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UK government debates changes to horserace betting levy

On 20 January, the House of Commons debated a motion put forward by Matthew Hancock MP for the Government to introduce proposals this year to improve the system of funding for horseracing in the UK.

Under the current regime, less than a quarter of the revenue from bets placed by UK residents are subject to the levy, as the majority of bets are placed with overseas licensed bookmakers. The 60 racecourses in Britain provide 20,000 direct and 80,000 indirect jobs. The cuts in prize money and cuts in the number of racing fixtures are key concerns for the industry.

Questions were raised in the Parliamentary debate as to whether the horserace levy amounts to unlawful state aid, with reference made to the recent speculation that France's proposals for a horse racing levy are incompatible with EU law. Any change to the UK's levy scheme could trigger a legal challenge on this basis, however it appears that the Government is willing to face that challenge.

John Penrose MP, the Parliamentary Under-Secretary of State for Culture, Olympics, Minister and Sport, confirmed that the Government would aim to meet the target of putting forward proposals by the end of 2011. Mr Penrose agreed that horse racing and booking cannot exist without each other and admitted that the current system is old-fashioned and "if not broken, in the process of breaking".

One potential solution put forward was to allow for a commercial relationship to be formed between bookmakers and racecourses. This would involve the creation of an intellectual property right or 'racing right' for racecourses so that they are able to sell the right to accept bets to bookmakers.

The conclusion of the Parliamentary debate was that there was "a broad consensus on the need to reform the levy and clear support for the need for a fair return" and the racing right was being considered as one of the options.



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Europe

Ireland prepares to tax and licence online betting

Ireland's newly published Finance Bill 2011 includes details of the rates of betting duty which will apply to online gambling. The rate of 1% on betting revenue which currently applies to land based bookmakers will be extended to anyone taking bets from Irish residents. A licence for online bookmakers and betting exchanges is being introduced, with annual fees ranging from €5,000 to €100,000 depending on turnover.



Whilst the Finance Bill is expected to be passed in the next four to six weeks, in order for these measures to come into effect the existing legislation will need to be amended. A policy paper released by the Minister for Justice and Law Reform proposes that the Gaming and Lotteries Act 1956 and the Betting Act 1931 be repealed and replaced by a single piece of legislation regulating all forms of gambling in Ireland, with the exception of the national lottery.

In light of the required legislative changes, the new regime is unlikely to come into force for at least a few months, particularly in view of the fact that a General Election is due to take place in the next month or so.

Whether it will be possible for the Irish treasury to collect tax revenue from operators based and licensed overseas, particularly those outside the EEA, remains to be seen.

France

The French Competition Authority has raised concerns in a non-binding opinion document about the advantages enjoyed by the land-based monopoly operators Pari-Mutuel Urbain ("PMU") and Française des Jeux ("FdJ") in the online sphere, in comparison to other licensed online operators. The report calls for a legal and operational separation of the online and offline activities of PMU and FdJ.

This report follows the European Commission's opening of a formal consultation into whether France's horserace betting levy constitutes unlawful state aid.

As online gambling licensing regimes gradually come into force across Europe, we may see issues of fair competition between online and offline licensees come to the forefront.

Spain

Spain's controversial proposed rate of 10% taxation on turnover of online operators has been reduced to 5% in the first official draft of the new legislation. This 5% rate would apply to fixed odds betting, betting exchanges, poker and casino games.

The consultation on the draft legislation came to an end earlier this month and it is expected that the legislation will begin being debated in Parliament shortly.

Sweden

Sweden's Supreme Administrative Court has ruled that in principle, the ban on advertising foreign gambling services may contravene freedom of speech legislation. Challenging the advertising ban on this basis would need to be done on a case by case basis, as the likely outcome would depend on the content of the advert in question.

Although Sweden is considered to have particularly strict legislation in relation to freedom of speech, it will be interesting to see whether similar arguments can be run in other jurisdictions.

UK

Gambling Commission cracks down on primary use

The Gambling Commission has published a reminder to operators that betting premises must offer betting as the primary activity. The Commission is actively enforcing this principle by making representations against premises licence applications which do not appear to be in compliance. In two recent cases, the licensing authority has rejected a betting premises licence on the basis of such representations from the Commission.

The Commission's Director of Regulation, Nick Tofiluk, has warned that operators who are not offering betting as the primary activity "are likely to attract further regulatory attention from the Gambling Commission".



Gambling Commission to check operator contributions

The Commission intends to begin checking up on the contributions made by operators towards the promotion of social responsibility in gambling.

A 'social responsibility code provision' is attached to UK operating licences requiring that operators must have and put into effect policies and procedures which include:

- a commitment to and how they will contribute to research into the prevention and treatment of problem gambling
- a commitment to and how they will contribute to public education on the risks of gambling and how to gamble safely
- a commitment to and how they will contribute to the identification and treatment of problem gamblers.

In practice, this provision is frequently met by the operator stating that they will make a contribution to the GREaT foundation in accordance with that organisation's standard formula for the relevant type of gambling service.

The Commission intends to begin reviewing the information provided on operators' quarterly or annual regulatory returns to ensure that contributions made do in fact address the three requirements. The Commission will also be making spot checks to ensure that the contributions have been received by the named recipient.

The Commission has stated that its interest is in ensuring that all operators make the required contributions and it highlights that those who have not yet made contributions for the 2010/2011 period still have time to do so.

DCMS Consultation on future of remote gambling in the UK

John Penrose MP, the Parliamentary Under-Secretary of State for Culture, Olympics, Minister and Sport, confirmed on 20 January that he was currently in the process of considering the responses to the consultation into the possibility of introducing a licence requirement for all operators targeting the UK. The consultation period ran from 22 March to 18 June last year, and the fact that responses are only now being considered is perhaps indicative of the Government's level of enthusiasm for brining about these changes.

Some sources are reporting that the Government's response to the consultation is expected by the end of

February and a recent article in the Daily Mail stated that "Culture Secretary Jeremy Hunt is planning to stop companies based overseas from advertising in this country" suggesting, perhaps, that an announcement was imminent. However, in light of the ongoing delays to this process we would not be surprised if this date is pushed back.

The Daily Mail is, of course, no friend to remote gambling operators, but nevertheless we would welcome some overdue clarification from DCMS of their future policy.

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USA

New Jersey Gambling Bill



The legalisation of online gambling in the US has moved a step closer with the New Jersey legislature's approval of a bill which will allow Atlantic City's licensed land based casinos to offer online games of chance including roulette, blackjack, poker, craps and slots. The bill has been amended from the original proposal to allow casinos to accept bets from around the world, however, and the proposal is now to allow bets from within New Jersey only.

Before being able to offer online wagering, casinos would need to apply for a licence and submit details of their internal control systems. All remote gambling equipment would need to be located at secure premises within Atlantic City.

The proposed tax rate is 8% of gross gambling revenue, in line with the rate currently paid in relation to offline operations.

Governor Chris Christie has the chance to veto the bill before it becomes law. Governor Christie is only likely to exercise this veto right if the provisions appear to contravene the 1961 Wire Act.

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