

Summary: Intervention & Options

Department /Agency: Department for Culture, Media and Sport	Title: Impact Assessment of Regulatory Future of Remote Gambling Consultation	
Stage: Consultation	Version: 0.1	Date: 22 March 2010
Related Publications:		

Available to view or download at:

<http://www.culture.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

Following Departmental and Gambling Commission consideration of the current system of remote gambling regulation in Great Britain, we have identified a number of risks to the licensing objectives of the Gambling Act 2005 (the Act) - to keep crime out of gambling, to ensure gambling is fair and open and to protect children and vulnerable adults from harm. In particular we are concerned about the differing regulatory requirements between British licensed remote gambling operators and their overseas counterparts with whom British consumers are able to gamble.

What are the policy objectives and the intended effects?

The policy objectives are to ensure that the licensing objectives and related protections contained within the Act continue to be afforded to British consumers; and to achieve greater fairness between British and overseas licensed operators in terms of consistent standards and requirements and commitments towards research, education and treatment of problem gambling in the UK.

What policy options have been considered? Please justify any preferred option.

The Government is consulting on four options in respect of EEA member states and three options for non-EEA jurisdictions. On the basis of three criteria (consistency, fairness and cost recovery), the Government's preferred option is to require all operators in EEA member states, Gibraltar and white listed jurisdictions that want to advertise to and/or transact with British consumers, to obtain a licence from the Gambling Commission. We also propose to introduce a streamlined whitelisting process for non-EEA jurisdictions.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy would require changes to primary legislation. The policy would be reviewed two years after any implementation.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

..... Date:

Summary: Analysis & Evidence

Policy Option: 4	Description: Extend the licensing system to all remote operators offering gambling to UK consumers and "streamline" the whitelist system
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The main costs will be incurred by operators already active in the British market but with all or part of their operations regulated overseas. Key costs will include the licence fees (application and annual) and any changes necessary to comply with Commission requirements.				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 2px;">One-off (Transition)</td> <td style="width: 30%; text-align: center; padding: 2px;">Yrs</td> </tr> <tr> <td style="padding: 2px;">£ tbc</td> <td></td> </tr> </table>		One-off (Transition)	Yrs	£ tbc	
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Average Annual Cost (excluding one-off)						
£ tbc						
Total Cost (PV)		£ tbc				
<p>Other key non-monetised costs by 'main affected groups' We would be grateful for any information from other regulators and remote gambling operators for further information as to the costs that may be incurred under an extended licensing system; though we recognise that these will differ depending upon the specific compliance requirements imposed on operators.</p>						

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' We anticipate that the licence fees paid to the Commission will cover the increased cost to the Commission of regulating additional operators and that the financial burden on the Commission caused by enquiries and overseas test purchase exercises will also be covered.				
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Average Annual Benefit (excluding one-off)						
£ tbc						
Total Benefit (PV)		£ tbc				
<p>Other key non-monetised benefits by 'main affected groups' Consumers and broadcasters should also benefit from simplified means in checking whether an operator is licensed by the Commission. Sports bodies and other UK agencies may also benefit from increased information sharing regarding suspicious betting and money laundering.</p>						

Key Assumptions/Sensitivities/Risks We recognise that costs and burdens imposed on operators, particularly in respect of compliance activity may differ depending upon a number of variables including geographical location, business model and any agreements the Commission may have formed with the home regulator.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ TBC	NET BENEFIT (NPV Best estimate) £ TBC
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What is the geographic coverage of the policy/option?	GB				
On what date will the policy be implemented?	TBC				
Which organisation(s) will enforce the policy?	Gambling Commission				
What is the total annual cost of enforcement for these organisations?	£ TBC				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	N/A				
What is the value of the proposed offsetting measure per year?	£ TBC				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	Yes				
Annual cost (£-£) per organisation (excluding one-off)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro TBC</td> <td style="width: 25%; text-align: center;">Small TBC</td> <td style="width: 25%; text-align: center;">Medium TBC</td> <td style="width: 25%; text-align: center;">Large TBC</td> </tr> </table>	Micro TBC	Small TBC	Medium TBC	Large TBC
Micro TBC	Small TBC	Medium TBC	Large TBC		
Are any of these organisations exempt?	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £ TBC

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

Under current arrangements (set out in the Gambling Act 2005), operators who have key equipment in Great Britain are required to be licensed by the Gambling Commission, whilst operators licensed in EEA Member States, Gibraltar and white listed jurisdictions (Isle of Man, Alderney, Tasmania and Antigua and Barbuda) are permitted to advertise in the UK by virtue of the licence held in their home jurisdiction.

Our analysis shows that whilst British consumers make up a significant proportion of the European gambling market, most online gambling offered to Britain comes from overseas, therefore outside of the Gambling Commission's regulatory reach. Whilst British consumers are certainly not without protection – most European jurisdictions, as well as all those included on the white list have systems of remote gambling regulation - those systems have varying standards and requirements that differ from those required here.

Whilst no specific public protection issues have yet arisen, we have identified risks to the Gambling Act's licensing objectives that have increasingly required intervention by the Commission at a cost to British based licence fee payers and the taxpayer.

For example, overseas operators do not have to report suspicious betting activity to the Gambling Commission or the relevant sports bodies (as is required of British licensed operators). They are also subject to different requirements in terms of software testing, age verification and setting self-exclusion limits. We have also found that both consumers and broadcasters can find it difficult to work out where operators are licensed, generating additional, unfunded work for the Gambling Commission in responding to queries. Furthermore, without oversight of the gambling activity occurring with overseas operators offering services to British consumers it is difficult for the Gambling Commission to undertake its statutory role as advisor to the Government on the incidence of gambling, the manner in which it is carried on, and the regulation of gambling. The current system further constrains the Department and the Commission in identifying potential issues and risks to the licensing objectives.

We also consider that it is important for the Government to assess the implications of overseas developments on British consumers and operators. In particular we note that both the European Commission and the European Court of Justice (ECJ) have recently signalled that national licensing systems, rather than automatic mutual recognition, may be compatible with Article 56 (freedom to provide services).

The Government has set out a number of options for reforming the regulation of remote gambling in its recently published consultation. Four options relate to operators based in EEA member states and Gibraltar, and a further three options to operators in jurisdictions outside the EEA, including those on the white list.

EEA Jurisdictions

The options

The four options are:

Option 1 – Do nothing;

Option 2 – Introduce non-statutory changes to the system;

Option 3 – Introduce the need for such operators to obtain a licence to enable them to advertise in the UK;

Option 4 - Introduce the need for such operators to obtain a licence to enable them to transact with British consumers and advertise in the UK;

Analysis and assessment of the options

Option 1

The Government has ruled out the 'do nothing' option, given the potential risks to the licensing objectives.

Option 1 also fails under all of the criteria set out in the consultation document, as it would

- (a) preserve inconsistent regulatory standards,
- (b) maintain an unlevel playing field in terms of the wider requirements on operators in relation to research, education and treatment of problem gambling, and
- (c) fail to provide the UK regulator with a cost recovery mechanism.

Option 2

Under option 2, we have explored whether the Gambling Commission could enter into Memoranda of Understanding (MOUs) with other regulators to share information or agree common standards/approaches. However, we felt that this option failed to meet to the criteria set out in the consultation document.

While the Gambling Commission could insist on consistency for all MoUs negotiated with outside jurisdictions (and some uncontroversial agreements may be reached quickly), it is unlikely that all overseas regulators will be willing to accept a "one-size fits all" standard that is not backed up by a statutory requirement. This in itself is therefore likely to mean either a failure to construct MoUs with some jurisdictions or result in a set of inconsistent agreements, and a system which would therefore not meet our own consistency criteria. The same argument therefore follows with respect to fairness. In terms of cost recovery, it is not considered appropriate to fund negotiations through existing licence fees from licensed operators. Separate funding would therefore have to be sought.

The Government has therefore recommended that this option is rejected.

Option 3

Under this option, the Gambling Act would be amended to extend the need for a licence to those operators wishing to *advertise* to British consumers. This would mean that those operators wishing to advertise in the UK would have to demonstrate that they met the Act's licensing objectives, and would ensure that the Gambling Commission is properly funded to deal with enquiries and complaints and to undertake a greater level of compliance monitoring and enforcement work in respect of overseas operators. Given the importance of advertising, this option would be likely to capture a significant proportion of operators transacting with British

consumers. It would also be a move to licensing based on the location of the customer rather than the operator which we consider is likely to be more sustainable in the longer term.

However, it could create an inconsistency between those operators wishing to advertise in the UK and those who wish to transact with British consumers but do not want, or need, to market their services to the UK directly. The same failing therefore applies in respect of the fairness criteria.

This option, while having some merit, is not deemed to target the issue directly, and the Government therefore recommends that it is rejected.

Option 4

This is the Government's preferred option. Under this option, the Act would be amended to extend the need for a licence to operators to allow them to *transact* with UK consumers *and/or advertise in the UK*. This would apply to all operators active in the UK market regardless of how they conducted their activity.

As this approach would be comprehensive in applying to all operators, it would provide regulatory certainty and consistency thus upholding the Act's licensing objectives; it would ensure all operators targeting the UK (wherever they are located) are required to comply with the Act's regulatory standards and demonstrate how they will contribute towards research, education and treatment in the UK. It would also ensure the Gambling Commission is properly funded to meet the increased workload.

The Government recommends this option as a direct solution to the issues identified.

Other Options

The Government has also considered a number of options which we considered would not be compliant with the provisions of EC Law. These were:

- a) **extend the white list system to operators in EEA member states and Gibraltar** We have considered whether it would be appropriate to extend the white listing regime (whereby we assess the regulatory system of a jurisdiction before enabling their licensed operators to advertise in the UK) to EEA member states and Gibraltar. However, we consider that to do so would not comply with EC law as we could end up restricting the freedom to provide services to companies who may meet our standards, solely on the basis that the jurisdiction in which they are licensed does not.
- b) **Close the market completely, enabling only operators based and licensed in Britain to offer gambling services to British consumers.** As above, we consider that it would be disproportionate and discriminatory to prevent EEA and Gibraltar licensed operators from offering their services in the UK simply by virtue of their geographical location outside Britain.

Non-EEA jurisdictions

The Options

Option 1 – Improve the white listing system for non-EEA jurisdictions

Option 2 – Develop a more streamlined white listing process as well as introduce licensing for operators in white listed jurisdictions

Option 3 – Abolish the white list and introduce a licensing system for operators in all non-EEA jurisdictions

Option 1

This involves making improvements to the current white listing system to reduce ambiguity around contributions to research, education and treatment of problem gambling in the UK and the introduction of fees for applications to the white list.

This would enable the Government to exercise greater scrutiny of the regimes operating in jurisdictions which apply for inclusion on the white list. However, it would create a disparity between operators based in EEA member states and Gibraltar which would be regulated by the Commission, and those outside the EEA which would not. As inclusion on the white list is not dependent on a jurisdiction replicating the UK's regulatory system, this would also lead to a range of different systems.

The cost recovery criteria could theoretically be met and less ambiguity should reduce the assessment costs, however, who and how to charge for white listing applications is unclear and may prove unfeasible.

The Government has recommended that this option is rejected.

Option 2

This option would see the current white listing process streamlined, with a number of its fundamental aspects retained, such as the need for jurisdictions/regulators to demonstrate their legislative/regulatory authority over gambling, the willingness and capacity to share information, and evidence that licensing objectives are broadly similar to our own.

In addition, operators wishing to transact with British consumers would be required to apply to the Gambling Commission for a licence. This should ensure that all operators (throughout EEA and white listed non-EEA areas) offering gambling services to British consumers are expected to implement consistent safeguards and demonstrate their commitment to contributing towards research, education and treatment here. The cost of licence fees should in turn cover the increased burden on the Gambling Commission in scrutinising applications and monitoring operators.

This is the Government's preferred option and we recommend that it is explored in greater detail.

Option 3

As with Option 2, this option would require all operators (including in any non EEA jurisdiction) offering gambling to British consumers to obtain a licence, but with the white list being abolished.

This is deemed to meet all the criteria set out in the consultation on the same basis as outlined in Option 2. The Government recommends this option is rejected however, given the additional benefits arising from the existence of the white list, such as promoting improved regulatory standards outside the EEA.

Costs and Benefits

We anticipate that the main group affected by the proposed changes will be remote gambling operators who want to offer services to British consumers and who currently have all or part of their operations based outside of Britain. They will be required to hold a remote operating licence from the Gambling Commission, comply with the Gambling Commission's requirements and technical standards, share relevant information with the Gambling Commission and other bodies, and allow the Gambling Commission access to certain remote gambling equipment/data.

The principal costs associated with the recommended proposals will be on operators applying to the Gambling Commission for a licence, and from annual fees required to cover the Commission's costs of ensuring compliance of licensees and taking action against non-

compliant or unlicensed operators. These are the same costs associated with the current licensing system. Gambling Commission fees and charges are currently related to relevant turnover with a minimum fee, progressive and cumulative percentage fees as turnover increases and a maximum cap beyond which no further fees are payable. It is not yet clear whether the remote gambling licence fee structure will stay the same under an extended system.

On the basis that the structure remains broadly similar a detailed breakdown of these costs will depend upon:

- a) The number of operators applying for licences
- b) The size and turnover of those operators
- c) Any adjustments made to the cost of a licence based on the regulatory system applicable in an operators' home jurisdiction and any agreements the Commission may negotiate with other regulators.

In addition, further costs could be imposed on operators if a decision is taken to require operators to locate parts of their operation in Britain, or if an operator needs to adapt its own monitoring and assessment capabilities in order to comply with the Gambling Commission's requirements (e.g. its ability to identify and report suspicious betting activity). At this stage we have been unable to ascertain these costs and would be grateful for information from the industry regarding the costs that operators may incur under an extended licensing system, bearing in mind the different approaches outlined in Chapter 5 of the consultation document. We will publish a detailed cost/benefit analysis in the next revision of the Impact Assessment.

There may also be costs incurred by the Gambling Commission in processing a greater number of licence applications, and in building and maintaining a capacity to monitor and assess the increased number of operators under its regulatory control. This would be offset by licence fees, the economies of scale that can be gained when dealing with larger numbers of operators and any agreements the Commission may enter into with other regulators to share information, compliance and enforcement burdens.

We also recognise that these proposals will have an impact on regulators in other jurisdictions, in particular those where a number of UK facing businesses are currently located. We will continue to explore with those regulators the quantifiable impact of our proposals on them.

Jurisdictions applying for inclusion on the white list may also incur some costs associated with that application (e.g. one off legal costs), and/or bringing their regulatory systems in line with the requirements of the UK. However, those costs broadly apply under the existing system and a more streamlined approach may reduce the overall burdens on applicant jurisdictions.

We recognise that further research is required with overseas jurisdictions and remote gambling operators to fully cost and assess a fair and proportionate licensing structure. As such, we intend to undertake further detailed discussions with interested parties regarding the detail of how an extended licensing system may work in practice. We will also ensure that a full cost/benefit analysis is provided for further consultation.

We consider the key benefits of the proposals would be that:

- 1) British consumers would be afforded consistent protections, as envisaged by the Gambling Act, from a wide range of gambling providers;
- 2) All operators targeting the UK (wherever they are located) will be required to comply with the Commission's requirements and technical standards and demonstrate how they will contribute towards research, education and treatment in the UK. This will benefit consumers as well as British licensed remote businesses;

- 3) The Gambling Commission will be properly funded to deal with enquiries/complaints and to undertake a greater level of compliance monitoring and enforcement work in respect of overseas operators;
- 4) The Gambling Commission would be provided with a more comprehensive picture of the remote gambling activity undertaken by British consumers to help advise the Government and inform future policy decisions.

Scale

At this stage it is difficult to determine how many operators will be affected. In order to establish this we would need to verify which operators are advertising in the trade press and through sponsored links. We could also gather information from other regulators and the remote gambling industry. The Gambling Commission's current estimate is that around 75 overseas operators would be affected by the proposed requirement to hold a UK remote gambling licence.

Competition assessment

The proposal to require all operators to obtain a licence to offer services to British consumers is consistent and promotes competition. The current system whereby operators with larger turnovers are charged more for a licence means that some operators would pay more than others. Further assessment is required as to whether this is a fair and proportionate approach.

The Office of Fair Trading published revised guidelines for Departments on the consideration of competition assessments in 2007. The guidelines state that, in relation to competition assessments, the following four key questions should be considered:

1. Does it directly limit the number or range of suppliers?

This is likely to be the case if the proposal involved:

- The award of exclusive rights to supply, or
- Procurement from a single supplier or restricted group of suppliers, or
- The creation of a form of licensing scheme, or
- A fixed limit (quota) on the number of suppliers.

DCMS position: Since the Act confers a number of freedoms on operators licensed in EEA member states, Gibraltar and white listed jurisdictions (in terms of the ability to advertise in reliance on the licence issued by the home regulator), the proposals have the potential to limit the number or range of suppliers. However, we consider the proposals to be necessary in order to ensure continued consumer protection. In essence, only operators who meet the Act's provisions and the Gambling Commission's requirements and who have been granted a licence would, in future, be permitted to advertise in the UK. Further, by requiring all operators active in the British market to adhere to the same standards and requirements, we consider that the proposals may have a positive effect on competition as well as provide consumers with a wider range of Gambling Commission licensed operators with which to gamble.

2. Does it indirectly limit the number or range of suppliers?

This is likely to be the case if the proposal significantly raises the costs:

- Of new suppliers relative to existing suppliers,
- Of some existing suppliers relative to others,

- Of entering or exiting an affected market.

DCMS position: As above, there will be additional costs for operators to pay in connection with the proposals, including licence application and annual fees. However, we are conscious of better regulation principles and the need to ensure that fees are reflective of the regulatory costs incurred as is currently the case for all Gambling Commission licensees.

3. Does it limit the ability of suppliers to compete?

This is likely to be the case if the proposal:

- Controls or substantially influences the price(s) a supplier may charge, or the characteristics of the product(s) supplied, for example by setting minimum quality standards
- Limits the scope for innovation to introduce new products or supply existing products in new ways
- Limits the sales channels a supplier can use, or the geographic area in which a supplier can operate,
- Substantially restricts the ability of suppliers to advertise their own products, or
- Limits the suppliers' freedoms to organise their own production processes or their choice of organisational form.

DCMS position: We do not consider that the proposals will limit the ability of suppliers to compete.

4. Does it reduce suppliers' incentives to compete vigorously?

This may be the case where a proposal:

- Exempts suppliers from general competition law,
- Introduces or amends intellectual property regimes,
- Requires or encourages the exchange between suppliers, or publication, of information on prices, costs, sales or outputs, or
- Increases the costs to consumers of switching between suppliers.

DCMS position: We do not consider that the proposals will reduce suppliers' incentives to compete vigorously.

Small Firms Impact Assessment

The main impact on small firms would be in terms of the costs outlined above. Maintaining the current system whereby charges for licences are calculated on the basis of turnover would assist in minimising the impact of the proposals on small businesses.

Legal Aid

No impact.

Sustainable Development

No impact.

Carbon Assessment

No impact.

Other Environment

No impact.

Health Impact Assessment

One of the principle objectives of the Gambling Act 2005 is the protection of children and other vulnerable persons from being harmed or exploited by gambling, and the Government takes the risks associated with all forms of gambling seriously.

The proposals have all three of the Act's licensing objectives at their core, and the purpose of the proposals is to ensure that all operators active in the UK market adhere to the provisions of the Act and its associated regulations, in particular in relation to social responsibility, so that British consumers are afforded the full range of protections envisaged by the legislation.

Race equality

No impact.

Disability equality

No impact.

Gender equality

We do not assess that this proposal has any significant impact on gender equality issues.

Human Rights

No impact.

Rural Proofing

No impact.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

ANNEX D: GOVERNMENT CODE OF PRACTICE ON CONSULTATION THE SEVEN CONSULTATION CRITERIA

1. When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.