



Department for Culture, Media and Sport

Draft Gambling (Licensing & Advertising) Bill

Presented to Parliament by the Secretary of State for Culture,
Media and Sport by Command of Her Majesty
December 2012

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1. Ministerial Foreword



The Government is committed to strengthening the regulation of remote gambling to ensure that effective consumer protection measures are afforded to all British based consumers.

Currently, consumers based in Great Britain face different consumer protection arrangements, and have to deal with a myriad of different regulators, depending on where the remote gambling they are taking part in is regulated. This problem is growing as more countries permit online gambling. At the same time, it is unfair to GB-licensed gambling operators that overseas competitors benefit from access to the market in Great Britain without necessarily bearing a fair share of the costs of regulation, or of research, education and treatment of problem gambling.

This draft Bill allows for the amendment of the Gambling Act 2005 so that remote gambling is regulated predominantly on a point of consumption basis. Consequently, all operators selling into the British market, whether based here or abroad, will be required to hold a Gambling Commission licence to enable them to transact with British consumers and to advertise in Great Britain. Such operators will consequently be subject to the provisions of the Gambling Act 2005, its regulations and the Gambling Commission's social responsibility and

technical standards requirements. These operators will also be required to pay Operating Licence fees, and to contribute to research, education and treatment in relation to British problem gambling and regulatory costs

These proposals are an important measure to help address concerns about problem gambling and to bridge a regulatory gap, by ensuring that British consumers will enjoy consistent standards of protection, no matter which online gambling site they visit. For example, previous work by the Gambling Commission has highlighted deficiencies in some remote operators' arrangements for preventing underage play, and, for the first time, overseas operators will be required to inform the UK regulator about suspicious betting patterns to help fight illegal activity and corruption in sports betting.

Finally, these reforms will ensure consistency and a level playing field as all overseas operators will be subject to the same regulatory standards and requirements as British-based operators.

We look forward to hearing your views, and those of the Culture, Media & Sport Select Committee who have been invited to carry out pre-legislative scrutiny. We trust that this process will ensure that the Bill is well prepared for introduction to Parliament.

A handwritten signature in black ink, appearing to read 'Hugh Robertson', written in a cursive style.

Hugh Robertson MP
Minister for Sport & Tourism
Department for Culture, Media & Sport
December 2012

2. Background

The Gambling Act 2005 provided, for the first time, a mechanism for regulation of remote gambling operators providing services in Great Britain. However, experience since the existing regulatory regime came into effect in 2007 suggests that the regulation of overseas based remote gambling operators selling products in Great Britain is not working as well as intended and has become unsustainable. At present there are different regulatory standards and approaches, and consumers based in Great Britain may experience varying levels of protection depending on the operator they engage with.

The Department for Culture, Media & Sport and the Gambling Commission jointly conducted a review in 2009 to examine the existing system of remote gambling regulation. The review considered the regulation of overseas operators, as well as ways to ensure overseas operators contribute fairly towards the costs of research, education and treatment of problem gambling in the UK.

The review proposed that overseas gambling operators should be required to obtain a Gambling Commission licence in order to transact with, or advertise to, British based consumers. This was adopted as the preferred option in the 12 week consultation which the Department for Culture, Media & Sport carried out between March and June 2010. The consultation also proposed a more stream-lined white listing process for non-EEA jurisdictions.

The consultation ran between 22 March and 18 June 2010 and provided an opportunity for interested parties to make representations to Government over the proposed reforms. The consultation received 38 responses. The majority of respondents (approximately 57%) favoured the proposals. On 14 July 2011, the then Minister for Tourism and Heritage, John Penrose MP, made a written

Ministerial statement to Parliament outlining the Government's proposed approach to reform of remote gambling regulation, in light of the responses received during the consultation period. This draft Bill provides the means for these reforms to be realised.

3. Overview of the current regulatory system

Under the current system remote gambling operators are required to hold a Gambling Commission (GC) licence only if they have remote gambling equipment located in Britain. Operators based outside Britain but licensed in EEA member states and Gibraltar are permitted to advertise gambling services in the UK in reliance on the licence issued in their home jurisdiction, as are operators licensed in one of the jurisdictions contained in Regulations under section 331 of the Act, otherwise known as 'the white list'. There are four places on the white list: Antigua and Barbuda, the Isle of Man, the States of Alderney and Tasmania.

In 2001 the Gambling Review Body, chaired by Sir Alan Budd, recommended that a proposed new gambling regulator license all forms of remote gambling. The then Government agreed with that recommendation on the basis that continued prohibition of remote gambling was neither desirable nor practical and that it was more sensible to license and regulate British-based sites, rather than leave customers having to gamble with offshore operators who may be subject to less stringent regulation. The then Government decided that gambling should be deemed to take place wherever the gambling operator is based (i.e. place of supply).

It was hoped that a freer approach to advertising would provide maximum reciprocal benefits for British businesses in terms of European and International gambling markets. It was also expected that by demonstrating best practice in gambling regulation in relation to operators here, Britain would be influential in improving standards of regulation across Europe and internationally.

The main provisions of the Gambling Act 2005 came into force on 1 September 2007 and are based around three key 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.

In addition to creating the Gambling Commission, it introduced a new licensing system requiring operators, key personnel and the premises on which gambling takes place to be licensed. It also created new offences, including those relating to the protection of children. For the first time, remote gambling was brought within the regulatory framework and the Act provided for specific operating licences for those wishing to provide gambling remotely.

British gambling regulation is currently based on the point of supply, with only those operators who locate at least one piece of their remote gambling equipment in Britain requiring a Gambling Commission licence. Overseas operators who provide gambling facilities to customers based in this country via the internet do not require a GB licence, although section 331(1) of the Act prohibits them from advertising unless they are situated within the EEA (including Gibraltar), or in one of the four jurisdictions that have been white listed by the Secretary of State (Antigua & Barbuda, the Isle of Man, the States of Alderney and Tasmania). Operators supplying gambling from these places can therefore advertise their services in Britain in reliance on the licence issued by their home jurisdiction (an arrangement which is unique to the British market amongst EU Member States).

In addition to the statutory provisions contained on the face of the Gambling Act and in its regulations, the Gambling Commission has developed a framework of

Licence Conditions and Codes of Practice (LCCP) to improve consumer protection and to uphold the licensing objectives. The Gambling Commission has the power to impose specific conditions on individual licences or categories of licence, which means that specific issues can be addressed if necessary. However, these conditions do not apply to operators who are based outside Britain (as they are not licensed by the Gambling Commission).

Some of the particular measures included in the LCCP are:

- reporting of suspicious betting activity to the Gambling Commission and sports governing bodies;
- in relation to casinos, reporting of suspected criminal activity to the Serious Organised Crime Agency (SOCA);
- robust procedures for preventing underage gambling and other social responsibility measures;
- requiring clear terms and conditions;
- requiring transparent complaint procedures, including recourse to an independent third party; and
- reporting other key events, such as incidents of internal or external fraud.
- In relation to betting, reporting of suspicious betting patterns
- Compulsory provision of pre-commitment options
- Requirement for operators to contribute to research, education and treatment;
- independent system integrity and game fairness testing.

The 'White List'

The Gambling Act allows the Secretary of State to designate non-EEA jurisdictions permitted to advertise remote gambling services in Britain. This is informally known as the 'white list'. Jurisdictions that want to be added must demonstrate that their regulatory system for gambling is robust and meets the

published criteria.

The criteria document is primarily based upon the Gambling Act's three licensing objectives (set out above). It also includes certain requirements in respect of fair tax, and jurisdictions are assessed on whether they follow the same core values which underpin the British regime. In assessing applications for the 'white list', jurisdictions must also demonstrate that they have the capacity, technical and regulatory ability, and political impetus necessary, to enforce its regulation.

Once on the 'white list', jurisdictions must inform the Government of any changes to their laws/regulatory systems. They must also comply with British advertising provisions, in particular the relevant codes that are regulated by the Advertising Standards Authority (ASA), as well as provide a list of their licensed operators. The Secretary of State has reserve powers to remove jurisdictions from the regulations if at any stage there is concern that their regulatory system no longer satisfies the criteria or is jeopardising the licensing objectives.

EEA Member States and Gibraltar

Operators based in EEA Member States, including Gibraltar, have greater freedom to advertise their services in Britain in that they can advertise gambling freely to British consumers, subject to the relevant advertising code provisions, in reliance on the licence issued by their home regulator.

The Advertising Codes

Gambling operators wishing to advertise in Britain need to comply with the advertising codes of practice which apply to the form and media in which they advertise their gambling facilities or services. The Secretary of State also has

powers under section 328 of the Act to make regulations with regard to the form, content, timing and location of gambling advertisements.

There are three advertising Codes of Practice. The Broadcast Committee of Advertising Practice (BCAP) and the Committee of Advertising Practice (CAP) are supervised by the ASA. The ASA administer the codes and respond to public concerns about gambling advertisements.

In particular the codes seek to ensure adverts don't:

- 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 code have to be amended or withdrawn. If serious or repeated breaches of the advertising codes occur then the ASA may refer advertisers to the Gambling Commission and broadcasters to OFCOM (the Communications regulator) to consider legal or regulatory sanctions.

In addition to the CAP and BCAP Advertising Standards Codes, the gambling industry has collectively devised its own *Gambling Industry Code for Socially Responsible Advertising*. The Industry Code includes a 9pm watershed on all broadcast gambling advertising with exceptions for bingo and lotteries and the advertising of sports betting around televised sporting events. The Industry Code also requires advertisements to display the gambleaware.co.uk address.

4. The case for change

Participation in remote gambling is steadily increasing. According to the British Gambling Prevalence Survey 2010 (Gambling Commission, 2010) 73% (35.5 million) of the adult population in Great Britain participated in some form of gambling in the year prior to the survey, with 14% using the internet to gamble - including buying lottery tickets online, betting online, playing casino games, bingo or other slot machine-style games and playing the football pools online.

The Gambling Commission's report into Industry Statistics between April 2008 and September 2011 estimates that global remote gambling Gross Gambling Yield (GGY) (excluding telephone betting) was £20.1 billion during 2011, which represents 10% growth on the previous year. UK consumer GGY (includes GGY generated with operators regulated overseas), which includes telephone betting, is estimated to have grown 5% between 2010 and 2011 to reach £2 billion. As at 31 March 2012 there were 288 remote gambling activity Gambling Commission licences held by 207 operators.

Risks to British consumers

Under the current arrangements set out in the Gambling Act 2005, only operators with key equipment in Britain are required to be licenced by the Gambling Commission, whilst operators in EEA member states, Gibraltar and white listed jurisdictions may advertise their services in Britain in reliance on the licence held in their home jurisdiction. The Government believes that the current system is flawed and can no longer adequately ensure the continued protections for British consumers the Act envisaged in a changing European and International landscape. The Government therefore believes that it is essential, now more than ever, for the protections envisaged in the Gambling Act 2005 to be afforded to all British consumers, regardless with whom they choose to gamble.

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. This is concerning and raises the question as to why European operators without sufficient regulatory oversight should have the automatic right, as is currently the case, to advertise in Britain.

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.

Furthermore 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.

Some operators do share some information with the Gambling Commission in addition to their home regulator on a voluntary basis. However, this is often of insufficient detail to be used in an investigation and limits the Gambling Commission's ability to conduct thorough investigations. There have been instances where the Gambling Commission has not received relevant information and has been unable to obtain the information from the overseas

licensed operator or regulator. In some cases, the Gambling Commission is told the refusal to provide information is because of overseas data protection requirements.

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.

That can lead to confusion for consumers, evidenced by the enquiries received by the Gambling Commission about gambling activity that is licensed offshore. The Gambling Commission has received enquiries about social responsibility (for example, where consumers have been unable to self-exclude from websites) and unfairness (for example, where winnings are not paid out or where complaints have been unsatisfactorily dealt with). However, the Gambling Commission cannot directly investigate these complaints or enquiries or follow up to determine whether the issues go on to be resolved, and has to refer the complainant on to overseas regulators.

Similar problems arise in respect of the carriers of advertisements who can also sometimes find it difficult to understand where the service or product that they are being asked to advertise is regulated. This has resulted in some illegal advertising of foreign gambling and has required regulatory intervention by the Gambling Commission.

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:

- 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.

5. Summary of Proposals

Ministers have responsibility for the protection of consumers under the Gambling Act 2005 and are accountable to Parliament and ultimately the British public. As such, the Government considers it essential for the Gambling Commission to have a greater degree of oversight in respect of the gambling offered into Great Britain. Further, the Government believes strongly that the costs of such oversight should be met by all service providers rather than British licensed operators and taxpayers, as is the case now.

To that end, this draft Bill proposes fundamental change to the basis on which the system of remote gambling is regulated in Britain from the current 'place of supply' basis to a 'place of consumption' basis. This will mean the British consumer becoming the pivot around which the system is based, rather than the location of the gambling operator (which is becoming increasingly difficult to identify where regimes, like our own, permit operators to locate equipment in different jurisdictions). This will also simplify the system – particularly for consumers.

The main change will be a requirement for all operators selling into the British market¹ being required to hold a Gambling Commission licence and therefore subject to the provisions of the Act, its regulations and the Gambling Commission's social responsibility and technical standard requirements. It will also mean a requirement for operators to contribute towards British problem gambling and regulatory costs².

The jurisdiction in which the operator (or the supplier of the various processes requiring licensing - player registration, servers etc.) is regulated will only be

¹ By which we mean: advertising to/transacting with British consumers

² Subject to HM Treasury operators would also contribute to UK gambling tax.

relevant (and then indirectly i.e. wouldn't have fees expressed in terms of country A and B) in terms of determining the fees and charges operators will be expected to pay and the level of Gambling Commission scrutiny they are afforded. Operators in well-regulated jurisdictions whose regulators can provide, for example, the necessary compliance information, will not face significant increases in licensing costs – those whose regulators cannot provide such information will need to pay the compliance costs associated with being subject to the same requirements as other Gambling Commission licensees.

The Government is clear that the proposals are not designed to duplicate the work of other regulators or to unnecessarily increase burdens imposed on operators. Rather, the system will be light-touch, avoiding duplication by relying on the work of other regulators, subject to sufficient on-going assurance of quality and rigour. This is the approach Britain has consistently adopted in discussions in Europe and represents the model we hope other European jurisdictions who are opening up their own gambling markets will adopt.

To ensure the minimum of disruption for operators already active in the British market, we intend to put in place a period of transition which will see operators already licensed in EEA countries and the existing white listed jurisdictions awarded an automatic provisional licence to prevent them having to cease trading.

The proposed changes will also mean phasing out the British white list, though operators based in the existing white listed countries will continue to benefit from the robust regulatory regimes we know are in place and the close regulatory relationships already in place between the Gambling Commission and the white listed regulators. In addition to moving away from the white list, we also intend to allow operators based anywhere in the world to apply for a

Gambling Commission licence in recognition of the global nature of the internet³.

³ Operators regulated outside the EEA or white listed countries are currently prohibited from advertising in the UK.

6. Summary of regulatory impact assessment

A Regulatory Impact Assessment (RIA) was completed in June 2011 and considered fit for purpose by the Regulation Policy Committee (RPC). The RIA details the proposals and alternative options considered.

The proposals are 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.

The proposals are within the scope of OIOO and qualify as a regulatory OUT, with an Equivalent Annual Net Cost to Business of zero, as the direct costs fall on non-GB-based operators.

A

B I L L

TO

Make provision about the licensing and advertising of gambling

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Licensing of remote gambling

In section 36 of the Gambling Act 2005 (territorial application: provision of facilities for gambling), for subsection (3) substitute—

- “(3) Section 33 applies to the provision of facilities for remote gambling only if—
- (a) at least one piece of remote gambling equipment used in the provision of the facilities is situated in Great Britain, or
 - (b) no such equipment is situated in Great Britain but the facilities are capable of being used there.”

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2 Advertising of foreign gambling

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- (1) Section 331 of the Gambling Act 2005 (offence of advertising foreign gambling) is repealed.
- (2) In consequence of the provision made by subsection (1)—
 - (a) omit the following provisions—
 - (i) section 332(3),
 - (ii) section 333(3), and
 - (iii) section 361(1)(b) (but not the “and” at the end), and
 - (b) in section 333(4), for “(1)(a), (2)(a) and (3)” substitute “(1)(a) and (2)(a)”.

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3 Advertising of gambling by way of remote communication

- (1) Section 333 of the Gambling Act 2005 (territorial application: remote advertising) is amended as follows.
- (2) In subsection (2) omit paragraph (b) (but not the “and” at the end).

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- (3) For subsection (9)(b) substitute –
- “(b) in the case of remote gambling, that –
- (i) at least one piece of remote gambling equipment to be used in providing facilities for the gambling is or will be situated in Great Britain, or
- (ii) no such equipment is or will be situated in Great Britain, but the facilities are or will be capable of being used there.”

4 Short title, commencement and extent

- (1) This Act may be cited as the Gambling (Licensing and Advertising) Act 2013. 10
- (2) This section comes into force on the day on which this Act is passed.
- (3) The remaining provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint (and different days may be appointed for different purposes).
- (4) The Secretary of State may by order made by statutory instrument make such transitory, transitional or saving provision as the Secretary of State considers necessary or appropriate in connection with the commencement of any provision made by this Act. 15
- (5) This Act extends to England and Wales and Scotland.
- (6) Section 2(1) and this section extend also to Northern Ireland. 20

GAMBLING (LICENSING AND ADVERTISING) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Gambling (Licensing and Advertising) Bill which was published in draft on 3 December 2012. They have been prepared by the Department for Culture, Media and Sport in order to assist the reader of the Bill and to help inform debate upon it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Bill seeks to amend the Gambling Act 2005 (“the 2005 Act”). Its purpose is to extend the scope of the regulatory regime currently governing remote gambling.

BACKGROUND

4. The 2005 Act introduced a new regulatory regime to govern the provision of all gambling in Great Britain, other than the National Lottery and spread betting, and introduced a unified regulator for gambling, the Gambling Commission (“the Commission”). The 2005 Act's basic approach to the regulation of gambling is that, absent certain express exceptions, a person who provides facilities for gambling without holding an operating licence issued by the Commission commits an offence under section 33 of the Act.
5. The 2005 Act also introduced the concept of ‘remote gambling’ and brought this within the regulatory framework for the first time. Remote gambling is defined as gambling in which persons participate by the use of ‘remote communication’, being communication using the internet; telephone; television; radio; or any other kind of electronic or other technology for facilitating communication.

6. The territorial reach of section 33 is governed by section 36 of the 2005 Act which makes different provision in respect of remote and ‘non-remote’ gambling. In the case of remote gambling, the 2005 Act requires that an operating licence is required for the provision of facilities for remote gambling if (but only if) at least one piece of ‘remote gambling equipment’¹ used in the provision of those facilities is located in Great Britain. This has meant that remote gambling operators who transact with UK customers can escape the regulatory supervision of the Commission by locating all their remote gambling equipment offshore.
7. The 2005 Act also regulates advertising of gambling services in Great Britain. Section 328 empowers the Secretary of State to make regulations controlling the advertising of gambling. To date no such regulations have been made and gambling advertising is in practice controlled through a provision in the Code of Practice which the Commission has issued under section 24 of the 2005 Act and which requires licensed operators to comply, as appropriate, with the Broadcast Committee of Advertising Practice and the Committee of Advertising Practice codes issued under the auspices of the Advertising Standards Authority and with the gambling industry's own *Gambling Industry Code for Socially Responsible Advertising*.
8. There are two general advertising offences: First, section 330 makes it an offence to advertise unlawful gambling. For these purposes, advertised gambling is unlawful if in order for the gambling to take place as advertised without the commission of an offence under the 2005 Act it would be necessary to rely on a licence notice, permit, registration or exception under the 2005 Act. The offence covers advertising of unlawful gambling by remote means.
9. Second, section 331 of the 2005 Act makes it an offence to advertise foreign gambling. “Foreign gambling” is gambling which either physically takes place in a non-EEA state² (e g a casino in Australia), or gambling by remote means which is not regulated by the gambling law of any EEA state. For the purposes of this section, Gibraltar is treated as if it is an EEA state, which will allow gambling operators based in Gibraltar to advertise their services in the United Kingdom. The offence covers advertising of gambling whether the advertising takes place by remote or non-remote means, and sections 332 and 333 make specific provision about this. This section extends to Northern Ireland.

¹ “Remote gambling equipment” is defined as electronic or other equipment used by or on behalf of a person providing facilities for remote gambling— (a) to store information relating to a person's participation in the gambling, (b) to present, to persons who are participating or may participate in the gambling, a virtual game, virtual race or other virtual event or process by reference to which the gambling is conducted, (c) to determine all or part of a result or of the effect of a result, or (d) to store information relating to a result.

² EEA State is defined as a State which is a contracting party to the Agreement in the European Economic Area signed at Oporto on 2nd May 1992.

These notes refer to the Gambling (Licensing and Advertising) Bill as published in draft for pre-legislative scrutiny on 3 December 2012

10. Sub-section 331(4) of the 2005 Act also confers a power on the Secretary of State to make regulations specifying countries or places which are to be treated as though they were EEA states for the purposes of this section. The effect of this is to put any advertising of gambling taking place in that country or place outside the scope of the offence. Regulations have been made by the Secretary of State (known as the “White List”) and they cover the following places: the Isle of Man, the Island of Alderney, Tasmania, and Antigua and Barbuda³.
11. With regard to territorial application, section 333 (Territorial application: remote advertising) provides that, in the case of remote gambling, regulations made under section 328 and the prohibition against advertising unlawful gambling in section 330 apply where the advertising in question satisfies various tests, one of which at section 330(9)(b) 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.
12. The Bill will extend the territorial scope of section 33 (offence of providing facilities for gambling), section 328 (regulations controlling the advertising of gambling by way of remote communication) and section 330 (advertising unlawful gambling by way of remote communication). The Bill will also repeal the prohibition in section 331 of the 2005 Act of advertising foreign gambling and thereby abolish the White List.
13. Before the Bill is passed, it has to be notified in draft to the European Commission in accordance with the Technical Standards and Regulations Directive 98/34/EC (as amended by Directive 98/48/EC) (“the Technical Standards Directive”)⁴.

TERRITORIAL EXTENT AND APPLICATION

14. *Subsections (5) and (6) of Clause 4 set out the territorial extent of the Bill. It extends in its entirety to England and Wales and Scotland. Clauses 2 and 4 extend also to Northern Ireland.*

Territorial application: Scotland

15. The Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not

³ Gambling Act 2005 (Advertising of Foreign Gambling) Regulations 2007 (SI 2007/2329)

⁴ The Technical Standards Directive requires that, where a member state wishes to impose a technical regulation (for example by making legislation relating to compulsory requirements for “information society services” (i.e. services supplied at a distance by electronic means and at the individual request of a recipient of services)), it must send a draft of the regulation to the European Commission and other member states and, except in urgent cases, wait for a period of three months before adopting the regulation. During this time amendments must still be able to be introduced.

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normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

Territorial application: Wales

16. The Bill does not contain any provisions that fall within the legislative competence of the National Assembly for Wales. It does not affect the functions of Welsh Ministers and does not make different provisions in relation to England and Wales.

Territorial application: Northern Ireland

17. Clause 2 repeals section 331 of the Act which extends to Northern Ireland and deals with the regulation of gambling. The regulation of gambling is a transferred matter for the purposes of the Northern Ireland Act 1998. Westminster will not normally legislate with regard to a transferred matter in Northern Ireland without consent of the Northern Ireland Assembly. Clauses 2 and 4 will therefore require the consent of the Northern Ireland Assembly by way of a Legislative Consent Motion.

COMMENTARY ON CLAUSES

Clause 1: Licensing of remote gambling

18. Clause 1 amends section 36 of the 2005 Act (territorial application: provision of facilities for gambling) by substituting a new sub-section (3). This extends the territorial application of section 33 of the 2005 Act so that operators providing remote gambling facilities will require an operating licence if no remote gambling equipment used in the provision of those facilities is situated in Great Britain but the facilities are capable of being used here.
19. So, for example, an offshore-based operator who makes remote gambling facilities available to customers around the world on the internet will need to obtain an operating licence from the Commission if such facilities are capable of being used in Great Britain regardless of whether they are, in fact, so used. If the operator wanted to avoid having to obtain such a licence, then he would need to block internet access for customers in Great Britain so that the remote gambling facilities are incapable of being used here.

Clauses 2: Advertising of foreign gambling

20. Clause 2 repeals section 331 (offence of advertising foreign gambling) and makes consequential amendments to certain provisions in the 2005 Act.

Clause 3: Advertising of gambling by way of remote communication

21. Clause 3 makes amendments to section 333 of the 2005 Act (territorial application: remote advertising). It repeals section 333(2)(b) thereby removing the requirement that the prohibition in section 330(1) applies to advertising by way of remote communication only if the advertising satisfies the additional tests in sub-section (5)

These notes refer to the Gambling (Licensing and Advertising) Bill as published in draft for pre-legislative scrutiny on 3 December 2012

or (6). The tests in sub-section (5) and (6) relate to the Audiovisual Media Services Directive 2010/13/EU and the Electronic Commerce Directive 2000/31/EC.

22. Clause 3 also amends section 333(3) of the 2005 Act by substituting a new subsection (9)(b) which forms part of the test which determines the territorial application of any regulations made under section 328 in relation to advertising by way of remote communication and the offence in section 330(1) of advertising unlawful gambling by way of remote communication. In line with the amendment made to section 36 of the 2005 Act, the test now requires, in the case of remote gambling, that 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.

FINANCIAL EFFECTS OF THE BILL

23. The Bill will have an Equivalent Annual Net Cost to Business of zero, as the direct costs fall on non-GB-based operators. There are no additional costs incurred by Government as associated costs will be recovered via fees.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

24. The Bill is not expected to have any effect on public service manpower. The Commission is adequately resourced to enforce the extended scope of the regulatory regime.

SUMMARY OF THE IMPACT ASSESSMENT

25. The Regulatory Impact Assessment (RIA) was considered fit for purpose by the Regulation Policy Committee (RPC). It details the proposals and alternative options considered.
26. The proposals are 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.
27. The proposals are within the scope of One-In-One-Out and qualify as a regulatory OUT, with an Equivalent Annual Net Cost to Business of zero, as the direct costs fall on non-GB-based operators.
28. The Regulatory Impact Assessment and the Equality Impact Assessment can be obtained from the Department for Culture, Media and Sport.

COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

These notes refer to the Gambling (Licensing and Advertising) Bill as published in draft for pre-legislative scrutiny on 3 December 2012

29. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill to make a statement about the compatibility of its provisions with the Convention rights (as defined by section 1 of that Act) before its second reading in each House of Parliament [*Details of statement to be included prior to second reading in each House*].

COMMENCEMENT

30. Clause 4 will come into force on the day on which it which the Act is passed. The remaining provisions will come into force on such day as the Secretary of State may by order made by statutory instrument appoint.



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