



Preparing for the proposed changes in the law under the Gambling (Licensing and Advertising) Bill

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By David Clifton & Suzanne Davies (Clifton Davies Consultancy Limited)

Introduction

We have published on our website a number of articles concerning the Gambling (Licensing and Advertising) Bill. Subject to parliamentary approval, the changes to the legislation set out in the Bill will require gambling operators that transact with or advertise to British consumers to obtain an operating licence from the Gambling Commission.

At the time of writing this article, the Bill is due to have its third reading in the House of Lords on 18 March 2014. In the event that there are no amendments, it will be sent to HM the Queen for Royal Assent. The change to the legislation is therefore now considered imminent with the consequence that the new licensing and regulatory regime could take effect as early as summer 2014.

The Commission has stated that:

- it is *“committed to ensuring those already legitimately trading with British consumers experience a smooth transition to the new system”*
- overseas operators currently lawfully providing remote gambling into Britain (because they hold a licence or authorisation from an EEA or white listed jurisdiction) will continue to be able to do so, provided that they apply for the relevant licences at the correct time
- operators will be able to make an application for a licence prior to the regulatory reforms coming into force
- an operator whose application has not been determined by the Commission before the new regime commences will be issued with an interim “continuation” licence, allowing it to continue to operate pending the final determination of its application
- business to business operators will not be covered by the transitional arrangements.

In this document, we are setting out information that is designed to assist with preparation for the proposed changes under the Bill.

The licence application

The Commission will require operators to submit their applications online. It has stated that it will not accept a manually completed form other than in exceptional circumstances

It will be important for affected operators to prepare their application and gather the necessary supporting documentation in advance. To assist in this process, the new application forms and guidance notes are set out below.

- **Multi-Jurisdictional Business Form (MJBf)** showing the questions to be answered and documentation to be provided by applicants who do not currently hold a remote operating licence with the Gambling Commission. Operators who qualify for transitional arrangements and/or who hold a non-remote operating licence with the Commission do not need to answer all questions, only those highlighted in the form.
- **Multi-Jurisdictional Business Form (MJBf) guidance notes**
- **Jurisdictional Rider** which accompanies the MJBf and shows the questions to be answered and documentation to be provided by applicants who do not currently hold a remote operating licence with the Gambling Commission. Operators who qualify for transitional arrangements and/or who hold a non-remote operating licence with the Commission do not need to answer all questions, only those highlighted in the form.
- **Authorisation for release of information form** - this is part of the application and must be signed to authorise third parties to release information to the Commission.
- **Jurisdictional Rider guidance notes**
- **Annex C - supporting information** - list of supporting information that must be provided with an application.
- **Template for a statement** that operators can request from their 'home' regulator and then submit with their application (or ask their 'home' regulator to submit separately). This will avoid duplication of information already supplied to the 'home' regulator.

Recognising that prospective licence applicants may want to try the online application service out, to understand how it works and what is required, before using it to submit an application, the Commission has requested the following for any "test runs":

- Record the applicant name as something along the lines of 'TEST and your name'
- When you get to the end of the application make sure you do not submit the application
- If you subsequently want to submit a real application, start a fresh application and delete the 'test application'.

Applicants for an operating licence issued by the Gambling Commission must bear in mind that a licence-holder must uphold the following three licensing objectives:

- keeping crime out of gambling,
- ensuring gambling is conducted fairly and openly and
- protecting children and vulnerable people from being harmed or exploited by gambling.

With the above objectives in mind, when considering the suitability of an applicant, the Commission will have regard to the following matters and seek evidence to support and enable an assessment to be made against each one:

- identity and ownership
- finances
- integrity
- competence and
- criminality.

Further information on the proposed new licensing and regulatory regime

We have been asked a number of questions in recent months as a result of which we concluded that it would assist our clients and potential new clients were we to set out a summary of answers to such questions, in respect of which we have been considerably assisted with information supplied by the Gambling Commission.

In summary:

- the Gambling Commission expects to invite applications overseas from operators currently lawfully providing remote gambling into Britain and those new to the British market a minimum of two months after the Bill receives Royal Assent.
- the precise details of the transitional measures will depend on the final form of the legislation, but subject to that, the Commission expects that overseas operators currently providing gambling facilities legally to British consumers:
 - will be required to apply and pay a fee in a transitional period (and, in this respect, the Commission's current fee system will apply)
 - having made such an application, will be issued with a "continuation" licence enabling them to continue to trade until their application is determined
 - will then have to pay the annual fee 30 days following the issue of the continuation licence
 - will be required to supply solely existing products that have previously been lawfully supplied to British customers (meaning that if an operator wants to add additional gambling activities to the ones they already offer, they must apply for those additional activities at the same time)
 - apply for the "*right size of licence*", because the Commission makes the point that it "*cannot vary the continuation rights*

granted pending the conclusion of a licence application”

- As matters presently stand, the Commission can accept applications from those planning to operate in Great Britain either:
 - by siting key equipment here
 - waiting for the intended legislation to come into effect on the basis that any licence granted will be subject to conditions preventing the licence from being used until any requirements in relation to key equipment are met.
- Unless the “small-scale operator exemption” applies, individuals in one or more of the following key management positions:
 - overall strategy and delivery of gambling operations
 - financial planning, control and budgeting
 - marketing and commercial development
 - regulatory compliance
 - gambling related IT provision and securityworking for licensed operators planning to make an application should consider applying as soon as possible for a Personal Management Licence (“PML”). We can provide further information on this if required.
- Changes to the Commission’s Licence Conditions and Codes of Practice” (“LCCP”) – about which we have written in other articles published on our website – are expected to be published during March 2014. It is expected that the bulk of those changes will be brought into force three months later in June 2014, with the remainder coming into force later in 2014.
- It is expected that within the earlier of the above-mentioned changes to the LCCP will be the new licence condition requirement that Gambling Commission licensed operators must source their gambling software from gambling software businesses licensed by the Gambling Commission. This is an area that has caused particular confusion and the Commission is intending to issue updated advice. However, in the meantime, we will be happy to answer any questions arising.
- The Commission has also stated that it will be consulting on and implementing further changes, including remote technical standards and remote testing strategy. However, the Commission has stated that it *“has no desire to unnecessarily duplicate testing already conducted on games available in Britain”* and will set out on its website its proposal and consult informally on them.
- The Commission will not specify where remote gambling equipment must be located under the new licensing and regulatory regime. However, in order to ensure that it has appropriate controls over the gambling offered and can fulfill its compliance and enforcement activities, it is likely, amongst other things, to ensure that:
 - equipment is located in jurisdictions where operating a remote gambling business is permitted,

- it has access to data on demand, meaning that unless local data protection laws allow data to be transferred to the Commission, an operator could not locate its equipment in that jurisdiction and
- it can be satisfied that all data and records are accurate and complete.

Advertising

Under the proposals contained within the Bill, only gambling operators licensed by the Gambling Commission will be able to advertise to consumers in Great Britain or provide them with remote gambling facilities.

Carriers of gambling advertising will therefore need to ensure that they only permit gambling operators licensed by the Commission to advertise in Britain. This task will be facilitated by a requirement that all licensed operators display on their website the Gambling Commission logo and provide a link to www.gamblingcommission.gov.uk so that consumers can verify (by reference to the Commission's register of licensed operators) that an operator has a valid licence.

In relation to the marketing of bonus offers and free bets as an incentive to attract new customers, the Commission has stated that it *"is working with its regulatory partners to ensure these offers are being marketed to customers in a fair and open way"* and that this could lead to changes to the LCCP.

In the meantime, licensed gambling operators should follow the voluntary gambling industry code for socially responsible advertising and guidance on the rules for gambling advertisements, with which gambling advertising should comply, can be found at:

<http://www.cap.org.uk/Advice-Training-on-the-rules/Help-Notes/Guidance-on-the-rules-for-gambling-advertisements.aspx>

Conclusion

Change is fast approaching. Please do not hesitate to contact us if you have any enquiry arising from the above.

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