership Structure						
(As at 31st March; 1999 and 2000 as a percentage of trading casinos, other years as a percentage of licensed casinos.)						
	1999	2000	2001	2002	2003	2004
Stanley Leisure Group Plc	20.7	25.4	24.2	25.4	30.4	29.4
Rank Group Plc	25.9	26.3	25.8	26.2	25.2	25.2
Gala Group	n.a.	22.9	21.1	20.8	21.5	21.0
London Clubs International Plc	6.0	5.9	7.0	7.7	7.4	6.9
Other	47.4	19.5	21.9	20.0	14.8	18.2
Total Trading	116	118	118	122	126	131
Total Licensed			128	130	135	143

Source: Gaming Board Annual Reports.

(III) RATIONALE FOR GOVERNMENT INTERVENTION

Currently, casinos are classified within the D2 use class, which means they are allowed a change of use to any other uses within D2. Adopting option one (no change) therefore continues to allow casinos this flexibility. As one of the effects of the Gambling Act is an increase in the numbers of casinos (of all types), it could be argued that this option would deny Local Authorities (LA) the ability to control development of new casino premises, which may be controversial with local residents, from existing D2 uses.

However, initially, proliferation of casinos from existing D2 uses would not be feasible as it is current Government policy to restrict additional casino licences. Existing casinos will have 'grandfather' rights to remain. This means that existing casinos, by virtue of their existence and establishment under the previous regulatory regime, would be allowed to remain, although the same casino would be unlikely to obtain a licence under the new regime.

This policy may change in the future though, and hence it is also important that we allay LA fears that they will be unable to manage the development of casinos should this occur.

As indicated by the figures, at present, the market is dominated by many relatively small premises. Generally, these premises are easily converted to other uses and few suppliers have invested heavily in a national brand. The industry appears to incur few costs which cannot be – at least, partially – recovered.³

³ Costs which cannot be recovered are 'sunk' costs. These are costs which must be borne by any new entrant into a market but which cannot be recovered should the venture fail. Sunk cost therefore act as a disincentive to potential new entrants.

Due to Government changes to the licensing practices, there will be greater scope for new (additional) casinos than was previously the case under the previous regime. However, the priorities for the lifting of deregulatory burdens are focused on:

- the exclusion of crime;
- fairness towards the punter;
- exclusion of children from casino gambling and protection of the vulnerable.

To that extent, in order to prevent the proliferation of casinos, or their establishment in unsuitable locations, this provides further evidence for additional regulatory control in the planning system.

3. Options

OPTION 1:

Do nothing. Casinos remain within the D2 class.

OPTION 2:

Remove casinos from the D2 use class altogether, (i.e. make them *sui generis*). No permitted development rights.

OPTION 3:

Remove casinos from the D2 use class altogether, (i.e. make them *sui generis*) but grant them permitted development rights for a change to uses within the D2 use class.

4. Benefits

OPTION 1: *No change*

- **Economic**

Casinos will continue to enjoy the flexibility of permitted development rights within the D2 use class and will have no additional planning restrictions should the current licensing policy be relaxed.

- **Social**

No social benefits have been identified.

- **Environmental**

No environmental benefits have been identified.

OPTION 2 *All casinos to be sui generis*

- **Economic**

It is recognised that one of the possible benefits of all casino developments, not just regional casinos, is in their regeneration capacity. There is, accordingly, an obvious incentive for local authorities to maximise the opportunity to capture them. There are a number of ways to achieve this, but whichever mechanism is followed, it is undermined if individual operators were able to convert from a Class D2 use to a casino without the need to secure planning permission for a change of use. Simply put, if casino developers were able to operate without promising regeneration benefits, there would be little obvious incentive for promising them. This option, therefore, provides such control.

- **Social**

There is widespread public concern that growth in the casino industry will increase problem gambling, hence option 2 would introduce an element of LA control to help mitigate these concerns and ensure that local residents can register any objections during the normal planning application process. This will also ensure that new casino premises have the support of the local community before development can begin.

- **Environmental**

No environmental benefits have been identified.

OPTION 3 *All casinos to be sui generis, but with permitted rights to D2*

- **Economic**

As with option 2, regeneration benefits could be obtained with local authority control over casinos.

- **Social**

As for option 2 social benefits, this would introduce an element of control to help mitigate local resident and LA concerns over a new casino premises in their community.

- **Environmental**

No environmental benefits have been identified.

5. Costs

OPTION 1 *No change*

- **Economic**

No economic costs have been identified.

- **Social**

Should there be uncontrolled change from leisure uses to casinos there could be adverse amenity impacts (eg. alcohol-induced crime, anti-social behaviour) associated with late-night activities and the non-gambling facilities of casinos (particularly regional casinos) as required by the licensing regulations, which could include nightclubs and bars. There is also concern about the loss of family leisure uses to premises only accessible to over-18s.

- **Environmental**

No environmental costs have been identified.

OPTION 2 *All casinos to be sui generis*

- **Economic**

Existing casinos would have 'grandfather rights' to run their business in their current premises. However, planning permission would be required for a change of use to convert any D2 premises to a casino, or to convert a casino into any other use.

The cost of planning application for a change of use of an existing building to a casino is currently £265. However, whilst the application costs for a change of use are low, it is possible that the local planning authority may see fit to impose a planning obligation, by means of a Section 106 agreement. This enables a planning obligation to be entered into by means of a unilateral undertaking by a developer as well as by agreement between a developer and a local planning authority. However, such an obligation is unlikely to be applied in the case of small scale changes of use.

Furthermore, although the application cost is insignificant compared with the costs of setting up a casino, the possibility of refusal could mean casino operator's development plans being curtailed.

It should also be expected that Local Authorities would have to deal with an increase in the number of planning applications, both to and from casino premises. However, the numbers of such applications is expected to be small. (Figures for the 18 months from the Gaming Board show that from January 2004 to June 2005 36 planning applications were sent to local planning authorities, although not all of these would relate to the development of new casinos, but re-development or re-modelling of existing ones.) The costs of planning applications are intended to cover the administration costs of dealing with them. Therefore, although the numbers of such applications is expected to slightly increase, this burden should be offset by the additional revenues received.

Of greater significance to the existing casino industry, is the possible reduction in the value of their assets as a result of these changes. For, unless planning consent can be obtained for a change of use, failing casino operators would have to run their businesses at low or even minus rate of return; or alternatively incur a possibly severe financial penalty on the disposal of their property which may no longer be a viable as a casino. Should a casino have to close down its operation, this would lead to a loss of employment, revenue for both local authorities and Government, and leave unsightly blank frontages in the locale.

It is difficult to accurately specify costs for these circumstances. There are a number of variables which have a bearing on the final costs, including: the location and size of the existing premises; the profitability, both current and forecast, of the existing casino; the viability of D2 premises in the same location; the property market generally.

- **Social**

No social costs have been identified.

- **Environmental**

As discussed in the economic costs, this option may potentially lead to unsightly frontages and also other general environmental hazards that might result from long-term non-occupation.

OPTION 3 *All casinos to be sui generis, but with permitted rights to D2*

- **Economic**

This option would result in increased costs to developers wishing to develop a D2 premises into a casino, as they would now have to make a planning application to the Local Authority. These LAs would of course see an increased burden through this increase in applications, although, as stated previously, the numbers are not likely to be significant.

- **Social**

We cannot identify any social costs of this option.

- **Environmental**

We cannot identify any environmental costs of this option.

6. Business sectors affected

The proposals for change only relate to the casino industry and other D2 uses.

As of 31st March 2004, there were 131 trading licensed clubs in Great Britain.⁴ During the year 2003-2004, the number of casino operators increased from 16 to 19. The largest of these companies (three of them) operate 30 or more casinos each. The remaining companies operate between one and nine casinos. There are 12 companies which operate single casinos in Great Britain.

Casino activity in Britain is relatively small. However, whilst this is perhaps not a significant sector of the leisure industry, the numbers of visits to casinos has increased in recent years, with nearly 12 million visits in 2003/04 – an increase of nearly 6% from the total in 1999-2000. The industry employs approximately 11,000 and is considered ‘mature,’ although this is in the context of the current regulatory regime.

Under the new regulatory regime – i.e. that envisaged by the Gambling Act 2005 – there will be four types of casino: those already permitted under the *Gaming Act 1968*; small casinos; large casinos; and regional casinos. However, although there are 131 ‘68 Act casinos, there will only be 17 additional casinos permitted under current proposals: 8 small, 8 large, and 1 regional.

It is not possible to estimate whether these additional casinos will make use of existing D2 uses, or whether they will be new development casinos which would require planning permission. However, the table below may provide a useful guide.

⁴ Statistics from the 2003-2004 Annual Report for the Gaming Board of Great Britain.

This sets out the number of applications for Certificates of Consent that the Gaming Board has received since January 2004, and the current position on these applications. This includes applications for new casinos and applications where there are significant changes to the ownership or fabric of existing casinos.

Planning permission is not a pre-requisite for an application for a Certificate of Consent, or for a Certificate of Consent to be granted. The table indicates, according to the Gaming Board's records, whether a planning application was also required in respect of the casino premises.

	Gaming Board* Applications received	Gaming Board* Applications determined	Planning permission required	Planning permission not required
Jan-Mar 2004	4	4	4	0
Apr-Jun 2004	4	3	4	0
Jul-Sep 2004	7	5	2	5
Oct-Dec 2004	12	9	7	5
Jan-Mar 2005	8	4	2	6
April-Jun 2005	21	0	17	4
TOTAL	56	26	36	20

* The Gaming Board considers applications for Certificates of Consent for casinos. Once a Certificate is issued, operators can then apply to the Licensing Justices for a Gaming License.

7. Issues of equity and fairness

The proposals all relate to changes to the planning regulations for casinos and relate to all casinos equally, whether they are termed regional, large, or small.

The options for change have been introduced largely as a result of changes to the licensing regime. The licensing regime has different legislative treatment for the different categories of casino, whereas these proposals treat all casinos the same, and neither mirror the differences, nor try to compensate for them.

8. Race, health and rural issues

The proposed changes do not bring up any issues of race or health, and as most casinos are located in and around cities, they are unlikely to affect rural concerns.

9. Consultation with small business: *the small firms impact test*

We have consulted the Small Business Service who are satisfied that, subject to the consultation of appropriate bodies in the casino industry to determine the impact of

policy of small businesses, the recommended proposal (option 3) will not have a significant impact on small businesses. We will consult the British Casino Association and Business in Sport and Leisure as part of the consultation process.

Whilst the Use Classes Order applies equally to both large and small businesses, we would like to hear from small businesses as part of the formal consultation, especially if they think they will be adversely affected.

10. Competition Assessment

There are three principal ways in which increased regulations can affect competition:

1. Supply and Demand

Change in the competitive process through affecting supply and demand (e.g. by changing the cost structures for firms, which can have effect the competitive process.)

2. Market Outcomes

Changes in the competitive process through specifying market outcomes (e.g. by specifying a minimum standard for a product.)

3. Direct Impact

Changes in the competitive process through direct impact (e.g. by changing barriers to entry or expansion).

The competition assessment seeks to identify the extent to which the regulations are likely to result in any of the three above effects.

SUPPLY AND DEMAND

The proposed changes will affect whether premises can undergo a change of use to or from casino. The changes will therefore affect the supply of casinos to the marketplace.

Under options 2 and 3, increases in supply are controlled as a change of use to a casino will require planning permission – although additional casinos would still be subject to licensing requirements. However, under options 1 and 3, a loss in supply would not be similarly controlled as a change of use from a casino to other D2 uses would be permitted without the requirement for planning permission.

The proposed changes to the regulations are unlikely to have any effect on demand for the ‘product’ within the casinos industry. The changes are administrative in nature, concerning planning policy only and so should not affect the demand for the product and services on offer.

MARKET OUTCOMES

The proposed changes do not specify any market outcome.

Despite the presence of some famous names, such as Rank or Gala, the casino market is considered to be a separate market, rather than an integral part of a wider gambling

or leisure market, such as cinemas or bingo. Whilst patrons of casinos are obviously free to participate in other gambling or leisure markets, there is little to indicate that a reduction in casino activity would result in patrons switching to bingo or cinema-going as an alternative.

DIRECT IMPACT

Option 1 will not have a direct impact on the casino industry. Only the options for change (options 2 and 3) will have a direct impact, as they will affect the ease with which casino operators can enter or leave the market.

Of these, option 2 will have the most significant impact as any change of use, whether to or from use as a casino, would require planning permission. Although this will affect operators both entering and leaving the casino market, the greatest impact will be on those operators wishing to leave the marketplace, as previously explained.

Option 3 addresses this issue and allows casino premises a 'one-way' change of use to D2.

The options for change (i.e. options 2 and 3) can be summarised, as follows:

Under both options:

- Both options raise a barrier to entry for new entrants in that any operator wishing to convert an existing Class D2 premises to a casino will now need planning permission.
- Both options will limit the number of casinos that might enter the market, but the proposed licensing systems will be more significant at present;
- Although the cost of planning permission is relatively small compared to the costs of converting a Class D2 use, the possibility for refusal may force companies to try and locate elsewhere or they may not enter the market at all;
- Both options may enhance the position of existing companies, as they will potentially face a lower threat of new entry if planning permission for such conversions is refused.

OPTION 2 *All casinos to be sui generis*

- Option 2 also raises a barrier to exit in that casino owners wishing to change a casino to another Class D2 use (or sell it to another operator to do so) will need to seek planning permission to do so.
- Indirectly, this option may also raise a barrier to entry for other operators of class D2 uses (e.g. bingo, swimming pools) in that they will not be able to convert casinos without planning permission.

OPTION 3 *All casinos to be sui generis, but with permitted rights to D2*

- Allowing limited development rights, maintains the status quo for any company wishing to change a casino into another Class D2 use;
- This would avoid any potential impacts on other markets as the right to convert a casino into another Class D2 use will again be subject to existing planning rules.

11. Enforcement and sanctions

Development that has gone ahead without the required permission can be considered by the local planning authority to be a breach of planning control and the local planning authority can take remedial enforcement action, for which procedures are already in place. Local authorities have a wide range of discretionary powers (considerably strengthened and improved in the *Planning and Compensation Act 1991*) and will decide the most appropriate action in each case in the light of local circumstances.

It should be remembered that casino development is a highly expensive undertaking. Anyone who carries out such a development without planning permission is putting their investment, and the development, at considerable risk. The sale of properties built or adapted without the necessary permission may also present considerable difficulties.

Furthermore, the restricted nature of the casino industry, their development hitherto being largely in the hands of reputable and responsible companies, and the numerical limitation on further casino development mean that any additional costs incurred by the enforcing authority are not likely to be significant.

12. Monitoring and review

We will continue to monitor the effectiveness of any changes we introduce. We intend to review any new measures within 5 years of them coming into force, or at such time as the Gambling Act is reviewed.

13. Consultation

(I) WITHIN GOVERNMENT

We have consulted DCMS on these proposals.

(II) PUBLIC CONSULTATION

This Partial RIA will be published for public consumption, as part of a consultation document, that will also be sent specifically to:

- Local planning authorities

- Business In Sport and Leisure (BISL)
- British Casino Association
- Association of British Casinos

14. Summary

OPTION 1 *no change*

Advocates of the ‘no change’ option focus on two points: that casinos have not hitherto been cause for concern in terms of land use impacts; and the Gambling Act should deal with any proliferation concerns.

On the first point, whilst it is true that casinos in the UK have, historically, not been the cause of concern in terms of adverse land use impacts, whether this will continue to be the case under the new Gambling Act, and whether the new ‘regional’ casinos will be similarly uncontentious, is perhaps problematic.

It could be argued that the declassification of casinos from D2 (ie. making them *sui generis*) based on the assumption of negative land use impacts before such impacts have been determined is unreasonable. Nevertheless, the likelihood of significant change within casino industry as a result of the Gambling Act should not be underestimated.

Although initial fears for the proliferation of casinos have now largely been resolved by the current policy, this is an interim measure. Although it could be assumed that this policy (or its successor) would continue to address the proliferation issue, it would not be appropriate to base a possibly long-term planning strategy on the provisions of a short-term policy, or one that was known to be in its first phase. In addition, a level of certainty would be appreciated not only by local planning authorities, but also by the casino industry.

Whilst the arguments for no change have merit, there is a risk that doing so would be a short-lived measure; that the UCO would need to be looked at again as a result of increased land-use impacts from post Gambling Act-type casinos, or as a result of the current policy having expired, or replaced with a less restrictive policy.

OPTION 2 *All casinos to be sui generis*

Under the current regulatory system, given that there do not appear to be any discernible land use consequences of concern in relation to casino development, the current classification of casinos within use class D2 is both logical and appropriate. However, on the presumption that the changes brought about by the Gambling Act will alter the nature of the existing casino industry, the classification of D2 is no longer appropriate.

The declassification of casinos from the Use Classes Order serves a number of functions. As has been argued, *sui generis* is the most appropriate status for casinos, given their unique nature in the new regulatory regime, as envisaged in the Gambling Act. It will allow local planning authorities to control the development of casinos where there are concerns over their impacts, and help address any concerns regarding proliferation.

However, making casinos *sui generis* without permitting any development rights for movement to the D2 use class could potentially affect the industry's asset base as the marketability and value of their premises could be reduced.

OPTION 3 *All casinos to be sui generis, but with permitted rights to D2*

As stated at option 2, making casinos *sui generis* serves a number of functions. It allows local planning authorities to control the development of casinos in their area and tackle any issues that may arise locally, perhaps through the use of conditions. These are also achieved by option 3.

However, this option permits a change of use to D2 without the requirement for planning permission. This has a number of benefits. It eliminates the administrative burden of the planning application process, and creates a degree of flexibility for the existing casino industry by allowing a change to D2 if the market changes. It means that casino operators are able to dispose of their premises at the full market value of a D2 use, rather than a (possibly unprofitable) casino only. It also has benefits for town centres by restricting conversions of D2 premises to casinos without local planning authority consent.

SUMMARY TABLE Costs and Benefits		
Option	Benefits (Economic, Social & Environmental)	Costs (Economic, Social & Environmental)
1. No change	<ul style="list-style-type: none"> • Casinos continue to enjoy flexibility within D2 class • License permitting, casinos will be interchangeable in line with consumer demand • Premises will still be valued at full market value. 	<ul style="list-style-type: none"> • This could result in the loss of existing D2 uses to casinos, which may also have additional knock-on effects, such as increased traffic, and additional parking requirements.
2. All casinos to be <i>sui generis</i>	<ul style="list-style-type: none"> • Communities would be assured that Local Authorities could control casino growth. 	<ul style="list-style-type: none"> • Increases in the number of planning applications, as planning consent required for changes to or from a casino. • Possible reduction in the value of existing casino premises • Potential for run down buildings to be left in the community.
3. All casinos to be <i>sui generis</i> , but with permitted rights to D2	<ul style="list-style-type: none"> • Communities would be assured that Local Authorities could control casino growth • Value of existing casino premises would be protected • Other leisure facilities could be established in former casino premises, in line with customer demand. 	<ul style="list-style-type: none"> • Increases in the number of planning applications, as planning consent required for changes to or from a casino.

ANNEX B

The Consultation Criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full consultation code may be viewed at
www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm

Are you satisfied that this consultation has followed these criteria?

If not, or you have any other observations about ways of improving the consultation process please contact:

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