

# STATE OF UK GAMING

By Melanie Ellis

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It is four years since the Gambling Act 2005 came into force, and the Government is now undertaking a review of the Act, looking at its impact on both the remote and non-remote sectors. A consultation was launched earlier this summer, asking questions such as how effective the Act has been in meeting the core licensing objectives, what the financial impact of the Act has been on the gambling industry, how the proliferation of off-shore online gambling has affected the industry and why the Act has not resulted in any new licences for casinos.

Responses to the Government's consultation are a useful barometer to the state of the UK gambling industry at the present time. Respondents represent a wide variety of interested parties, including large operators such as Gala and William Hill, bodies representing the interests of problem gamblers such as GamCare and the GREaT Foundation, local licensing authorities, industry bodies and religious groups. From operators and industry groups the message is that the industry is experiencing difficult times, due to a combination of the regulatory burden, tax increases and other factors such as (for land-based operators) the smoking ban. The Gala Coral Group points out in its response that the combination of these factors resulted in a 30% reduction in profits.

## Online

A common theme in consultation responses from operators is the difficulties faced by UK licensed online operators in competing with those based overseas. The Gambling Commission estimates that 75% of remote gambling carried out by UK residents is with operators located overseas. Well known UK bookmakers such as Ladbrokes and William Hill have been forced to move their operations offshore, because the UK's 15% gaming duty prevented them from competing effectively. However, on 14 July 2011 the Government announced that it was proposing to amend the provisions of the Gambling Act 2005 in relation to remote gambling. Currently operators based in the EEA and 'White List' jurisdictions may freely advertise in the UK, but the Government now intend to remove this permission and instead require all operators targeting UK customers to obtain a licence from the UK Gambling Commission. This will apply to those merely accepting deposits from UK residents, as well as those actively advertising in the jurisdiction.

In making these changes, the UK is following the general trend in Europe, where many jurisdictions are moving to systems which require online gambling operators to obtain a local licence. When the 2005 Act was drafted, the UK Government took the position that European law required that companies based in other EEA jurisdictions to have the freedom to provide their services to the UK. However, the European Commission has since accepted licensing regimes in other European jurisdictions which require all those wishing to target that market to obtain a local licence. It is unsurprising, then, that the UK Government has decided to follow that model, given the large tax revenues which would flow from bringing all online gambling onshore.

The UK is currently a very attractive market for online gambling operators who, by basing themselves in tax efficient jurisdictions such as Alderney, Gibraltar, Malta or the Isle of Man, can target this lucrative market without paying large amounts of tax. The Government has yet to comment on the tax implications of the proposed changes, but we anticipate that the current gaming duty of 15% on gross gambling yields will continue to apply to all UK licensees. Given the value of the UK as a target market, it is likely that the majority of operators currently targeting the UK will obtain a UK licence when the requirement comes into force, most likely at some point in 2012. Although paying gaming duty will no doubt have a significant impact on the bottom line, the 15% duty rate in fact compares favourably to that imposed in other jurisdictions such as France and Italy. As all operators will be required to pay the same rate, the impact may be less than is anticipated.

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Although the Government does not propose to introduce enforcement measures such as IP blocking, we anticipate that it will become almost impossible to advertise unlicensed gambling services in the UK due to the fact that the media will be aware that they may only accept advertisements for UK licensed operators.

## Casinos

As of September 2010, 145 '1968 Act' land based casinos were operating in the UK, receiving a total of over 17 million visits per year. The new legislation prevents new casinos from opening in areas where there may be demand for more facilities, restricting new casinos to the 16 areas which were given permission to grant a new licence, chosen as tests of social impact. Three of the new land-based casino licences have in fact been granted this year (in Hull, Newham and Solihull), and the competition process has now commenced in most areas. However, the fact that most of the casino competitions have proceeded so slowly is a worthwhile question for discussion. Some areas have not experienced much interest from potential operators, for example in Hull where the licence was awarded to the only applicant. In response to the Government consultation, representatives of the casino industry have suggested that they be allowed to move existing licences to other areas where there is interest in operating a casino but no licences are available, for example cities such as York or Peterborough.

## Betting

Betting represents the majority of non-remote gambling in the UK. The turnover of betting shops had fallen in 2010 as compared to 2009, while turnover from gaming machines located in betting shops has increased. Understandably, operators have therefore taken full advantage of their allowance of four 'Category B' gaming machines, which offer maximum prizes of £500 and maximum stakes of £100 (in multiples of £10). However the Commission has recently seen the need to publish a reminder to current and potential betting shop operators that they must offer betting as the primary activity on the premises, rather than gaming machines. The Commission released a supplemental licence condition back in January 2009 specifying that gaming machines could only be made available when sufficient facilities for customers to take part in the primary licensed gambling activity were also available. In two cases this year, applications for betting premises licence have been rejected by local licensing authorities following representations from the Gambling Commission on this issue.

There have been calls for a return to the previous 'demand' test for new betting shops. For example, in its consultation response the London Borough of Haringey pointed out that when, under the previous regulatory regime, Magistrates could refuse new betting licences on the basis of a lack of demand, the borough did not experience the current (in the Council's view undesirable) clustering of shops in certain areas.

## Bingo and AGCs

The Government has recently decided to increase the number of 'Category B3' gaming machines allowed in bingo premises and adult gaming centres, and has also increased the maximum stake on these machines. Turnover and participation fees in bingo premises and AGCs were down in 2010 from 2009, so it is hoped these changes will increase their turnover from machines.

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## Final thoughts

In order to make the proposed amendments in relation to online gambling, the primary legislation needs to be redrafted. This provides an ideal opportunity for other changes to be made to the 2005 Act. The wide scope of the consultation exercise indicates that the present Government may be considering more extensive changes, but the extent to which it has an appetite for this is unclear. Gambling laws have always been something of a hot potato, and the Government may not wish to get embroiled in the same arguments over casinos and problem gambling which dogged the previous Labour Government. Whilst it is clear that the UK licence requirement for remote operators will be brought into force, the future of non-remote gambling regulation in the UK remains to be seen.

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