



department for
**culture, media
and sport**

A Consultation on the Regulatory Future of Remote Gambling in Great Britain

22 March 2010

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Chapter 1: Introduction

- 1.1 In April 2009 the Minister for Sport, Gerry Sutcliffe, asked officials at the Department for Culture, Media and Sport (the Department), working with the Gambling Commission, to look in detail at aspects of the system of remote gambling regulation in Britain, including the existing regulatory controls that apply to operators licensed overseas as well as mechanisms to secure fair contributions from all towards research, education and treatment for problem gambling in the UK and the Horserace Betting Levy.
- 1.2 Following that exercise, on 7 January 2010, the Minister [announced](#) that the Department would consult on the feasibility of extending the existing licensing system for remote gambling to overseas-based operators that offer services to or advertise in the UK.
- 1.3 This consultation document sets out the Department's key findings and seeks your views on our proposals for change to address the concerns we have identified. A separate, consultation stage Impact Assessment has also been prepared and is available on the DCMS website.

Scope of consultation

- 1.4 The geographical scope of this consultation is Great Britain, and, where advertising restrictions are concerned, Northern Ireland.
- 1.5 This is a public consultation. We particularly seek views from those operating remote gambling businesses, based both inside and outside of Great Britain; regulatory bodies and Governments in other jurisdictions that regulate remote gambling; faith and community groups; and sports bodies. However, we also welcome views from others and all responses will be carefully considered.
- 1.6 The consultation period will run for 12 weeks from 22 March to 18 June 2010.

- 1.7 Please respond before the closing date. There is a summary of the questions in Chapter 6. Please send responses to gambling.consultations@culture.gsi.gov.uk . If you do not have access to e mail, please respond to:

Remote Gambling Consultation
Gambling Team
Sport and Leisure Directorate
2-4 Cockspur Street
London SW1Y 5DH

- 1.8 This consultation is intended to be an entirely written exercise. Please contact the Gambling Team if you require any other format e.g. Braille, Large Font or Audio.
- 1.9 For enquiries about the handling of this consultation please contact the DCMS Public Engagement and Recognition Unit (PERU) at the above address or email using the form at www.culture.gov.uk/contact_us, heading your communication "Consultation on the Regulatory Future of Remote Gambling in Great Britain".
- 1.10 Copies of responses will be published after the consultation closing date on the Department's website: www.culture.gov.uk
- 1.11 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 ("FOIA"), the Data Protection Act 1998 ("DPA") and the Environmental Information Regulations 2004.
- 1.12 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

- 1.13 The Department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.
- 1.14 The consultation is guided by the Government's Code of Practice on Consultation which is available at: <http://www.berr.gov.uk/whatwedo/bre/code/page46954.html>

Chapter 2: The Current System

- 2.1 The Gambling Act 2005 (the Act), which took full effect on 1 September 2007, is based around three key licensing objectives:
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - Ensuring that gambling is conducted in a fair and open way; and
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 2.2 The Act created a new independent regulator, the Gambling Commission (the Commission), and gave new powers to local licensing authorities. The Act introduced a new licensing system requiring operators, key personnel and the premises on which gambling takes place to be licensed. It also created new offences, including those relating to the protection of children.
- 2.3 For the first time, remote gambling was also brought within the regulatory framework and the Act provided for specific operating licences for those wishing to provide gambling remotely (via the internet, telephone, interactive TV etc).
- 2.4 However, a remote gambling operator is required to hold a Commission licence only if it has remote gambling (key) equipment¹ located in Great Britain. Section 331 of the Act permits the advertising of gambling services in the UK from European Economic Area (EEA) member states, Gibraltar and jurisdictions contained in regulations under section 331(4), otherwise known as 'the white list'. There are currently four jurisdictions on the white list: Antigua and Barbuda, the Isle of Man, the States of Alderney and Tasmania.

¹ As defined in section 36 of the Act

- 2.5 In addition to the statutory provisions contained on the face of the Act and in its regulations, the Commission has developed a framework of Licence Conditions and Codes of Practice (LCCP) to improve consumer protection and to uphold the licensing objectives. The Commission has the power to impose specific conditions on individual licences or categories of licence, which means that specific issues can be addressed if necessary.
- 2.6 Some of the particular measures included in the LCCP are:
- independent system integrity and game fairness testing;
 - reporting of suspicious betting activity to the Commission and sports governing bodies;
 - in relation to casinos, reporting of suspected criminal activity to the Serious Organised Crime Agency (SOCA);
 - robust procedures for preventing underage gambling and other social responsibility measures;
 - requiring clear terms and conditions;
 - requiring transparent complaint procedures, including recourse to an independent third party; and
 - reporting other key events, such as incidents of internal or external fraud.
- 2.7 It is estimated that there are currently between 2000-2500 gambling websites worldwide. The Commission currently has approximately 150 remote licensees that can offer internet betting, casino or bingo. Of these, fewer than 100 are active, consisting of some large betting operators but mainly small betting operators. The Commission's industry statistics paper for 2008 gives the remote sector's gross gambling yield (GGY) at approximately £890 million with approximately £850 million² generated from remote betting operations and the remaining £40 million GGY from casino, bingo and other gambling products.

The White List

- 2.8 Under section 331(4) of the Act, the Secretary of State has the power to designate certain countries or places permitted to advertise remote gambling services in the

² Includes GGY from Ladbrokes, Skybet and William Hill who are no longer licensed by the Commission to provide internet gambling.

UK. That list is more commonly referred to as the white list and jurisdictions that wish to be included must demonstrate that their regulatory system for gambling is robust and meets the Government's published criteria.

- 2.9 The criteria are³ based on the three licensing objectives of the Act. The criteria also include certain requirements in respect of fair tax. The Government does not demand that a jurisdiction's licensing and regulatory regime must mirror that of the UK: the key question is whether a jurisdiction has embedded within its regulatory regime the same core values which underpin ours. That is to say, that they too regulate gambling in order to protect children and vulnerable people from being harmed or exploited; to keep crime out; and to ensure that gambling is conducted fairly, and that they have the facilities and resources in place to ensure compliance and enforcement with those values and the regulatory regime in operation.
- 2.10 In assessing applications for the white list, we must also be satisfied that the jurisdiction has the capacity, technical and regulatory ability, and political impetus necessary, to enforce its regulation.
- 2.11 Once a jurisdiction is added to the white list, it is subject to monitoring to ensure continuing compliance with the criteria. Jurisdictions are required to inform the UK Government of any changes to their legislative and regulatory systems or policies. They must also comply with our advertising provisions, in particular the relevant advertising codes that are regulated by the Advertising Standards Authority (ASA), as well as provide us with a list of all the operators they license. That list must be kept up to date.
- 2.12 The Government retains the power to review the regulations at any time and ask for further information. We may also ask jurisdictions to amend or resubmit representations to us. Importantly, the Secretary of State retains reserve powers to remove a jurisdiction from the white list if, at any stage, there is concern that their regulatory or licensing system no longer satisfies the criteria set out in the published document or is jeopardising the licensing objectives.

³ <http://www.culture.gov.uk/images/publications/WhiteListingCriteria.pdf>

EEA member states and Gibraltar

- 2.13 Operators based in EEA member states, including Gibraltar, have greater freedom in terms of advertising their services in the UK. Under section 331(2), such operators may advertise gambling freely to UK consumers, although subject to the relevant advertising code provisions. Further detail regarding the regulation of gambling advertising is set out in paragraph 2.16 to 2.19 below.
- 2.14 In taking the decision to allow British based online gaming during the passage of the Act, the Government took the view that continued prohibition was neither desirable nor practical. The Government also favoured a free market approach in the hope that this would provide the maximum reciprocal benefits for British businesses in terms of European and International gambling markets.
- 2.15 In terms of gambling services in Europe, the Government recognised that gambling regulation was left to the competence of each individual member state and that there was no harmonisation and no realistic prospect of this being achieved in the short term. The Government noted that remote gambling had been specifically excluded for that reason from the scope of the E-commerce Directive which came into force in 2002. However, at that time the Government had hoped that jurisdictions would ensure that the EC Treaty principles, in particular those relating to the freedom of establishment and the freedom to provide services, would be afforded to British operators who demonstrated, as a result of the provisions of the new Act, that they were socially responsible. The Government also expected that by demonstrating best practice in gambling regulation in relation to operators located here, Britain would be influential in improving standards of regulation across Europe and internationally.

The Advertising Codes

- 2.16 Gambling operators wishing to advertise in the UK need to comply with the advertising codes of practice which apply to the form and media in which they advertise their gambling facilities or services. The Secretary of State also has powers under section 328 of the Act to make regulations with regard to the form, content, timing and location of gambling advertisements.

- 2.17 There are three advertising Codes of Practice. The Broadcast Committee of Advertising Practice (BCAP) and the Committee of Advertising Practice (CAP) are supervised by the ASA. The ASA administer the codes and respond to public concerns about gambling advertisements. In particular the codes seek to ensure adverts don't:
- portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm;
 - exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young people or other vulnerable people;
 - suggest that gambling can be a solution to financial concerns;
 - link gambling to seduction, sexual success or enhanced attractiveness; or
 - be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture.
- 2.18 Adverts that breach the code have to be amended or withdrawn. If serious or repeated breaches of the advertising codes occur then the ASA may refer advertisers to the Commission and broadcasters to OFCOM (the Communications regulator) to consider legal or regulatory sanctions.
- 2.19 In addition to the CAP and BCAP Advertising Standards Codes the gambling industry has collectively devised its own *Gambling Industry Code for Socially Responsible Advertising*. The Industry Code includes a 9pm watershed on all broadcast gambling advertising with exceptions for bingo and lotteries and the advertising of sports betting around televised sporting events. The Industry Code also requires advertisements to display the gambleaware.co.uk logo (a website set up by the Responsibility in Gambling Trust (RiGT)⁴ to assist problem gamblers and their families).

⁴ Formally known as the Gambling Industry Charitable Trust (GICT) and now known as the GREaT Foundation.

Chapter 3: The Need for Change

- 3.1 Despite the considerable success of the strengthened regulatory system, for a variety of reasons, the Government decided in 2009 that there was a clear need to look again at the system of remote gambling regulation. In particular, concerns were raised by Parliamentarians and others as to whether the current protections for British consumers are sufficient, given that an increasing number of gambling operators are now regulated offshore, outside the scope of the Act and the Commission's regulation. Whilst the Commission does not, of course, have a monopoly on good regulation - most, if not all, sites targeting British consumers will be subject to some form of regulation in their home jurisdiction - there are different regulatory standards and approaches. Consumers therefore may experience varying levels of protection depending upon which operator they deal with.
- 3.2 In addition, without specific requirements imposed by overseas jurisdictions, overseas based operators are not compelled to report certain information, e.g. instances of suspicious betting activity, to the Commission or relevant sports bodies, even where such activity may involve British sports and/or British consumers. Nor are operators licensed overseas obligated to contribute towards research, education and treatment of problem gambling in Britain⁵.
- 3.3 In examining the current system of remote gambling regulation in Britain, it is also important to consider its continuing sustainability within a European market which is moving towards individual approaches to regulation in each member state, including national licensing regimes, as well as an increasingly global market in which the landscape is not yet clear.
- 3.4 It is impossible to put a figure on the size of the remote gambling industry located overseas but marketing into Britain. This is because wholly overseas licensed operators do not report any figures to the Commission and Commission licensed operators are not required to report information on those parts of their business that

⁵ Though they may be required to contribute to such initiatives in their home jurisdictions.

are regulated overseas. We can therefore only refer to industry estimates, research and publically available reports.

- 3.5 However, our initial work has shown that whilst British consumers make up a significant proportion of the European remote gambling market, our domestic regulator, tasked with upholding the licensing objectives of the Act, is regulating increasingly fewer gambling operators. Following the implementation of the Act, no major remote gaming operators chose to relocate their overseas operation in Britain. Smaller scale remote gaming operators were attracted to Britain and became licensed. However, the majority of remote casinos accessed by British consumers remain regulated overseas.
- 3.6 Furthermore, a number of remote betting operators previously licensed by the Commission have recently relocated overseas to compete with their overseas competitors accessing the British market. Such moves put pressure on other operators licensed by the Commission to follow suit in order to compete and have had a significant effect on the size of the remote gambling market regulated by the Commission. It therefore seems appropriate to look again at the current system to ensure that the protections enshrined in the Act continue to be afforded to British consumers.
- 3.7 Over recent years, internet gambling has grown considerably. Global Betting and Gaming Consultants (2008) estimate that worldwide online gambling revenues were US\$600 million in 1998; US\$5.6 billion in 2003; and US\$16.6 billion in 2008. Even with the economic downturn many remote operators are reporting increases in revenues and it is likely that growth will only continue as more and more people gain access to the internet and e-commerce becomes mainstream. Traditional land based operators are noticing an ever increasing slice of their revenue is coming from remote gambling⁶.
- 3.8 In the years since the Act was introduced, the international remote gambling landscape has changed significantly, particularly in Europe. Since the Act received Royal Assent in 2005, gambling services have been specifically excluded from the

⁶ Indicated by data extracted from a number of published annual reports of well-known betting operators.

scope of the Services Directive. In practice this means that member states have latitude to regulate gambling (including restricting the freedom of establishment (Article 49) and the freedom to provide services (Article 56)) as they see fit, provided those restrictions are:

- justified by imperative reasons in the general interest,
- suitable for achieving the objectives in question,
- necessary and proportionate, and
- applied in a non-discriminatory manner, as interpreted by decisions of the European Court of Justice.

- 3.9 More recently, the European Commission and the European Court of Justice (ECJ) have signalled that the partial opening of restrictive markets through the introduction of national licensing systems could be implemented by member states without contravening EC law. This differs significantly from previous interpretations which suggested that mutual recognition was the only way to comply with Treaty provisions (i.e. if a provider is licensed in one member state, it should be able to offer its services in another without further licensing).
- 3.10 Many European and international countries such as France, Italy, Denmark and South Africa are moving from a prohibition stance to a national licensing and regulation system based upon a set of requirements for operators wanting to access their particular market and target their consumers. This is in contrast to some existing offshore remote jurisdictions where the regulation is not provided for the protection of their citizens but for operators using their jurisdiction as an outward facing hub from which to access other markets. In particular, we are aware that some offshore jurisdictions which license remote gambling do not permit their own citizens to access that gambling.
- 3.11 There are also new and emerging European jurisdictions where online gambling sites have started to target British consumers (i.e. by displaying a .co.uk web address). Very little is known about the level of regulation and consumer protection in these jurisdictions and there is concern that there may not be effective systems of regulation in place.

- 3.12 Currently operators based in any EEA member state, Gibraltar or white listed state are free to advertise and provide their services in the UK without needing a Commission licence or complying with Commission requirements. There are a variety of reasons and incentives for operators to select the most ideal jurisdiction in which to obtain a licence. These could include a combination of tax, regulatory requirements, infrastructure and staff availability and access to other markets. The vast majority of offshore but UK facing operators are licensed in Alderney, Gibraltar, the Isle of Man and Malta.
- 3.13 As such, the specific provisions of the 2005 Act, and associated Commission requirements such as anti-money laundering and sports integrity reporting, probity of operators and testing of software may not necessarily be enforceable requirements for the majority of the remote operators with whom British consumers gamble. For example:

Standards and Software testing

- 3.14 There are differences in the requirements imposed on operators by gambling regulators in overseas jurisdictions (in particular in relation to social responsibility requirements such as self-exclusion and other features that can assist a person to control their gambling) which can result in different protection measures for British consumers, depending upon where the operator or website is regulated. These differences inevitably lead to confusion amongst consumers who may not be aware that their different gambling activities are subject to varying levels of protection.
- 3.15 Commission licensed operators must undergo rigorous independent software testing to ensure fairness of games to consumers. They must also adhere to information security standards based on recognised international standards and designed to safeguard player data, funds and gambling operations from accidental or malicious misuse. Overseas licensed operators have different levels of testing and security requirements and the Commission is not able to assess their robustness. This may ultimately mean that consumers are gambling on websites that have not been independently tested or audited to the standards expected of Commission licensees.

Enquiries and Complaints

- 3.16 The Commission receives many enquiries from British consumers about gambling activity licensed offshore. There have been enquiries in relation to social responsibility (for example, where consumers have been unable to self exclude from websites) and unfairness (for example, where winnings are not paid out or where complaints have not been satisfactorily dealt with). However, as the Commission does not regulate these operators, they can only refer enquirers to the regulator in the originating jurisdiction and cannot investigate the complaints or follow up to determine whether the issues go on to be resolved.
- 3.17 These enquiries give us a general indicator of the common problems that exist for British consumers and indicate that some people are unaware that they are gambling on an overseas licensed website and are not protected by British law. Indeed, the Commission recently produced an [awareness leaflet](#)⁷ to advise consumers what to look for when gambling online in recognition of the increasing enquiries about remote gambling.

Advertising problems

- 3.18 Section 331 of the Act permits advertising of gambling services in the UK from EEA member states, Gibraltar and jurisdictions contained in the white list. However, enquiries received by the Department and the Commission from the carriers of advertisements show that it can be difficult to understand where the service or product that they are being asked to advertise is regulated. This has resulted in some illegal advertising of foreign gambling and has required regulatory intervention by the Commission.
- 3.19 We are also aware that not all operators regulated overseas clearly display their licensed status and that in some cases those that do are often buried deep within the terms and conditions of the site. This problem, and the ensuing confusion that can be caused to broadcasters and publishers, can also be exacerbated by complex

⁷ <http://www.gamblingcommission.gov.uk/pdf/WhatToLookForGamblingOnline.pdf>

company or group structures whereby different gambling products are licensed in different jurisdictions.

Protecting against crime

- 3.20 The checks undertaken by the Commission into the companies and key shareholders behind the gambling operation are an important crime prevention measure. However, many overseas operators do not undergo any British probity checks in this regard.
- 3.21 In addition, the strong anti money laundering regulations imposed on British licensed operators, including the reporting by Commission licensed casino operators of money laundering activity to SOCA, do not apply to overseas operators, which may increase the risk of money laundering and criminal financing going unnoticed. We recognise that many other jurisdictions have similar requirements in respect of money laundering prevention but without a specific requirement to pass information to SOCA, we cannot be sure that the UK authorities receive all relevant information regarding the activities of British citizens.

Sports integrity reporting

- 3.22 Only operators licensed by the Commission are required to report suspicious betting activity to the Commission and the relevant sporting bodies. Consequently, there is a potential risk that match fixing and suspicious betting practices taking place on overseas licensed sites (including those that that may have an impact on sports events held in the UK) may not be notified to UK authorities.
- 3.23 We recognise that some operators voluntarily share some information with the Commission in addition to their home regulator. However, this is often of insufficient detail to be used in an investigation and limits the Commission's ability to investigate instances of suspicious betting activity. There have been instances where the Commission has not received relevant information and has been unable to obtain the information from the overseas licensed operator or from the overseas regulator. In some cases, the Commission is told the refusal to provide information is because of overseas data protection requirements.

3.24 There is currently no way to ensure that the protections of the gambling regulatory framework, in particular those afforded by licence condition 15 on reporting suspicious betting activity, are applied on a consistent basis to all operators who transact with British consumers or allow bets on UK events.

Other factors

3.25 The Commission has a statutory duty to advise the UK Government about the incidence of gambling, the manner in which it is carried on, the effects of gambling, and the regulation of gambling and does this in relation to the information it holds. Without oversight or knowledge of the gambling activity taking place with overseas licensed operators, it is increasingly difficult for the Commission to effectively perform its statutory duty to advise the UK Government in relation to remote gambling.

3.26 Furthermore, if the Commission or the Government identifies a specific risk to the licensing objectives which requires regulatory action to address (such as an additional licence condition or code provision or an amendment to technical standards), that action will not be effective on the vast majority of UK facing gambling operators as most are licensed overseas. This means that the issue not only goes unaddressed in terms of consumer protection, but could also place British licensed operators at a competitive disadvantage to their overseas counterparts who are not compelled to comply with the same regulatory measures.

Research, Education and Treatment of Problem Gambling

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

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

3.28 There are a number of ways that operators can discharge their responsibilities in this area. In particular, though not formally required by the provisions of the LCCP,

operators are encouraged to contribute, on a voluntary basis, to the GREaT Foundation (GREaT)⁸, which is a charity originally established by the gambling industry in 2002 to tackle problem gambling through the funding of research, education and treatment from voluntary donations from the industry⁹. GREaT has agreed with the UK gambling industry a funding formula to assist operators in calculating an appropriate contribution. Whilst we are aware that a number of overseas licensed operators contribute to GREaT, which should be applauded, there is no obligation on them to comply with the broader LCCP provisions and no way of determining, where voluntary contributions are made, that those donations are commensurate with the aforementioned funding formula.

Costs

- 3.29 The Commission is funded primarily through licence fees paid by licensed gambling operators. As overseas operators do not pay licence fees to the Commission, any work undertaken to assess the social responsibility and age verification procedures of overseas operators targeting the British market must either be met out of fee income or separately funded by the Department. This is also the case for both the Department's and the Commission's work in assessing applications from jurisdictions applying for inclusion on the 'white list'.
- 3.30 The Commission also incurs costs arising from dealing with enquiries and complaints by consumers about gambling websites licensed outside of the Commission's regulatory remit (as discussed above). These costs are likely to increase if more operators take their businesses offshore and continue to target British consumers and it seems inappropriate for these costs to be met by UK taxpayers and/or a decreasing number of Commission licence fee payers.

Other Issues

- 3.31 In addition to adhering to British regulatory requirements and contributing to research, education and treatment of problem gambling in the UK, UK-based operators also pay tax on their betting and gaming revenue. Licensed remote

⁸Formally known as the Responsibility in Gambling Trust (RiGT) and the Gambling Industry Charitable Trust (GICT)

⁹http://www.gamblingcommission.gov.uk/research_consultations/consultations/closed_consultations_with_res_p/rret_1.aspx

betting operators are also required to contribute 10% of their gross profits towards supporting the British Horseracing Industry via the Horserace Betting Levy (the Levy).

- 3.32 Taxation policy is a matter for HM Treasury and this consultation does not explore tax. We think it is important to consider regulatory and taxation issues separately and that it would be inappropriate, and contrary to EC law, to make regulatory changes based solely upon fiscal reasons. That is why both the review and this consultation are focused on regulation. Of course there will need to be close liaison between the Department and HM Treasury to ensure that any implications for taxation policy are properly considered as the regulatory proposals progress.
- 3.33 With regard to the Levy, the Minister was clear in his statement to Parliament on 7 January 2010 that he is continuing to explore ways to ensure that all operators taking bets on British races pay to support British horseracing. That issue is being looked at separately and as such, the Levy is not included within the scope of this consultation.

Chapter 4: Options

4.1 After establishing the need to consider making changes to the existing system of remote gambling regulation in Britain as detailed in Chapter 3, it is important to determine clear criteria against which to assess the different options available. We consider that the following criteria are appropriate for assessing the various options:

- Consistency of Regulatory Standards;
- Fairness;
- Cost recovery.

Consistency of Regulatory Standards

4.2 One of the main problems that we identified with the current system is a lack of consistency in terms of regulatory standards and approaches taken by different regulators. Though this may not necessarily result in reduced protections for British consumers (although reduced requirements in respect of independent software testing and in respect of social responsibility may indeed result in just that), we consider that the specific provisions contained within the Act, its secondary legislation and the Commission's requirements that have been explicitly considered to be appropriate for British consumers should be adhered to by all operators within the British market.

4.3 We think that it is essential for British consumers to be able to gamble with any operator able to advertise in the UK, confident in the knowledge that the standards and requirements linked to the licensing objectives of the Act that are currently imposed on Commission licensed operators apply to all. Consumers should be able to expect the same basic provisions regarding fairness, crime prevention (including information security and privacy) and social responsibility on all gambling websites advertised in the UK.

Fairness

4.4 We consider that consistency in regulatory standards is closely linked to the issue of fairness – all operators active in the British gambling market should be required to adhere to the same standards, requirements and obligations in respect of social

responsibility. Not all jurisdictions have the same requirements and so operators in those jurisdictions with less robust regulations do not have the same administrative or regulatory burdens imposed thus creating a competitive advantage at the possible expense of the consumer.

- 4.5 As discussed in paragraphs 3.27 and 3.28, remote gambling operators currently licensed by the Commission are expected to contribute towards research, education and treatment of problem gambling in Britain. One of the main ways to do so is to contribute financially towards the GREaT Foundation in line with an agreed funding formula. Whilst we acknowledge and applaud the many overseas licensed operators active in the British market who already contribute their fair share, as well as those overseas regulators who have already arrangements in place with GREaT, we think it is important to try to ensure that all operators who market their services to British consumers appropriately contribute to problem gambling initiatives in Britain in a manner commensurate with the level of activity generated by British consumers.
- 4.6 We have set out in paragraphs 3.32 and 3.33 that taxation and the Levy are not included in this consultation. As such, we cannot address these points when considering fairness. However, we are satisfied that greater fairness in terms of regulatory standards and contributions towards research, education and treatment is appropriate for consideration in this document.

Cost Recovery

- 4.7 In the previous chapter, we also identified a number of costs associated with the current system of remote gambling regulation that fall to UK taxpayers or Commission licensees. We therefore think it is essential, when considering making changes to the system, to address this problem and ensure that all costs are properly recovered.

Options in respect of EEA member states and Gibraltar

- 4.8 Taking into account the criteria set out above, we have considered a range of options in respect of EEA member states and Gibraltar. These options are set out below. We felt, given the greater freedoms those operators have in terms of accessing the British market, that it would be appropriate to consider changes that may be appropriate for them before considering changes that would affect operators

based elsewhere. Further, we were conscious that some decisions that we may wish to make in respect of EEA and Gibraltar licensed operators could have a significant impact on the sustainability of the whitelisting system.

4.9 We considered the following options, explored in further detail below:

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

Consideration

Option 1: Do Nothing

- 4.10 This option would mean retaining the remote gambling regulatory system in its current form so that EEA and Gibraltar licensed operators could continue to advertise gambling services in the UK in reliance on the licence issued by their home regulator.
- 4.11 **Consistency:** We have set out in Chapter 3 of this document our concerns in relation to differing standards, requirements and approaches that are at play under the current system. We do not therefore consider that this option would provide the consistency sought.
- 4.12 **Fairness:** Though a number of operators licensed in EEA member states and Gibraltar voluntarily contribute towards research, education and treatment of problem gambling in the UK, they are not required to comply with the broader Commission LCCP provisions and there is no way of determining, where voluntary contributions are made, that those donations are commensurate with the agreed funding formula that GREaT agreed with the UK gambling industry. We do not therefore consider that this option would provide the degree of fairness sought.

- 4.13 **Cost Recovery:** We have set out in Chapter 3 the problems regarding cost recovery that are apparent under the existing system. Making no changes would fail to address these issues and cost recovery would fail to be provided.

Summary of Option 1

<u>Criteria</u>	<u>Achieved?</u>
Consistency	x
Fairness	x
Cost Recovery	x

- 4.14 The Government recommends that we reject the option of doing nothing.

Option 2: Introduce non-statutory changes to the system

- 4.15 Under this option, we have explored whether introducing any non-statutory measures (i.e. measures that do not require amending legislation) could be implemented to address the concerns that we have identified. For example, whether the Commission could engage in increased regulatory co-operation, including the negotiation of MOUs, with other regulators that could lead to arrangements in respect of information and data sharing (say, for example in relation to suspicious betting practices) as well as seek assurances regarding regulatory standards, requirements and approaches (such as technical standards and social responsibility requirements).
- 4.16 The Commission has been heavily engaged in the work of the International Association of Gambling Regulators (IAGR) and the more recent Gambling Regulators European Forum (GREF) initiatives to develop good practice in regulating remote gambling. However, there is a long way to go before there is not only consensus on the standards to be adopted, but also agreement on how compliance is enforced.

- 4.17 **Consistency:** This type of non-statutory approach has some merit. Importantly, reaching such agreements without the need for legislative change (which can take a considerable length of time) can lead to much faster resolution of concerns and increased consistency of standards for British consumers.
- 4.18 However, such agreements are non-binding in legal terms which does not provide us with the statutory reassurance we are seeking – there would be no way to independently assess whether the terms agreed are being adhered to by either party and a limited ability to enforce the provisions of the agreement if one party withdrew their co-operation. It is also unlikely that every overseas regulator with operators targeting the British market would agree to the same non-statutory terms and conditions. Some may be more content than others to share certain information, for example. Again, this causes us concern in terms of consistency for British consumers.
- 4.19 **Fairness:** A similar issue arises in respect of contributions towards research, education and treatment for problem gambling in the UK. Whilst some jurisdictions may be content to oversee their operators' contributions to the UK in this area, it is unlikely that all would.
- 4.20 **Cost Recovery:** Asking the Commission to enter into negotiations with other regulators would impose additional resource and financial burdens upon them. We do not consider that such discussions could be legitimately funded through licence fees paid by Commission licensed operators and thus funding would need to be acquired from elsewhere. Without conferring any specific benefits on overseas regulators or operators, it is difficult to see where the additional funding could come from and this option therefore would certainly not meet our objective of ensuring cost recovery.

Summary of Option 2

<u>Criteria</u>	<u>Achieved?</u>
Consistency	x
Fairness	x
Cost Recovery	x

4.21 The Government recommends that we reject this option.

Option 3: Introduce the need for a licence to advertise in the UK

- 4.22 Under this option we would need to amend the Act and introduce a requirement for operators licensed in EEA member states and Gibraltar to obtain a licence from the Commission that would enable their services to be advertised in the UK. This would represent a move away from the current system whereby such operators can advertise in the UK in reliance on the licence issued in their home jurisdiction. Operators would therefore be required to demonstrate their suitability to hold a licence, including their ability to meet and adhere to the provisions of the Act, its secondary legislation and the Commission's requirements in order to be permitted to advertise to UK consumers.
- 4.23 **Consistency:** This approach would ensure consistency of standards in that all operators who want to advertise in the UK would have to meet the same obligations in respect of the Act's three licensing objectives. However, this option would only apply to those operators who want to undertake advertising in the UK – it would not apply to operators who are not intending to advertise but who still wish to transact with British consumers. This could therefore give rise to continuing inconsistency of standards, albeit on a limited scale, given the crucial importance of marketing.
- 4.24 **Fairness:** Subject to the limitation that this option only applies to those operators who want to undertake advertising in the UK, operators would need to comply with the relevant LCCP provisions in respect of social responsibility, including the requirement to demonstrate how they will contribute to research, education and treatment of problem gambling in the UK.
- 4.25 **Cost Recovery:** A licence fee could be charged to operators who want to advertise in the UK to recover the Commission's costs in assessing the application and monitoring compliance with British requirements. The fee could also cover any costs associated with undertaking enforcement activity against non-compliant operators and in addressing illegal gambling, as is the case under the existing system.

Summary of Option 3

<u>Criteria</u>	<u>Achieved?</u>
Consistency	✘
Fairness	✘
Cost Recovery	✓

4.26 Though the Government considers that this option has significant merit, there are a number of reasons why we recommend that we reject this option in favour of the Government's preferred option below. In particular we are concerned about the difficulty in determining when advertising directed at British consumers is taking place, which is particularly the case with internet advertising and affiliate marketing. It is far easier to determine whether an operator is transacting with British consumers. We also consider that it is possible for operators to circumvent the system by obtaining a Commission licence for a significant marketing campaign only to relinquish that licence but continue transacting with British consumers the following year when the marketing has ceased.

Option 4: Introduce the need to obtain a licence to transact with British consumers and advertise in the UK.

4.27 This is the Government's preferred option. Though similar in approach to option 3 above, under this option we would need to amend the Act and introduce a requirement for operators licensed in EEA member states and Gibraltar to obtain a licence from the Commission to permit them to transact with British consumers and/or advertise in the UK. This would therefore apply to all operators who want to operate in the British market, irrespective of whether they want to advertise their services or not. Further detail as to how such a system may work in practice is included in Chapter 5; however, in terms of top-level detail, operators would be required to demonstrate their ability to meet and adhere to the provisions of the Act, its secondary legislation and the Commission's requirements in order to be permitted to transact with and/or advertise to British consumers.

4.28 **Consistency:** This approach would ensure consistency of standards in that all operators who transact with British consumers would have to meet the same

obligations in respect of the Act's three licensing objectives and would face the full range of regulatory sanctions should they fail to comply with the expected standard.

4.29 **Fairness:** This approach would require compliance with all the relevant LCCP provisions and therefore meets the fairness criteria.

4.30 **Cost Recovery:** Also as above, a licence fee could be charged to operators to ensure that all costs associated with regulation monitoring and enforcement are recovered.

Summary of Option 4 (the preferred option)

<u>Criteria</u>	<u>Achieved?</u>
Consistency	✓
Fairness	✓
Cost Recovery	✓

4.31 The Government believes that this option represents the most appropriate way forward warranting closer scrutiny and consideration. Further detail is explored in Chapter 5.

Question: Do you agree with the Government's preferred option? If not, please set out clearly your reasons and let us know if you consider any of the options above, or any other option not considered in this paper, to be more appropriate.

Other Options

4.32 The Government also considered other options as set out below. However, we discounted them at an early stage as we considered that they would not be compliant with the provisions of EC Law. In particular, we looked at whether we could:

- i) Extend the white list to EEA member states and Gibraltar; or
- ii) Close the market completely, enabling only operators based and licensed in Britain to offer gambling services to British consumers.

- 4.33 Under i) we considered whether it would be appropriate to extend the principles of the white list to European jurisdictions. This would mean that EEA and Gibraltar operators would not be able to advertise their services in the UK unless their home jurisdiction was included on the white list and had therefore undergone an assessment of their statutory and regulatory frameworks for gambling. Though this approach seemed desirable, we felt that to do so would not be compliant with key principles of the EC Treaty. In particular we were conscious that some operators would be able to demonstrate the necessary standards and requirements but would effectively be prevented from advertising in the UK if the frameworks in their home jurisdiction were insufficient in meeting the Government's published criteria for white listing. We therefore discounted this option.
- 4.34 We underwent a similar thought process in respect of option ii). It would be disproportionate and discriminatory to prevent EEA and Gibraltar licensed operators from advertising their services in the UK simply by virtue of their geographical location outside Britain. We therefore also discounted this option.

Options for non-EEA jurisdictions

- 4.35 Having looked at the various options available to us in respect of EEA and Gibraltar licensed operators, and in selecting our preferred option (Option 4), we now need to explore in greater detail the impact this may have on the white listing system and on operators licensed in jurisdictions outside the EEA. We consider that the following options are available to us and will proceed to consider these in further detail below. We have assumed, for the purposes of these options that we will be seeking to introduce licensing for EEA and Gibraltar operators:
- a) **Improve the white listing system for non-EEA jurisdictions;**
 - b) **Develop a more streamlined white listing process as well as introduce licensing for operators in white listed jurisdictions; and**
 - c) **Abolish the white list and introduce a licensing system for operators in all non-EEA jurisdictions.**

Consideration

Option a) Improve the white listing system for non-EEA jurisdictions

- 4.36 This option would entail making some improvements to the white listing system, such as clearer criteria, a less ambiguous requirement regarding contributions towards research, education and treatment for problem gambling in the UK¹⁰, and the introduction of specific fee charging provisions to ensure cost recovery in terms of assessing applications and in ensuring continued compliance with the published criteria.
- 4.37 **Consistency:** This option would provide some consistency in approach in that the jurisdiction's legislative and regulatory framework for gambling would undergo assessment by the Government, with input from the Commission, the Foreign and Commonwealth Office, and HM Treasury. However, the published criteria document does not require white listed jurisdictions' regulatory systems to be identical to our own. As such, some inconsistency would remain under this approach. Furthermore, the Commission would not have any direct oversight of individual operators licensed within white listed jurisdictions which would also lead to less consistency in terms of compliance monitoring and enforcement.
- 4.38 We are also concerned that by pursuing this option we would create an imbalanced system overall wherein British based operators and operators licensed in EEA member states and Gibraltar are regulated by the Commission but where operators in white listed jurisdictions do not have to undergo the same scrutiny when it comes to the application of British standards and requirements.
- 4.39 **Fairness:** As we could include in the criteria document specific requirements relating to financial contributions towards research, education and treatment of problem gambling in the UK, we could achieve a reasonable degree of fairness. However, as operators would not be subjected to the wider LCCP provisions in respect of social responsibility, an imbalance would remain.

¹⁰ At present the document only requires white listed operators to contribute towards research, education and treatment. The document does not require contributions to the UK specifically so this requirement could currently be met by contributing to local initiatives.

4.40 **Cost Recovery:** It would be possible to include, as part of the white list criteria, some specific fee charging provisions to ensure the process fully recovered costs. However, to do so would require amendments to the Act as we don't currently have the legal power to charge a fee for the white list. Thus cost recovery could be achieved but only if the legislation was changed. This would take time to implement and in the meantime, costs would continue to be incurred in respect of the existing white listed jurisdictions. It is also unclear who would be required to pay the fees for white listing (operators or the regulator within a jurisdiction) and how this could take practical effect. This would need further exploration.

Summary of Option a)

<u>Criteria</u>	<u>Achieved?</u>
Consistency	x
Fairness	x
Cost Recovery	✓

4.41 The Government has decided to reject this option.

Option b) Develop a more streamlined white listing process as well as introduce licensing for operators in white listed jurisdictions

4.42 **This is the Government's preferred option.** Under this option we would retain the principle of the white list by developing a more streamlined process to assess certain key criteria relating to a jurisdiction's statutory and regulatory framework, but we would also require operators in white listed jurisdictions to obtain a Commission licence in order that they may transact with and advertise to British consumers. Further information regarding this option is set out in chapter 5.

4.43 We consider that some aspects of the existing white listing process are important in assisting the Government to assess the ability of overseas jurisdictions to effectively regulate gambling and that we may wish to retain. Although the Commission would have regulatory oversight of individual operators from white listed jurisdictions, we still consider it important to ensure certain key criteria are met at regulator level in order for the system to work most effectively. For example, we think it is important to be sure that the regulatory body applying for inclusion on the white list has the

legislative and/or regulatory authority to regulate gambling in that jurisdiction and to be willing and have the capacity to share information on operators.

- 4.44 We also think it is important, as is the case under the existing system, that the applicant jurisdiction has a similar approach to our own, i.e. that they regulate gambling in order to protect children and vulnerable people from being harmed or exploited; to keep crime out; and to ensure that gambling is conducted fairly, and that they have the facilities and resources in place, as well as the political impetus, to ensure compliance and enforcement with those values and the regulatory regime in operation. We further recognise the importance of adhering to fair tax principles as is currently required by the existing criteria.
- 4.45 Whilst we consider these issues to be important, we are confident that the white listing process can be streamlined to enable faster consideration of applicant jurisdictions and to reduce costs and burdens on the Department, the Commission, and the applicant jurisdictions themselves.
- 4.46 **Consistency:** We consider that the requirement for operators in white listed jurisdictions to obtain a Commission licence will result in consistency due to the obligation to adhere to the relevant British standards.
- 4.47 **Fairness:** Fairness could be achieved through the requirement for licensees to comply with the relevant LCCP provisions relating to social responsibility.
- 4.48 **Cost Recovery:** Fees could be charged for licences which would recover the costs associated with the licensing, compliance and enforcement of individual operators. Fees could also include an element to cover the cost of assessing the statutory and regulatory framework of the jurisdiction that applied to be included on the white list. Alternatively, jurisdictions could be required to provide an independent third party assessment of the statutory and regulatory framework within their jurisdiction as part of their application for the white list.

Summary of option b) (the preferred option)

<u>Criteria</u>	<u>Achieved?</u>
Consistency	✓
Fairness	✓
Cost Recovery	✓

4.49 The Government considers that this option represents the most appropriate way forward warranting closer scrutiny and consideration. Further detail is explored in Chapter 5.

Option c) Abolish the white list and introduce a licensing system for operators in all non-EEA jurisdictions

4.50 Under this option we would remove the white list in its entirety and introduce a licensing system to transact with and/or advertise to British consumers for operators in non-EEA jurisdictions.

4.51 **Consistency:** All operators would be required to apply for a Commission licence, demonstrating their ability to meet and adhere to British standards and requirements. They would also undergo Commission scrutiny in respect of compliance and ongoing monitoring.

4.52 **Fairness:** All operators would be required to adhere to the LCCP provisions in respect of social responsibility thus ensuring fairness in this regard.

4.53 **Cost Recovery:** As fees would be payable for licences, we are satisfied that cost recovery could be achieved under this option.

Summary of option c)

<u>Criteria</u>	<u>Achieved?</u>
Consistency	✓
Fairness	✓
Cost Recovery	✓

4.54 Despite meeting the assessment criteria set out at the beginning of this chapter, the Government has decided to reject this option. Whilst we think this option has considerable merit, we are conscious of the benefits that the white list has realised. In particular, by providing an incentive for non-EEA jurisdictions to improve regulatory standards, and by providing economic and reputational benefits for those jurisdictions already on the white list. We are concerned that abolishing the white list would result in the loss of those benefits and would have a detrimental effect on existing white listed countries and we have therefore decided not to pursue this option.

Question: Do you agree with the Government's preferred option b) above? If not, please set out clearly your reasons and let us know if you consider any of the options above, or any other option not considered in this paper, to be more appropriate.

Conclusions

4.55 In summary, the Government's preferred way forward for consideration is to introduce the need for operators licensed in EEA member states, Gibraltar and white listed jurisdictions to obtain a Gambling Commission licence to transact with British consumers and advertise in the UK. We also propose to develop a more streamlined white listing process for non-EEA jurisdictions. We consider this approach to meet all of the assessment criteria set out at the start of this chapter and further detail as how to the proposals may work in practice is contained in chapter 5.

Question: Do you agree with the Government's preferred overall option as summarised in the paragraph above? If not, please set out clearly your reasons and let us know if you consider any of the options above, any other combination of the options above, or any other options not considered in this paper, to be more appropriate.

Chapter 5: The Proposals

- 5.1 This chapter sets out the proposals for extending the current regulatory system for remote gambling to include operators based overseas but that offer services to British consumers or advertise in the UK.
- 5.2 However, the Government is mindful that under the current system some operators licensed by the Gambling Commission transact with overseas-based customers. We want to ensure that those operators can continue to be effectively regulated in Britain, with the reputational and infrastructure benefits this brings, as well as ensure that the impact of our proposals are minimised for those operators. We therefore propose the following triggers for a licence:

Requirement to hold a licence

- 5.3 Under an extended remote licensing system, operators will be required to apply for a licence from the Gambling Commission if they wish to:
- a) have access to the British market. By this we mean transact with, and/or advertise to, British consumers; and/or
 - b) locate their remote gambling equipment in Britain, regardless of whether they intend to target/access the British market.

Question: Do you agree with the twin triggers for requiring a licence?

- 5.4 Definitions may need to be further refined in due course, but broadly speaking we consider that transacting with British consumers to include any gambling transaction between an operator and a person ordinarily resident in Britain, defined either by residential address, registration using a British bank account or IP address – or a combination of all three.

Question: Do you agree with the above definition of ‘transacting with British consumers’?

5.5 In terms of defining when an operator locates its operations in Britain and thus triggers the need for a licence, we consider the current requirements relating to key equipment in the Act to be broadly appropriate. This approach ensures that any operators who choose to locate their remote gambling equipment in Britain because of the infrastructure and other commercial reasons, but who may not necessarily wish to transact with British consumers are also required to be licensed.

Advertising

- 5.6 Currently, section 331 of the Act defines foreign 'remote' gambling as remote gambling 'none of the arrangements for which are subject to the law about gambling of an EEA State (whether by being regulated, exempted, prohibited or otherwise)'. We consider that this definition would need to be amended to reflect the fact that foreign gambling would in the future be considered gambling that doesn't take place in reliance on a Commission licence.
- 5.7 Further amendments may also need to be made in respect of this part of the Act to accommodate the changes we are proposing. In particular, the current definitions of advertising in section 327 as well as sections 332 and 333 which relate to advertising by non-remote and remote means, both of which apply to the provision of gambling facilities by remote communication.
- 5.8 Our initial thinking is that information about remote gambling services would be considered to be advertising by remote means (and thus deemed to be targeting the British market) if:
- the information provided (by whatever means – including by way of remote communication) is intended to come to the attention of one or more persons in Britain (this would include all usual forms of advertising such as broadcast media and any advertising by remote means);
 - a communication is sent which is intended to come to the attention of one or more persons in Britain (this would include spam emails); or
 - data is made available with a view to it being accessed by one or more persons in Britain or in circumstances such that it is likely to be accessed by one or more persons in Britain (these could include gambling websites in English with .co.uk addresses and/or the ability to gamble in pound sterling or internet

banner gambling advertising placed on other non-gambling websites designed to be seen by British consumers).

- 5.9 This test mirrors the existing provisions contained in section 333(4) of the Gambling Act and we are satisfied that it covers all scenarios that we would wish to capture in respect of remote advertising. It is worth noting that the Commission currently has limited powers to take action against the advertising of foreign gambling where the parties in question are located overseas. This is commonly the case for advertising via direct mail, spam emails, banner advertising on websites, referral websites, the use of .co.uk domains and pound sterling. This difficulty will still exist under a licensing regime; however, these types of activities are generally considered a lower impact and less successful form of acquisition marketing.
- 5.10 Furthermore, the existing legislation provides for the Commission to pursue and, if appropriate, prosecute, British-based companies involved in advertising any foreign gambling. This could be a British broadcasting company, publisher or event organiser.

Question: Do you agree that the above definitions of advertising are appropriate?

Question: Do you agree that direct mail and spam etc are a low impact and less successful form of advertising?

Advertising of non-remote gambling

- 5.11 In looking again at the current system of remote gambling regulation and advertising, we think it is important to consider whether, under an extended licensing regime, the advertising of non-remote foreign gambling should be permitted in the UK (for example, the advertising of overseas destination casinos) without the need for express permission or authorisation (i.e. through inclusion on the white list and/or the issuing of a Commission licence). Currently, the advertising of such non-remote gambling activities is prohibited under the existing definition of foreign gambling¹¹. However, since a consumer would have to travel outside Britain to participate in the gambling being advertised, it may no longer be appropriate to continue this

¹¹ Unless the jurisdiction in which the operator is licensed is included on the white list.

prohibition. In particular we are aware that some jurisdictions have been seeking entry onto the white list to enable their operators to advertise solely non-remote gambling services here. In light of the preferred option we have identified in this document, we question whether it should be necessary for such operators to be licensed in a white listed jurisdiction and for them to obtain a Commission licence in order to advertise non-remote gambling that would take place outside the Commission's jurisdiction.

- 5.12 Of course we recognise that without requiring white list inclusion and a Commission licence, it is possible that operators in some jurisdictions within close proximity to Britain may take advantage of this opportunity and could provide direct competition to our domestic market without reciprocal provisions being afforded to British businesses. Such a change may therefore be unattractive to British businesses and may offer limited benefits for the British economy. However, it is important to note that whilst the opportunity to advertise non-remote casinos in European and white listed jurisdictions already exists, we are not aware of any substantive evidence of this advertising taking place or diverting trade from British establishments.
- 5.13 We also recognise that to permit the advertising of non-remote gambling to UK consumers without having undertaken any assessment of the regulatory framework of the jurisdiction in which that gambling would take place, and/ or without the Commission having had specific oversight of the operator concerned could be perceived as jeopardising the protections afforded to British consumers under the Act. Having said that, we consider that British consumers, in travelling abroad to undertake the gambling activity advertised, would not normally expect to be protected by the provisions of British law in the same way that consumers might expect to be protected when gambling online in their own home. We therefore consider the risk to consumer protection to be minimal.
- 5.14 We would therefore be grateful for views as to whether **non-remote** foreign gambling advertising should be permitted in the UK, without a requirement for the operator to be located in a white listed jurisdiction or to hold a Commission licence. In considering this course of action, we may also consider whether it would be appropriate to take powers in any future legislation to allow the Secretary of State to

reinstate the prohibition on the advertising of non-remote gambling services from outside the UK if it became necessary to do so for consumer protection reasons.

Question: Do you think we should permit the advertising of non-remote foreign gambling without the requirement for the operator to be located in a white listed jurisdiction or to hold a Commission licence?

Fees

- 5.15 As is currently the case, application fees would be payable for licences and should reflect the Commission's costs in assessing an operator's suitability to hold a licence. The current fee structure allows an operator already licensed by the Commission for other gambling activity to receive a discount for any subsequent licences they apply for as many of the checks will have already been carried out.
- 5.16 As is already the case, the Commission, when assessing the suitability of an applicant, will take full account of any evidence available from or supplied to regulatory authorities in other countries. The Commission will also give consideration to an operator's compliance history in other jurisdictions so as to impose the minimum burden on operators, in line with better regulation principles. Similarly, in deciding what conditions, if any, are appropriate with regard to location of key equipment, staff, access to data or equipment and/or financial security, the Commission will take into account the safeguards relating to the licensing objectives already in place in any overseas location.
- 5.17 Annual fees are required to cover the Commission's costs of ensuring compliance of its licensees and taking enforcement action against non-compliant or unlicensed operators (as is currently the case under the existing operating licensing system). The current fee structure has an incremental level of fees based on the revenue of that operator and assumes that the variable costs of undertaking compliance activity for individual licensees will broadly level out across all licensees. However, licensing an operator whose operations are geographically spread over multiple locations could potentially require additional compliance expenditure. That is something we will need to explore further to enable us to consider how best to cover these variable costs so that the Commission can meet its regulatory obligations and ensure full cost recovery.

- 5.18 In particular, we may wish to consider whether the Commission could be provided with the power to require individual operators to pay additional fees or make provision for third party audits if they are causing disproportionate levels of work.
- 5.19 We should also ensure that the Commission retains the ability to enter into bilateral arrangements with other regulators in order to share information and minimise costs. For example, the Commission could agree that the regulator or third party in the home state (approved by the Commission) undertakes one/all compliance visit/s and reports back. This would assist in keeping unnecessary burdens on operators to a minimum and may also provide some reciprocal benefits for other regulators in terms of sharing information and expertise.
- 5.20 After the necessary licence has been issued, operators will be free to access the market and interact with British consumers. Operators will be expected to comply with the provisions of the Act, its associated regulations and the Commission's requirements. Operators will also be expected to comply with the specific provisions in the LCCP in terms of putting in place clear commitments towards research, education and treatment in Britain. In doing so, operators may wish to contribute financially to the GREaT Foundation, in line with the agreed funding formula; however this system currently operates on a voluntary basis¹².

Compliance

- 5.21 Licensing operators that are currently outside of the Commission's regulatory control will mean that those operators will need to meet the Commission's requirements to ensure that consumers receive the same levels of protection. This in itself will greatly enhance the Commission's ability to assess an operator's compliance as well as inform their understanding of how British consumers gamble online in a more complete way. This is because all licensed operators are currently required to:
- report immediately any key events, suspicious money laundering or betting integrity issues;

¹² Whilst the current system for contributing financially towards research, education and treatment for problem gambling in the UK is voluntary, under section 123 of the Gambling Act, the Secretary of State retains the ability to impose a statutory levy on Gambling Commission licence holders or classes of licensees if contributions fall below a certain level.

- submit regular activity reports detailing their size, revenue and any concerning non-compliance indicators;
- co-operate and respond to any queries from the Commission.

5.22 However it is vital that the Commission is able to monitor and enforce compliance effectively and therefore we need to consider the requirements to be placed on operators that may be based, either wholly or partly, overseas to ensure the full range of compliance checks can be completed, as well as allow the Commission to investigate for potential criminal prosecution. Currently, the Commission is already able to conduct a series of checks on its licensees without physically inspecting equipment and premises, including:

- visual checks of gambling websites for certain compliance issues such as responsible gambling information and terms and conditions;
- test purchase exercises to test age verification procedures;
- ensuring operators obtain information security audits and testing of games;
- assessing regulatory returns data and flagging any issues of concern; and
- dealing with escalated complaints and the resolution of any issues.

5.23 To assess an operator more comprehensively however, a physical compliance inspection is required. The Commission currently takes a risk based approach in determining which operators are visited when. During these visits the Commission interviews licensed management and day to day staff responsible for carrying out the companies' procedures. Tours of the facilities are also conducted, assessing matters such as the contact centre staff's level of compliance knowledge and undertaking dip sampling of records for items such as staff training material, self exclusion registers and full audit trails of recently released games to ensure appropriate testing and authorisation procedures were followed.

5.24 The profile of the remote gambling industry is such that different aspects of operators can be spread across different locations and often different countries. The Commission currently deals with instances where a licensee may have key equipment located in Britain but key staff and other operations based overseas. This

presents significant challenges and often requires key staff to fly into compliance meetings with the Commission.

- 5.25 Conversely, some operators with all or part of their remote business regulated overseas retain some presence in Britain (i.e. corporate Headquarters, licensed premises, call-centres etc). This is particularly the case for the well known UK brands and those operators with a large portion of their revenue derived from British consumers. So, an extended licensing system may in many instances make conducting corporate inspections straightforward.
- 5.26 However, there will be cases where licensees are wholly located overseas. In those circumstances, we will need to consider whether certain functions should be required to be located in Britain.
- 5.27 For the purposes of this consultation, and indeed when considering any future legislative changes, we consider it is appropriate to focus on the outcome desired rather than specifying the underlying mechanism an operator must use to achieve that outcome. For example, we know that the Commission will require access to certain equipment, records and staff in order to assess compliance. We will therefore need to consider the most appropriate method for the Commission to obtain that access. We think it is likely that approaches will differ between operators depending on a number of factors, including geographical location of key staff/key equipment, factors such as agreements and MOUs agreed between home regulators and the Commission and business model.
- 5.28 We are reluctant therefore to set out at this stage a comprehensive list of requirements to impose on all operators, preferring instead to indicate the desired outcomes as well as some possible options for operators to meet the Commission's needs. Under the existing legislation, the Commission already retains powers to impose conditions on licensees in relation to a range of issues. We think, in reducing burdens on both operators and the Commission, that those powers should be retained to ensure a bespoke approach based on a range of factors rather than 'one-size fits all'. This approach would also provide a degree of future-proofing to account for technological and regulatory changes that may take place internationally in the future.

- 5.29 In this way the Commission can impose more operator specific and flexible licence conditions to cater for the particular operation. We consider that there is a range of ways that the Commission can assure itself that the operator is complying with its statutory and regulatory obligations. For example, the Commission may want to consider requiring:
- A mirrored, tamper-proof server containing a full copy of gambling transaction records for inspection by the Commission (in Britain or elsewhere);
 - A regulatory representative in Britain;
 - A UK registered company and certain office functions located in Britain;
 - More enhanced regulatory returns; or
 - A bond lodged in Britain or payable to the Commission in the event of default.
- 5.30 Though the above options are available and will require further consideration and consultation with other regulators and the gambling industry, we are not yet convinced of the need to impose such conditions on operators as standard. The Commission will have the power (as it does now) to impose specific conditions or suspend or revoke an operator's licence in the event of continued non-compliance or failure to provide the information needed for the Commission to properly assess compliance. As such, we consider there is scope to undertake a more pragmatic approach in this area.
- 5.31 Of course, it will be possible for the Commission to visit certain operators' operations based overseas to ensure compliance. However, we are particularly keen to explore greater regulatory co-operation between jurisdictions as a means to ensure compliance with British requirements as well as keep burdens on operators and the Commission to a minimum. For example, the Commission could ask overseas regulators or third parties to carry out some of the compliance activity on their behalf. It might be possible, for example, for the Commission to contract with another regulator or specialist company to check compliance of particular operators with British requirements and standards. We think that this approach has considerable merit and we recognise that closer working relationships between regulators will be fundamental for the future if national licensing systems are adopted more widely to

avoid operators having to undergo numerous compliance and inspection visits from a range of regulators in the jurisdictions in which they are licensed.

- 5.32 We also recognise that this approach may offer the potential to further minimise costs and burdens on operators in jurisdictions where comprehensive information or compliance sharing agreements have been negotiated with the Commission, though this is something that will need to be explored in far greater detail as this work progresses. There may also be benefits for other regulators in relation to greater information exchange and the sharing of best practice and expertise.
- 5.33 Whilst we are confident that the approach we have outlined would provide both the Commission and the industry with maximum flexibility, we recognise that by not setting out detailed requirements we could be creating uncertainty for the industry in terms of not knowing exactly what investment will be needed in order to obtain and maintain a Commission licence. We consider that our thinking in this area would benefit from further development and refinement through further discussions with industry and other regulators to minimise uncertainty as this work progresses. We will therefore ensure that there is a further full consultation with industry on the detailed proposals of how an extended licensing system may work in practice and that an updated impact assessment with detailed cost/benefit analysis will be published at that time.

Question: Do you agree with our initial assessment regarding approaches towards compliance of remote gambling operators that may be based wholly or partly overseas? In particular in relation to:

- a. **additional fees**
- b. **MOUs or other agreements between regulators.**
- c. **Requiring some presence in Britain.**

If not, please state your reasons why as well as the approach you consider the Government should take.

Enforcement

5.34 When we talk about enforcement, we generally mean the measures we consider are necessary to deter and prevent operators from circumventing the licensing system and to sanction those operators that do. We have set out below the enforcement options we consider are available to us and have provided what we consider to be the pros and cons of each.

Offences

5.35 We propose to amend the current offence provisions in the Act to cover advertising to and transacting with British consumers without a Commission licence. We have considered whether this offence should have extra-territorial application; however, on balance we believe that extradition, given the resources and the diplomatic sensitivities involved, would be disproportionate in relation to the offence committed and the likely harm caused.

5.36 We consider that legitimate operators would not want to risk committing an offence in Britain and that this would therefore provide a suitable incentive to 'buy-in' to the licensing system. Though there would remain a risk that less reputable operators may try to circumvent the licensing system, such operators are likely to be smaller and have a significantly lower impact.

5.37 In the event of detecting an unlicensed operator believed to be actively targeting British consumers, a straightforward test purchase exercise would assist the Commission in determining whether an offence was being committed. Though we recognise that without extra-territorial extent, it will be difficult to actually pursue the offence through the Courts if the operator is located outside Britain, we consider that the consumer awareness raising measures we are proposing in paragraphs 5.47 to 5.50 will help to combat this obstacle by ensuring that consumers are better able to make informed decisions about the operators with whom they gamble.

5.38 Further, we recognise that increased regulatory co-operation and two-way information sharing between regulators may provide the Commission with additional methods with which to identify and potentially prevent unlicensed operators from

targeting the UK market. If regulators are able to work more closely together in this area it may be possible to deter unlawful activity by operators via greater co-operation and negotiation. For example, it may be possible for the Commission to negotiate with another regulator an agreement whereby an operator risks losing the licence issued by their home regulator if they continue to target the UK market without obtaining a licence. This could provide a powerful and effective deterrent and could reduce the need for criminal sanctions to be imposed.

- 5.39 We have considered whether to make it an offence for a British citizen to gamble with an unlicensed provider. This would be a new offence as no such provision exists in the legislation at present and could potentially provide a useful disincentive for people to gamble with unlicensed providers. This approach would also enable the offence to be prosecuted here. However, at this stage we are not minded to consider such a provision further as it seems disproportionate to the harm caused and raises issues of informed adult choice.
- 5.40 Therefore we propose that offences relating to the provision of remote gambling services in Britain without a licence and the advertising of remote gambling services without a licence are included as part of an overall enforcement package. In line with the other sanctions already within the Act, we would propose that the offences can be prosecuted by the Commission or the police. We may wish to consider the level of fine or length of custodial sentence imposed but this consideration could take place at a later time. We do not intend at this stage to introduce an offence that would criminalise the consumer for gambling with an unlicensed operator.

Question: Do you agree with the Government's proposals relating to offences as set out above? If not please clearly state your reasons why as well as your views on the approach you consider the Government should take.

Other enforcement approaches

- 5.41 Internet Service Provider (ISP) blocking is currently used in the UK in relation to child sexual abuse image websites and is operated in partnership with the internet industry. It has also been introduced (or has been proposed to be introduced) in some form by the United States and a number of European member states,

including France, Norway and Italy to tackle what are considered to be 'illegal' foreign internet gambling websites.

- 5.42 We note that the evidence as to the effectiveness of ISP blocking is mixed and that there are considerable cost and resource implications in requiring the filtering of gambling websites as well as potential impacts on the operation of the internet. Though there may be some benefits to be realised from implementing ISP blocking in terms of preventing British consumers from accessing unlicensed websites and in protecting licensed British operators from unlicensed competitors, we are concerned about the burdens such a measure would impose on ISPs, the likely limits on its effectiveness and the disproportionate costs that would be incurred by the Commission in monitoring such a requirement. We also acknowledge concerns that introducing ISP blocking or filtering runs the risk of creating precedents in other areas involving the regulation of the internet and that to impose such a measure raises issues regarding informed adult choice.
- 5.43 On balance we consider that introducing ISP blocking/filtering may not be appropriate in a British context at this time. However, we will need to consider, in the light of experience and technological innovation, whether we should take powers in legislation to impose such a measure in the future if it was deemed necessary and appropriate to do so.
- 5.44 Financial Transaction Blocking (FTB). As with ISP blocking, the United States and some European member states have introduced (or are proposing to introduce) FTB to prevent consumers from accessing unlicensed gambling websites. Such blocking is usually effected with the co-operation of the banks and credit card companies who block financial transactions identified via the Merchant Category Code (MCC) 7995¹³.
- 5.45 Here too, we note that the evidence of the effectiveness of this measure is mixed and that to implement such a measure in Britain would impose additional burdens on the financial sector. To do so would also raise similar issues in terms of cost/resource implications and informed adult choice as discussed in relation to ISP

¹³ This is the universal identifier for gaming and gambling merchants and transactions emanating from those merchants, including those providing betting, lottery tickets, casino gambling etc

blocking above. In particular, we are concerned that such a measure would prevent British consumers from using their British debit and credit cards when gambling overseas which would appear to be a disproportionate approach.

- 5.46 As with ISP blocking, we consider that introducing FTB may not be appropriate in a British context at this time but that we should consider whether to take powers in legislation that would enable us to impose such a measure in the future if it was deemed necessary and appropriate to do so.

Question: Do you think we have considered that above two restriction measures adequately? If not, please set out clearly your reasons and your views on the approach you consider the Government should take.

Question: Do you agree that the Government should consider taking powers in legislation to implement technological enforcement measures in the future in the event it became necessary and appropriate to do so? If not, please set out clearly your reasons and your views on the approach you consider the Government should take.

Consumer Awareness

- 5.47 In order to further support the safeguards that would be included as part of an extended licensing system for all remote gambling operators that wish to transact with British consumers (as well as assist in protecting those operators who have chosen to be licensed by the Commission from unlicensed competitors), we consider that a number of consumer awareness raising measures will need to be implemented to assist consumers make informed choices in respect of the operators with whom they choose to gamble. The Commission already has in place some of the items listed below; however we consider that such measures could include, but need not be limited to, the following:

- A dedicated area on the Commission's website where consumers can:
 - check the licensed status of operators;
 - learn which operators have had their licences suspended or revoked;
 - learn which operators are trying to access the market without a licence (we envisage this would usually refer to repeat offenders); and

- anonymously or otherwise, inform the Commission of any operators that have been targeting British consumers without a licence.
- Enabling individual licences to be viewed by consumers via the Commission website. This could also include functionality to allow licensees to link to their licence from their website improving transparency and reducing the risk of unauthorised use of the Commission's logo.
- Publication of advice relating to remote gambling, such as a revised version of the Commission's leaflet –'[What to look out for when gambling online](#)'. This would help to ensure that consumers know how to determine whether an operator is licensed in Britain, and thus complies with British standards, as well as explain the potential risks of gambling with an unlicensed provider.

Question: Do you agree with the proposed consumer awareness raising measures that we have proposed? If not, please clearly state why as well as the approach you consider should be taken.

- 5.48 As we have set out in the paragraphs above, there are a number of enforcement mechanisms available to ensure that only those licensed by the Commission advertise in the UK and target British consumers. However, it is important to acknowledge the limitations of such measures in terms of the Government's ability to regulate the internet and take action against operators based outside of Britain. We accept that no solution, short of one imposed at disproportionate cost and unacceptable limits on consumer choice and freedom, will ever be 100% effective.
- 5.49 However, we consider that by putting in place a fair and open system of regulation which provides operators with the ability to apply for a licence to advertise in the UK and conduct business with British consumers, the majority of the remote gambling taking place in Britain will be effectively regulated. It is already the case that a large proportion of gambling operators demonstrate corporate and social responsibility and we envisage that these operators will want to show their commitment to complying with the regulatory regime we are proposing. Whilst there will always be operators that refuse to comply, we consider these will be few and far between and will have such a limited impact on the protection of British consumers and licensed

operators that to implement excessive enforcement measures would appear to be disproportionate when compared to the risk they present.

- 5.50 That is why we recommend that an overall enforcement package to supplement the extended licensing system for remote gambling should consist of the following:
- Offences relating to the provision of remote gambling services in Britain without a licence and the advertising of remote gambling services without a licence. This should deter most operators from circumventing the regulatory regime and may enable us to take action against those who repeatedly commit offences;
 - Consumer awareness raising measures (listed above) to assist consumers make an informed choice as to who they gamble with and explain the risks associated with gambling with unlicensed providers; and
 - Considering whether to take powers in legislation to introduce additional safeguarding enforcement measures in the future should it become necessary and appropriate to do so.

Question: Do you agree with the Government's overall approach to enforcement as set out above? If not, please clearly set out the reasons why as well as your views regarding the approach you consider the Government should take.

Chapter 6: Summary of Questions

- Question 1: Do you agree with the Government's preferred option in relation to EEA and Gibraltar licensed operators? If not, please set out clearly your reasons and let us know if you consider any of the options, or any other option not considered in this paper to be more appropriate.**
- Question 2: Do you agree with the Government's preferred option b) above? If not, please set out clearly your reasons and let us know if you consider any of the options, or any other option not considered in this paper, to be more appropriate.**
- Question 3: Do you agree with the Government's preferred overall option in relation to EEA, Gibraltar and white listed operators? If not, please set out clearly your reasons and let us know if you consider any of the options, any other combination of the options, or any other options not considered in this paper, to be more appropriate.**
- Question 4: Do you agree with the twin triggers for requiring a licence?**
- Question 5: Do you agree with the definition of 'transacting with British consumers'?**
- Question 6: Do you agree that the above definitions of advertising are appropriate?**
- Question 7: Do you agree that direct mail and spam etc are a low impact and less successful form of advertising?**
- Question 8: Do you think we should permit the advertising of non-remote foreign gambling without the requirement for the operator to be located in a white listed jurisdiction or to hold a Commission licence?**

Question 9: Do you agree with our initial assessment regarding approaches towards compliance of remote gambling operators that may be based wholly or partly overseas? In particular in relation to:

- a. additional fees**
- b. MOUs or other agreements between regulators.**
- c. Requiring some presence in Britain.**

If not, please state your reasons why as well as the approach you consider the Government should take.

Question 10: Do you agree with the Government's proposals relating to offences as set out above? If not please clearly state your reasons why as well as your views on the approach you consider the Government should take.

Question 11: Do you think we have considered that above two restriction measures adequately? If not, please set out clearly your reasons and your views on the approach you consider the Government should take.

Question 12: Do you agree that the Government should consider taking powers in legislation to implement technological enforcement measures in the future in the event it became necessary and appropriate to do so? If not, please set out clearly your reasons and your views on the approach you consider the Government should take

Question 13: Do you agree with the proposed consumer awareness raising measures that we have proposed? If not, please clearly state why as well as the approach you consider should be taken.

Question 14: Do you agree with the Government's overall approach to enforcement as set out above? If not, please clearly set out the reasons why as well as your views regarding the approach you consider the Government should take.



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