DUTCH GAMBLING LAW AND POLICY:
AN UNTENABLE PAROCHIAL APPROACH

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1 Introduction

The aim of this paper is to evaluate the attempts of the Dutch government to maintain strict boundaries around the Dutch gambling market. Paragraph 1 will outline the legal background to the regulation of gambling in the Netherlands, including the basis of current policy. This will be followed in paragraph 2 of a description of the key players in this field the various levels of government which are involved. Subsequently paragraph 3 considers the political climate prevailing in the Netherlands at the time of writing before attempting to make a rational analysis of the existing state of affairs, in paragraph 4. After a brief overview of recent case law in paragraph 5 a few critical concluding remarks are offered.

2 The Legal Aspects of Gambling Regulation

Gambling regulation in the Netherlands dates back to 1726. The regulation of gambling in the Netherlands dates back to 1726. Traditionally, lotteries have been a popular way for governments to quickly raise capital. When capitalism was still in its infancy, gambling and speculation were closely linked. During

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the progressive industrialisation of the nineteenth and twentieth centuries, gambling was regulated under criminal law in the form of public indecency laws. It was then considered part of the vice industry, along with prostitution, alcohol and drugs.

Since then, the history of gambling regulation has been characterised by a constant tussle between definitions of legality and illegality. Every attempt to regulate gambling in the Netherlands has created its own illegality, as it were. Over the years, there have been many legal challenges on what precisely constitutes a game of chance (the outcome of which cannot be influenced by the players) and what constitutes a game of skill. As a result lawyers have managed to create a world of their own which is consequently difficult to enforce.

Yet it is not just the legal definition of gambling that poses a problem: the social definition is also a thorny issue. Gambling operators highlight the excitement of gaming and its convivial aspects. The anti-gambling lobby and people such as social workers emphasise the risk of financial loss and the exploitation of human weakness. The rise of the Internet has increased the importance of technology and has made gambling more accessible, which in turn poses new problems for the regulator.

Since 1964, gambling in the Netherlands has been regulated by the Gambling Act (Wet op de kansspelen, ‘WOK’). This Act was, and still is, based on the principle of ‘canalisation’. In other words, since a total ban on gambling would not be feasible and there is always a risk of criminal exploitation, the government is trying to channel people’s compulsion to gamble towards more positive ends. Legal gambling is therefore permitted, preferably provided by a state monopoly, and the profits are channelled to the Treasury and to (nationally defined) good causes.

3 Key Players on the Dutch Gambling Market

3.1 The Supply Side

The national lottery Stichting Exploitatie Nederlandse Staatsloterij (SENS) is the oldest monopoly-holder on the Dutch gambling market. In 1976, following pressure from the tourism sector for the provision of casinos, it was joined by Holland Casino, also a state monopoly. Holland Casino now has 12 outlets in the Netherlands, with another two due to be opened shortly.

The football pools and the sports tote have been operating since 1961, and both have now moved away from the voluntary sector to become professional draws. The Lotto supports the world of sport (65% of their net results) and culture

4 Zedelijkheidswetgeving.