

Jersey: the next online gambling jurisdiction?

Legislation establishing a Gambling Commission was recently unanimously passed in Jersey, alongside more socially orientated provisions to tackle problem gambling. Melanie Ellis, of Harris Hagan, examines whether the new legislation can help Jersey become a 'top regulatory destination for large online gambling operators'.

The island of Jersey began considering modernising its gambling laws back in 2005, when it was agreed that a Gambling Commission should be established, with the purposes of licensing, regulation, harm reduction/social responsibility and ensuring that gambling issues do not damage the island's international reputation.

Legislation establishing the new Jersey Gambling Commission has now been passed by a unanimous vote of the States Assembly, and it is anticipated that the Commission will be set up in May 2010. The new laws introduce a set of 'Guiding Principles', which are similar in scope to the licensing objectives of the UK's Gambling Commission. These principles focus on the protection of children and vulnerable persons, preventing fraud and money laundering and being fair to consumers.

The Jersey Gambling Commission's initial role will be to regulate fixed odds betting terminals in betting shops, but the body's purposes, as set out in the legislation, indicate that Jersey is looking to licence online gambling in the future. Disaster recovery facilities are already available on the island, so the infrastructure is in place to enable large operators to host their gambling servers in Jersey. It is expected that e-gambling legislation will be debated during 2010, but as yet it is too early to say when licences may become available.

The Bailiwick of Jersey is, like the established online gambling jurisdictions of Alderney and the Isle of Man, a British Crown Dependency. With financial services making up approximately 60% of the island's economy, a key consideration for Jersey, in contemplating licensing online gambling, is to protect its reputation as one of the world's leading offshore financial centres.

It can therefore be expected that the Jersey Gambling Commission will employ the highest standards of regulation and will be rigorous in its approach to investigating potential licensees. Subject to the outcome of the ongoing Department of Culture, Media and Sport/Gambling Commission review, Jersey should be a shoo-in for the UK white list.

Commenting on the possibility of licensing online gambling, Jersey's Economic Development Minister, Alan Maclean, has referred to the fact that it is an industry with a small footprint, which would not lead to any significant immigration to the island. The implication is that Jersey does not plan to follow Gibraltar's model of requiring significant staffing within the jurisdiction. Jersey may well follow the model of requiring just one or two key officials to be resident in the jurisdiction.

There is no doubt that Jersey has one eye on the revenue generated by the online gambling industry in jurisdictions such as Alderney and the Isle of Man. However, Jersey will need to be competitive with these jurisdictions, if it is to tempt operators to its shores. Inevitably, the system would include very low, if not non-existent, gambling duty. To facilitate high standards of regulation, however, it will almost certainly be necessary for Jersey-licensed operators to pay an annual fee of a similar level to those in Alderney and the Isle of Man, which start at around £35,000 per year. This type of set up may not be attractive to start up ventures, but larger operators may find it advantageous to be based somewhere with the financial services capability and reputation of Jersey.

Under the new legislation, the Jersey Gambling Commission is required to create a fund to be used solely for pursuing its responsible

gambling functions. This social responsibility fund will be financed by a statutory levy on gambling operators, and the legislation provides for this levy to be up to 2% of licensees' turnover. The decision to introduce a levy was based upon a consideration of the difficulties experienced in the UK, where licensees need only make voluntary contributions to organisations such as the Responsibility in Gambling Trust.

If Jersey does become a top regulatory destination for large online gambling operators - with the island's population amounting to only around 90,000 - 2% of revenue will far exceed what could possibly be required to protect and assist problem gamblers living in Jersey. Further, a 2% levy would certainly affect Jersey's competitiveness with jurisdictions such as Alderney, which has no similar levy or gaming duty. The legislation does provide that the levy can be restricted to certain types of licence, although there may be an outcry from non-remote operators if only they are required to contribute. If it is applied to online licensees, it would be surprising if the maximum contribution of 2% of turnover were imposed.

Jersey is not part of the European Union or European Economic Area. Whilst some operators may be looking to become licensed within Europe, in order to take advantage of the rights of free movement of services and freedom of establishment, in light of current developments in Europe, a Jersey operator looking to market its services to Europe would not necessarily be disadvantaged.

Recent decisions from the European Court of Justice have highlighted that governments can restrict the right of operators licensed in other Member States to provide gambling services to

There is no doubt that Jersey has one eye on the revenue generated by the online gambling industry in jurisdictions such as Alderney and the Isle of Man

residents on public interest grounds. Operators choosing to become licensed in a jurisdiction on the basis that it is within the EU, are, therefore, unlikely to be able to rely on Article 49 rights allowing them to offer their services in other EU countries. Many European countries are, in any event, likely to follow the example set by Italy and France, requiring local licences to be obtained in order to offer gambling services to local residents. These issues certainly warrant consideration by the Jersey Government, but are unlikely to prove fatal to its potential as a top regulated jurisdiction.

Details of Jersey's plans to licence online gambling operators are eagerly anticipated, but high standards of regulation combined with Jersey's existing reputation as an international financial centre are a recipe for success.

Melanie Ellis Associate
Harris Hagan
ellis@harrishagan.com
