

# The government consults on proposals for online gambling

by Julian Harris

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In January 2010, the UK Government announced a new licence system for gambling businesses based overseas but operating in Britain. Julian Harris, a Partner at Harris Hagan, looks at the UK regulatory and licensing framework and examines what the future for such online operators in the UK will look like.

On 7 January 2010, following a nine month review, the former Sports Minister Gerry Sutcliffe announced proposals for new licence requirements for overseas online gambling operators. These would require all online gambling operators wishing to advertise their services in the UK or to transact with British customers, to be licensed by the UK Gambling Commission. This announcement represented a volte-face from the regime established by the 2005 Gambling Act ('the Act'), which permitted licensed operators, not only in the UK, but in any European Economic Area (EEA) jurisdiction - including Gibraltar - or in any jurisdiction white-listed by the UK Government, to operate in Britain. The 'White List' included Alderney, the Isle of Man, Tasmania and, controversially, Antigua and Barbuda.

More details of the government's proposals have become known, published in the March 2010 Consultation document . The Consultation runs until 18 June. Thereafter, the government intends to finalise its proposals, following which there will be a further consultation period on the detail.

Recommended options

The key recommendations are:

- in relation to all operators - whether licensed in white-listed jurisdictions, EEA Member States or Gibraltar - to introduce a requirement that they obtain a licence from the UK Gambling Commission, authorising them to transact with British consumers and advertise in the UK; and
- to develop a more streamlined white-listing process for adding new non-EEA jurisdictions to the list.

Legislative change to the Act will be required as it would add a new offence of transacting with British consumers without holding a UK licence. The proposed definition for this new offence would apply to any gambling transaction conducted between an operator and a person 'ordinarily resident in Great Britain'. It will thus include any person registering with a British residential address, bank account or IP address. This is a wide definition and will include British residents whilst travelling overseas - who register using their British address or bank account - and foreign individuals registering whilst visiting Britain, due to the British IP address.

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Currently, operators based outside the UK, the EEA, Gibraltar and white-listed jurisdictions are not permitted to advertise in the UK. However, they are allowed to carry out transactions with UK customers. Although the proposals do not specifically address such operators, the new offence will result in those operators having to acquire a UK licence. This represents a shift in policy from licensing according to operator location to a system, such as that adopted in Italy and France, where licensing reflects customer locations.

## Bespoke licensing

The UK Government proposes that differing requirements will be imposed on operators, depending upon their home jurisdiction. A distinction will accordingly remain between operators from whitelisted jurisdictions and those EEA jurisdictions regarded as being well regulated. The Government intends that the UK Gambling Commission will employ a 'bespoke approach' when determining licence conditions, in contrast to the current system, where a standard set of conditions are imposed on most operators. Inevitably, this will have two consequences:

- It will impose a significant burden on the UK Gambling Commission, and the possibility of a resulting increase in licence fees must be a concern.
- At least in the early stages, operators will be unsure of the extent of the burden likely to be placed upon them, and advisers will have to make a careful assessment of their home licensing regimes and of the nature and conduct of the operator.

The Consultation document envisages that the UK Gambling Commission may consider requiring some operators to establish a UK corporate presence, a representative in Britain, and/or to locate certain parts of their operation and key equipment in the jurisdiction. These factors would impose additional costs on operators but the key concern is whether they become liable to pay UK corporate tax.

It follows that those licensed outside the EEA - particularly in less well-regarded licensing jurisdictions - will have the most onerous licensing conditions imposed. Those in established and well-regarded EEA jurisdictions and those in white-listed jurisdictions will have lesser burdens and, in some cases, may be minimal. Our expectation is that operators licensed in jurisdictions such as, for example, Alderney and the Isle of Man, which are regulated to a standard similar to that of the UK Gambling Commission and which have similar application requirements, may - in effect - be fast tracked.

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## Tax

The Consultation proposals are silent on the matter of tax, which is a matter for HM Treasury and not the Department of Culture, Media and Sports. Nevertheless, it seems to us that those operators having to establish in the UK and in particular those required to establish a UK corporate entity, may become liable to pay corporation tax. Moreover, operators licensed in the UK will become liable to gambling duty on their UK transactions.

This raises an important question. Until now, UK taxation has been operator-driven (i.e. taxation of origin), not player driven (i.e. taxation on destination). It remains unclear how the issue of taxation will be addressed when new UK licences are introduced, but if overseas operators are to be liable to UK tax, then UK-based operators should not be liable to HM Treasury for overall profit, but should be judged on player location and destination, like their European counterparts.

## Fees

Although the requirement to pay UK tax is likely to be the main financial concern for operators, they will also incur fees payable to the UK Gambling Commission. The level of fees varies, depending on the type and scale of the operation. For example, a remote casino or bingo operator with annual gross gambling yields of between £0.5 million and £5 million would pay an application fee of around £7,000 and an annual fee of around £10,000. A remote betting operator accepting bets on real events, with annual gambling yields of between £5.5 million and £110 million would pay an application fee of around £7,000 and an annual fee of around £38,000. The highest category licensees - those offering casino games, bingo or betting on virtual events with yields of over £500 million per year - attract an application fee of around £64,000 and an annual fee of around £155,000.

The Consultation considers whether fees might vary for operators based in different jurisdictions, with those causing disproportionate levels of work for the UK Gambling Commission paying more. For example, due to operations being spread over multiple locations, this would be a fair approach: why should an operator be subject to a strict regulatory regime in a respected white-listed or EEA jurisdiction - who may also be 'fast tracked' into the UK licensing regime - pay the same amount as an operator who has bought a licence in an unregulated jurisdiction?

## Enforcement

Inevitably, reputable operators currently targeting the UK market will, of course, want to apply for the appropriate licence. In considering its enforcement strategy, the Government recognises that the smaller operators with significantly less impact on the UK market, who

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are more likely to commit the offences of advertising to - and transacting with - British consumers without holding a licence. It is not intended that these offences will have extraterritorial effect. The UK Government's view is that extradition would be disproportionate to the harm caused, given the resources and diplomatic sensitivities involved. Nor is it proposed to make it an offence for British residents to gamble with an unlicensed operator, mainly for the same reason.

The legislation already allows the UK Gambling Commission to prosecute British companies involved in advertising foreign gambling, such as broadcasters and publishers. This will remain an effective deterrent for the media to carry advertisements for unlicensed operators. The requirement for all operators to hold a licence from the UK Gambling Commission before being entitled to advertise in the UK, it would be a simple task for the media to check on the UK Gambling Commission's database, whether or not they can accept advertisements from a particular operator.

The UK Government has also considered whether to introduce financial transaction blocking and/or ISP-blocking to enforce the new system. Evidence regarding the effectiveness of these measures was found to be mixed. Having regard to the cost implications of such measures, the UK Government has taken the view that they would not be appropriate. Nevertheless, the UK Government may decide to include changes to the Act which would also minister to introduce such measures in the future, if found necessary.

## Impact

The UK Gambling Commission has produced an estimate that approximately 75 overseas operator will be affected by the proposals. Given the fact that all operators currently accepting UK customers will be affected - not merely those in white-listed and EEA jurisdictions - we believe that this estimate is too low. We would expect significantly higher numbers of operators to be seeking a new licence when these proposals come into effect. The main practical implications for operators will be the need to comply with the UK Gambling Commission's licence conditions, codes of practice and technical standards. Operators will also need to submit quarterly regulatory returns to the UK Gambling Commission, giving details of compliance, revenue and any suspicious activity.

## Timing

Experience suggests that it is likely that the recommended options will be implemented. It was the debate following the white-listing of Antigua and criticism by the main position parties regarding the lack of contribution from overseas operators to, for example, research

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into and treatment of problem gambling, that led Sports Minister Gerry Sutcliffe to begin the review leading to these proposals. Whilst there may be some variation in approach between the parties, it seems likely that the incoming

Government will support these proposed, or at least similar changes. A further Consultation with the industry to work out the details of the new system will inevitably delay implementation, and whilst exact timing will depend on legislative priorities, they are likely to come into force in 12 to 18 months.

## Finally

On any view, accessing the lucrative UK online gambling market will become more expensive. However, provided that the government does protect responsible operators who chose to obtain a licence from those who do not, the fact that those businesses operating in the UK will be subject to the same requirements means that none are disadvantaged in comparison with their competitors. This protection is vital, given that the additional costs, and possibly tax, will make those responsible operators less competitive in terms of bonuses and odds, than those who chose to remain unlicensed.

The proposed changes will require the Act to be amended. Following the General Election, the incoming Government may want to make other changes, such as the Labour Party's proposal for local councils to have new powers to limit the expansion of betting shops. We may, therefore, see a more comprehensive Bill.

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