

The NI Assembly
All-Party Group on Reducing
Harm Related to Gambling
Inquiry Report

**Gaming
Machines in
Northern Ireland**

26 September 2022

The All-Party Group (APG) on Reducing Harm Related to Gambling was established to address issues associated with gambling harm in our communities. All-Party Groups provide a forum in which MLAs and outside organisations and individuals can meet to discuss shared interests in a particular cause or subject. This report is based on written and oral evidence received by the APG over a period of four months from November 2021 to March 2022. The report was drafted by Chambré, the Group Secretariat. Secretariat support is funded by Derek Webb.

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Introduction

Status of gambling regulation in Northern Ireland

Gambling regulation is a devolved matter in Northern Ireland (NI), where it falls under The Betting, Gaming, Lotteries and Amusements (NI) Order 1985 (henceforth the 1985 Order). Unlike Great Britain, NI does not have an independent gambling regulator.

In April 2022, the first phase of a two-phase approach to reforming NI's gambling laws was completed with the [Betting, Gaming, Lotteries and Amusements \(Amendment\) Act 2022](#) becoming law. This includes a new offence of inviting, causing, or permitting a person under 18 years of age to play a high-stake gaming machine, and includes enabling powers to introduce Codes of Practice for land-based (i.e. not online) gambling operators covering several areas of gambling activity, including gaming machines.

The next phase involves a more comprehensive overhaul of NI's gambling laws, including a complete new regulatory framework that will, for the first time, encompass online gambling. It is anticipated that it will take the whole of the current Assembly mandate to bring forward and enact the necessary legislation.

Background to the All-Party Group and inquiry into gaming machines

The NI Assembly All-Party Group (APG) on Reducing Harm Related to Gambling was established in March 2020 to address issues associated with gambling harm in our community.

In September 2020, the APG launched an inquiry into the future regulation of gambling in NI. Of the 17 written responses received as part of that inquiry, nearly all raised concerns about the proliferation of and lack of protections around gaming machines in NI, particularly with regard to so-called fixed-odds betting terminals (FOBTs).ⁱ The issue of gaming machines and gambling harm was also raised frequently during the oral evidence sessions. It was therefore decided that the APG would undertake a short inquiry into the issue.ⁱⁱ

ⁱ All but one of the respondents called for some form of legislative change relating to FOBTs.

ⁱⁱ The full Terms of Reference for the inquiry can be accessed via [this link](#), or via the APG's website (www.gamharmapg.org). The schedule of oral evidence sessions is also available on the APG website.

The inquiry sought to understand how a regulatory regime for gaming machines could be developed that had gambling harm reduction at its core. It considered:

- The legal position of gaming machines in NI and other jurisdictions
- What level of regulation might be appropriate for different types of gaming machines
- Additional protections for children and young people
- The human cost to those who have suffered harm as a result of using gaming machines

The APG has stressed many times that it in no way seeks to prohibit gambling. Rather it recognises that serious gambling-related harms can and do occur in our communities and that a better, coordinated system of regulation, education, treatment and prevention is required to address this reality. The inquiry aimed to gather a solid evidence base on the harm associated with gaming machines and possible solutions in order to inform the next phase of gambling reform.

It should be noted that unlike other jurisdictions where electronic gaming machines are permitted, the government in NI does not collect or publish information on the effect of gaming machines on rates of gambling harm. Therefore, much of the evidence submitted to the inquiry draws on research from Great Britain (GB) or international jurisdictions, from which proportionate estimations for NI can be drawn.

Gaming machines

What are gaming machines?

A gaming machine (also known as a “slot”, “fruit” or “poker” machine) is a machine that creates a game of chance for users to gamble on. Many gaming machines are of the reel-based type (e.g., fruit or slot machines), though other popular games include roulette, bingo and simulated horse/greyhound racing. To place a bet on a gaming machine, users pay a stake, then push a button, a combination of buttons and/or pull a handle.



Figure 1: Typical UK gaming machines.

Traditionally gaming machines were mechanical devices, however the standard modern iteration is the result of decades of innovation and is a complex combination of software, audio-visual stimuli and mathematical algorithms.¹ Modern gaming machines typically offer “multi-line” play, whereby users can wager on more than one line at once.²

In GB, a gaming machine is defined by the Gambling Act 2005 as a machine that is “designed or adapted for use by individuals to gamble (whether or not it can also be used for other purposes)”.³ In NI, the supply, maintenance, and operation of gaming machines are regulated under the 1985 Order. Under this legislation, a gaming machine is defined as any machine which:

- a. is constructed or adapted for playing a game of chance by means of it; and*
- b. has a slot or other aperture for the insertion of money in the form of cash or tokens.⁴*

Under the 1985 Order, anyone seeking to supply a gaming machine needs to hold a gaming machine certificate or permit. To do so otherwise is an offence. Additionally, anyone can apply to a licensing authority to have a gambling licence, permit or certificate refused or not renewed, or revoked altogether.

Gaming machines can be found in a variety of settings, including amusement arcades, bookmaking offices, bingo clubs and registered clubs. Whereas in the past, land-based gambling would have been dominated by sports betting and casino games, there has been a significant increase in gaming machine gambling in recent years.⁵ In its written submission to this inquiry, the Northern Ireland Turf Guardians Association (NITGA) said that gaming machines are now an “extremely important part of the NI bookmaker business model”, as traditional betting methods continue to decrease in popularity in favour of more technological formats.

According to the GB Gambling Commission, the gross gambling yield (GGY) of gaming machines in GB (excluding those requiring only a local authority permit) totalled £907.5 million between April 2020 and March 2021 (the last period for which published figures are available).⁶ This amounts to around 53.3 per cent of total GGY for the land-based sector, and 10.6 per cent of GGY overall (excluding lotteries). For the period between April 2019 and March 2020 (i.e. the period prior to the impact of the COVID-19 pandemic)ⁱⁱⁱ, the GGY of gaming machines in GB was £2.1 billion, which amounts to around 87.5 per cent of GGY for non-remote (i.e. land-based) betting, and 20.5 per cent of overall GGY (excluding lotteries).⁷

The Department for Communities does not know how many gaming machines are in operation here, how they are distributed geographically or what revenues they generate.

As with all casino games, the “house” (e.g., the bookmakers) has a built-in advantage when it comes to gaming machines. Machines will typically have an RTP (Return to Player) percentage ranging from about 90 to 97 per cent. The RTP is the expected percentage that a specific game will return to the player in the long run (it is not synonymous with average return per individual game).

For example, a £1 bet on a gaming machine with an RTP of 90 per cent will ultimately return 90p to the player, factoring in wins along the way. Then, from a stake of 90p, the same machine is programmed to return 81p over a series of plays, and so on. There is no way to “beat the machine”. If you play for long enough, you are effectively guaranteed to lose your money.

*If a player only lost 10 per cent of their money while playing [gaming] machines, it would not be ruinous. But the trouble is: if you keep playing, you lose all your money.*⁸ – Neil Lawrence et al, *Ka-Ching! Pokie Nation*

ⁱⁱⁱ Note: these figures include 11 days from March 20, 2020, when land-based sections of the industry were forced to close due to COVID-19 restrictions.

Michael Shackleford, a mathematician best known for his professional analysis of the mathematics of casino games (and who programmes the RTP into gaming machines himself) describes low and high RTP rates as the difference between “slaughtering or sheering the sheep”.⁹ “Slaughtering” refers to machines with lower RTP rates, where users lose their money relatively quickly, while “sheering” refers to a higher RTP that keeps users playing - with the understanding that they will still lose.

*I know what an awful bet they are, because I've designed hundreds of these games. I'm sorry: they're just a lousy bet.*¹⁰ – Michael Shackleford, gambling odds analyst and game programmer

Under GB law, gaming machines must display clearly the RTP, as well as the category of machine. Under NI law, the supplier's full name and address, together with the manufacturer's serial number (if any), must be prominently and securely displayed on the front of a gaming machine.¹¹

Major manufacturers in the UK gaming machine market are Light & Wonder Corporation (formerly known as Scientific Games), Dransfields & Reflex Gaming and Inspired Gaming.¹² Light & Wonder recently renewed a contract with Entain that will see them provide 10,000 gaming machines, which will be fitted across the group's Ladbrokes and Coral high street betting offices.

Fixed-Odds Betting Terminals

So-called fixed-odds betting terminals (FOBTs) are a modern form of gaming machine. They offer games such as roulette and video slots via an electronic terminal. While traditional fruit and slot machines were a permanent fixture for decades in the UK, FOBTs didn't appear in high street bookmakers until 1999, and in NI from 2003.

FOBTs have often been referred to as the “crack cocaine” of gambling – both due to their relative addictiveness, and how quickly users can develop gambling-related problems following initial exposure.¹³ A 2016 study concluded that they account for more than half the UK's gambling harm.¹⁴

The distinction between FOBTs and other gaming machines can be thought of from both a technical and legal perspective. In technical terms, a FOBT offers results based on “fixed odds” which are programmed into the machine (the RTP – typically set at 90 to 97 per cent). The result of any given bet is determined by a remote random number generator (RNG), which in the case of FOBTs is located outside of the machine. In other forms of gaming machine, the result is determined by an internal digital compensator.

Some commentators use the term FOBT when referring to gaming machines in general. As will be discussed, UK courts have taken the view in the past that the location of the

RNG is irrelevant when defining a FOBT, rather they hold that the users' experience is the determining factor. In this report, unless otherwise stated, we consider the issues arising from FOBTs and other forms of gaming machine to be largely synonymous. The issues arising do not stem from where the outcome of virtual bets is decided.

A Northern Ireland Office (NIO) report from September 2019 notes that the legal status of FOBTs under the 1985 Order is "unclear". The report gives an estimate of 800-900 FOBTs operating in bookmaking offices. This does not take account of gaming machines in bingo halls, adult gaming centres and other venues.

While in GB, FOBTs are covered by the 2005 Gambling Act, in NI there is no legislation directly covering these machines. As will be discussed, the official position of the Department for Communities is that FOBTs in NI are classed as "gaming machines" under the 1985 Order, even though the machines in operation today involve much higher stakes and prizes than the Order permits. Moreover, in GB, under the 2005 Act, up to four of these machines can be situated at one betting premise,¹⁵ whereas the 1985 Order specifies a maximum of two gaming machines per licensed bookmakers office.

Reform around gaming machines in Northern Ireland

On 26 April 2022, an update to the 1985 Order in the form of The Betting, Gaming, Lotteries and Amusements (Amendment) Act (NI) 2022 entered the statute books. The Act contained a number of provisions, including permitting bookmakers and bingo halls to open on Sunday and Good Friday and increasing the maximum price of a society lottery ticket from £1 to £100.

In regard to gaming machines, the legislation introduced a new offence of inviting, causing or permitting a person under 18 years of age to play a high-stakes gaming machine. It also introduced Codes of Practice for land-based gambling operators, which will require a Commencement Order to be made in the Assembly before they can become law. The Act also makes it more explicit in the 1985 Order that a breach of the Codes of Practice can be grounds for a gambling licence, permit or certificate to be refused, not renewed, or revoked.

The Department has described the Amendment Act as phase one of a two-phase process. It is anticipated that a more comprehensive overhaul of the regulations around gambling in NI will be introduced during the current Assembly. It is the APG's view that the second phase of reform should address the regulation of gaming machines in NI directly, either entirely through the Codes of Practice, or in the new legislation to be introduced.

Reform around gaming machines in Britain and Ireland

Gaming machines in GB are regulated under the 2005 Gambling Act and are categorised by definitions (A-D) produced by the Gambling Commission. The GB Gambling Commission issues gaming machine licences and can levy fines and revoke licences. Following a 2016 review, the Government cut the maximum stake on FOBTs in betting shops from £100 to £2.

In December 2020, The Department for Digital, Culture, Media and Sport (DCMS) announced a review of the UK gambling laws, specifically to determine whether the 2005 Act is still fit for the digital age and to protect vulnerable groups in society. The review ran from 8 December 2020 to 31 March 2021 and received over 16,000 submissions. Specifically on gaming machines, the review sought views on restricting young children's access to certain forms of game machines.

A white paper setting out the conclusions of the review has been much anticipated. On 14 July 2022, it was announced that the white paper would be postponed for a fourth time, amidst Prime Minister Boris Johnson's resignation and ensuing political turmoil.¹⁶ At the time of writing, it has yet to be published.

Gambling in Ireland (the Republic) is regulated under the Betting Act 1931, the Gaming and Lotteries Act 1956 and the National Lottery Act 2013. Amending legislation^{iv} saw the maximum stake and prize limit for gaming machines increase to €5 and €500 respectively in 2020. Operators of gaming machines are required to hold a Gaming Licence from Revenue¹⁷ for each premises where a gaming machine is available for play and a licence for each machine. A 2008 review ruled that FOBTs should not be introduced in betting shops in the Republic but would be allowed in casinos.¹⁸

The Republic has recently completed a comprehensive review of its gambling legislation. Work is underway on the drafting of a Gambling Bill to reform the regulation of gambling activities and to provide for an independent Gambling Regulatory Authority of Ireland. The General Scheme of the Bill¹⁹, published in October 2021, suggests that the future regulator will be tasked with the regulation of gaming machines. During the pre-legislative scrutiny of the Bill, Senator Michael McDowell (Independent, National University of Ireland) raised the issue of FOBTs, warning that he "doesn't see any policy to help control them" in the current scheme of the Bill. Mr Barry Grant of the charity Extern Problem Gambling said that he has "grave concerns" surrounding the issue of FOBTs in Ireland, and that his organisation would want to see a complete ban on them.

^{iv} Gaming and Lotteries (Amendment) Act 2019.

Gaming machines in other jurisdictions

Casinos and other gambling venues in the United States have come to rely on gaming machines for the majority of their revenue – as much as 70 per cent on average.²⁰ Total revenue from gaming machines in the US for April 2022 was \$2.95 billion.²¹ Gaming machines remain a “sweet spot” for American casinos: revenue accruing from them jumped 10 per cent between 2019 and 2021, compared to a 1.1 per cent rise in revenue from traditional table-top casino games.²²

Gaming machines are regulated at the state level in the US, and so their legal position varies widely. The hardware and software of all US gaming machines must conform to state regulatory standards. In 2021, the American Gaming Association (AGA) published a white paper in which it warned that unregulated gaming machines were increasingly an issue and called on the federal government to “[clarify] the law to make the illegality of these machines clear where any ambiguity exists”.²³

In Australia, gaming machines are permitted under the various state and territory licensing regimes in casinos, hotels, and clubs (except for Western Australia where gaming machines are only permitted in casinos). As in the US, the regulation differs in each state and territory. For example, in New South Wales the socioeconomic impact on the local area is considered during any application that would raise the number of gaming machines. In Victoria, there is a venue, area, and jurisdiction cap on the number of gaming machines with a mandatory pre-commitment system, whereby players pre-commit to how much money they want to spend before playing.²⁴

In New Zealand all gaming machines are required by law since 2009 to have Player Information Displays that inform the gambler how long they have been playing, how much they have lost, and which encourage them to take breaks.

Overview of findings

Comparison with other forms of land-based gambling

Evidence presented to the APG indicated that the risk of gambling-related harm is significantly higher with gaming machines than with other forms of land-based gambling.

The below table is drawn from the GB Gambling Commission's 2016 Gambling Behaviour report²⁵ examining the "problem gambling" and "at risk" rates of several gambling products. It indicated that just over half (52.9 per cent) of all users of gaming machines in bookmakers were either problem gambling or at risk, compared with less than 20 per cent for other land-based activities. The percentage associated with either category from any gambling product (excluding the National Lottery) was 11.1 per cent.

	"Problem gambling" %	"at risk" %	Total Rate %
Any gambling (excl National Lottery draws only)	1.6	8.5	11.1
Horse racing (not online)	3.3	14.1	17.4
Bingo (not online)	3.9	10.4	14.3
Machines in bookmakers (FOBTs)	13.7	39.2	52.9
Online gambling on slots, casino or bingo games	9.2	35.6	44.8

Table 1: Rates of gambling harm by gambling product (GB Gambling Commission, 2016)

As the APG has previously argued, it is logical to assume that the regulation of gaming machines should differ from that of say, horse racing which carries less than three times the risk.

Clinical Lead and Consultant Psychologist for The NHS Northern Gambling Service, Dr Matt Gaskell told the inquiry that gaming machine usage is the number one land-based gambling activity undertaken by patients presenting at his clinics:

Playing continuous gambling products, like slot machines, is the single biggest risk factor for gambling problems. It's a bigger risk factor than any individual factor. As far as we're concerned, in the clinics that I oversee,

54 per cent of our service users are presenting with gambling machines as their product of choice.

A recent meta-analysis of 104 studies submitted to the inquiry as written evidence shows that the highest gambling risk factors are associated with continuous-play format gambling products: online gambling and gaming machines.²⁶ These products, unlike other more traditional forms of gambling, can be played essentially non-stop, which carries significant risks for users. A 2020 survey of 20 prevalence studies that compared gambling on gaming machines to racing or casino table games concluded that people who participated in gaming machine gambling “were more likely to have gambling problems”.²⁷

Dr Gaskell also presented research showing that play on gaming machines is the most rapid route to gambling addiction, taking an average of one year versus three years for other gambling products.²⁸ In his view, they are intentionally engineered to exploit our reward learning systems and vulnerabilities, and “undermine the whole concept of responsible gambling”.

In contrast to the likes of card games or sports betting, which offer less continuous action (and frequently, more social interaction), game machine play immerses users and offers little by way of a “cool down” period between bets. Dr Gaskell told the inquiry that his patients find themselves immersed in continual play, usually at high speed, with highly frequent opportunities to bet and no time to reflect. This state of altered consciousness is often referred to as “the zone”.²⁹

One former user of gaming machines told the inquiry that they experienced episodes of prolonged play in a “trance-like state” in which they could not recall how long they were playing for or how much they had gambled:

I have done other drugs and I can't replicate what a fixed-odds betting terminal roulette machine did to my brain with anything else I've ever used in my life. It was overwhelming and it really does take you out of that place of making rational decisions and thought.

Additional evidence submitted to the inquiry³⁰ reported that many game machine players describe play as “reassuringly hypnotic”, when compared to other forms of land-based gambling:

The visual stimuli, the repetitive pattern of betting and outcome, and the chance to withdraw into one's own world are features that may contribute to this perception.

The dangers of the “zone” state were raised several times during the inquiry. Dr Matt Gaskell reported that it was this state, rather than the prospect of winning money, that kept his users on gaming machines:

Their drug, if you like, is time and this state of dissociation - not the sensation-seeking of big wins. The longer they can be in the zone and be detached from normal life, the better. Their thinking and judgment is so clouded they continue to play under the illusion of some control over these preordained events, until they've no money left.

One respondent told the inquiry that gaming machines were “the first and last thing” that they gambled on. This user told the APG that gaming machines were “the worst of [their] addiction” because they were aware that there was no skill involved in using them, and yet were powerless to stop. This contradicts statements from the land-based industry to the inquiry, that “if the players never won, frankly, they wouldn't play”.

NITGA representatives cite the 2016 Northern Ireland Gambling Prevalence Survey,³¹ which showed that 8.1 per cent of NI gamblers used some form of gaming machine.^v This is compared with other forms of gambling, such as the National Lottery (46.8 per cent), scratch cards (23.7 per cent) or sports betting (22.8 per cent). While the APG does not dispute that gaming machines represent a small portion of net gambling activity in NI, the disproportionate risk to users when compared with other forms warrants closer attention and specifically targeted policies to protect individuals. Addictive products should be regulated based on the risk of harm, regardless of their popularity relative to other addictive products. This is especially pertinent, given that the same 2016 survey found that NI has a relatively high rate (2.3 per cent) of problem gamblers when compared with GB, Ireland and other jurisdictions.

Recommendations

- **Regulation proportionate to the higher risk**

The higher risk associated with gaming machines should be accounted for when legislating for land-based gambling in the second phase of reform.

Structural characteristics

Previous research on gambling-related harm tended to focus on individual behaviours. This framing has focused the discussion on the idea of the “individualized flawed consumer”³² and the promotion of “responsible gambling” and self-control as a means of resolving gambling harm at the societal level. However, what this focus omits is the

^v 6.5 per cent of those surveyed gambled on land-based slot machines, and 1.6 per cent of those surveyed said they used virtual gaming machines in bookmakers.

addictiveness of the products themselves – no more so than in the case of gaming machines. It also aligns with industry interests, by diverting focus from the harmfulness of gambling products and practices, and on to individuals. But as one witness told the inquiry, we cannot “educate the addictiveness out of addictive products”.

Dr Matt Gaskell told the inquiry that, in his view, gaming machines are “deliberately engineered products” which are fundamentally “addictive by design”. Gaming machines have been refined to maintain motivation to continue play for as long as possible - even as the customer is losing, breaking the usual rules of human behaviour. They achieve this through specific design features known as “structural characteristics”. These are “responsible for reinforcement, may satisfy gamblers’ needs and may actually facilitate excessive gambling”.³³ Structural characteristics (i.e., the product itself) are distinguished from the ‘situational characteristics’ (i.e., the environment, the number and location of gaming machines and their marketing) that entice people to gamble.

In the case of gaming machines, structural characteristics relevant to the risk of addiction include:

- Stake and prize limits
- Near misses
- Losses disguised as wins (LDWs)
- Spin speeds

The APG heard evidence that modern gaming machines have been designed with structural characteristics that function, as much as possible, to prolong the aforementioned “zone” state, which is associated with both risky play and gambling problems.³⁴

Stake and prize limits

The APG received written evidence that suggests a strong link between high stakes and poor probability judgements when compared with lower stakes³⁵, and subsequently that stake limits can help mitigate gambling harm. Prize limits have also been shown to result in more responsible gambling practices.³⁶

A recovering gambling addict told the inquiry that the last time he ever gambled on gaming machines, he lost £2,000 in 20 minutes on four FOBTs in four different bookmakers, “and obviously was completely suicidal after that”.^{vi}

^{vi} Note that this would have been prior to the GB stake reduction in 2018.

In May 2018, the UK Government cut the maximum stake on FOBTs in GB from £100 to £2 (and kept the prize limit at £500).³⁷ The limit of £2 was decided on following a public consultation, during which it was argued that the £100 limit allowed users to lose large amounts of money in single sittings and promoted reckless gambling.³⁸ Stake and prize limits are reviewed in GB on a three-yearly basis and can be readily adjusted using secondary legislation.

It should be noted that a comprehensive study of the impact of this stake reduction has yet to be undertaken. However, one respondent to the inquiry noted that there was a 40 per cent drop in police call-outs to betting shops in 2019, with the stake reduction having been enacted three months into that year.³⁹ Dr Matt Gaskell added that regulating stake limits “can have a significant effect on harms” and “reduces harm in important respects”, though it must be considered with other structural characteristics of gaming machines that motivate continued play.

As NI is not covered under the GB legislation, the change did not apply here. Nevertheless, most NI gambling operators have “voluntarily” lowered the maximum stake on their FOBT gaming machines to £2 with a £500 prize limit since 2019.

However, under the 1985 Order, the maximum stake for standard gaming machines in NI is 30p, and the prize limit is maximum £25. The maximum stake for jackpot machines is 50p, and a £250 prize.⁴⁰

CATEGORY	STAKE LIMIT	PRIZE LIMIT
Jackpot gaming machine	50p	£250
Amusements with Prizes (AWP) gaming machine	30p	£25
	30p	£8

Table 2: Stake and prize limits for gaming machines under the 1985 Order.^{vii}

This being the case, all gambling operators with premises in NI that are operating FOBT gaming machines, which have a £2 stake and £500 prize limit, are non-compliant with the 1985 Order.

Representatives from the land-based gambling industry told the inquiry that in their view, FOBTs operating in their premises are not gaming machines as defined under the 1985 Order, and therefore the above limits do not apply. NITGA told the inquiry that the law should be amended to bring gaming machine stake and prize limits into line with GB, and argued that defining FOBTs as gaming machines under the 1985 Order without doing so would result in a *de facto* ban:

As NI's current legal framework on AWP gaming machines provides only for a maximum stake of 30 pence, classifying FOBTs as gaming machines in the absence of amending stakes and prizes at the same time would implicitly prohibit the use of FOBTs in Northern Ireland without the need for an explicit ban even being required.

However, as previously mentioned, the Department for Communities has confirmed its view that FOBTs are classed as gaming machines under the 1985 Order.^{viii} This position

^{vii} The majority of gaming machines in NI are in the AWP category. Jackpot gaming machines are only permitted in registered clubs in NI. The two different levels of stake and prize limits for AWP are generally based on player age. The higher limit (30p stake; £25 prize limit) is for over 18s. The lower limit (30p stake; £8 prize limit) can be played by anyone of any age.

^{viii} See Minister for Communities' answer to Assembly Written Question (AQW 28227) in Appendix 6.

follows a Supreme Court Ruling in *Rank v HMRC [2015] UKSC 48*. In this case the Supreme Court judgment found that games like FOBTs could be classed as gaming machines in Great Britain, even if the mechanical process which created the “chance element” (such as a random number generator) was located somewhere else.

The Supreme Court's decision dismisses the suggestion that the location of the chance element within a machine or outside is an important distinction, which industry representatives had suggested in their evidence to the inquiry.

In contrast, Department for Communities officials confirmed to the APG in its oral evidence session:

The courts have tended to take the view, at least in Britain, that you have to look at machines like FOBTs from the point of view of how they're seen by the player and used by the player, and the purpose they're used by the player for, rather than technicalities of whether there's a remote number-generator inside or outside the machine.

Following the Court ruling, the Department wrote to the PSNI Chief Constable to say that “[its] Legal Advisers have expressed the opinion that the Supreme Court decision clarifies the law here and gives weight to the assertion that FOBTs fall within the definition of a gaming machine as set out in the legislation in Northern Ireland”. The Minister also asked for the PSNI's view on the matter and the implications for enforcement of NI gambling law, particularly as regards stake and prize limits. The PSNI's Legal Branch reviewed the Supreme Court ruling at the time and advised that the law in England and Wales is “not exactly the same” as in NI, and that a legal test case may be required to provide clarity on the matter. As the PSNI are responsible for enforcement of the 1985 Order, it fell to them to progress this.

Representatives from both the Northern Ireland Amusement Caterers Trade Association (NIACTA) and NITGA told the inquiry that as stakes and prizes have not been increased since 2003, they would like current levels reviewed and ideally brought into line with those in GB.

If, in the future, stakes and prizes were changed and brought into line with GB, FOBT operators in Northern Ireland who currently offer GB stakes and GB prizes would be operating legally from the date of that change. However, this leaves unanswered the separate question of whether operators who currently track GB prizes are committing criminal offences by breaching NI law. If the view held by the Department is correct, FOBT operators should be capping each stake at 30p instead of £2, and capping the prize at £25 instead of £500.

NIACTA and NITGA have indicated that they would be prepared legally to challenge the Department for Communities' position that FOBTs in NI are classed as gaming machines under the 1985 Order, and that NIACTA and NITGA members operating FOBTs on their premises are in breach of the law. Neither NIACTA nor NITGA have provided a copy of legal advice on which to base such a challenge.

The APG believes that certainty is needed as to whether FOBTs are or are not gaming machines for the purposes of the 1985 Order.

If a court recognises that FOBTs are gaming machines, any recognition of this in future legislation would essentially be confirmatory.

However, if a court says FOBTs fall outside of the 1985 Order's concept of gaming machines, future legislation becomes much more important because it would change the current legal position to bring FOBTs within the concept – and the regulation – of the gaming machine.

Finally, policymakers should be aware that while a stake reduction has been shown to mitigate gambling harm, stakes of any size present different risks to users. Dr Matt Gaskell notes that two types of "stake players" gamble on gaming machines:

You have those who will play low stakes, sometimes referred to as 'escape gamblers' in order to play for as long as possible. These are people who want the 'dark flow' experience [i.e. the "zone"]. The other group could be referred to as 'action players' who prefer high stakes (like on FOBTs prior to the GB regulation reducing the maximum stake to £2) with the opportunity to experience a 'big win' but who can lose a lot of money very quickly...

Consideration should therefore be given to both types of gaming machine users when regulating stake limits.

Recommendations:

- **Enforcement of 1985 Order**

The APG supports the Department for Communities' position that FOBTs in Northern Ireland are gaming machines for the purposes of the 1985 Order and recommends that the 1985 Order's stake and prize limits should be enforced accordingly.

- **Clarity on legal position of FOBTs**

Greater clarity is needed in preparation for the next phase of legislation on the legal position of FOBTs in NI. The APG recommends that the PSNI urgently launch a legal test case under the 1985 Order on the operation of FOBTs in betting shops

and other premises where licensed gambling activities are taking place, with the aim of obtaining a judicial view on whether or not FOBTs are 'gaming machines' under the 1985 Order and are therefore subject to the significantly lower stake and prize caps set out in the 1985 Order, rather than the stake and prize caps currently in use by the bulk of the industry in NI.

Near misses and losses disguised as wins

On gaming machines, near misses are interpreted as "frustrating losses", – they occur when the user believes they were close to a win (a perfect spin, a winning bet etc.), but missed by just a small margin. In reality, near misses are programmed into the machine itself. There is evidence to suggest that near misses can cause users' brains to release almost as much dopamine to reward the player as a win, especially among addicts.⁴¹ The APG received evidence showing that users generally consider near misses to be "closer to a win than a loss", despite being a loss:

*Near misses have been found to lead to play persistence in gamblers and have been shown to produce a number of physiological effects that suggest brain circuitry reward.*⁴² — New South Wales Responsible Gambling Fund

The Australia/New Zealand Gaming Machine National Standard (2016) requires that gaming machines "not be misleading, illusory or deceptive – such as a 'near miss' design".⁴³

Losses disguised as wins (LDWs) occur when a user wins less money than they bet, resulting in an overall loss (e.g., bet £2, win back £1), but is "rewarded" by audio-visual stimuli. Gaming machines "celebrate" LDWs with winning sights and sounds. This technique has a potent psychological effect on users, as it taps into their brain's reward circuitry and contributes to the "cognitive dissonance" where users may know that they are losing but are unable to stop playing. The evidence received by the inquiry suggests that LDWs are strongly associated with harmful, continuous play, particularly for problem gamblers.⁴⁴

Both near misses and LDWs were raised to the inquiry as warranting some form of regulation, as they combine to produce the potent experience which prolongs play in problem gamblers. LDWs cause users to overestimate how much they are winning (or if they're winning at all) and near misses motivate continued play.⁴⁵

Spin speeds

Spin speeds are the rate at which a user can make bets on a gaming machine. Faster spin speeds mean that you can bet at a faster rate. Gaming machines generally allow users to bet every couple of seconds. This quick and near-continuous play is associated

with a more “potent” experience, in which users may forget about the external world while betting large amounts of money. Studies that have examined spin speeds have shown that faster speeds are associated with an increased risk of excessive gambling.⁴⁶

In GB, the 2005 Gambling Act set the spin speed for games on FOBTs at a minimum of 20 seconds, and for other game machines at a minimum of 2.5 seconds.^{ix} In 2017, as part of the public consultation which would lead to the reduction of stake and prize limits, the Gambling Commission was asked to consider reducing the spin speeds on virtual roulette games, which are found on FOBTs, from 20 seconds per bet to one minute “to better reflect [the spin speed of] roulette in a casino...”.⁴⁷ This proposal was never implemented.

In February 2021, the GB Gambling Commission did however introduce a ban on slot spin speeds faster than 2.5 seconds for online games, and on losses disguised as wins for online games.⁴⁸ Specifically, the Commission has banned:

- features that speed up play or give the illusion of control over the outcome
- slot spin speeds faster than 2.5 seconds
- sounds or imagery which give the illusion of a win when the return is in fact equal to, or below, a stake.

Announcing the changes, the then Chief Executive Neil McArthur said that “the evidence shows that these features increase the risk of harm to customers”. It is logical to assume that the same features causing harm to users online will present similar harms in the case of gaming machines.

Other characteristics

Other structural characteristics of gaming machines (e.g., free spins, number of lines, music and colour) have been shown to contribute to problem gambling to varying degrees. Further studies are needed to determine the risk factor of each characteristic, and the APG recommends that policymakers should be aware of the latest science regarding gaming machine features and gambling-related harm.^x

NITGA notes that FOBTs in NI include social responsibility software consistent with the regulatory standard applicable in GB. This includes a player limit facility, time of play reminders, staff notification of long play sessions and responsible gambling messages

^{ix} Though recognising the link between spin speeds and gambling harm is a welcome step, it is worth noting that there is no evidence that 2.5 seconds is a safe enough speed. More research is needed to determine the actual safest level.

^x For a recent review of current research, see ‘Literature review of the impact of EGM characteristics on gambling harm’ commissioned by NSW Responsible Gambling Fund (2019).

displayed on-screen. Although the APG welcomes such measures, they are fundamentally insufficient to ensure user safety. As a former user told the inquiry, warning features such as these fail to account for how addictive the products are:

One thing that I did get that didn't make any difference were so-called safer gambling pop up messages. [...] I vividly remember, like, laughing, laughing out loud at some of these messages after I'd been ploughing notes over and over again into the machine. All of a sudden someone's telling me, "Why don't you just take a timeout?" It doesn't work.

Recommendations:

- **Structural characteristics**

Future NI gambling legislation should take account of the structural characteristics of gaming machines with the aim of reducing gambling-related harm. Serious consideration should be given to banning 'near misses' and LDWs and slowing spin speeds. These characteristics should form part of the consideration as to which machines are permitted in NI venues and how many.

- **Testing and licensing**

That the testing and licensing of gaming machines in NI take account of their structural characteristics and associated harm.

Number and location of machines

In addition to structural characteristics, the inquiry heard evidence to suggest that environmental factors are crucial to reducing harm. Chief among these is the number of machines and the location in which they're found. When a large number of machines are placed in an environment with many simultaneous opportunities to bet, the potential risk to users is increased. This is why, according to one respondent, gaming machines are "front and centre" in bingo halls and other venues.

Dr Matt Gaskell told the inquiry that, in his view, policymakers aiming to reduce harm should avoid "[recreating] the ability to bet frequently and continually across products", and "think about gambling environments and the ability for an individual to just be able to bet at high frequency and continually over time".

This sentiment was echoed by a former user of gaming machines:

I would really advocate for a big separation between gaming machines and sports betting. I know they're in the same venue, but as much friction and separation as possible. I was going at 16 from £5 football

bets to placing hundreds of pounds on a machine that was designed to addict me but also guarantee profit from me.

It is with this in mind that jurisdictions around the world regulate the number of gaming machines permitted within a given establishment. In GB, an operating licence (issued by the Gambling Commission), together with a betting premises licence (issued by the licensing authority), allows up to four FOBTs to be sited on betting premises.

The number of gaming machines permitted per licensed office in NI is regulated under the 1985 Order, by which:

Not more than two gaming machines (or such other number as the Department may specify, by order subject to affirmative resolution) shall be made available for gaming on any licensed office.⁴⁹

As previously discussed, representatives of the land-based industry in NI told the inquiry that they do not believe that FOBTs in their venues fit the definition of gaming machines as laid out in the 1985 Order. In their written submission to the inquiry, NITGA cited intelligence which suggests that NI bookmakers “have an average of less than 2.5 FOBT machines” and argued that the law should be amended in line with the limit in GB of four machines. Due to the lack of clarity, it has been suggested that NI bookmakers can have up to four FOBTs and two non-FOBT gaming machines.

NITGA told the inquiry that in their view, regulation to limit the number of FOBTs would simply “serve to push illegal operators to fill the void”. In their written submission, NIACTA said that enforcement should be directed at “illegal activities such as gaming machines in taxi ranks, chip shops, Facebook Bingo or any premises operating without permits or licenses”. No evidence was provided as to how these unlicensed venues would be able to do this, or why FOBT suppliers would risk using a legal intranet interface to support an illegal operation.

They also argue that FOBTs are an important part of the Northern Ireland bookmaker business model as traditional betting methods continue to decrease in popularity in favour of new technology-enabled gambling methods. They warn that a full ban would cause “serious and devastating economic hardship to bookmakers resulting in business closures and a loss of employment”. As stated, the APG does not seek to prohibit gaming machines, but to regulate in a way that protects users from harm.

Recommendations:

- **Number of gaming machines**

That the number of gaming machines currently permitted in various venues be enforced according to the 1985 Order. In the next phase of legislation, the number of permitted gaming machines on licenced premises should not be increased.

- **Separation from other forms of gambling**

That any future consideration of the number of permitted gaming machines takes account of the impact of the betting environment on the potential for harm. Ideally, gaming machines should be separated to the greatest possible extent from other forms of betting, for example, by locating them in a separate room.

- **Data requirements**

That land-based operators be required to furnish the Department for Communities, relevant licensing authority or any future gambling regulator with up-to-date data on the number and type of gaming machine in operation within their venues, and any other data as requested by such a regulator.

List of recommendations

- **Regulation proportionate to the higher risk**
The higher risk associated with gaming machines should be accounted for when legislating for land-based gambling in the second phase of reform.
- **Enforcement of 1985 Order**
The APG supports the Department for Communities' position that FOBTs in Northern Ireland are gaming machines for the purposes of the 1985 Order and recommends that the 1985 Order's stake and prize limits should be enforced accordingly.
- **Clarity on legal position of FOBTs**
Greater clarity is needed in preparation for the next phase of legislation on the legal position of FOBTs in NI. The APG recommends that the PSNI urgently launch a legal test case under the 1985 Order on the operation of FOBTs in betting shops and other premises where licensed gambling activities are taking place, with the aim of obtaining a judicial view on whether or not FOBTs are 'gaming machines' under the 1985 Order and are therefore subject to the significantly lower stake and prize caps set out in the 1985 Order, rather than the stake and prize caps currently in use by the bulk of the industry in NI.
- **Structural characteristics**
Future NI gambling legislation should take account of the structural characteristics of gaming machines with the aim of reducing gambling-related harm. Serious consideration should be given to banning 'near misses' and LDWs and slowing spin speeds. These characteristics should form part of the consideration as to which machines are permitted in NI venues and how many.
- **Testing and licensing**
That the testing and licensing of gaming machines in NI take account of their structural characteristics and associated harm.
- **Number of gaming machines**
That the number of gaming machines currently permitted in various venues be enforced according to the 1985 Order. In the next phase of legislation, the number of permitted gaming machines on licenced premises should not be increased.
- **Separation from other forms of gambling**
That any future consideration of the number of permitted gaming machines

takes account of the impact of the betting environment on the potential for harm. Ideally, gaming machines should be separated to the greatest possible extent from other forms of betting, for example, by locating them in a separate room.

- **Data requirements**

That land-based operators be required to furnish the Department for Communities, relevant licensing authority or any future gambling regulator with up-to-date data on the number and type of gaming machine in operation within their venues, and any other data as requested by such a regulator.

Appendices

Appendix 1: List of members and declarations of interest

Note: this inquiry took place in the final part of the 2017-2022 Assembly Mandate.

Robbie Butler MLA – Chairperson

Philip McGuigan MLA – Vice-Chairperson

Paula Bradley MLA – Secretary

Justin McNulty MLA – Treasurer

Pam Cameron MLA

Sinéad Bradley MLA

Paula Bradshaw MLA

Pat Catney MLA

Mark Durkan MLA

Sinéad Ennis MLA

David Hilditch MLA

Maoilíosa McHugh MLA

John Stewart MLA

Jim Wells MLA

Appendix 2: List of witnesses

3 February 2022

Clinical understanding of the impact of gaming machines

- Dr Matt Gaskell - Clinical Lead & Consultant Psychologist at the NHS Northern Gambling Clinics

10 February 2022

Gaming machines in Northern Ireland - Local gambling sector

- Gerald Steinberg, Chairman, Northern Ireland Amusement Caterers Trade Association (NIACTA)
- Brendan McAreavey, President, Northern Ireland Amusement Caterers Trade Association (NIACTA)
- Paul McLean, Secretary, Northern Ireland Turf Guardians Association (NITGA)

24 February 2022

Lived experience of the impact of gaming machines

- James Grimes, founder of the Big Step and Head of Education at Gambling with Lives

3 March 2022

Department for Communities (DfC) on draft Codes of Practice for gaming machines and industry compliance

- Martina Campbell
- Ciarán Mee

Appendix 3: Call for evidence (questions asked)

A call for written evidence ran from Wednesday 24 November to Wednesday 15 December, 2021. Organisations and individuals were invited to make written submissions to the APG that addressed all or some of the following questions:

- Do the regulations on gaming machines currently in force in Northern Ireland provide adequate protection for people here?
- Do you believe that the Betting, Gaming, Lotteries and Amusements Bill, currently passing through the Assembly, will introduce sufficiently strong protections for people here?
- Do measures contained in the Gaming, Betting, Lotteries and Amusements (Amendment) Bill to provide additional protections for young people go far enough, or are stronger protections needed?
- Responding to the Minister's announcement that 'tighter controls on FOBTs' will be included in the proposed new Code of Practice for gambling operators, do you believe this is an appropriate means of regulating these machines? What measures, if any, relating to FOBTs and other gaming machines would you like to see contained in the Code of Practice?
- With regard to gaming machines, are the current licensing arrangements for gambling premises sufficient? Should individual licenses for each gaming machine be considered?
- What statistical information on gaming machines should be collected and made available by the Department and its agencies?
- How should a new regulatory regime for gaming machines be enforced?

Appendix 4: List of written evidence submissions received

- Advice Northern Ireland
- Gaming Laboratories International
- Mission & Public Affairs Council of the Church of England
- Northern Ireland Amusement Caterers Trade Association
- Northern Ireland Turf Guardians Association
- Royal College of Psychiatrists Northern Ireland
- The Christian Institute

Appendix 5: Access to oral evidence recordings

All oral evidence sessions held by the inquiry into gaming machines in Northern Ireland were recorded and are available to the public on request. To request a copy of any of the sessions please email: secretariat@gamharmapg.org.

Appendix 6: AQW 28227 17-22 (FOBTs)

AQW 28227 17-22:

Mr Robbie Butler
Ulster Unionist Party
Lagan Valley
Tabled Date: 18/01/2022
Answered On Date: 27/01/2022
Priority Written: No

Question:

To ask the Minister for Communities whether fixed odds betting terminals, classified as B3 gaming machines in Great Britain, are classified as gaming machines under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, as amended.

Answer:

Fixed Odds Betting Terminals are covered within the definition of a gaming machine as set out in Article 2 (2) of the Betting, Gaming, Lotteries and Amusements Order 1985 (the 1985 Order).

This is based on legal advice following a Supreme Court Ruling in the matter of HMRC v Rank Group Plc, and other Upper Tier Tax Tribunals on the same issue.

AQW 28227 17-22 can also be accessed via the following link:

<http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=364146>

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