
Harris Hagan Bulletin – 17 May 2013

Update on New Regime for Online Gambling in the United Kingdom

On 9 May 2013, a revised version of the [Gambling \(Licensing and Advertising\) Bill](#) (“the Bill”) received its first reading in the House of Commons. This followed the pre-legislative scrutiny of the original Bill by the House of Commons Culture, Media and Sport Committee (“the Committee”), which published its [report](#) on 1 May 2013, and the Queen’s speech to Parliament on 8 May 2013, in which the Government set out its legislative programme for the year.

The Bill, originally published on 3 December 2012, proposes to effect a fundamental change to the basis on which remote gambling is regulated from the current point of supply basis to a **point of consumption basis**. In practical terms this means that all operators selling or advertising online gambling remote gambling products into the British market, whether from here or abroad, will be required to hold a UK licence. This reflects the policy of many other European Member States.

Pre-legislative scrutiny

The Committee received written evidence from 33 different organisations and held two oral evidence sessions in January and February. Unsurprisingly, the Committee supported the principle that gambling should be regulated on a point of consumption basis. The Committee acknowledged the concerns raised about taxation and recommended that, in setting a tax rate for remote gambling, the Treasury should bear in mind that too high a rate would be liable to drive customers and companies into the unregulated market. The Committee further recommended (1) a change to clause 1 of the Bill, to make it clearer that the operators affected are those providing remote gambling services to customers in Great Britain; and (2) an amendment to address the anomaly that it is currently illegal for casinos to provide online gambling on their premises. Whilst the first recommendation was incorporated in the revised Bill, the Bill has not been amended to enable casinos to provide online gambling within their own walls.

In relation to the Bill’s compatibility with EU law, the Committee stated that “[a]lthough we cannot rule out the possibility that a disgruntled remote gambling operator or association might try to bring a case against the UK in the European Court of Justice, we are satisfied that the Government has considered the compatibility of the proposed legislation with EU Law and we note its confidence that any challenge to the legislation would be unlikely to succeed.” No criticism of the Bill has been made by the European Commission, despite receiving a formal complaint from Malta.

What changes are proposed by the Bill?

1. Remote gambling equipment

Clause 1 of the Bill has been amended so that an operating licence is required **if gambling facilities are used in Great Britain** (even if no equipment is located in Great Britain) and the operator knows, or should know, that the **facilities are being used or are likely to be used**

in Great Britain. The words “capable of being used” have been removed. This change was made following concerns that the new regime would be left behind by technological development and would potentially catch all remote gambling operators in the world even though this was not the Government’s intention.

2. Advance application

Clause 1 has also been amended to include provision for the making, consideration and determination of advance applications, including new and variation applications, as ordered by the Secretary of State. No details regarding the practicalities as to when and how an advance application can be made have been published yet.

3. Advertising of foreign gambling

Clause 2, which repeals the offence of advertising foreign gambling in section 331 of the 2005 Act, is unchanged. This amendment effectively abolishes the White List.

4. Remote gambling advertising

Clause 3, which amends section 333 of the 2005 Act, is also unchanged. This amendment removes an anomaly under the existing legislation, which allows a television broadcaster or service provider, who is under the jurisdiction of an EEA state, to advertise unlawful gambling. It also amends the existing legislation to remove, in relation to the offence of advertising unlawful gambling, the requirement that at least one piece of equipment be situated in Great Britain.

5. Northern Ireland

Clause 4 has been inserted and creates an offence of advertising unlicensed remote gambling, which will only apply in Northern Ireland. The effect of this amendment is that operators will not be able to advertise remote gambling in Northern Ireland without a licence from the Gambling Commission. The law in Northern Ireland does not regulate remote gambling and therefore the repeal of section 331, which is one of the few provisions of the Act that does apply to Northern Ireland, would otherwise mean that operators could advertise remote gambling in Northern Ireland regardless of whether they were regulated in Great Britain (or in any country). This new offence will bring Northern Ireland in line with the position in Great Britain.

It should be noted that the Bill is still subject to possible amendment during its progress through Parliament.

When will this happen and what do you need to do?

The second reading of the Bill in the House of Commons, which is the first opportunity for MPs to debate the main principles of the Bill, is yet to be announced. Please click [here](#) to track the progress of the Bill.

The Bill is likely to be passed by Parliament this year, with full implementation expected by the end of next year. There will be a period of transition, which will enable operators already licensed in EEA jurisdictions and in the current white listed jurisdictions to be awarded an automatic provisional licence, pending full approval. If you are selling into the British market, and are not already licensed

in an EEA jurisdiction, Gibraltar or the current white list, we recommend starting the application process sooner rather than later.

For further information, please contact Julian Harris or John Hagan on 020 7002 7636.

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