



HM Treasury



HM Revenue
& Customs

Taxing remote gambling on a place of consumption basis:

summary of consultation responses

August 2013



HM Treasury



HM Revenue
& Customs

Taxing remote gambling on a place of consumption basis: summary of consultation responses

August 2013

© Crown copyright 2013

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or email psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at public.enquiries@hm-treasury.gov.uk.

You can download this publication from www.gov.uk

ISBN 978-1-909790-15-5

PU1554

Contents

		Page
Chapter 1	Introduction	3
Chapter 2	Policy development since the consultation	5
Chapter 3	Consultation responses	9
Annex A	Consultation responses received	25
Annex B	List of meetings	27
Annex C	Draft legislation	29

1

Introduction

1.1 Remote gambling is gambling using remote communication, for example Internet gaming or telephone betting. Under the current tax rules, gambling activities are subject to UK gambling taxes on a “place of supply” basis. This means that gambling operators supplying from the UK pay tax on all of their gross gambling profits while operators supplying the UK from other countries pay no UK gambling taxes.

1.2 At Budget 2012, the Government announced that gambling taxes in the UK will be reformed so that remote gambling is taxed on a “place of consumption” basis. With a place of consumption tax basis, remote gambling operators will pay tax on the gross gambling profits generated from UK customers, no matter where in the world the operator itself is located. Premises based gambling will be unaffected.

1.3 A place of consumption approach supports the Government’s objective of a fairer tax system. Currently, remote gambling operators can and do avoid UK gambling taxes by supplying from abroad. The reform will level the playing field in terms of UK gambling tax liability and provide a fairer basis for competition between remote gambling operators supplying the UK market from the UK and from overseas. The reforms will also help improve the sustainability of the UK’s tax base by ensuring that remote gambling, alongside other gambling products, makes a fair contribution to UK tax receipts. The reform will bring additional public revenues from operators based abroad who supply remote gambling to the UK.

1.4 The consultation document *Taxing remote gambling on a place of consumption basis: consultation on policy design* sought views on the specific design characteristics of a place of consumption based tax regime. Responses and comments were invited from businesses, trade bodies and other interested parties between 5 April and 28 June 2012. This document summarises the comments received during the consultation and the Government’s broad response and current policy position, outlines the detailed design characteristics of a place of consumption based tax regime for remote gambling, and sets out the Government’s proposed next steps. The Government has continued to engage with the industry beyond the consultation period and welcomes further views and comment on the detail of the reform.

1.5 The consultation received 40 written responses from businesses, industry representative groups, other interested bodies and individuals. A list of respondents is available in Annex A. Officials also held a number of meetings with businesses and industry representatives, and a list of meetings is included in Annex B.

1.6 Finally, Annex C includes a draft of the key Finance Bill clauses for comment. The Government welcomes views by 30 September 2013 on the issues raised in this document and the draft legislation. The final design of the reformed tax regime and the draft clauses may change in light of comments received and as work continues. The Government expects to publish a complete draft of the relevant Finance Bill clauses for a full technical consultation in the autumn. Following legislation in Finance Bill 2014, the Government plans to implement the reform on 1 December 2014. HMRC will issue guidance to help businesses prepare for implementation.

1.7 Please address any comments on the draft legislation to Mark Banks in HM Revenue and Customs (0161 827 0333, mark.banks@hmrc.gsi.gov.uk) and general queries on the reform to Graham Hunt in HM Treasury (020 7270 4326, graham.hunt@hmtreasury.gsi.gov.uk).

2

Policy development since the consultation

2.1 It was clear from the consultation that two specific areas were of particular concern to respondents. These were the way in which the Government would define a “UK customer” and the mechanisms that would be put in place to ensure the successful enforcement of the reformed tax regimes.

2.2 Having taken into account the concerns of consultation respondents on the definition of UK customer and the right enforcement mechanisms for the reformed regimes, the Government believes it has settled on the right approach. As two of the most significant areas of the reforms the Government welcomes further comment on these issues, which may be refined further.

Definition of UK person

2.3 Determining whether transactions are made in the UK or by a UK person is essential for accurately determining tax liability under a place of consumption based regime. Question 4 in the consultation proposed a “reasonableness test”, where operators would be expected to take reasonable steps to determine the location of their customers in order to correctly identify UK customers. The consultation paper suggested that operators could use a number of methods which would be considered reasonable; including customer self-verification, instantaneous tracking technology (such as geo-location software on smartphones) and the registered payment address of a customer.

2.4 There was concern among some operators that there was not sufficient certainty regarding the definition of “reasonable”. The majority of operators also argued that determining a customer’s physical location at the time each gamble was made would be very difficult to achieve and costly to oversee. This would be especially so for remote gambling undertaken via a mobile phone or tablet computer, where a customer may gamble whilst moving (for example as they travel).

2.5 The majority of respondents preferred a system where their UK customers (a “UK person”) were determined by reference to where the customer usually lives. This approach would also provide a clearer definition of UK consumption which would be easier to comply with.

2.6 In light of the preference of the majority of consultation responses, the Government has decided that for the purposes of remote gambling the definition of UK customers will be based on where the customer usually lives. This will mean that, for example, remote gambling undertaken by a customer who usually lives in the UK whilst temporarily on holiday abroad will be liable for tax (as long as that gambling could have been accessed from the UK). Conversely, remote gambling undertaken by a customer who usually lives abroad whilst temporarily in the UK will not be. Premises based gambling will be unaffected.

2.7 Many operators are already subject to “know your customer” regulatory requirements where operators are required to collect information on their customers. In many cases information can be verified from multiple sources. This approach is therefore expected to minimise any additional administrative burden on operators. HMRC will publish guidance on determining the place where customers usually live ahead of the implementation of the reform.

Enforcing a place of consumption based gambling tax regime

2.8 Throughout the consultation process many existing remote gambling operators expressed concern about enforcement. In particular, since many liable operators may be based abroad and have no assets, staff or presence in the UK at present, there was a fear that some operators would seek to continue to trade with UK customers without paying tax. If this happened, this could disadvantage those operators who correctly accounted for and paid tax which was due. The majority of respondents raised enforcement concerns as part of the consultation and felt that the reform should be supported by a strong and robust enforcement regime.

2.9 The consultation paper proposed that, in some circumstances, the Remote Operating Licence (ROL) of a non-compliant operator would be revoked and that a criminal penalty for failure to provide HMRC with a security (when one was required) should be introduced. Failure to provide for a security when one is required is already a criminal offence for some other taxes. This was supported by many respondents.

2.10 Following the comments received during the consultation the Government will employ a number of tools to help ensure compliance with the reformed tax regime. In the first instance these will include:

- HMRC working together with other tax jurisdictions to recover outstanding tax debts, including through the EU Mutual Assistance in the Recovery of Debt (MARD) directive;
- HMRC requiring operators based in jurisdictions with which the UK does not have a reliable debt collection and assistance agreement, to either:
 - appoint a joint and severally liable fiscal representative; or
 - appoint an administrative representative (who would not be joint and severally liable) and provide HMRC with a security
- HMRC requiring operators with a poor compliance history to provide HMRC with a security.

2.11 Following support from respondents, the Government intends that a new summary criminal offence will be created for operators that are required but fail to provide a security to HMRC. Sufficient opportunity will be provided for operators to provide a security, and a criminal conviction would only be sought in appropriate circumstances. Any decision by HMRC to require a security from a remote gambling operator will be accompanied by the statutory right to an independent review of that decision and the right of appeal to an independent tribunal.

2.12 In addition to the creation of a summary criminal offence for the failure to provide a security when one is required, the Government intends to create summary criminal offences for the failure to appoint a fiscal or administrative representative (when one is required). Remote gaming duty, general betting duty and pool betting duty already provide for indictable criminal offences for the fraudulent evasion of the duties. For remote gaming duty, this offence carries upon conviction an unlimited fine and imprisonment of up to seven years. The Government intends to mirror these penalties for general betting duty and pool betting duty.

2.13 Finally, in serious cases of non compliance the consultation proposed that an operator would have their ROL from the Gambling Commission revoked following a direction from HMRC. Following reforms to remote gambling regulation led by the Department for Culture, Media and Sport, all operators based anywhere in the world who provide gambling to customers based in Great Britain will be required to hold a ROL from the Gambling Commission. Without a ROL, a remote gambling operator could not legally advertise remote gambling or transact with customers in Great Britain.

2.14 The Government's current intention is that where a ROL holder breaches certain tax related "trigger points", and does not rectify them within a reasonable period, HMRC will initiate a process that will require the Gambling Commission to suspend an operator's ROL. The Government intends that these triggers will include:

- The licence holder fails to register for general betting duty, pool betting duty or remote gaming duty;
- The licence holder fails to adhere to key registration requirements – such as a failure to provide a security or representative when one is required or a failure to provide HMRC with access to records to ensure that tax is paid accurately;
- A time to pay agreement between the operator and HMRC (where applicable) has broken down and is not replaced by a further time to pay agreement;
- HMRC issues an assessment for unpaid duty and this assessment is not paid by the due date and no appeal is made;
- The licence holder fails to pay tax due and this failure is over a time/ amount threshold. As set out in the consultation, this would be:
 - a default on tax liabilities of two periods, with the default extending in each case up to three months (i.e. duty due in respect of two accounting periods is paid late) within a rolling five year period; or
 - a default on tax liability of one accounting period, with the default extending to six months, within a rolling five year period.

2.15 Following the suspension of a ROL, if an operator does not fulfil any outstanding tax requirements, HMRC will require the Gambling Commission to permanently revoke the ROL after 6 months (subject to any appeal made by the operator). The decision to revoke will be made by HMRC rather than the Gambling Commission, and as such operators will be able to appeal to the Tax Tribunal before a licence is revoked. Full guidance on the licence revocation process will be issued by HMRC ahead of the implementation of the reform.

2.16 Once a licence had been revoked, if the operator wanted to apply for a new ROL they would have to apply to the Gambling Commission. As the licence revocation process relates to tax failures (rather than regulatory failures) the Government intends that the Gambling Commission could not issue a new ROL to an operator who had previously had a ROL revoked until or unless any outstanding tax failures had been rectified.

3

Consultation responses

3.1 This chapter summarises the responses received to the questions in the consultation¹ and outlines the Government's response.

General questions

The Government welcomes general views on the proposed policy design, and also seeks answers to some specific questions summarised below.

The Government also welcomes comments on the summary of tax impacts provided in Chapter 5. Information received during the consultation will be used to refine the analysis of the impacts.

3.2 Many respondents gave their thoughts on the principle of moving to a place of consumption tax basis for remote gambling and on the gambling tax regime more generally. Views on the reforms were mixed; some respondents argued that a place of consumption tax basis would help to level the playing field in terms of UK tax liability between operators supplying the UK market from the UK and those supplying from overseas. Others argued that the reform would damage profitability (for those firms supplying from overseas) and distort competition.

3.3 Many respondents commented on the potential impact of the reform on competition within the remote gambling sector. In particular, some respondents were concerned that inadequate enforcement of a place of consumption based tax regime would distort competition in favour of non-compliant operators who would seek to evade paying tax that was legally due. Some respondents stressed the need for strong enforcement mechanisms and low rates of duty, both to ensure compliance with the regime and to minimise any distortion to competition.

3.4 There were some more general comments on the UK tax system. Specifically, some respondents noted that the exemption of gambling from VAT in the UK and the inability to recover input VAT against UK gambling tax liabilities is a significant deterrent to businesses locating their remote gambling operations in the UK. Some respondents argued that allowing businesses to recover input VAT paid on purchases against their gambling duty liabilities would improve the competitiveness of the UK tax system.

The Government's response

3.5 The Government has carefully considered the potential impact of the reform on competition in the remote gambling market. Bringing all operators supplying gambling to UK consumers within the UK gambling tax regime will improve fairness and competition.

3.6 Tax rates were beyond the scope of the consultation. The Government keeps all taxes under review and welcomes the information received regarding the estimated impact of tax levels on gambling businesses. The scope of the consultation was limited to the gambling tax regime and the Government has not therefore considered changes to the treatment of other taxes such as VAT.

¹ Most respondents did not provide a response to every question in the consultation document. References to "respondents" or "responses" are therefore in respect of those who responded to the respective question.

Specific questions

Scope of a place of consumption basis of taxation

(Question 1) It is envisaged that only the changes necessary to move general betting duty, pool betting duty and remote gaming duty to a place of consumption basis will be made. (i) What, if any, other changes to the existing duty regimes that have not been discussed in this document are required? (ii) Do you have any other comments on the scope or design of the reform?

3.7 Broadly speaking, respondents did not identify any changes that would need to be made to other duty regimes as part of the reform. However, some respondents called for greater harmonisation across the wider gambling duty regimes, such as a move toward uniform tax rates for all gambling activities.

3.8 Many respondents had comments on the scope of the reform. The most prevalent of these regarded the tax treatment of marketing costs, including bonuses and free-plays. A number of respondents suggested that these player incentives should be excluded entirely from all gambling taxes. These respondents argued this would have the effect of making the tax regimes more generous toward operators and would encourage operators to offer promotions, and could also help lessen the distortion in competition between compliant and non-compliant operators.

The Government's response

3.9 As outlined in the consultation document, the reform to gambling taxation will be limited to changes to general betting duty, pool betting duty and remote gaming duty. In most areas the reform will not extend beyond the changes necessary to ensure gambling by UK customers is taxed on a place of consumption basis, although some changes will be made to the administration of the taxes. For example, the Government intends that a quarterly accounting period will be adopted for the three taxes, and that it will be mandatory for ROL holders to register and file returns electronically.

3.10 The Government has not been persuaded that changes to the tax treatment of "free plays" or bonuses are appropriate at this time. As such, the Government intends that the tax treatment of player promotions and incentives such as bonuses and free plays for general betting duty, pool betting duty and remote gaming duty will remain unchanged from the current situation for those taxes, as set out in relevant gambling duties legislation.

(Question 2) What, if any, specific gambling products (other than those discussed in this consultation document) need special consideration in regards to a move to a place of consumption basis of taxation?

3.11 Respondents asked the Government to give special consideration to player to player games, such as poker, where the gambling operator receives a commission or charge for the use of facilities. In the case of such games, respondents suggested that since operators did not have an interest in the outcome of the game and simply facilitated gaming between players, tax should be due only on the participation fees received from UK customers.

3.12 Several respondents suggested that the Government should review the tax treatment of "social gaming" and consider bringing it into scope of the reformed duty regime. Social gaming can include games where the player pays to take part, or to have access to certain features in the game, but cannot win a prize.

The Government's response

3.13 As proposed in the consultation document and in light of responses received, the Government has decided that the effect of the charging provision for person to person games, such as poker, will be to tax the amount that is retained from UK customers. For games against the house, the basis of remote gaming duty will be the difference between the amount that is

due in stakes from UK customers and the amount that is paid out to those customers as winnings (in respect of those stakes).

3.14 Social gaming where a prize cannot be won was out of the scope of the consultation and of the reform, since it is not currently defined as gambling either by social or tax legislation. The Government will continue to monitor the market for social gaming and other associated products to consider any impact on gambling taxation.

(Question 3) Other countries have moved, or are considering moving, to taxing remote gambling on a place of consumption basis. What, if any, lessons from your experience in providing remote gambling to customers in other countries should the UK take into account?

3.15 Responses focused on the wider effects of the reform on remote gambling markets. A number of respondents noted examples in other countries where overly burdensome tax and regulatory regimes increased costs for operators, and therefore put them at a competitive disadvantage compared to non-compliant competitors. Respondents noted that any rise in illegal shadow or “grey” market activity from non-compliant, unlicensed operators that resulted from the reform could potentially compromise customer protection and UK tax revenues. A number of operators thought this risk would increase if UK gambling tax rates were increased.

3.16 Some respondents said that countries which tax gambling gross profits, as the UK does, generally had more success in reforming their gambling tax regimes compared to countries with turnover-based taxes. This was due to the relatively high distortionary effect that turnover-based tax structures can have.

3.17 Additionally some respondents noted that the Government may find it difficult to enforce a place of consumption based tax regime, as many remote gambling businesses have no assets, staff or physical presence in the UK at present. In addition respondents noted that the need to ensure compliance would have to be balanced against ensuring that the reformed tax regime is not so restrictive as to drive operators out of the market.

The Government’s response

3.18 The Government welcomes the experiences shared by gambling operators active in other jurisdictions and appreciates that international comparisons must reflect the very different tax and regulatory approaches different countries have taken in respect of gambling.

3.19 The Government’s proposed approach to the successful enforcement of the gambling tax regimes has been outlined in the previous chapter and is discussed in more detail below in response to question 22 and 23.

Defining the customer’s location

(Question 4) It is proposed that operators will have to take reasonable steps to determine the location of their customers. (i) Do you agree with a ‘reasonableness test’ approach? If not, what alternative solutions would you propose? (ii) Are there any products for which an operator would be unable to make a reasonable attempt to determine whether the customer was in the UK or where it would be unclear when a bet was made or when the facilities were used?

3.20 As outlined in chapter 2, most respondents argued that determining a customer’s physical location at the time each gamble was made would very difficult to achieve, especially for mobile gaming or player to player games where customers may participate in a game via a third party operator. Respondents also expressed concerns over the definition of “reasonable”, administrative burdens and the overall cost of determining the physical location of customers. Many respondents expressed a preference for customer location to be determined by reference to the customer’s normal place of residence.

The Government's response

3.21 In light of the preference of the majority of consultation responses, the Government has decided that for the purposes of remote gambling the definition of UK customers (a "UK person") will be based on where the customer usually lives. Betting on premises in the UK (such as betting taking place inside licensed betting operators) will continue to be subject to tax by reference to the location of the premises without the need for the operator to determine whether the customer is a UK person.

3.22 Many operators are already subject to "know your customer" regulatory requirements, and are required to determine their customers' address. In many cases this information can be supported from multiple sources (for example, the customer's given address and the customer's credit card details). This approach is therefore expected to minimise any additional administrative burden on operators. HMRC will publish guidance on determining the place where customers usually live ahead of the implementation of the reform.

General betting duty

(Question 5) The proposed arrangements for bookmakers and betting exchanges are outlined in 3.9 and 3.10. What, if any, products or arrangements would require further consideration?

3.23 Most respondents were content with the proposed arrangements for bookmakers and betting exchanges and did not identify any products or arrangements that would require further consideration. Some respondents suggested that business users of betting exchanges could potentially avoid paying gambling taxes at present and that the taxation of betting exchanges should therefore be tightened or considered in more detail separately by the Government.

The Government's response

3.24 As proposed in the consultation document, general betting duty will be charged on a bookmaker's UK net stake receipts. In the case of remote operators, UK net stake receipts will be calculated as the difference between the amount the bookmaker is due in stakes from UK customers and the amount it has paid out in winnings to those customers. Bookmakers will continue to be entitled to carry forward losses under general betting duty, but only to the extent of their UK net stake receipts.

3.25 UK-based bookmakers taking bets via betting exchanges are already liable to general betting duty. Under the reformed regime, those carrying on the business of bookmaking via betting exchanges based anywhere in the world will be liable to duty on their UK net stake receipts in respect of their transactions with UK customers.

(Question 6) Do you agree that spread betting should continue to be liable to general betting duty on a place of supply basis?

3.26 A number of respondents argued that spread betting should be subject to the same tax treatment as fixed-odds betting, on the basis that continuing to tax spread betting on a place of supply basis would represent unequal treatment and could give rise to tax avoidance opportunities. Respondents noted that if spread betting operators based abroad were not subject to UK gambling duties, those operators would enjoy a tax advantage, and could even structure spread bets to appear very similar to fixed-odds bets, potentially distorting competition.

3.27 One respondent noted that continuing to tax spread betting operators on a place of supply basis would put UK-based spread betting operators at a competitive disadvantage to firms based abroad, since they would continue to be liable to duty on transactions in respect of both customers based in the UK and those based abroad.

The Government's response

3.28 Spread betting to UK customers is mostly provided by UK-based firms and operates under a different regulatory regime from the majority of gambling activity, with operators regulated by the Financial Conduct Authority rather than the Gambling Commission. This recognises the differences between spread betting and other forms of gambling, and spread betting's similarity with some forms of financial trading. In light of this the Government will maintain the taxation of spread betting on a place of supply basis, though will continue to monitor the provision of spread bets.

Pool betting duty

(Question 7) Under the new regime, the basis for net pool betting receipts would be the difference between stakes due from, and winnings paid to customers in the UK. (i) Would you support such an approach for traditional pools and/or other products that are subject to pool betting duty? (ii) If not, what other approaches would you propose? (iii) Could you provide further information on your business model relevant to a move to a consumption based taxation regime?

(Question 8) It is envisaged that pool betting on horses and dogs will be moved to a place of consumption basis of taxation. (i) If you operate pool betting on horses and dogs, what, if any, issues experienced by pool betting promoters discussed in 3.17 also apply to you? (ii) Should, in your view, pool betting on horses and dogs remain liable to general betting duty or would a revised pool betting duty be more appropriate?

3.29 Pool betting duty is currently charged on stakes plus expenses minus prizes. Some respondents noted that the "expenses" provision is outdated and creates unnecessary complexity for operators. Respondents also noted that, in the case of commingled pools, where two or more operators merge pools to offer larger prizes, operators may face difficulties identifying whether customers of other operators' were UK customers, and therefore in accounting for duty liability.

3.30 Respondents also noted that continuing to tax pool betting on a "stakes minus prizes" formula under a place of consumption system could lead to high levels of duty volatility for an operator, depending on whether the winner of a large pool was a UK or non-UK customer. To overcome these issues and to reflect the fact that pool betting operators do not have an interest in the outcome of the gamble, respondents suggested that duty be applied to an operators' commission on transactions with UK customers, rather than to net stake receipts.

3.31 Respondents who expressed a preference were in favour of pool betting on horses and dogs remaining liable to general betting duty (rather than moving to the pool betting duty regime).

The Government's response

3.32 In light of the consultation responses received, the Government intends that pari-mutuel pool betting on horses and dogs will remain liable to general betting duty though calculated in a similar way to other pari-mutuel pool bets. The Government intends that the basis for general betting duty and pool betting duty in the case of pari-mutuel pool bets will be the amount that is retained from UK customers. This will be calculated on a proportional basis. This will make pool betting operators less susceptible to duty volatility than would otherwise have been the case.

3.33 Betting other than pari-mutuel betting that is liable to pool betting duty will continue to be subject to pool betting duty on a gross profits basis (i.e. stakes due minus prizes paid). The Government has decided, in light of responses received, to remove the "expenses" provision that imposes a duty liability on certain expenses of the promoter or associated persons.

Remote gaming duty

(Question 9) It is proposed that remote gaming duty will be charged on the provision of facilities for remote gaming to customers in the UK. What, if any, products or arrangements exist for which the proposed approach would cause concerns?

3.34 Some respondents noted that it is not always clear whether the provider of the network or the operator with whom the customer gambles is considered to be the person providing the facilities for remote gaming, particularly in cases where the software for remote gaming is provided by a third-party. As such some respondents felt that the definition of “provision of facilities” would need to be clarified further.

3.35 Some respondents reiterated that in the case of player to player games such as poker, tax should be due on participation fees from UK customers.

The Government's response

3.36 Following the concerns raised by many operators surrounding the definition of “provision of facilities”, the Government intends that the person liable for remote gaming duty will be the person with whom the customer contracts or enters into arrangements with for the gamble. While in the vast majority of cases this will be the same person as the person who holds a Gambling Commission ROL, the Government intends that ROL holders will also be made joint and severally liable to duty where this is not the case.

Liability for the duty

(Question 10) It is proposed that the licence holder will be made jointly and severally liable to duties on remote gambling. Are there any commercial circumstances in which the licence holder is unaware of dutiable profits and therefore at present is unable to ensure that the right tax is paid?

3.37 Some respondents raised concerns with the extension of joint and several liability to members of a network, where a single gambling offering is provided by two or more operators. In particular, they noted that operators would not always be able to account for their partners' duty liabilities, and that they should therefore not be made liable in these circumstances.

3.38 However, some operators responded that it would be highly unlikely that a holder of a ROL would be unaware of dutiable profits. Some highlighted that, in cases where tax liability is shared, for example between a customer-facing operator and a service provider, there may be short periods during a commercial “reconciliation period”, when profits or losses are settled, when the holder of a ROL would not be aware of how much tax they would be liable to. Beyond the reconciliation period, ROL holders would have full sight of the profits from the offering, and therefore of their tax liability.

The Government's response

3.39 The Government has taken respondents' concerns into consideration and intends that, as outlined in the consultation, joint and several liability will extend to all those holding a ROL for a relevant remote gambling offering. Joint and several liability will not extend to different companies who offer gambling as part of a network, such as a single poker game with customers of different operators, but who are not corporately affiliated.

(Question 11) Under the current legislation, a number of people associated with the provision of remote gambling can be liable to gambling duties (see Table 3.A). If you engage in arrangements with others to jointly provide remote gambling to UK customers, do you have (or could you contract for) sufficient certainty as to who would be liable to the duty?

3.40 The majority of respondents said that liability could be clearly defined in existing commercial contracts, and that they would therefore have sufficient certainty as to who would be liable to pay duty. Some respondents noted that certainty would be contingent on liability being clearly defined in legislation.

The Government's response

3.41 As stated in the response to Question 9, duty liability will be attached to the person with whom the gambler contracts or enters into arrangements for the gamble. The Government believes this approach will provide greater clarity to operators and welcomes views on whether there are any complex commercial arrangements which may make duty liability difficult to determine. HMRC will publish guidance to assist operators to determine duty liability ahead of the implementation of the reform.

(Question 12) It is envisaged that where a non-compliant operator accesses the UK market using a critical partner, the partner could become liable for future duty. (i) What are your views on this approach? (ii) Which critical partners should this extend to and what arrangements between the principal and its critical partners should be in scope? (iii) To what financial extent should critical partners be liable to a non-compliant operator's future duty? (iv) What notice period would critical partners require before becoming liable for duty?

3.42 While most respondents were in favour of extending liability to critical partners of non-compliant operators in some way, on the basis that it would help ensure compliance, views on how this should be achieved were mixed. A number of respondents were in favour of critical partners being broadly defined to include all affiliates and commercial partners of remote gambling operators.

3.43 However some respondents raised strong concerns that a broad definition of "critical partner" could deter non gambling commercial partners and service providers, such as financial institutions and payment service providers, from entering into contracts with remote gambling businesses. This could cause significant disruption to the remote gambling industry and may have wide ranging unintended consequences.

The Government's response

3.44 After considering the issue further, the Government has decided not to extend tax liability to the critical partners of non-compliant operators. As noted by many of the consultation responses, a broad definition of "critical partner" could risk extending tax liability beyond gambling operators to affiliates and others who legitimately have no sight of the profits from a remote gambling offering. Such an approach may have significant unintended consequences for the remote gambling market. A narrow definition may have fewer unintended effects but would be relatively easy to bypass by non-compliant operators and their commercial partners, who could reorganise their contractual arrangements in such a way so that they did not fall under the critical partner definition.

3.45 In light of these difficulties, the Government does not intend to extend liability to the critical partners of non-compliant operators at this time. The Government will continue to consider options for extending liability to critical partners of non-compliant operators in future, and would welcome proposals that would achieve this without causing undue disruption to compliant operators or creating adverse consequences within the remote gambling market.

Transition to a place of consumption based taxation system

(Question 13) It is envisaged that overseas operators will have to account for duty on gross gambling profits generated from UK customers after the implementation date. (i) Do you agree with this approach? (ii) If not, what alternative approaches do you propose? (iii) Are there any circumstances where this approach would not be possible?

3.46 Most respondents were content with the approach proposed in the consultation. A number of respondents felt that gambles from UK customers placed before the implementation date where winnings in respect of those gambles were paid out after the implementation date, should attract relief. A number of respondents requested a long-lead in time before implementation of the reformed tax regime, so that they could adequately prepare their accounting systems.

The Government's response

3.47 In light of the responses received and in line with the consultation, the Government intends that operators will be required to account for duty on dutiable profits generated from UK customers after the implementation of the reform.

3.48 Under this approach, where winnings are paid out to UK customers after the implementation date in respect of stakes received before that date, it will be possible to account for those winnings in the duty calculation. This will ensure that an inflated duty liability in the first accounting period after implementation is not incurred in respect of transactions coming into tax for the first time. In order to benefit from this, remote gambling operators would need to determine which stakes were from UK customers before the implementation date and correctly ascribe winnings after the implementation date to those customers.

Repeal of double taxation relief

(Question 14) It is proposed that the double taxation relief for remote gambling will cease upon implementation of a place of consumption basis of taxation. Are there any circumstances under which double taxation relief would still be required?

(Question 15) The final reconciliation for the double taxation relief would be conducted at the end of the accounting period ending after the implementation date of a place of consumption basis of taxation. (i) Do you agree with such an approach? (ii) If not, do you have any views on alternative means to ensure that the right amount of relief is claimed?

3.49 Several respondents said that double taxation relief for remote gambling should only cease if there was certainty that there was no longer any chance for double taxation to occur in the future. Responses also noted that double taxation relief should only be repealed after the final claims had been made.

3.50 Some respondents suggested double taxation relief should be extended to operators based outside the UK where those operators were based in jurisdictions with place of supply based tax regimes, as operators in those jurisdictions could be subject to double taxation on their transactions with UK customers. Some respondents noted that even where other jurisdictions operated place of consumption based tax regimes, the potential for future double taxation still existed, for example if different jurisdictions defined customer location differently.

3.51 Finally, one respondent highlighted the possibility of the future double taxation of spread betting, which will remain taxed on a place of supply basis in the UK. Spread betting by non-UK customers with UK-based operators could be subject to double taxation in cases where those customers are from jurisdictions with place of consumption based tax regimes for spread betting.

The Government's response

3.52 The double taxation relief for remote gambling was introduced to allow UK-based gambling providers to claim relief in respect of duty paid in other countries in respect of their overseas customers. As remote gambling providers will no longer be liable to pay UK duty in respect of non-UK customers when the tax regimes are put on a place of consumption basis (except for spread betting, which will remain on a place of supply basis), the Government will repeal the double taxation relief as part of the gambling tax reforms.

3.53 The Government will continue to monitor the remote gambling market to consider the possibility of future double taxation of remote gambling and spread betting, particularly the effect of other jurisdictions' moves to place of consumption based tax regimes on UK-based spread betting operators.

3.54 The Government expects that HMRC will not accept double taxation relief claims relating to any period after 1 December 2014. In respect of claims for time periods before 1 December 2014, HMRC will accept claims made up to 12 months after the end of the claim period.

Filing requirements and accounting periods

(Question 16) Do you believe that an electronic registration and electronic filing facility is necessary for a move to a place of consumption basis of taxation? If so, do you have any views on its design?

3.55 All respondents said that an electronic registration and filing facility for the reformed tax regimes would be either preferable or necessary. Several respondents expressed a desire for the facility to be as similar as possible to existing systems for tax registration and filing, to minimise the administrative burden for operators. Operators also requested clear guidance from HMRC ahead of the implementation of the reforms on how the system would work.

The Government's response

3.56 In light of the comments and views expressed by respondents, the Government intends to introduce an electronic registration and filing facility for general betting duty, pool betting duty and remote gaming duty. Electronic registration and filing of returns will be mandatory for taxpayers with a Gambling Commission ROL. Taxpayers without a ROL, for example high street bookmakers subject to general betting duty or pool betting duty, will have the option to move to electronic filing, but will continue to be able to file paper returns if they wish.

(Question 17) If the reform were to require standardised accounting periods would you have any views as to: i) The most appropriate length for accounting periods? ii) Whether accounting periods should fit with calendar months or have other start and finish dates? iii) The amount of notice you would require before changes to accounting periods were implemented?

3.57 Responses relating to accounting periods were mixed, owing largely to operators' varied accounting systems, though many operators supported the introduction of standardised accounting periods. A number of responses requested that operators are allowed the flexibility to alter the start date of an accounting period to align with their existing accounting practices. Respondent's views on the amount of notice which would be required varied from six to twelve months.

The Government's response

3.58 To reduce the administrative burdens associated with operating a number of different accounting period arrangements, HMRC will provide for quarterly accounting periods as standard for general betting duty, pool betting duty and remote gaming duty following the implementation of the reform. Quarterly accounting periods will follow the model of a number of other taxes, including Machine Games Duty. This will apply to all operators who are subject to

general betting duty, pool betting duty or remote gaming duty, including those currently on monthly accounting periods.

3.59 Businesses that wish to use non-standard accounting periods will be allowed to do so. Operators will be able to choose any date up to 16 days either side of what would have been the end of their quarterly accounting period under standard arrangements. This will allow, for example, a business to have accounting periods which always end on the last Sunday of the month. Suitable transitional arrangements will be put in place for existing operators to switch from monthly to quarterly returns.

(Question 18) (i) Do you have any views as to whether harmonised interest and late filing and payment penalties should be introduced for a place of consumption basis of taxation? (ii) How much notice would you require if these were to be introduced?

3.60 The majority of respondents were in favour of harmonised interest and late filing and payment penalties in line with the arrangements for other taxes. Views on the amount of notice required varied. Some respondents requested an initial “grace period”, to allow operators to adjust to any changes that were made without risk of incurring penalties.

The Government’s response

3.61 In light of the responses received and in common with Machine Games Duty, HMRC’s harmonised interest and late filing and penalty regimes² will be applied to general betting duty, pool betting duty and remote gaming duty. This will replace the penalty regimes currently in operation for these taxes.

Registration

(Question 19) It is proposed that an aligned registration process across general betting duty, pool betting duty and remote gaming duty will be created. What, if any, views do you have on its design?

3.62 The majority of respondents were in favour of an aligned registration process for general betting duty, pool betting duty and remote gaming duty. A small number of respondents raised concerns that such a system may force them to register for duty on products that they do not offer.

The Government’s response

3.63 Operators are currently required to notify HMRC of liability to general betting duty and must have a permit from HMRC for carrying on a pool betting business. A registration system will be introduced for both duties as part of the reform to align with the current provision for registration for remote gaming duty. For those gambling operators who have liability to more than one gambling tax, separate registration will be required for each tax. However to minimise burdens for those who apply each registration system will have common features so that the process is streamlined. HMRC will not require operators to register for taxes when they have no reason to do so.

3.64 This means that all businesses, including terrestrial betting operators with no remote betting operations will need to register. Existing operators who have notified HMRC of a general betting duty liability or have an HMRC pool betting permit will not have to register, and will be treated as already having registered. This will minimise the additional administrative burden on these operators. HMRC may require additional information from these existing operators. HMRC will publish guidance on businesses’ new requirements and the registration process for general betting duty, pool betting duty and remote gaming duty.

² For further information please see <http://www.hmrc.gov.uk/agents/compliance/penalties.htm>

3.65 HMRC will also provide a facility for group registrations for each tax (but a group will not be able to cover more than one tax). Group treatment will be allowed for corporate bodies under a common controller providing at least one of the members is in the UK and will be the representative member. This may be useful to, for example, businesses under a common controller which operate high-street betting shops in the UK and remote betting operations based abroad. A group need only submit one tax return per accounting period which will show the total duty liability for the group for that tax. If a group has a member outside the UK then that member will not require either a fiscal representative or an administrative representative (see below). All group members will have joint and several liability for the relevant tax.

(Question 20) It is envisaged that operators based in jurisdictions without reciprocal debt collection arrangements with the UK will be able to appoint an administrative representative in the UK and deposit a security rather than appointing a jointly and severally liable fiscal representative. Would you expect to take advantage of the facility to appoint an administrative representative?

3.66 Views varied on whether operators would expect to appoint administrative representatives, if they were given the choice to do so. Some respondents asked for certainty on the level of security which would be required if they chose to appoint an administrative rather than fiscal representative, and for HMRC guidance regarding who HMRC would accept as a fiscal representative. Some respondents said that any security requirement should not be large enough to act as a barrier to entry into the market, which could distort competition.

The Government's response

3.67 In order to successfully enforce the reformed gambling tax regimes, HMRC will need access to accurate operator records and enforceable assets. Where operators who supply remote gambling to UK customers are based in foreign jurisdictions with which the UK does not have a reliable debt collection and assistance agreement (and are not part of a group registration with a UK-based operator), they will be required to either:

- 1 Appoint a joint and severally liable fiscal representative; or
- 2 Appoint an administrative representative (who would not be joint and severally liable) and provide HMRC with a security.

3.68 A fiscal representative would need to be established in the UK and would be subject to HMRC approval. Typically, a fiscal representative would be a solicitor, accountant or a UK subsidiary of an international gambling operator with sufficient substance to meet the liability. The representative does not have to be a person involved in the gambling industry.

3.69 An administrative representative would also need to be in the UK and would be subject to HMRC approval, but would not be joint and severally liable to the principal's tax liability. The representative would be expected to have access to appropriate records and make tax returns on behalf of the registered operator. Operators who appoint an administrative representative instead of a fiscal representative will be required to provide HMRC with a security, which could be drawn-down by HMRC in the event that tax was not paid. A security would typically be equivalent to six months' estimated duty liability.

3.70 HMRC will publish guidance on administrative and fiscal representatives, as well as how security provision will work, ahead of implementation of the reform.

Validation of earnings

(Question 21) To ensure tax compliance, HMRC will need to validate the level of earnings an operator generates from customers in the UK. (i) What are your views on effective approaches to validating earnings remotely? (ii) What are the best approaches to supplying transactional information to HMRC?

3.71 Broadly speaking, responses suggested that in practice HMRC would not experience difficulty in validating earnings, since the nature and practices of the industry (including electronic recordkeeping) are such that all transactions are recorded and could be shared easily.

3.72 Respondents suggested a range of approaches that HMRC could adopt to validate the level of earnings generated from customers in the UK. These included operators having to send soft copies of their audited accounts, validation by independent auditors, and self-assessment. Respondents also asked for validation to be as similar as possible to that in other tax regimes.

3.73 A number of responses drew on international experience to suggest that a validation system that is administratively burdensome could lead to fraudulent behaviour or non-compliance by some remote gambling operators.

The Government's response

3.74 In light of the responses received, operators will be required to provide HMRC with access to transactional records and accounts on request. These will need to be made available in the UK in an appropriate format. The Government believes that this approach will minimise any administrative burden for operators resulting from the reformed taxes. HMRC welcomes comments on how operators may comply with this requirement in the least burdensome way.

Enforcement of the duty

(Question 22) It is proposed that an operator who is required but fails to deposit a security but continues to supply dutiable transactions to UK customers would be subject to a new criminal offence. Would you support such an approach? Why?

3.75 As outlined in chapter 2, the majority of respondents highlighted the importance of robust enforcement regime of the reformed tax regimes. The consultation proposed that a new criminal offence is created for cases where an operator fails to provide HMRC with a security when required, and this was broadly supported by the industry.

3.76 While respondents were in favour of a new criminal offence, some concerns were raised. In particular, respondents noted that criminal sanctions should be used proportionately, and not applied unless other enforcement methods had been exhausted by HMRC.

The Government's response

3.77 Following support from respondents, the Government intends that a new summary criminal offence will be created for operators that are required but fail to provide HMRC with a security. Sufficient opportunity will be provided for operators to provide a security, and a criminal conviction would only be sought in appropriate circumstances. Any decision by HMRC to require a security from a remote gambling operator will be accompanied by the statutory right to an independent review of that decision and the right of appeal to an independent tribunal.

3.78 In addition to the creation of a summary criminal offence for the failure to provide a security when one is required, the Government intends to create summary criminal offences for the failure to appoint a fiscal or administrative representative (when one is required). Remote gaming duty, general betting duty and pool betting duty already provide for indictable criminal

offences for the fraudulent evasion of the duties. For remote gaming duty, this offence carries upon conviction an unlimited fine and imprisonment of up to seven years. The Government intends to mirror these penalties for general betting duty and pool betting duty.

(Question 23) An operator who has been in default on its tax liabilities for two periods of three months within five years, could have its operating licence withdrawn. What are your views on this proposed threshold?

3.79 Many respondents supported the revocation of an operators' ROL from the Gambling Commission in serious cases of gambling tax non-compliance on the basis that strong enforcement levers would deter non-compliance.

3.80 Some respondents asked for HMRC to exercise discretion before requiring the Gambling Commission to revoke operating licenses, for example to distinguish between genuine mistakes and deliberate non-compliance for tax. There were also calls for licence revocation to be subject to safeguards that apply to the revocation of licences under other taxes, such as sufficient notice before a licence is revoked and the right of appeal against a decision.

The Government's response

3.81 In light of respondents' calls for strong enforcement of the tax regimes and in line with the consultation document, HMRC will be able to require the Gambling Commission to revoke an operator's ROL if an operator seriously fails in their gambling tax obligations.

3.82 As outlined in chapter 2, the Government's current intention is that HMRC will require the Gambling Commission to suspend an operator's ROL when the licence holder breaches one or more tax related "trigger points", each associated with serious non-compliance of their gambling tax obligations, and does not rectify them within a reasonable period. These triggers include:

- The licence holder fails to register for general betting duty, pool betting duty or remote gaming duty;
- The licence holder fails to adhere to key registration requirements – such as a failure to provide a security or representative when one is required or a failure to provide HMRC with access to records to ensure that tax is paid accurately;
- A time to pay agreement between the operator and HMRC (where applicable) has broken down and is not replaced by a further time to pay agreement;
- HMRC issues an assessment for unpaid duty and this assessment is not paid by the due date and no appeal is made;
- The licence holder fails to pay tax due and this failure is over a time/ amount threshold. As set out in the consultation, this would be:
 - a default on tax liabilities of two periods, with the default extending in each case up to three months (i.e. duty due in respect of two accounting periods is paid late) within a rolling five year period; or
 - a default on tax liability of one accounting period, with the default extending to six months, within a rolling five year period.

3.83 Following the suspension of a ROL, if an operator does not fulfil any outstanding tax requirements, HMRC will require the Gambling Commission to permanently revoke the ROL after six months (subject to any appeal made by the operator). The decision to revoke will be made by HMRC rather than the Gambling Commission, and as such operators will be able to appeal to the Tax Tribunal before a licence is revoked. Full guidance on the licence revocation process will be issued by HMRC ahead of the implementation of the reform.

3.84 Once a licence had been revoked, if the operator wanted to apply for a new ROL they would have to apply to the Gambling Commission. As the licence revocation process relates to tax failures (rather than regulatory failures) the Government intends that the Gambling Commission could not issue a new ROL to an operator who had previously had a ROL revoked until or unless any outstanding tax failures had been rectified.

(Question 24) A place of consumption based taxation regime for remote gambling will extend to Northern Ireland, even though the Gambling Act does not apply to Northern Ireland. What, if any, specific issues does the taxation of remote gambling provided to customers in Northern Ireland raise which need to be considered as part of the reform?

3.85 Most respondents did not express a view or concerns about extending the place of consumption based approach to Northern Ireland. A small number of respondents raised concerns about reforming the tax regime applicable to transactions with Northern Irish customers without simultaneously reforming the regulatory regime. There were also concerns that transactions with Northern Irish customers could be subject to double taxation in future.

The Government's response

3.86 In light of the responses received, the Government is content that extending the tax reforms to Northern Ireland does not present any legal or administrative issues to the Government, operators or customers.

Tax impact assessment

3.87 The Government is grateful for the consultation responses received on this section of the consultation. The responses received have helped to inform the policy development of the Government's reforms.

(Question 25) (i) What are your, or the industry's, estimates of the size of the global remote gambling market for 2011-12? (ii) What has the average market growth rate been in the past? (iii) How is the market projected to grow in the future?

3.88 Most respondents referred to H2 Gambling Capital's assessment of the remote gambling market, which estimates the remote gambling market generated gross gambling yield of around £20 billion in 2012.

3.89 There was broad agreement that the UK's remote gambling market is a relatively mature in comparison with other jurisdictions, and that the growth of the UK market in the coming years will not continue at the same pace as that of the last decade. Some respondents pointed to the mobile gambling market as a new source of growth for the remote gambling sector.

(Question 26) (i) How easy is it for new companies to enter the remote gambling market? (ii) What factors are important for companies building their market share in the UK?

3.90 Most respondents were of the view that it is difficult for new companies to enter the remote gambling market due to its highly competitive nature. Respondents mentioned low profit margins, high start up costs associated with the need for product differentiation and the costs of marketing and brand-building as barriers to entry.

3.91 Conversely some operators disagreed with this view. They felt that said start-up costs were generally low, and the high sensitivity of remote gambling customers to prices (reflecting an absence of brand loyalty) made it relatively easy for new companies to enter the remote gambling market and acquire new customers quickly.

3.92 A number of factors were said to be required to build and sustain market share over time, including innovations in technology, far-reaching advertisement campaigns, and spending on player promotions such as sign-up bonuses.

(Question 27) (i) What are your estimated gross gambling profits generated from providing remote gambling to UK customers for 2011-12? (ii) What is the split between betting and gaming? (iii) How has this split changed over time? (iv) How is it expected to change in the future? (v) What proportion of your global gross gambling profits comes from remote gambling provided to UK customers?

3.93 A number of remote gambling operators provided answers to this question on a confidential basis which has been considered by the Government.

(Question 28) (i) Would a move to a place of consumption based taxation system impact business decisions related to investment, company location and whether to offer bets to UK and/or overseas customers? (ii) If so, in what way would these decisions be impacted?

3.94 Most respondents said that increased tax liability would lead to reduced marketing expenditure in the UK, as operators looked to absorb the additional tax liability. Some operators suggested that they may consider limiting their investment in the UK market as a result of the reform, or to shift their focus to other jurisdictions. One respondent pointed to international examples where operators were still active despite the tax and regulatory regimes there being more restrictive and punitive than that in the UK.

3.95 Views on the impact of the reform on market prices were varied. Some said that, where possible, businesses would be forced to offer less attractive odds (i.e. to pass on some of the increased costs to customers). Many others said that the highly competitive nature of the sector, and the fixed-odds nature of many remote gambling products made this approach less likely, and that instead operators would look to reduce other discretionary spending including marketing expenditure and player promotions.

(Question 29) (i) What is the profile of an 'average' remote gambling customer? (ii) How does it differ from the traditional forms of gambling? (iii) Is displacement expected from traditional forms of gambling? (iv) How much displacement has been observed in the past?

(Question 30) (i) How responsive are customers to relative prices? (ii) What are your overround (profit margin) rates? (iii) What are the average overround rates in the market more generally? (iv) How would the change to remote gambling taxation change your effective tax rate and to what extent would you expect to pass it on to customers? (v) How do you expect customers to respond to this change?

3.96 Several respondents made reference to the Gambling Commission's "British Gambling Prevalence Survey 2010" for the profile of remote gambling customers.

3.97 Generally, respondents said that remote gambling customers were more technologically astute than customers who only took part in traditional forms of gambling, allowing them to more readily compare the odds and incentives offered by different operators. As a result, some respondents held the view that remote gambling customers were more sensitive to prices than customers of traditional gambling. Most respondents said that there was little displacement from traditional forms of gambling to remote gambling.

3.98 Most respondents did not answer the question on overround rates. Those who did said that margins for remote gaming tended to be much lower than for remote betting. Respondents also said that gaming offered less scope than betting for operators to decide odds and to pass the tax burden onto customers.



Consultation responses received

A.1 A total of 40 responses to the consultation were received from trade associations, operators, and other bodies and individuals. The Government is grateful to all participants who have taken the time to respond to the consultation.

Responses were received in writing from individuals, and the following trade associations and other bodies:

- Albert Poggio (Government of Gibraltar)
- Alderney Gambling Control Commission
- Bingo Association
- British Horseracing Authority
- Federation of Racecourse Bookmakers
- Gibraltar Betting and Gaming Association
- Gibraltar Gambling Commissioner
- Government of Gibraltar
- Hi-Growth eGaming Companies Forum
- Isle of Man Government
- National Casino Industry Forum (NCiF)
- Northern Ireland Department for Social Development
- Northern Ireland Horse Racing Group
- Remote Gambling Association
- The Salvation Army
- Sport and Recreation Alliance

Gambling companies and other businesses:

- 888 Holdings Plc
- 32Red Plc
- BDO LLP
- Bedfred
- Bet365 Group Ltd
- Betfair Ltd
- bwin.party digital entertainment Plc

- Dictao
- Ernst & Young LLP
- Gala Coral Group Ltd
- Gambling Data
- GBI Racing Ltd
- IG Group Holdings Plc
- International Game Technology
- Ladbrokes Plc
- Paddy Power Plc
- Pokerfuse
- The Rank Group Plc
- Sportech Plc
- Sporting Index Group Ltd
- UC Group Ltd
- Victor Chandler International Ltd
- William Hill Plc

B

List of meetings

B.1 During the course of the consultation, officials met with representatives and members from the following groups:

- 888 Holdings Plc
- Bet365 Group Ltd
- bwin.party digital entertainment Plc
- Hassan's, representing the Gibraltar Betting and Gaming Association
- National Casino Industry Forum
- Paddy Power Plc
- The Rank Group Plc
- Remote Gambling Association
- Sportech Plc
- Victor Chandler International Ltd
- William Hill Plc



Draft legislation

C.1 This annex contains early draft legislation for many of the key aspects of the reform to remote gambling taxation. The final design of the reformed tax regime and the draft clauses may change in light of comments received and as work continues. Following further refinements which will be made as necessary, the Government expects to publish a complete draft of the relevant Finance Bill clauses for an eight week technical consultation in the autumn.

1 General betting duty, pool betting duty and remote gaming duty

Schedule 1 (which makes provision about general betting duty, pool betting duty and remote gaming duty) has effect.

SCHEDULES

SCHEDULE 1

Section 1

GENERAL BETTING DUTY, POOL BETTING DUTY AND REMOTE GAMING DUTY

PART 1

AMENDMENTS OF BGDA 1981

5

1 BGDA 1981 is amended as follows.

2 In section 1 (the duty), for “5D” substitute “5C”.

3 In section 2 (bookmakers: general bets), for subsection (1) substitute –

“(1) General betting duty is charged on a bet made with a bookmaker if the bet –

10

(a) is made using UK betting facilities, or

(b) is made by a UK person and is not an excluded bet.”

4 For section 4 substitute –

“4 Pool betting on horse and dog races

(1) General betting duty is charged on a bet made by way of pool betting if –

15

(a) the bet relates only to horse racing or dog racing,

(b) the bet is not an on-course bet, and

(c) the bet –

(i) is made using UK betting facilities, or

20

(ii) is made by a UK person and is not an excluded bet.

(2) The amount of duty charged under subsection (1) in respect of bets falling within that subsection is 15% of the amount of the pool betting profits of a person (“P”) in respect of such bets for the accounting period.

25

(3) For the purpose of calculating P’s pool betting profits for an accounting period in respect of bets falling within subsection (1) –

(a) treat the bets as dutiable pool bets and apply sections 5F(5) to (8), 7(2) to (7), 7F and 7G (pool betting duty) accordingly, but

(b) treat the amount of P’s pool betting receipts in respect of the bets for the accounting period as being X (calculated by applying section 5(1)(a), (2), (4) and (5) in respect of the bets).”

30

5 (1) Section 5 (net stake receipts) is amended as follows.

(2) In subsection (1), for “sections 2 to 4” substitute “section 2 or 3”.

- (3) In subsection (3), for “sections 2 to 4” substitute “section 2 or 3”.
- (4) For subsection (7) substitute –
- “(7) This section applies for the purposes of a charge under section 4 as provided in subsection (3)(b) of that section.”
- 6 (1) Section 5AB (betting exchanges) is amended as follows. 5
- (2) In subsection (2), for “the parties to the bet are” substitute “any party to the bet who is a UK person is”.
- (3) After subsection (5) insert –
- “(6) For the purposes of this section it does not matter –
- (a) whether the bet is made in the United Kingdom or elsewhere; 10
- (b) whether the facilities are in the United Kingdom or elsewhere.”
- 7 (1) Section 5B (liability to pay) is amended as follows.
- (2) After subsection (3) insert –
- “(3A) In the case of bets falling within section 4(1) made in an accounting period, the general betting duty is to be paid by P when it becomes due.” 15
- (3) In subsection (4), omit “4(1) or”.
- 8 [Amend section 5C (bet brokers).]
- 9 Omit sections 5D (accounting period: general betting duty) and 5E (double taxation relief). 20
- 10 Before section 6 (but after the heading “Pool betting duty”) insert –
- “5F Interpretation: “dutable pool bet” etc**
- (1) For the purposes of pool betting duty –
- (a) “dutable pool bet” means a bet made by way of pool betting that satisfies the conditions in subsections (2) and (3), and 25
- (b) “P” means any person to whom an amount falls due in respect of a dutable pool bet.
- (2) The first condition is that the bet –
- (a) is made using UK betting facilities, or 30
- (b) is made by a UK person and is not an excluded bet.
- (3) The second condition is that the bet is not –
- (a) made wholly in relation to horse racing or dog racing, or
- (b) made for community benefit.
- (4) [Transitional provision based on existing s. 7B(4).] 35
- (5) A dutable pool bet is a “pooled prize bet” if all or part of the amount falling due to P in respect of the bet is assigned by P to a fund (a “prize fund”) from which winnings are paid in respect of pool betting.
- (6) A dutable pool bet is an “ordinary bet” if it is not a pooled prize bet. 40

-
- (7) The Commissioners may by notice published by them make provision about prize funds, and the notice may (in particular) make provision –
- (a) as to how such funds are to be held,
 - (b) requiring information relating to such funds to be recorded by persons responsible for them, and
 - (c) requiring such information to be provided to the Commissioners.
- (8) A notice under subsection (7) may be revised or replaced.”
- 11 For sections 7 to 7B substitute –
- “7 Duty charged on pool betting profits**
- (1) Pool betting duty is chargeable at the rate of 15% of P’s pool betting profits for an accounting period.
- (2) P’s pool betting profits for an accounting period are the aggregate of –
- (a) the amount of P’s profits for the period in respect of pooled prize bets (calculated in accordance with subsections (3) to (5)), and
 - (b) the amount of P’s profits for the period in respect of ordinary bets (calculated in accordance with subsection (6)).
- (3) P’s pool betting profits for an accounting period in respect of pooled prize bets are –
- (a) the amount of P’s pool betting receipts for the accounting period in respect of pooled prize bets, minus
 - (b) the amount of P’s pool betting receipts in respect of pooled prize bets that are assigned by P during the period to one or more prize funds.
- (4) If after P assigns an amount to a prize fund any amount contained in the fund is used otherwise than to pay winnings in respect of pool betting, the relevant proportion of the amount so used is to be added to the amount of P’s profits calculated in accordance with subsection (3) for the accounting period in which the amount is so used.
- (5) *[Provision for calculation of the relevant proportion.]*
- (6) P’s profits for an accounting period in respect of ordinary bets are –
- (a) the amount of P’s pool betting receipts for the accounting period in respect of ordinary bets, minus
 - (b) the amount of P’s expenditure for the period on winnings in respect of ordinary bets.
- (7) This section needs to be read with –
- (a) section 7A (which makes provision for the calculation of P’s pool betting receipts),
 - (b) section 7C (which makes provision about amounts due in respect of dutiable pool bets),
 - (c) section 7F (which makes provision about calculating winnings), and

- (d) section 7G (which makes provision about the treatment of losses).

7A Pool betting receipts

- (1) The amount of P’s pool betting receipts for an accounting period in respect of dutiable pool bets of any description is the aggregate of amounts falling due to P in the accounting period in respect of dutiable pool bets of that description. 5
- (2) Subsections (3) to (6) apply for the purposes of subsection (1) but have effect subject to any regulations under subsection (7).
- (3) Where— 10
- (a) a person makes a bet, and
 - (b) the bet relates to a single event, or to two or more events taking place on the same day,
- any sum due to P in respect of the bet is treated as falling due on the day on which the event or events take place. 15
- (4) Where—
- (a) a person makes a bet, and
 - (b) subsection (3) does not apply,
- any sum due to P in respect of the bet is (subject to subsection (6)) treated as falling due when the bet is made. 20
- (5) *[Transitional provision based on existing s. 7D(4).]*
- (6) *[Transitional provision based on existing s. 7D(5).]*
- (7) The Commissioners may by regulations make provision as to when any sum due to P in respect of a bet is to be treated as falling due for the purposes of subsection (1). 25
- (8) Provision made by regulations under subsection (7) may not provide for a sum due to P in respect of a bet to be treated as falling due—
- (a) earlier than when the bet is made, or
 - (b) later than when the bet is determined.
- (9) Regulations under subsection (7) may— 30
- (a) make provision that applies generally or only in relation to a specified description of bet;
 - (b) make different provision for different purposes;
 - (c) make transitional provision.”
- 12 For sections 7C to 7E substitute— 35

“7C Amounts due in respect of dutiable pool bets

- (1) Any payment that entitles a person to make a bet is, if the person makes the bet, to be treated as an amount falling due in respect of the bet.
- (2) All payments made— 40
- (a) for or on account of or in connection with bets that are dutiable pool bets for the purposes of a calculation under section 7,
 - (b) in addition to amounts falling due in respect of the bets, and

- (c) by the persons making the bets,
 are to be treated as amounts due in respect of the bets except in so far
 as the contrary is proved by the person whose pool betting profits are
 being calculated.
- (3) The payments may be payments made – 5
 (a) to P, or
 (b) to another person.”
- 13 (1) Section 7F (net pool betting receipts: calculating winnings) is amended as
 follows.
- (2) For subsection (1) substitute – 10
 “(1) Subsections (2) to (5) apply for the purpose of calculating
 expenditure on winnings in a calculation under section 7, but have
 effect subject to any regulations under subsection (6) of this section.”
- (3) In subsection (2), for “The reference to paying an amount to a person
 includes a reference to holding it in an account” substitute “Expenditure on
 winnings includes expenditure on an amount held in an account for a
 person” 15
- (4) In subsection (3), for “a payment by way of” substitute “expenditure on”.
- (5) *[Amendment of subsection (5).]*
- (6) For subsection (6) substitute – 20
 “(6) The Commissioners may by regulations make provision as to when
 expenditure on winnings is to be treated as incurred for the purposes
 of a calculation under section 7.”
- (7) *[Provision about insurance payments.]*
- (8) *[Amendment of subsection (7).]* 25
- (9) For the heading substitute “**Pool betting profits: calculating expenditure on
 winnings**”.
- 14 After section 7F insert –
- “7G Losses**
- (1) Where the calculation under section 7(3) to (5) of P’s profits for an
 accounting period produces a negative amount, it is not included in
 the calculation under section 7(2) for that accounting period but may
 be carried forward in reduction of the profits calculated under
 section 7(3) to (5) for one or more later accounting periods. 30
- (2) Where the calculation under section 7(6) of P’s profits for an
 accounting period produces a negative amount, it is not included in
 the calculation under section 7(2) for that accounting period but may
 be carried forward in reduction of the profits calculated under
 section 7(6) for one or more later accounting periods.” 35
- 15 (1) Section 8 (payment and recovery) is amended as follows. 40
- (2) In subsection (1) –

- (a) for “a person’s net pool betting receipts” substitute “P’s pool betting profits”, and
 - (b) for “the person” substitute “P”.
- (3) For subsection (2)(a) and (b) substitute –
 - “**(a)** P; 5
 - (b)** a person responsible for the management of any business in the course of which any bets have been made that are dutiable pool bets for the purposes of calculations under section 7 of the amount of P’s pool betting profits for any accounting period;” 10
- 16 Omit section 8ZA (double taxation relief).
- 17 (1) Section 8A (meaning of “bet made for community benefit”) is amended as follows.
 - (2) In subsection (1), for “6 to” substitute “5F to”.
 - (3) In subsection (5)(b), after “purposes of private” insert “or commercial”. 15
- 18 Omit section 8B (accounting period: pool betting duty).
- 19 (1) Section 8C (meaning of “bet” for purposes of pool betting duty) is amended as follows.
 - (2) In subsection (1), for “6 to” substitute “5F to”.
 - (3) In subsection (2), for “6 to” substitute “5F to”. 20
 - (4) In subsection (4), for “7C(3)” substitute “7C(2)”.
 - (5) In the heading, for “6 to” substitute “5F to”.
- 20 Before section 10 insert –
 - “9C Accounting period**
 - (1) For the purposes of general betting duty and pool betting duty – 25
 - (a) a period of 3 consecutive months is an accounting period, but
 - (b) the Commissioners may provide in regulations under paragraph 2 or 2A of Schedule 1 for some other specified period to be an accounting period.
 - (2) The first day of an accounting period is such day as the Commissioners may direct. 30
 - (3) The Commissioners may agree with a person to make either or both of the following changes for the purposes of that person’s liability to general betting duty or pool betting duty –
 - (a) to treat specified periods (whether longer or shorter than 3 months) as accounting periods; 35
 - (b) to begin accounting periods on days other than those applying by virtue of subsection (2).
 - (4) The Commissioners may by direction make transitional arrangements for periods (whether of 3 months or otherwise) to be treated as accounting periods where – 40
 - (a) a person becomes or ceases to be registered, or

- (b) an agreement under subsection (3) begins or ends.
- (5) Regulations made by virtue of subsection (1)(b) may –
- (a) apply generally or only to a particular case or class of case;
 - (b) make different provision for different cases;
 - (c) make transitional provision. 5
- (6) A direction under this section may apply generally or only to a particular case or class of case.”
- 21 Omit section 10A (definition of qualifying foreign tax).
- 22 (1) Section 12 (supplementary provisions) is amended as follows.
- (2) In subsection (4), at the appropriate place insert – 10
- ““UK betting facilities” means facilities for receiving or negotiating bets, or conducting pool betting operations, that are provided (whether temporarily or permanently) in the course of a business on any premises in the United Kingdom;”.
- 15
- (3) After subsection (4A) insert –
- “(4B) A bet is an excluded bet for the purposes of this Part of this Act if –
- (a) it was not made in or from the United Kingdom, and
 - (b) the facilities used to receive or negotiate the bet or (in the case of pool betting) to conduct the pool betting operations were not capable of being used in or from the United Kingdom. 20
- (4C) The Treasury may by order amend subsection (4B).”
- 23 For sections 26A to 26H substitute –
- “26A Interpretation etc.**
- (1) For the purposes of remote gaming duty, “remote gaming” means gaming in which persons participate by the use of – 25
- (a) the internet,
 - (b) telephone,
 - (c) television,
 - (d) radio, or 30
 - (e) any other kind of electronic or other technology for facilitating communication.
- (2) For the purposes of remote gaming duty, “dutable remote gaming arrangements” means arrangements (whether or not enforceable) between a person (“P”) and a UK person for the UK person to participate in remote gaming. 35
- (3) Arrangements are not dutable remote gaming arrangements if –
- (a) the arrangements are not entered into in or from the United Kingdom, and
 - (b) the facilities used to participate in the gaming are not capable of being used in or from the United Kingdom. 40
- (4) For the purposes of remote gaming duty, “pooled prize arrangements” means dutable remote gaming arrangements in respect of which all or part of the amounts falling due in respect of

participation by a UK person in remote gaming under the arrangements are assigned by P to a fund (a “gaming prize fund”) from which prizes are provided to participants in gaming.

- (5) For the purposes of remote gaming duty “ordinary arrangements” means dutiable remote gaming arrangements that are not pooled prize arrangements. 5
- (6) The Treasury may by order amend –
 - (a) the definition of “remote gaming” in subsection (1), and
 - (b) subsection (3).
- (7) An order under subsection (6) may include incidental, consequential or transitional provision. 10
- (8) The Commissioners may by notice published by them make provision about gaming prize funds, and the notice may (in particular) make provision –
 - (a) as to how such funds are to be held, 15
 - (b) requiring information relating to such funds to be recorded by persons responsible for them, and
 - (c) requiring such information to be provided to the Commissioners.
- (9) A notice under subsection (8) may be revised or replaced. 20

26B The duty

A duty of excise to be known as remote gaming duty is charged on dutiable remote gaming arrangements.

26C The rate

- (1) Remote gaming duty is chargeable at the rate of 15% of P’s remote gaming profits for an accounting period. 25
- (2) P’s remote gaming profits for an accounting period are the aggregate of –
 - (a) the amount of P’s profits for the period in respect of pooled prize arrangements (calculated in accordance with subsections (3) to (5)), and 30
 - (b) the amount of P’s profits for the period in respect of ordinary arrangements (calculated in accordance with subsection (6)).
- (3) P’s remote gaming profits for an accounting period in respect of pooled prize arrangements are –
 - (a) the amount of P’s remote gaming receipts for the accounting period in respect of pooled prize arrangements, minus 35
 - (b) the amount of P’s remote gaming receipts in respect of pooled prize arrangements that are assigned by P during the period to one or more gaming prize funds. 40
- (4) If after P assigns an amount to a gaming prize fund any amount contained in the fund is used otherwise than to provide relevant prizes to participants in remote gaming, the relevant proportion of the amount so used is to be added to the amount of P’s profits calculated in accordance with subsection (3) for the accounting period in which the amount is so used. 45

- (5) *[Provision identifying relevant prizes and for calculation of the relevant proportion.]*
- (6) P's profits for an accounting period in respect of ordinary arrangements are –
- (a) the amount of P's remote gaming receipts for the accounting period in respect of ordinary arrangements, minus 5
 - (b) the amount of P's expenditure for the period on winnings in respect of ordinary arrangements.
- (7) This section needs to be read with –
- (a) section 26E (which makes provision for the calculation of P's remote gaming receipts), 10
 - (b) section 26F (which makes provision for the calculation of P's expenditure on remote gaming winnings), and
 - (c) section 26G (which makes provision about the treatment of losses). 15

26D Accounting periods

- (1) For the purposes of remote gaming duty –
- (a) a period of 3 consecutive months is an accounting period, but
 - (b) the Commissioners may by regulations provide for some other specified period to be an accounting period. 20
- (2) The first day of an accounting period is such day as the Commissioners may direct.
- (3) The Commissioners may agree with P to make either or both of the following changes for the purposes of P's liability to remote gaming duty –
- (a) to treat specified periods (whether longer or shorter than 3 months) as accounting periods,
 - (b) to begin accounting periods on days other than those applying by virtue of subsection (2). 25
- (4) The Commissioners may by direction make transitional arrangements for periods (whether of 3 months or otherwise) to be treated as accounting periods where –
- (a) a person becomes or ceases to be registered, or
 - (b) an agreement under subsection (3) begins or ends. 30
- (5) Regulations under subsection (1)(b) may –
- (a) apply generally or only to a particular case or class of case;
 - (b) make different provision for different cases;
 - (c) make transitional provision. 35
- (6) A direction under subsection (2) may apply generally or only to a particular case or class of case. 40

26E Remote gaming receipts

- (1) The amount of P's remote gaming receipts for an accounting period in respect of dutiable remote gaming arrangements of any description is the aggregate of the amounts falling due in that period (whether to P or another person) in respect of the participation in 45

remote gaming by UK persons under the arrangements of that description.

- (2) The Treasury may by order provide that where a UK person who participates in remote gaming relies on an offer which waives payment or permits payment of less than the amount which would have been required to be paid without the offer, the UK person is to be treated for the purposes of this section as having paid that amount. 5

26F Remote gaming winnings

- (1) The amount of P's expenditure on remote gaming winnings for an accounting period in respect of ordinary arrangements is the aggregate of the value of prizes provided (whether by P or another person) in that period which have been won (at any time) by UK persons participating in remote gaming under the arrangements. 10
- (2) A reference to providing a prize to a UK person includes a reference to crediting money in respect of remote gaming winnings by the UK person to an account if the UK person is notified that – 15
- (a) the money is being held in the account, and
 - (b) the UK person is entitled to withdraw it on demand.
- (3) The return of a stake is to be treated as the provision of a prize. 20
- (4) Where the account of a UK person participating in remote gaming is credited otherwise than as described in subsection (2), the credit is to be treated as the provision of a prize; but the Commissioners may direct that this subsection is not to apply in a specified case or class of cases. 25
- (5) Subsections (2) to (6) of section 20 apply (with any necessary modifications) for the purpose of remote gaming duty as for the purpose of bingo duty.

26G Losses

- (1) Where the calculation under section 26C(3) to (5) of P's profits for an accounting period produces a negative amount, it is not included in the calculation under section 26C(2) for that accounting period but may be carried forward in reduction of the profits calculated under section 26C(3) to (5) for one or more later accounting periods. 30
- (2) Where the calculation under section 26C(6) of P's profits for an accounting period produces a negative amount, it is not included in the calculation under section 26C(2) for that accounting period but may be carried forward in reduction of the profits calculated under section 26C(6) for one or more later accounting periods. 35

26H Exemptions

- (1) Remote gaming duty is not charged on dutiable remote gaming arrangements if and in so far as the remote gaming in which a UK person participates under the arrangements – 40
- (a) is charged with another gambling tax, or
 - (b) would be charged with another gambling tax but for an express exception. 45

-
- (2) Subsection (1)(b)–
- (a) does not prevent remote gaming duty being charged on dutiable remote gaming arrangements where the remote gaming in question is the playing of bingo which is not licensed bingo (as to the meaning of which terms see section 20C), and 5
 - (b) does not apply in cases where the other gambling tax is machine games duty.
- (3) In this section “gambling tax” means –
- (a) machine games duty, 10
 - (b) bingo duty,
 - (c) gaming duty,
 - (d) general betting duty,
 - (e) lottery duty, and
 - (f) pool betting duty. 15
- (4) The Treasury may by order –
- (a) confer an exemption from remote gaming duty, or
 - (b) remove or vary (whether or not by textual amendment) an exemption under this section.
- (5) In calculating P’s remote gaming profits for an accounting period, no account is to be taken of amounts or prizes if, or in so far as, they relate to remote gaming to which an exemption applies by or under this section.” 20
- 24 (1) Section 26I (liability to pay) is amended as follows.
- (2) After subsection (2) insert – 25
- “(2A) Remote gaming duty which is charged on P’s remote gaming profits for an accounting period may be recovered from the holder of a remote operating licence for the business in the course of which the gaming took place as if the holder of the licence and P were jointly and severally liable to pay the duty. 30
- (2B) In subsection (2A) “remote operating licence” has the same meaning as in the Gambling Act 2005 (see section 67 of that Act).”
- (3) In subsection (3)(c), at the end insert “(including provision requiring payments to be made electronically)”.
- 25 Omit sections 26IA to 26IC (double taxation relief). 35
- 26 (1) Section 26J (registration) is amended as follows.
- (2) For subsections (1) and (2) substitute –
- “(1) The Commissioners must maintain a register of persons who enter into arrangements which may make them liable for remote gaming duty. 40
 - (2) A person may not enter into such arrangements without being registered.”
- (3) In subsection (3)(a), after “registration” insert “(including provision requiring applications to be made electronically)”.

- (4) In subsection (4) after “licence” insert “(within the meaning given by section 67 of the Gambling Act 2005)”.
- (5) For subsections (5) and (6) substitute –
- “**(5)** The regulations may permit the Commissioners to make registration, or continued registration, conditional; and the regulations may, in particular, permit the Commissioners to require –
- (a) the provision of security for payment of remote gaming duty;
- (b) (in the case of a foreign person) the appointment of a United Kingdom representative with responsibility for one or both of the following –
- (i) making returns in respect of remote gaming duty;
- (ii) discharging liability to remote gaming duty.”
- 27 (1) Section 26K (returns) is amended as follows.
- (2) In subsection (1), for “provide facilities for remote gaming in respect of which remote gaming duty may be chargeable” substitute “enter into arrangements which may make them liable for remote gaming duty”.
- (3) In subsection (2)(e), after “making” insert “(including provision requiring returns to be made electronically)”.
- 28 [Consequential amendments of section 26M.]
- 29 Before section 27 (and in Part 3) insert –
- “26O Suspension and revocation of remote operating licences**
- Schedule 4C makes provision about the suspension and revocation of remote operating licences.”
- 30 In section 32 (orders and regulations), for subsection (3) substitute –
- “**(3)** But the following provisions of this section apply instead of subsection (2) in the case of –
- (a) an order under section 12(4C);
- (b) an order under section 26H(4) which has the effect of adding to the class of activities in respect of which remote gaming duty is chargeable;
- (c) an order under section 32B(2) which has the effect of adding to the class of persons falling within the definition of “UK person”.
- (4)** In such a case –
- (a) the statutory instrument containing the order must be laid before the House of Commons, and
- (b) the order ceases to have effect at the end of the period of 28 days beginning with the day on which it was made unless, during that period, it is approved by a resolution of the House of Commons.
- (5)** In reckoning the 28-day period, no account is to be taken of any time during which –
- (a) Parliament is dissolved or prorogued, or
- (b) the House of Commons is adjourned for more than 4 days.
- ”

-
- (6) An order ceasing to have effect by virtue of subsection (4)(b) does not affect –
- (a) anything previously done under the order, or
 - (b) the making of a new order.”
- 31 After section 32A insert – 5
- “32B Definition of “UK person”**
- (1) In this Act “UK person” means –
- (a) an individual who usually lives in the United Kingdom, or
 - (b) a body corporate which is legally constituted in the United Kingdom. 10
- (2) The Treasury may by order –
- (a) amend the definition of “UK person” in subsection (1),
 - (b) make provision as to the cases in which a person is, or is not, a UK person for the purposes of this Act, and
 - (c) make provision about bets made, and arrangements to participate in remote gaming entered into, by bodies of persons unincorporate. 15
- (3) An order under subsection (2) may include incidental, consequential or transitional provision.
- (4) The Commissioners may by notice published by them – 20
- (a) specify steps that must be taken in order to determine whether a person making a bet or entering into arrangements to participate in remote gaming is a UK person,
 - (b) specify who must take those steps,
 - (c) specify circumstances in which a person making a bet or entering into arrangements to participate in remote gaming is to be treated as a UK person because of a failure to produce sufficient evidence to the contrary, and 25
 - (d) specify circumstances in which a person making a bet or entering into arrangements to participate in remote gaming is to be treated as not being a UK person on the basis of evidence of a description specified in the notice. 30
- (5) A notice under subsection (4) may be revised or replaced.
- 32C Facilities capable of being used in United Kingdom: burden of proof**
- (1) This section applies where, in civil proceedings in any court or tribunal, it is necessary to determine whether the facilities used to make a bet or enter into arrangements to participate in remote gaming were capable of being used in or from the United Kingdom. 35
- (2) The burden of proof lies on any person claiming that the facilities were not capable of being so used.” 40
- 32 (1) Section 33 (interpretation) is amended as follows.
- (2) In subsection (1) –
- (a) at the appropriate place insert –

““foreign person” means a person who –

- (a) in the case of an individual, is not usually resident in the United Kingdom,
 - (b) in the case of a body corporate, does not have an established place of business in the United Kingdom, and 5
 - (c) in any other case, does not include an individual who is usually resident in the United Kingdom;”, and
 - (b) omit the definition of “foreign tax”.
- (3) Omit subsection (1B). 10
- 33 Omit Schedule A1 (betting duties: double taxation relief).
- 34 (1) Schedule 1 (betting duties) is amended as follows.
 - (2) In paragraph 2 (general administration: general betting duty), after sub-paragraph (3) insert –
 - “(3A) Regulations under this paragraph may also in particular include provision about methods of payment (including provision requiring payments to be made electronically).” 15
 - (3) In that paragraph, after sub-paragraph (4) insert –
 - “(4A) Regulations under this paragraph may also in particular include provision about – 20
 - (a) liability to make returns in respect of general betting duty;
 - (b) timing;
 - (c) form;
 - (d) content;
 - (e) method of making (including provision requiring the returns to be made electronically); 25
 - (f) declarations;
 - (g) authentication;
 - (h) when a return is to be treated as made.”
 - (4) In paragraph 2A (general administration: pool betting duty), after sub-paragraph (3) insert –
 - “(3A) Regulations under sub-paragraph (2) may also include provision about returns, including provision about liability to make returns in respect of pool betting duty and anything mentioned in paragraph 2(4A)(b) to (h).” 35
 - (5) In that paragraph, omit sub-paragraph (4).
 - (6) For paragraphs 4 and 5 substitute –
 - “*Registration*
 - 4 (1) The Commissioners must maintain a register of persons who carry on – 40
 - (a) a general betting business;
 - (b) a pool betting business.

-
- (2) A person may not carry on a general betting business or a pool betting business without being registered.
- (3) The Commissioners may make regulations about registration; in particular, the regulations may include provision (which may include provision conferring a discretion on the Commissioners) about – 5
- (a) the procedure for applying for registration (including provision requiring applications to be made electronically);
 - (b) the timing of applications; 10
 - (c) the information to be provided;
 - (d) notification of changes to the register;
 - (e) de-registration;
 - (f) re-registration after a person ceases to be registered.
- (4) The regulations may permit the Commissioners to make registration, or continued registration, subject to conditions. 15
- (5) Those conditions may in particular require –
- (a) the provision of security for the payment of general betting duty or pool betting duty, and
 - (b) (in the case of a foreign person) the appointment of a United Kingdom representative with responsibility for one or both of the following – 20
 - (i) making returns in respect of general betting duty or pool betting duty;
 - (ii) discharging liability to general betting duty or pool betting duty. 25
- (6) The regulations may include provision for the registration of groups of persons; and may provide for the modification of the provisions of this Part in their application to groups.
- (7) The modifications may, for example, include a modification ensuring that each member of a group will be jointly and severally liable for the duty payable by any member of the group.” 30
- (7) *[Provision for conversion of existing notifications and permits into registrations.]*
- (8) At the end insert –
- “Regulations* 35
- 17 Regulations under this Schedule –
- (a) may make provision which applies generally or only for specified purposes,
 - (b) may make different provision for different purposes[, and
 - (c) may include transitional provision and savings].” 40
- 35 Omit Schedule 4B (double taxation relief).
- 36 Before Schedule 5 insert –

“SCHEDULE 4C

section 26O

SUSPENSION AND REVOCATION OF REMOTE OPERATING LICENCES

Breach notice

- 1 (1) The Commissioners may give a breach notice to the holder of a remote operating licence if it appears to them that there has been a breach of –
 - (a) a requirement to be registered under this Act in respect of an activity authorised by the licence,
 - (b) any conditions or requirements to which registration under this Act in respect of such an activity is subject, or
 - (c) a requirement to pay general betting duty, pool betting duty or remote gaming duty in respect of such an activity.
- (2) The breach notice must specify –
 - (a) the breach,
 - (b) the action that must be taken in order to remedy the breach, and
 - (c) the period (which must be at least 90 days) within which the action must be taken.

Final notice

- 2 (1) If it appears to the Commissioners that the breach has not been remedied in full within the period specified in the breach notice, they may give the holder of the remote operating licence a final notice.
- (2) The final notice must –
 - (a) specify the breach and the extent to which it has not been remedied since the breach notice was given, and
 - (b) state the Commissioners’ intention to direct the Gambling Commission to suspend the remote operating licence.
- (3) The decision to give the final notice is to be treated as a relevant decision for the purposes of sections 15A and 15C to 16 of the Finance Act 1994 (customs and excise reviews and appeals) and, accordingly, the final notice must include an offer of a review of the decision under section 15A of that Act.
- (4) Only the holder of the remote operating licence may bring an appeal under section 16 of the Finance Act 1994 as applied by subparagraph (3).

Direction to suspend remote operating licence

- 3 (1) After the review request period has ended, the Commissioners may direct the Gambling Commission to suspend the remote operating licence if the breach specified in the final notice has not been remedied in full to the satisfaction of the Commissioners.

- (2) But if the Commissioners have been required to review the decision, or an appeal has been brought against the decision, a direction may be given under sub-paragraph (1) only if—
- (a) the decision to give the final notice has been upheld (in whole or in part) and the period within which any appeal or further appeal may ordinarily be brought has ended, 5
 - (b) the proceedings on the review, appeal or any further appeal have been abandoned, withdrawn or discontinued, or
 - (c) the proceedings on the review, appeal or any further appeal are in progress but— 10
 - (i) the holder of the remote operating licence is a non-EU person,
 - (ii) the breach was a failure to pay an amount of general betting duty, pool betting duty or remote gaming duty, and 15
 - (iii) the holder of the licence has not given to the Commissioners such security as appears to them adequate for the payment of the amount of duty that remains due. 20
- (3) A direction under this paragraph may include provision directing the Gambling Commission as to how it is to exercise its powers under section 118(4) of the Gambling Act 2005 (time and duration of suspension and saving and transitional provision).
- (4) In this paragraph— 25
- “non-EU person” means a person who—
- (a) in the case of an individual, is not usually resident in a member state of the European Union,
 - (b) in the case of a body corporate, does not have an established place of business in a member state of the European Union, and 30
 - (c) in any other case, does not include an individual who is usually resident in a member state of the European Union;
- “the review request period” means the period of 30 days beginning with the date of the final notice, subject to any extension given under section 15D of the Finance Act 1994. 35

Reinstatement of remote operating licence

- 4 (1) The Commissioners may direct the Gambling Commission to reinstate a remote operating licence suspended pursuant to a direction under paragraph 3 if they are satisfied that— 40
- (a) the breach specified in the final notice has been remedied in full,
 - (b) there are no other grounds on which a breach notice could be given in respect of the licence, and 45
 - (c) the holder of the licence has given to the Commissioners any security requested by them for the payment of amounts of general betting duty, pool betting duty and

remote gaming duty likely to be due in future in respect of any activity authorised by the licence.

- (2) *[Right of review and appeal for licence holder against refusal by Commissioners to direct reinstatement.]*
- (3) An appeal tribunal may direct the Gambling Commission to reinstate a remote operating licence suspended pursuant to a direction under paragraph 3 if the tribunal gives permission to appeal against a decision to give a final notice under section 16(1F) of the Finance Act 1994 (appeal out of time). 5
- (4) The reinstatement of a remote operating licence pursuant to a direction given under sub-paragraph (3) does not prevent the Commissioners from giving a further direction under paragraph 3(1) in reliance on the final notice if – 10
 - (a) the decision to give the notice is upheld (in whole or in part) in the proceedings on the appeal or any further appeal, or the proceedings on the appeal or any further appeal have been abandoned, withdrawn or discontinued, and 15
 - (b) the period during which any further appeal may ordinarily be brought has ended without an appeal being brought. 20
- (5) In this paragraph “appeal tribunal” has the same meaning as in Chapter 2 of Part 1 of the Finance Act 1994.

Revocation of remote operating licence

- 5 (1) The Commissioners may direct the Gambling Commission to revoke a remote operating licence suspended pursuant to a direction under paragraph 3 if the breach specified in the final notice has not been remedied in full to the satisfaction of the Commissioners within the period of 6 months beginning with the day on which the direction under paragraph 3 was given. 25 30
- (2) A direction under this paragraph may include provision directing the Gambling Commission how it is to exercise its powers under section 119(4) of the Gambling Act 2005 (time of revocation and saving and transitional provision).
- (3) *[Right of review and appeal for licence holder against revocation.]* 35

[Consent requirement for grant of new remote operating licence

- 6 *Provision requiring consent of Commissioners in certain cases.]*

Supplementary

- 7 Notices under this Schedule must be in writing.
- 8 In this Schedule – 40
 - (a) “remote operating licence” has the same meaning as in the Gambling Act 2005 (see section 67 of that Act), and
 - (b) references to the holder of such a licence are to the person to whom the licence is or was issued.”

PART 2

AMENDMENTS OF OTHER ACTS

[*Gambling Act 2005*

37 *Consequential amendments of Gambling Act 2005.]*

Finance Act 2008

5

38 (1) The Table in paragraph 1 of Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing) is amended as follows.

(2) For the entries relating to general betting duty and pool betting duty substitute –

“General betting duty	Obligation to register under regulations under paragraph 4 of Schedule 1 to BGDA 1981 (registration of general betting business).	10
Pool betting duty	Obligation to register under regulations under paragraph 4 of Schedule 1 to BGDA 1981 (registration of pool betting business).”	15

(3) In the entry relating to remote gaming duty –

- (a) omit “to notify under paragraph 8(2) of Schedule 4B to BGDA 1981 (reduction etc in qualifying foreign tax) and obligation”, and
- (b) for “that Act” substitute “BGDA 1981”.

20

25

HM Treasury contacts

This document can be downloaded from
www.gov.uk

If you require this information in another
language, format or have general enquiries
about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

E-mail: public.enquiries@hm-treasury.gov.uk

ISBN 978-1-909790-15-5



9 781909 790155 >