



Important considerations in relation to the future regulation of remote gambling in Great Britain

David Clifton & Suzanne Davies
Clifton Davies Consultancy Limited
dc@cliftondavies.com
sd@cliftondavies.com

Important considerations in relation to the future regulation of remote gambling in Great Britain

**By David Clifton & Suzanne Davies (Clifton Davies Consultancy Limited)
November 2013**

In September 2013 the Gambling Commission published three consultation documents, which are directly relevant to the future British regulatory regime for remote gambling, namely:

- Remote operating licence application review
- Proposed amendments to licence conditions and codes of practice for all operators ("LCCP")
- Protection of customer funds: proposals for amendments to current licence condition 4 for all gambling operators

Remote operating licence application review

The first-mentioned consultation (which closed on 28 October) contained proposals designed to improve the application process and information requirements for remote operating licence applications. It also set out the way in which the Commission proposes to exchange information with other gambling regulators to avoid unnecessary duplication and to reduce the burden on applicants. The Commission states on its website that *"the timetable for the introduction of the new application process and information requirements will mirror the timetable for acceptance of applications following the introduction of the Gambling (Licensing and Advertising) Bill, currently expected in early 2014"*.

Proposed amendments to LCCP (including protection of customer funds)

Although the Gambling Commission will give full consideration to all responses to the other two consultation documents which have been received by the 4 December 2013 deadline, it is anticipated that the proposals set out in each document will to a greater or lesser extent be embodied in amended an LCCP document and, as such, will need to be borne in mind now by existing licence holders and those applying to the Commission for operating licences, whether for wholly new licences or under the intended transitional period once the Gambling (Licensing and Advertising) Bill has been enacted.

We do no more below than summarise the nature of the possible future changes and additions to the existing LCCP requirements that would have bearing on the remote gambling industry. We will be pleased to advise in relation to specific questions arising from this summary.

General and financial conduct

- An explicit requirement that all gambling operators should act in an open and cooperative manner with the Gambling Commission at all times
- Incorporation of contractual provisions with third parties (including affiliates and those who provide user interfaces) that effectively render such parties subject to the same codes of practice as apply to operators (and enable prompt termination of the contract in the event of a breach)
- The person responsible for compliance should not (except with the express approval of the Gambling Commission) occupy any other specified management office – with a possible exception for small-scale operators
- Revised requirements relating to the prevention and detection of money-

laundering

- A specific requirement that licence-holders must comply with their own terms pursuant to which they offer gambling

Complaints & disputes

- Incorporation within the complaints & disputes policy of an independent alternative dispute resolution procedure

Information requirements

- Suspicions of offences under the Gambling Act 2005 to be provided to the Gambling Commission as soon as reasonably practicable
- Additional “key events”, “other reportable events” and “information about wider material changes or risks” which must be reported to the Gambling Commission
- Notification to the Gambling Commission of suspected or attempted interference with (a) events in Great Britain on which bets are placed worldwide and (b) events outside Great Britain where bets are placed in Great Britain

Specific requirements for remote gambling operators

- Obligations in relation to the location and relocation of remote gambling key equipment (taking into account the future removal of the need for remote licensees to locate at least one piece of key equipment in Great Britain)
- Allowing access by the Gambling Commission to (and provision of data from) key equipment
- A new condition requiring that all gambling software used by a licensee must have been supplied by a holder of a gambling software operating licence
- New conditions applicable to network arrangements:
 - to ensure that every player in Great Britain who participates in network arrangements does so via a Gambling Commission licensed B2C operator,
 - requiring the B2B network operator to have effective information sharing arrangements in place with B2C operators, whether or not the B2C operator is licensed by the Gambling Commission and
 - in the case of poker network arrangements (ie peer-to-peer gaming as opposed to other network arrangements such as bingo and pool betting) involving pooling British and non-British player liquidity, requiring the B2B network operator to ensure that any third party operator holds the appropriate permissions in the country in which it is based and to conduct due diligence enquiries, including in relation to customer identification measures, in order to approve third party operators as being suitable
- An obligation to link customer accounts activity across group companies
- A restriction to the use of payment processors that are authorized so to do under the Payment Services Regulations 2009
- Changes to the requirement for display of licensed status (and, following Parliamentary deliberations on the Gambling (Licensing and Advertising) Bill it may yet be that the Commission will require licence-holders to display a “kitemark”)

Protection of customer funds

- A prohibition on the co-mingling of customer funds with other company funds by one or more of the following means, possibly with different rules for specific gambling products:

- Segregated accounts
 - A “Quistclose” trust
 - Insurance against insolvency
 - An independent trust account
 - A reserve held by the Gambling Commission
- A requirement on operators to disclose on the home page and deposit pages (by means of a standard rating system) an assessment of the level of protection of customer funds that they offer to their customers, with special arrangements applying to “restricted display devices such as mobile phones or mini-tablets
- In the case of network arrangements where players are “pooled”, regardless of the arrangements between the B2B and B2C operators, it will be the B2C operator who is responsible for meeting any commitments made to the customer and consequently the B2C operator should arrange the segregation and protection of all customer funds (crystallised benefits such as winnings, unused deposits, bonuses etc) whether or not the B2C operator has received settlement of those funds from the network/pool
- A requirement that operators make clear to their customers what charges and administration fees apply and may be debited to their accounts
- Requirements in relation to frequency of reconciliation of customer funds
- A requirement that operators who participate in a common wallet system across remote and non-remote platforms ensure that customer funds are held in an account for all funds held in the common wallet, regardless of source.
- Categorisation of financial institution with which customer funds may be held or the location of such financial institution
- Associated “key event” or “other reportable event” notification requirements

Possible future developments

- A multi-agency review of the advertising and marketing of free bets and bonuses (in light of concerns about potentially misleading or unfair terms and conditions)
- Changes to the LCCP to reflect evolving best practice in social responsibility measures
- Third party test purchasing to improve the prevention of underage gambling
- Amendment of the Gambling Commission’s expectations in relation to the contributions that the industry makes to appropriate research, education and treatment
- Improved collaboration between the Gambling Commission and partner agencies including SOCA and UKFIU
- Timelines that should apply to the handling of complaints and disputes

We will report further on the Gambling Commission’s reaction to the responses to the consultations as soon as this information is known. In the meantime, please contact us with any queries arising, including in relation to operational and compliance changes that might sensibly be implemented now in advance of any specific LCCP or other requirement being imposed.

© Clifton Davies Consultancy Limited 2013

