



# Gambling (Licensing and Advertising) Bill

**Bill No 8 2013-14**

**RESEARCH PAPER 13/55** 17 September 2013

Remote gambling operators currently need a licence in Britain only if they have equipment located here. The *Gambling (Licensing and Advertising) Bill* would move the regulation of remote gambling to a 'point of consumption' basis so that all remote operators would need a licence from the Gambling Commission to enable them to transact with British customers and advertise in Britain. The Government believes this will increase protection for British customers as well as enabling British-based operators to compete on an equal footing with other remote operators.

The Bill was the subject of pre-legislative scrutiny by the Culture, Media and Sport Committee which published a report in May 2013.

This paper has been prepared for the Second Reading debate in the House of Commons.

John Woodhouse

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## Research Paper 13/55

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## Summary

Under the *Gambling Act 2005*, it became possible, for the first time, to offer “remote gambling” from equipment based in Great Britain. The Act defines remote gambling as gambling where customers participate through the use of “remote communication” such as the internet, telephone, television, or radio.

Under the current system, an operating licence from the Gambling Commission is only required if at least one piece of remote gambling equipment is located in Great Britain. Remote gambling operators who locate all of their equipment offshore do not need a licence and are not subject to the regulatory supervision of the Commission, whether or not their remote gambling facilities are used by British customers. The 2005 Act does, however, prohibit overseas operators from advertising in Britain unless they are situated within the EEA (including Gibraltar), or in Antigua & Barbuda, the Isle of Man, or the States of Alderney and Tasmania (the “white listed” countries).

The *Gambling (Licensing and Advertising) Bill* would amend the 2005 Act so that all remote gambling operators would be required to obtain a licence from the Gambling Commission to enable them to transact with British customers and advertise in Britain.

The Government argues that this would increase protection for British customers as remote operators would be subject to robust and consistent regulation; required to support action against illegal activity and corruption in sport; required to contribute to research, education and treatment in relation to British problem gambling; and required to comply with licence conditions that protect children and vulnerable adults. The Government also claims the change would allow British-based operators to compete on an equal footing with other remote operators.

Clause 1 of the Bill would amend the 2005 Act so that a Gambling Commission operating licence would be required where no remote gambling equipment was located in Great Britain “but the facilities are used there” and the operator “knows or should know that the facilities are being used, or are likely to be used, in Great Britain”.

Clause 2 (1) would remove the current offence of advertising “foreign gambling” (and abolish the “white list”). This clause also extends to Northern Ireland. As the law in Northern Ireland does not currently regulate remote gambling or its advertising, the effect of this clause would be that remote gambling operators could advertise in Northern Ireland, regardless of whether they were regulated in Britain. Clause 4 of the Bill would therefore create an offence of advertising unlicensed remote gambling, to apply in Northern Ireland only, so that customers there would enjoy the same level of protection as British customers.

Clause 3 would amend provisions in the 2005 Act relating to “remote advertising”.

## 1 Introduction

The *Gambling (Licensing and Advertising) Bill* was introduced in the House of Commons on 9 May 2013.

It is a short Bill which would amend the *Gambling Act 2005* and move the regulation of remote gambling from a 'point of supply' to a 'point of consumption' basis.

The Bill has four substantive clauses and a fifth clause giving details of the Bill's territorial extent and commencement dates. Clauses 1 to 3 apply to Great Britain; clause 2(1) also extends to Northern Ireland. Clause 4 applies to Northern Ireland only. As gambling is a transferred matter for the purposes of the *Northern Ireland Act 1998*, clauses 2(1) and 4 would require the consent of the Northern Ireland Assembly by way of a legislative consent motion.

Under the Bill, all remote gambling operators would need a licence from the Gambling Commission to enable them to transact with British customers and advertise in Britain. Under the current system, overseas operators do not require a Gambling Commission licence unless at least one piece of "remote gambling equipment" is located in Great Britain. The 2005 Act does, however, prohibit overseas operators from advertising in Britain unless they are situated within the EEA (including Gibraltar), or in one of the "white listed" countries (Antigua & Barbuda, the Isle of Man, the States of Alderney and Tasmania).

The Government believes that the new regulatory system would increase protection for British customers as at present they may experience differing standards, depending on which operator they are interacting with. It is also hoped that the new system will support action against illegal betting activity as well as establishing fairer competition costs for British-based operators by requiring all overseas operators to contribute to regulatory costs.

A draft Bill was published by the Department for Culture, Media and Sport in December 2012 and was the subject of pre-legislative scrutiny from the Culture, Media and Sport Committee. The Committee's report, published on 1 May 2013, supported the Bill's principle that remote gambling should be regulated on a point of consumption basis.

The Bill as introduced into the Commons on 9 May differs slightly from the draft Bill. These differences are noted in part 6 of this paper. However, nearly all the discussion and comment at pre-legislative scrutiny stage is relevant to the Bill as introduced and this discussion is therefore summarised in part 5.

The Department for Culture, Media and Sport has published [Explanatory Notes](#) to the Bill, and a [Regulatory Impact Assessment](#) of June 2011 is also available.

Further information on the Bill's progress can be found on the [Gambling \(Licensing and Advertising\) Bill](#) page of the Parliament website.

## 2 The remote gambling industry

Remote gambling involves the customer using remote communications such as the internet, telephone, television or radio.<sup>1</sup>

The remote gambling industry in Great Britain is made up primarily of:

- some high street bookmakers that also offer remote gambling

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<sup>1</sup> Gambling Commission website: [About remote gambling](#) [accessed 17 September 2013]

- large remote-only operators
- smaller betting operators that operate remote gambling facilities themselves
- fantasy football style remote pool betting operators
- smaller remote-only bingo and casino operators that do not offer any premises based gambling
- businesses supplying gambling software to gambling operators.<sup>2</sup>

As of 30 September 2012 there were 293 remote gambling activity licences held by 216 operators.<sup>3</sup>

Participation in remote gambling has been rising steadily. According to the *British Gambling Prevalence Survey 2010*, 73% of the adult population in Great Britain participated in some form of gambling in the year before the survey, with 14% using the internet to gamble.<sup>4</sup>

It has been estimated that gross gambling yield (GGY)<sup>5</sup> from global remote gambling (excluding telephone betting) was £20.1bn during 2011, representing 10% growth on the previous year. UK consumer GGY (including GGY generated with operators regulated overseas), which includes telephone betting, is estimated to have grown 5% between 2010 and 2011 to reach £2bn.<sup>6</sup> Further statistics are available in the Gambling Commission's *Industry statistics: April 2009 to March 2012*.<sup>7</sup>

A May 2013 paper by the European Parliament Library estimates that online gambling has a 10.9% share of the overall EU gambling market.<sup>8</sup> According to figures in the paper, the UK has the largest remote gambling market out of EU member states with gross gambling revenues (ie, stakes less prizes but including bonuses) of over 2.5bn euros in 2011.<sup>9</sup>

### 3 What is the current legislation?

Remote gambling on websites based in Great Britain became legal for the first time under the *Gambling Act 2005*. The 2005 Act came fully into force on 1 September 2007. Until that date, the principal relevant legislation was the *Gaming Act 1968*. Under the 1968 Act, which obviously pre-dated the development of the internet, online gambling from a website hosted in Great Britain was illegal because the Act prescribed that the customer had to be present in the room in which gaming took place. However, British gambling law applied only to websites whose servers were based in Great Britain.<sup>10</sup> There was therefore no way in which the British Government could prevent British citizens from accessing websites based overseas. It was not illegal for British residents to gamble online with overseas operators. Nor was it illegal for overseas operators to offer online gambling to British residents (although there were restrictions on advertising).

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<sup>2</sup> Gambling Commission, *Industry Statistics: April 2009 to March 2012*, December 2012, p49

<sup>3</sup> Ibid, p49

<sup>4</sup> NatCen/Gambling Commission, *British Gambling Prevalence Survey 2010*, February 2011, pp9-10

<sup>5</sup> Gross gambling yield is the amount retained by operators after the payment of winnings but before the deduction of the costs of the operation

<sup>6</sup> Gambling Commission, *Industry Statistics: April 2009 to March 2012*, p49

<sup>7</sup> Gambling Commission, *Industry Statistics: April 2009 to March 2012*, section 7

<sup>8</sup> Library of the European Parliament, *Online gambling in the EU*, May 2013, p2

<sup>9</sup> Ibid, p2

<sup>10</sup> Most of the law referred to in this paper has application in Great Britain only. Northern Ireland has its own gambling laws.

### 3.1 The Gambling Act 2005

The [Gambling Act 2005](#) consolidated existing legislation and introduced a new regulatory regime for the provision of gambling in Great Britain.<sup>11</sup> The Act is underpinned by three licensing objectives:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- ensuring that gambling is conducted in a fair and open way; and
- protecting children and other vulnerable persons from being harmed or exploited by gambling<sup>12</sup>

A new industry regulator, the [Gambling Commission](#), was set up under the Act. The Commission's duties include issuing operating licences to organisations and individuals who are providing facilities for gambling, as well as personal licences to certain individuals working in the gambling industry.<sup>13</sup> To uphold the licensing objectives, the Gambling Commission issues Licence Conditions and Codes of Practice (LCCP) that licence holders must follow.<sup>14</sup>

Under [section 33](#) of the 2005 Act, unless certain exemptions apply, it is an offence to provide facilities for gambling without holding an operating licence from the Gambling Commission.

Further detail on the 2005 Act and the role of the Commission is available from its website.<sup>15</sup>

### 3.2 The 2005 Act and remote gambling

In its [July 2012 report](#) on the 2005 Act, the Culture, Media and Sport Committee observed that the desire to impose order and regulation on the online sector was one of the “key motivations” behind the Act – both to protect British customers from possibly unscrupulous operators and to make Britain a base for the growing online industry.<sup>16</sup>

Under the 2005 Act, for the first time, it became possible to offer “remote gambling” from equipment based in Great Britain.

Remote gambling is defined in [section 4\(1\)](#) of the Act as “gambling in which persons participate by the use of remote communication” – the internet, telephone, television, radio or “any other kind of electronic or other technology for facilitating communication.”

An operating licence from the Gambling Commission is only required if at least one piece of “remote gambling equipment” is located in Great Britain ([s36](#)). Remote gambling operators who locate all of their equipment offshore are therefore not subject to the regulatory supervision of the Commission, whether or not their remote gambling facilities are used by British consumers.

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<sup>11</sup> The exceptions are the National Lottery (regulated by the National Lottery Commission) and spread betting (regulated by the Financial Conduct Authority)

<sup>12</sup> [Gambling Act 2005 s1](#)

<sup>13</sup> Gambling Commission website, [How we regulate](#) [accessed 17 September 2013]

<sup>14</sup> Gambling Commission website, [Licence conditions and codes of practice](#) [accessed 17 September 2013]

<sup>15</sup> Gambling Commission website, [Gambling related legislation](#) [accessed 17 September 2013]

<sup>16</sup> Culture, Media and Sport Committee, [The Gambling Act 2005: a bet worth taking?](#), HC 421 2012-13, p40



### 3.3 The 2005 Act and advertising

Under [section 328](#), the Secretary of State may make regulations controlling the form, content, timing and location of advertisements for gambling. No such regulations have yet been made and gambling advertising is, in practice, controlled through the Gambling Commission's Code of Practice.<sup>17</sup> This requires licensed operators to comply with the Broadcast Committee of Advertising Practice (BCAP) and the Committee of Advertising Practice (CAP), both issued by the Advertising Standards Authority (ASA), as well as the Gambling Industry Code for Socially Responsible Advertising.

The [BCAP](#) and [CAP](#) codes aim to ensure that adverts do not:

- portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm;
- exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young people or other vulnerable people;
- suggest that gambling can be a solution to financial concerns;
- link gambling to seduction, sexual success or enhanced attractiveness; or
- be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture.

Adverts that breach the codes have to be amended or withdrawn. If serious or repeated breaches codes occur, the ASA can refer advertisers to the Gambling Commission and broadcasters to the broadcasting regulator Ofcom.<sup>18</sup>

It is an offence to advertise unlawful gambling ([s330](#) of the 2005 Act).

In the case of remote gambling, [section 333](#) provides that any regulations made by the Secretary of State (under [s328](#)), and the prohibition against advertising unlawful gambling ([s330](#)), apply where the advertising satisfies various tests. One of these is that, with regard to the gambling to which the advertising relates, at least one piece of remote gambling equipment to be used in providing facilities for that gambling is, or will, be situated in Great Britain.

### 3.4 Advertising foreign gambling

Under [section 331](#) of the 2005 Act, it is an offence to advertise "foreign gambling"<sup>19</sup> - gambling which either physically takes place in a non-EEA state or gambling by remote means which is not regulated by the gambling law of any EEA state.<sup>20</sup> The offence applies whether the advertising takes place by remote or non-remote means. For the purposes of [s331](#), Gibraltar is treated as if it is an EEA state.

The Secretary of State can make regulations specifying countries or places which are to be treated as though they were EEA states – meaning that operators supplying gambling from these places can advertise their services in the UK on the basis of the licence issued by their

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<sup>17</sup> Gambling Commission, *Licence conditions and codes of practice* (consolidated version), December 2011

<sup>18</sup> Background document accompanying the *Draft Gambling (Licensing & Advertising) Bill*, Cm 8497, December 2012, p12

<sup>19</sup> Other than a lottery

<sup>20</sup> The EEA is the member states of the EU plus Iceland, Norway and Liechtenstein

home jurisdictions.<sup>21</sup> Regulations have been made covering the Isle of Man, the Island of Alderney, Tasmania, and Antigua and Barbuda. This is informally known as the “white list” of approved countries.

#### 4 DCMS review and consultation, 2009-10

In April 2009, prompted by technological advances in online gambling and the “changing international regulatory landscape”, the then Minister for Sport, Gerry Sutcliffe, announced a review of overseas gambling operators who advertise in the UK:

(...) The Department for Culture, Media and Sport, working with the Gambling Commission, will look at a number of issues, including securing fair contributions from overseas licensed operators towards the costs of regulation, the treatment of problem gambling and the Horserace Betting Levy. The Department will also look at the existing controls that apply to operators licensed overseas to ensure the rigorous consumer protections introduced by the Gambling Act continue to be upheld.<sup>22</sup>

The review found that whilst the British remote gambling market was one of the largest in Europe, most of the gambling offered to British consumers came from overseas.<sup>23</sup> The DCMS review also found that overseas operators were not required to contribute to research, education or the treatment of problem gambling; report suspicious gambling to the Gambling Commission or sports bodies; crime to the Serious Organised Crime Agency; or test products to Gambling Commission standards. There were particular concerns that operators from overseas did not contribute towards regulatory costs and that the current system was therefore unfair for British taxpayers and those paying fees to the Gambling Commission.<sup>24</sup>

A written ministerial statement of 7 January 2010 set out details of a [consultation](#) on extending the Gambling Commission’s licensing system to overseas-based operators offering services in the UK. The statement referred to the need to ensure that British consumers were satisfactorily protected:

(...) Under an extended remote gambling licensing system, all operators active in the British market would have to adhere to the Act’s provisions, its secondary legislation and the Commission’s standards and requirements. That would mean obligations to report suspicious betting activity to the Commission and UK sports bodies, as well as compliance with the Commission’s software testing, age verification, self-exclusion, technical standards and social responsibility requirements bringing a more consistent level of protection for British consumers.

(...) Though British consumers are not unprotected - most overseas jurisdictions have regulatory systems - standards vary and requirements differ from our own. Therefore, I feel that change is necessary to ensure the protections in the Gambling Act - to keep gambling crime free, to ensure gambling is fair and open, and to ensure that children and vulnerable people are protected from harm - continue to be afforded to British consumers.

These proposals would require legislative change to implement and there remain many complex issues to be considered; for example, how we can actively police an extended licensing system and keep burdens on industry to a minimum...<sup>25</sup>

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<sup>21</sup> An arrangement unique to the British market amongst EU member states

<sup>22</sup> “[A fair deal for British gambling operators – creating a more level playing field to compete with overseas rivals](#)”, DCMS press notice 066/0930, April 2009

<sup>23</sup> DCMS, [Remote gambling regulation - impact assessment](#) (IA No. DCMS 029), June 2011, p9

<sup>24</sup> Ibid, p8

<sup>25</sup> [HC Deb 7 January 2010 c11WS](#)

In respect of EEA states and Gibraltar, the options offered in the consultation were:

- 1) Do nothing;
- 2) Introduce non-statutory changes to the system, such as Memoranda of Understanding (MOUs) with other regulators, and increased regulatory co-operation;
- 3) Introduce the need for such operators to obtain a licence to enable them to advertise in the UK; and
- 4) Introduce the need for such operators to obtain a licence to enable them to transact with British consumers and advertise in the UK.<sup>26</sup>

The fourth was the then Government's "preferred option."<sup>27</sup>

In respect of non-EEA jurisdictions, the options proposed were:

- a) Improve the white listing system for non-EEA jurisdictions;
- b) Develop a more streamlined white listing process as well as introduce licensing for operators in white listed jurisdictions; and
- c) Abolish the white list and introduce a licensing system for operators in all non-EEA jurisdictions.<sup>28</sup>

The second option was the then Government's "preferred option."<sup>29</sup>

The consultation period was 22 March to 18 June 2010. The new government of May 2010 decided that it would allow the consultation to run its course and analyse the responses before making any policy changes.<sup>30</sup>

Responses to the consultation were published in July 2010,<sup>31</sup> with 57% of respondents favouring the consultation's preferred options.<sup>32</sup> Those that were broadly supportive included remote gambling companies licensed by the Gambling Commission; charities, faith and community groups; sports bodies; the National Lottery; and trade associations representing premises-based gambling. With some exceptions, most remote gambling companies and offshore British-facing gambling regulators opposed the consultation's preferred options.<sup>33</sup>

## 5 The draft Gambling (Licensing and Advertising) Bill

### 5.1 The government's proposals

In a [written statement](#) of 14 July 2011, the then Minister for Tourism & Heritage, John Penrose, said that the Coalition Government planned to amend the *Gambling Act 2005* so that remote gambling would be regulated on a point of consumption basis.<sup>34</sup> The statement also said that it was "unfair to GB-licensed gambling operators that overseas competitors

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<sup>26</sup> DCMS, [A consultation on the regulatory future of remote gambling in Great Britain](#), March 2010, para 4.9

<sup>27</sup> Ibid, para 4.27

<sup>28</sup> Ibid, para 4.35

<sup>29</sup> Ibid, para 4.42

<sup>30</sup> DCMS, [Remote gambling regulation - impact assessment](#) (IA No. DCMS 029), June 2011, p8

<sup>31</sup> DCMS, [Responses to the Consultation on the Regulatory Future of Remote Gambling in Great Britain](#), July 2011

<sup>32</sup> Background document accompanying the [Draft Gambling \(Licensing & Advertising\) Bill](#), Cm 8497, December 2012, p6

<sup>33</sup> DCMS, [Remote gambling regulation - impact assessment](#) (IA No. DCMS 029), June 2011, p9

<sup>34</sup> [HC Deb 14 July 2011 c37-8WS](#)

benefit from access to the market in Great Britain without bearing a fair share of the costs of regulation, or of research, education and treatment of problem gambling.<sup>35</sup>

To implement the proposals outlined in the statement, the Government published the *Draft Gambling (Licensing & Advertising) Bill* on 3 December 2012.<sup>36</sup>

A [background document](#) accompanying the draft bill summarised the Government's reasons for wanting to change the current system; the main one being concern over protection for British consumers:

Whilst the Government recognises that the majority of operators currently targeting British consumers are subject to established and effective regulatory regimes, not all operators are. The Gambling Commission is aware of new and emerging European jurisdictions where online gambling sites have begun targeting British consumers and where very little is known about the level of regulation and consumer protection...

Even where operators are subject to appropriate levels of regulation overseas, there are different regulatory standards and approaches. There is limited consensus in areas such as standards and software testing which inevitably means that British consumers may experience varying levels of protection depending upon which operator they deal with.<sup>37</sup>

The document also noted some of the problems faced by the Gambling Commission, particularly in relation to investigating suspicious betting activity and match fixing:

(...) without specific requirements imposed by overseas jurisdictions, operators may not be compelled to report certain information, e.g. instances of suspicious betting activity, to the Gambling Commission or relevant sports bodies, even where such activity may involve British sports and/or British consumers. As such, there is a potential risk that match fixing and suspicious betting practices taking place on overseas licensed sites (including those that may have an impact on sports events held in the Britain) may not be notified to the relevant British authorities, thereby placing consumers at risk.

(...) There is currently no way to ensure that the protections of the gambling regulatory framework, in particular those afforded by licence condition 15 on reporting suspicious betting activity, are applied on a consistent basis to all operators who transact with British consumers or allow bets on British events. With technological advancements, it is becoming increasingly difficult to identify the level of regulatory oversight of gambling service provision and key equipment where regimes, like our own, permit operators to locate equipment in different jurisdictions. Many operators have different products licensed in different jurisdictions, but a consumer can access those products from the same branded homepage, often without knowing that they can be inadvertently gambling with an operator that is not licensed by the Gambling Commission.<sup>38</sup>

The licensing of overseas based operators offering services in Britain could also help with problem gambling:

All operators licensed by the Gambling Commission have to comply with the conditions set out in LCCP. In particular, all licensees must have in place, and put into effect, policies and procedures intended to promote socially responsible gambling. These policies must include a commitment to, and set out how they will contribute to:

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<sup>35</sup> Ibid

<sup>36</sup> DCMS, *Draft Gambling (Licensing & Advertising) Bill*, Cm 8497, December 2012

<sup>37</sup> Ibid, p14

<sup>38</sup> Ibid, pp14-5

- research into the prevention and treatment of problem gambling;
- public education on the risks of gambling and how to gamble safely; and the identification and treatment of problem gamblers.<sup>39</sup>

Clause 1 of the draft Bill would amend section 36 of the 2005 Act and extend the territorial scope of section 33, so that an operating licence from the Gambling Commission would be required where no remote gambling equipment was located in Great Britain “but the facilities are capable of being used there.” This would shift the regulatory system from a ‘point of supply’ basis to a ‘point of consumption’ basis.

Clause 2 would repeal section 331 of the Act, thereby removing the offence of advertising “foreign gambling” and abolishing the “white list”.

Clause 3 would amend section 333 of the Act, thereby changing the test for determining the territorial application of regulations on advertising to the same basis as that for determining whether a licence was required:

- either at least one piece of remote gambling equipment to be used in providing facilities for gambling is or will be situated in Great Britain; or
- no such equipment is or will be situated in Great Britain but the facilities are or will be capable of being used here.

The background document refers to a [Regulatory Impact Assessment](#) (RIA) of June 2011. The RIA includes the Government’s rationale for intervention and opposing views; alternative policy options; and a cost-benefit analysis of the proposals. According to the RIA, the Government’s proposals were “cost and benefit-neutral to British-based remote gambling operators, as there will be no additional costs and may even be some (as yet unquantified) marginal net benefits in relation to fees”.<sup>40</sup>

## 5.2 Pre-legislative scrutiny

The draft Bill was considered by the Culture, Media and Sport Committee. The Committee’s [report](#), published on 1 May 2013, noted the differing opinions of UK-based gambling operators and those based overseas:

The overseas-based remote gambling operators generally opposed the Bill, on the grounds it was unnecessary for consumer protection, might drive consumers to cheaper unlicensed operators and was principally intended to bring overseas operators within the UK’s tax regime. Much of the UK-based gambling industry, sports bodies (concerned about match-fixing) and organisations working to combat problem gambling supported the principle of the Bill.<sup>41</sup>

The Committee supported the Bill’s principle that remote gambling should be regulated on a point of consumption basis. It also looked at a number of issues raised by the Bill, including those summarised below.

### **Wording of the Bill**

The Committee approved the wording of the Bill’s clauses, with the exception of clause 1 for which it recommended a change to “make it clearer that the operators affected are those

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<sup>39</sup> Ibid, p16

<sup>40</sup> Background document accompanying the [Draft Gambling \(Licensing & Advertising\) Bill](#), December 2012, p20

<sup>41</sup> Culture, Media and Sport Committee, [Pre-legislative scrutiny of the draft Gambling \(Licensing and Advertising\) Bill](#), HC 905 2012-13, May 2013, p3

providing remote gambling services to customers in Great Britain.”<sup>42</sup> This followed some organisations querying the clause; the High Growth Forum, for example, said that:

(a) Relating the territorial application to the location of gambling equipment is confusing, costly to British business and, ultimately, unnecessary to the effectiveness of the proposed legislation.

(b) We don't understand therefore why the amended Bill [the Gambling Act 2005] still makes reference to the location of the gambling equipment at all. Particularly in the era of cloud computing, the notion of what is and is not a piece of gambling equipment simply makes no sense in this context.<sup>43</sup>

After pointing out some ‘anomalies’ created by the wording of clause 1, the Forum said that these could be avoided by “amending Section 36 of the 2005 Act (and related clauses) to state that the offence applies to the provisions of facilities for remote gambling by persons present in Great Britain.”<sup>44</sup> The Committee said that it did not think the draft Bill’s reference to the location of gambling equipment was confusing, but saw “merit” in the Forum’s proposed amendment.<sup>45</sup> The Department for Culture, Media and Sport told the Committee that it was open to suggestions about alternative wording for clause 1.<sup>46</sup>

### **Casinos**

In its written evidence, the National Casino Industry Forum asked for the draft Bill to be amended to “allow the UK on-shore casino sector to provide its customers with the same remote gambling experience the government seeks, through this bill, to licence and legitimise outside a casino.”<sup>47</sup> The Committee agreed and recommended that a clause be added to the Bill so that remote gambling from a casino would no longer be illegal.<sup>48</sup>

### **Compatibility with EU law**

The Remote Gambling Association (RGA) raised concerns with the Committee as to whether the draft Bill was compatible with EU law:

A restriction on trade between EU states, such as changes to licensing regimes, is only permitted in limited circumstances. In relation to remote gambling, case law indicates that those circumstances include a requirement for greater consumer protection.<sup>49</sup>

The RGA said it was “impossible” to objectively assess the need for increased consumer protection without seeing the evidence-base for the claim.<sup>50</sup> William Hill endorsed the RGA’s submission<sup>51</sup> and claimed that the Bill would face “strong and sustained legal challenge.”<sup>52</sup>

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<sup>42</sup> Ibid, p3

<sup>43</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill - Additional written evidence*, May 2013, Ev 43

<sup>44</sup> Ibid, Ev 44

<sup>45</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill*, pp24-5

<sup>46</sup> Ibid, p24

<sup>47</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill - Additional written evidence*, May 2013, Ev 42

<sup>48</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill*, p26

<sup>49</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill*, Ev 41

<sup>50</sup> Ibid, Ev41

<sup>51</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill - Additional written evidence*, Ev 11

<sup>52</sup> Ibid, Ev 14

In its written evidence to the Committee, the DCMS argued that the Bill was compliant “on the basis that it is a necessary and proportionate means of achieving the legitimate aim of enhanced consumer protection for British citizens”:

(...) The Government considers that strengthening consumer protection now is an important prudential step given the significant risk of harm to British consumers in the future, particularly as more countries permit online gambling...the Gambling Commission now has oversight of less than 20% of the British remote gambling market and does not have the direct access to operators, their systems and data to identify current and developing risks or to address them. We need to repatriate gambling regulation so the Commission has the ability to do what it was set up to do ie ensure that gambling provided to those in Britain is fair, crime free and socially responsible.<sup>53</sup>

The Committee said it was satisfied that the Government had considered the Bill’s compatibility with EU law and noted “its confidence that any challenge to the legislation would be unlikely to succeed.”<sup>54</sup>

### **Taxation**

The current taxation system for online gambling is levied on a point-of-supply basis, meaning that only those companies based in the UK are taxed here. At the time of the 2012 Budget, the Government said it would move to taxing remote gambling on a place of consumption basis:

(...) This follows a review of remote gambling taxation announced on 18 July 2011. Under the revised taxation regime, operators will pay tax on gambling profits generated from customers in the UK, whether the supplier is in the UK or elsewhere. A consultation on detailed design characteristics will follow shortly after Budget 2012. Legislation will be introduced in a future finance bill and the measure is planned to be introduced in December 2014, although the implementation date will be kept under review.<sup>55</sup>

A consultation document on the design of the system was published in April 2012.<sup>56</sup> The Government’s summary of responses was published in August 2013 and included a draft of Finance Bill clauses for further comment (by 30 September 2013).<sup>57</sup> The Government said that following the Finance Bill 2014, the reform would be implemented on 1 December 2014.<sup>58</sup>

In its July 2012 report on the *Gambling Act 2005*, the Culture, Media and Sport Committee had urged the Government to implement the proposed changes by December 2014:

(...) To give certainty to online operators, and their investment plans, we urge the Government to adhere to its timetable for implementation by December, 2014 and to make plans to deal with any challenges to the proposed new system. However, the Treasury still needs to work with industry stakeholders to establish the correct level for

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<sup>53</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill*, Ev 38 [see also a DCMS letter from Hugh Robertson, dated 7 February 2013, to the European Scrutiny Committee and reproduced in its [thirty-second report](#) of session (HC 86-xxxii 2012-13)]

<sup>54</sup> Ibid, p15

<sup>55</sup> HM Treasury/HMRC, *Overview of Tax Legislation and Rates*, March 2012, p22

<sup>56</sup> HM Treasury/HMRC, *Taxing remote gambling on a place of consumption basis: consultation on policy design*, April 2012

<sup>57</sup> HM Treasury/HMRC, *Taxing remote gambling on a place of consumption basis: summary of consultation responses*, August 2013

<sup>58</sup> Ibid, p3

online gambling taxation, taking into account the need to encourage companies to accept UK regulation and taxation and to discourage the formation of a grey market.<sup>59</sup>

In evidence to the Committee on the draft Bill, the RGA, together with companies such as William Hill and Ladbrokes, argued that the Bill was really a “backdoor method to tax off-shore operators”:<sup>60</sup>

The only reference to tax anywhere in the supporting papers is a tiny footnote. Clearly it is not officially for DCMS to comment on matters of taxation, but it is disingenuous not to acknowledge its fundamental importance to the debate given the broad perception that it is the government's desire to maximise taxation which is driving this legislative change.<sup>61</sup>

When questioned by the Committee, the DCMS said that the Bill was “not about taxation”:<sup>62</sup>

The basis for this Bill is the concerns about public protection and consistency of regulation that we have set out. In parallel, the Treasury has developed its tax proposals but the two are not dependent on each other.<sup>63</sup>

The Committee's conclusions noted that “the Government has stated that the ability to bring all operators serving UK consumers within the tax net is a consequence, but not the prime motivation, of the legislation”:

...Whether or not this is the case, we regard it as a legitimate and desirable outcome of the change in the licensing regime that in future remote gambling companies doing business in the UK should be subject to the same taxation requirements, whether they are based onshore or offshore. However, in setting a rate of tax, the Treasury should bear in mind the need to avoid setting it at so high a level that companies and their customers are driven into the black market.<sup>64</sup>

### **Enforcement**

The document accompanying the draft Bill contained little on how it would be enforced, other than that the system would be “light-touch, avoiding duplication by relying on the work of other regulators, subject to on-going assurance of quality and rigour.”<sup>65</sup> The March 2010 DCMS [consultation document](#) did, however, consider (before rejecting) a number of enforcement options.<sup>66</sup>

Many of those giving evidence to the Committee observed the draft Bill's lack of reference to enforcement and raised doubts about the effectiveness of measures tried elsewhere. The RGA said that other jurisdictions had tried ISP blocking, payment provider blocking and advertising restrictions, but that “none of these have been wholly effective”.<sup>67</sup> Paddy Power

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<sup>59</sup> Culture, Media and Sport Committee, *The Gambling Act 2005: a bet worth taking?*, HC 421 2012-13, pp37-8

<sup>60</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill*, Ev 41

<sup>61</sup> Ibid, Ev 41

<sup>62</sup> Ibid, Ev31

<sup>63</sup> Ibid, Ev30

<sup>64</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill*, p27

<sup>65</sup> Background document accompanying the *Draft Gambling (Licensing & Advertising) Bill*, December 2012, p18

<sup>66</sup> DCMS, *A consultation on the regulatory future of remote gambling in Great Britain*, March 2010, pp45-50; some of the enforcement measures discussed were: giving any new offences extra-territorial application (p45); Internet Service Provider and Financial Transaction blocking (pp46-8); and the creation of a new offence for a British citizen to gamble with an unlicensed provider (p46)

<sup>67</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill*, Ev 41



commented that a “wide range” of mechanisms would be needed for effective enforcement and that these should include IP blocking, financial penalties, bringing criminal proceedings, revoking licenses, and setting out objective compliance criteria.<sup>68</sup> Ladbrokes also pointed to IP and credit card bans although it doubted whether these would be effective enough.<sup>69</sup> CARE, the Christian social policy charity, argued that the threat of financial blocking would be the simplest enforcement measure.<sup>70</sup>

The DCMS told the Committee that the Bill said little about enforcement because the 2005 Act already contained provision for various measures:

The 2005 Gambling Act has provisions for criminal offences, which the Gambling Commission can enforce, and, through the application of licence provisions, again set in place in the 2005 Act but extended by this Bill to all operators within the GB market, the Gambling Commission can apply licence requirements to require those sorts of enforcement measures and others.<sup>71</sup>

The Gambling Commission said that the costs of enforcing the new system would be met by the additional income generated from remote operators joining its licensing regime.<sup>72</sup> The Committee welcomed this assurance but said it would continue to monitor this.<sup>73</sup>

## 6 The Bill

The *Gambling (Licensing and Advertising) Bill* had its first reading in the House of Commons on 9 May 2013. It is a short Bill containing four substantive clauses and a fifth clause giving details of the Bill’s territorial extent and commencement dates.

As in the draft Bill, clause 1 concerns the licensing of remote gambling, but has been redrafted. Clauses 2 and 3 are unchanged from the draft Bill. Clauses 1 to 3 apply to Great Britain; clause 2(1) also extends to Northern Ireland.

The Bill contains a new clause 4 which would create an offence of advertising unlicensed remote gambling in Northern Ireland. This clause applies to Northern Ireland only. As gambling is a transferred matter for the purposes of the *Northern Ireland Act 1998*, clause 2(1) and clause 4 would require the consent of the Northern Ireland Assembly though a legislative consent motion.

The Government has said that the Bill’s proposals would increase protection for British customers, as remote gambling operators would be:

- subject to robust and consistent regulation
- required to support action against illegal activity and corruption in sport
- required to contribute to research, education and treatment in relation to British problem gambling

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<sup>68</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill - Additional written evidence*, Ev 36

<sup>69</sup> Ibid, Ev 40

<sup>70</sup> Culture, Media and Sport Committee, *Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill*, Ev 48

<sup>71</sup> Ibid, Ev 27

<sup>72</sup> Ibid, Ev 35

<sup>73</sup> Ibid, p23

- required to comply with licence conditions that protect children and vulnerable adults

The Bill would also:

- Level the regulatory field for all remote operators - allowing British-based operators to compete on an equal footing.<sup>74</sup>

### 6.1 Redrafted clause 1: licensing on a 'point of consumption' basis

As in the draft Bill, clause 1 concerns the licensing of remote gambling, but has been redrafted. **Clause 1(2)** would amend section 36 of the 2005 Act and extend the territorial scope of section 33, so that an operating licence from the Gambling Commission would be required where no remote gambling equipment was located in Great Britain "but the facilities are used there" and the operator "knows or should know that the facilities are being used, or are likely to be used, in Great Britain". This would shift the regulatory system from a 'point of supply' basis to a 'point of consumption' basis.

An overseas-based operator offering remote gambling facilities would have to block their website to customers in Great Britain to avoid the need for a Gambling Commission licence.

A new sub-clause has also been added to Clause 1: **clause 1(3)** would repeal paragraph (a) of section 26B of the *Betting and Gaming Duties Act 1981*. The Explanatory Notes to the Bill explains that this is to exempt the new category of remote gambling operators from remote gambling duty:

(...) Under [Section 26B], duty is charged on the provision of facilities for remote gambling in two cases. The first case is where the facilities are provided in reliance on a remote operating licence (section 26B(a)). The second case is where at least one piece of remote gambling equipment used in the provision of the facilities is situated in the United Kingdom (section 26B(b)). At present, under the 2005 Act, an operator is only required to hold a remote operating licence if they have at least one piece of remote gambling equipment in Great Britain. Therefore a remote gambling operator who needs a licence will always also fall within section 26B(b) of the 1981 Act. As above, clause 1(2) of the Bill extends the category of operators who will have to hold a remote gaming licence. The government do not intend to use this Bill to extend the remote gambling duty to this new category of operators. The repeal of section 26B(a) ensures that they will not be liable for remote gambling duty, whilst not affecting the liability of those who are currently required to hold a remote operating licence.<sup>75</sup>

### 6.2 New clause 4: Northern Ireland

**Clause 2(1)** of the Bill would repeal section 331 of the 2005 Act, removing the offence of advertising "foreign gambling". As s331 extends to Northern Ireland and, as the law in Northern Ireland does not currently regulate remote gambling or the advertising of remote gambling, the effect of repealing this section would be that remote gambling operators could advertise in Northern Ireland, regardless of whether they were regulated in Britain (or elsewhere).

**Clause 4** of the Bill would therefore create an offence of advertising unlicensed remote gambling, to apply in Northern Ireland only. A remote gambling operator not holding the necessary licence from the Gambling Commission would not be able to advertise remote

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<sup>74</sup> HMG, *Background briefing to the Queen's Speech May 2013*, p88

<sup>75</sup> [Bill 8-EN](#), pp3-4

gambling in Northern Ireland. Customers in Northern Ireland would enjoy the same level of protection as British customers (s330 of the 2005 Act).

A person found guilty of advertising unlicensed remote gambling would be liable on summary conviction to imprisonment for a term of up to six months, a fine not exceeding level 5 on the standard scale, or both.