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New Regime for Online Gambling in the United Kingdom

On 3 December 2012 the UK Government published a long awaited draft Gambling (Licensing and Advertising) Bill proposing changes to the basis upon which remote gambling is regulated in Britain. The Bill covers less than one and a half pages, contains only four sections and only seeks to amend three sections of the Gambling Act 2005.

If approved by parliament and passed into law, the Bill proposes fundamental changes to the way in which online gambling is licensed and regulated in Britain and represents a reversal of the policy reflected in the 2005 Act. For the online gambling industry it will have major ramifications in terms of licensing, regulation, compliance and, importantly, taxation, regardless of whether operators are specifically targeting the British market or not.

How the current system works

As it stands, remote gambling operators are only required to hold a licence from the UK Gambling Commission if they have remote gambling equipment located in Britain. Operators based outside Britain, but licensed in the European Economic Area (EEA), which includes all Member States of the European Union, together with Gibraltar and the so-called “white-listed” jurisdictions (namely Alderney, Antigua and Barbuda, the Isle of Man and Tasmania), are permitted to advertise gambling services in the UK in reliance on a licence issued in their home jurisdiction.

Why is this changing?

Unsurprisingly, taxation is a key driver. Although the tax rate for online gambling in Britain is, at 15%, considerably lower than in most European jurisdictions, it was sufficiently high to cause most operators to shun the licensing regime in Britain, in favour of other jurisdictions, such as Alderney, Gibraltar, the Isle of Man and Malta.

The Government accepts that the majority of operators currently targeting the British market, and particularly those from white listed jurisdictions, are subject to effective regulation. That said, there is concern on the part of the Gambling Commission that little is known about the licensing regimes in some emerging European jurisdictions, whose operators nonetheless have the automatic right to target and advertise in the British market.

There is also concern that operators from overseas may not be required to report instances of suspicious betting activity to relevant sports bodies, creating a potential risk that match fixing and suspicious betting practices occurring on overseas licensed sites may not be notified to British authorities.

The consequence is that the Bill 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. This reflects the policy of many other European Member States.

What changes are proposed by the draft Bill?

1. Remote gambling equipment – section 33 of the 2005 Act makes it an offence for a person to provide facilities for gambling without holding an operating licence issued by the Gambling Commission. Its territorial reach is governed by section 36, which provides that, in the case of remote gambling, the 2005 Act requires an operating licence for the provision of facilities for remote gambling only in circumstances where at least one piece of “remote gambling equipment” used in the provision of those facilities is located in Great Britain.

Clause 1 of the Bill amends section 36 so that operators providing remote gambling facilities will require an operating licence, even if no remote gambling equipment used in the provision of facilities is situated in Great Britain, but where those facilities are “capable” of being used here.

2. Advertising overseas gambling services – the 2005 Act regulates advertising and gambling services in Great Britain. Section 331 makes it an offence to advertise foreign gambling, which is defined as gambling which takes place either in a non-EEA state (including land-based casinos), or gambling by remote means which is not regulated by the gambling law of an EEA state, including Gibraltar. Regulations have also excluded white listed jurisdictions.

The Bill proposes that this restriction will be abolished and will, as was the position before the 2005 Act, enable the advertisement of, for example, gambling resorts in Las Vegas, in Great Britain. Interestingly, it will also remove any doubt as to the legality of offering seats in Vegas poker tournaments as prizes in online poker tournaments.

3. Remote Gambling Advertising – clause 3 makes amendments to section 333 of the 2005 Act which covers the territorial application of the ban on advertising of unlawful remote gambling. In line with the amendment made to section 36, the test now requires that either at least one piece of remote gambling equipment is or will be situated in Great Britain, or where no such equipment will be situated here, but the facilities will be capable of being used here with an exemption for EEA or white listed jurisdictions. The ban on advertising unlawful remote gambling is therefore intended and will apply to all remote gambling not covered by a UK licence. Unlike the offence under section 33, however, there is an additional test; pursuant to section 333(4), information or communications must be intended to come to the attention of one or more persons in Great Britain and data must be made available with a view to its being accessed by person/s in Great Britain or where it is likely to be accessed in Great Britain.

Is it as straight-forward as it seems?

The wording of clause 1 of the Bill goes much further than anticipated. Although the Government’s own commentary refers to the clause as extending the territorial application so that operators “providing” remote gambling facilities will require a licence, the clause itself is considerably wider, applying to the provision of facilities for remote gambling if the facilities are “capable” of being used in Great Britain. It will therefore apply even if an operator neither targets British customers nor

advertises in Britain. It will even apply to those operators who do not have a UK specific website, or even an English language website. As presently drafted, exemption will only be gained if operators ensure that people located in Britain are specifically excluded from the site.

For the largest UK operators based currently in jurisdictions such as Alderney, Gibraltar, the Isle of Man and Malta, the principal effect will be increased costs, primarily in the form of tax, currently levied at 15%, which the Government announced some time ago would be introduced by December 2014 on all UK based online revenue. In addition, there will be the extra cost of regulation. For those non-British businesses currently supplying the UK from outside, who have not been the subject of UK regulation in the past, the licensing process will be more expensive and certainly more time-consuming.

The Government has said that 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 approval. So those in jurisdictions where regulators can provide the necessary compliance regulation will face less scrutiny than those whose regulators cannot provide such information. These operators will need to pay the compliance costs associated with being subject to the same requirements as other Gambling Commission licensees.

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

It is plainly the Government's intention that the Bill will become law in time for it to be enforced by December 2014, but no indication has been given as to when the Bill will first be presented to parliament. Whilst this is a short straightforward Bill that is likely to receive all party support, it must also be notified to the European Commission and the Member States under the Technical Standards Direction. The Government must then wait three months before adopting the new law. During that time it is at least possible that operators may seek to challenge the proposed changes, which could spell substantial delay. It may become law during 2013 but 2014 is more realistic.

If you are selling into the British market, you will be required to hold a licence from the Gambling Commission, and will therefore be subject to the provisions of the 2005 Act, its regulations and the Commission's social responsibility and technical standards requirements. You will also be required to contribute towards British problem gambling and regulatory costs. It follows that those operators, particularly those not currently licensed in white listed jurisdictions, should begin the application process sooner rather than later.

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