

## UNITED KINGDOM

# UK Reforms

*Proposed changes in gambling law may yield unintended consequences*

By Thomas Logan

**T**he Department for Culture, Media and Sport is currently conducting a review of the Gambling Act 2005 (the Act). The Draft Gambling (Advertising and Licensing) Bill (the Bill) was published in December 2012 and proposes radical reforms to the current remote gambling regulations in the UK, affecting operators, suppliers and affiliates. The Bill is currently progressing through Pre-Legislative Scrutiny by Commons Select Committee with the most recent hearing being held on February 12. With the coalition government having the majority in the House of Commons, and the likelihood that the bill will receive support from opposition too, it is likely that the Bill will come into force without significant amendments.

The rationale for the proposed changes is stated as being consumer protection and simplification, allowing UK consumers to deal with UK licensed entities and with recourse to the UK regulatory body. If the UK regulated entity is not operating in a manner that the UK regulator deems appropriate, its licenses and ability to do business in the UK could be stopped. However, as with all legislative and policy changes, there are intended and unintended consequences. This article examines the proposed changes and some of those consequences.

### Abolition of the 'white list'

One important change proposed by the Bill is to phase out the white list and European Economic Area (EEA) exemptions. The Act currently prohibits advertising services to the UK unless the operator is based in the EEA (including

Gibraltar) or in the following White Listed jurisdictions: Alderney, Antigua and Barbuda, the Isle of Man and Tasmania. The proposed changes in the Bill would require all EEA or white list operators servicing the UK market to obtain a UK operating license. The UK government is looking to provide some provisional operating licenses to enable EEA and white listed operators to transition smoothly into the new regime, but no details have been released.

In principle, EU law permits an authorised operator in one Member State to provide remote gambling services to consumers based in another Member State. Member States are still fully entitled to 'opt out' on the grounds of public policy, as we have seen across Europe and require remote operators from other Member States to obtain a local license.

Ostensibly, the Bill appears to fall in-line with EU law, as the foundation



for imposing such a restriction is based on consumer protection and public order. The Bill is consistent with the approach other EU jurisdictions such as Belgium, France and Italy have taken, which all require local licenses to service their market.

### The shift from 'point of supply' to 'point of consumption'

The other main change proposed by the Bill is a shift from point of supply regulation (i.e. where the remote gambling operator is located) to point of consumption (i.e. where the consumer is located). If this comes into force, unamended, all overseas operators will need a UK operating license in order to transact with, and advertise to, British consumers. This also has a knock-on effect on software providers that service remote gambling operators. If their software is being used by an entity servicing the UK market, they will require a UK software operating license.

For UK players, helpfully there is no indication that the player pool will be required to be segregated.

### Licensing and compliance costs

Annual UK licensing fees are relatively consistent with other “white list” operators. According to the Bill, operators already in “well-regulated jurisdictions” that can provide the necessary compliance information “... will not face significant increases in licensing costs.” The same cannot be said of current remote operators not in white-list jurisdictions. Revenues from licensing fees are expected to only increase by two million pounds annually; notwithstanding this the Gambling Commission has already been accused of “Empire Building” by Conservative MP, Phillip Davies.

### Gambling Duty and Tax

Separately to the Bill, the UK government has introduced a ‘point of consumption’ tax for offshore gambling operators. This will mean, by December 2014, any remote operator servicing the UK market will be required to pay gambling duty, at 15% on all gross profits. Under these changes, HMRC will have new powers to impose criminal sanctions and/or revoke an operating licence for non-payment. As a result of the duty change, HMRC anticipates a revenue boost of £70 million in the first year, rising up to £270 million in the following years.

Additionally, UK companies are subject to UK corporation tax on their profits, levied at 23% for 2013. This additional cost would make a major difference to online poker providers’ cost base unless it can be minimized. Structures where the profits are effectively “offshored” have however come under significant scrutiny recently, and the UK Government is exploring options to close these loopholes.

### When will this happen?

The question is when the Bill will hit the statute books. It cannot be feasible for HMRC to revoke offshore remote licenses; therefore, we can only assume that these new powers are meant to work in parallel to the Bill. It follows that the Bill should become law before the December 2014 cut-off, if not earlier. Remarkably, a separate Private Member’s Bill introduced in June last year (Offshore Gambling [Amendment] Bill), which seeks to achieve similar objectives to the Draft Gambling (Licensing and Advertising) Bill, aims for a much more ambitious deadline: April 2013.

### Summary

The major impact of the Bill and tax reforms will be to repatriate tax revenues and remote operators, those who may have previously fled to the white list jurisdictions for tax reasons, back to the UK and to widen the net to crack down on offshore gambling operations.

And while operators and software providers currently servicing the UK market should consider the implications of these changes and whether or not to obtain a UK operating or software license in advance, affiliates too need to consider their own responsibilities in ensuring that the partners they promote are fully compliant with the new regulations, once in place. Affiliates and advertising agents of white list and offshore operators need to add in a layer of due diligence to check that their operators have the requisite license in the UK. ♣

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## MEMBERS IN THE NEWS

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### Britt Singletery

Britt Singletery of Singletery Thrash in Biloxi has been appointed by US District Judge Carl Barbier in New Orleans to serve as an Appeal Panellist for the final review of all claims related to the BP Deepwater Horizon oil disaster. Sixteen attorneys from Texas around the Gulf to Florida were selected. Only two came from Mississippi. BP or the Claimants have the right to appeal an award from the Claims Administrator to the Panel. The Panel decision is final unless Judge Barbier accepts review. Britt is listed in the 2013 Best Lawyers for Gaming and Alternative Dispute Resolution. As a former US Magistrate he has conducted thousands of settlement conferences. This appointment will be challenging but is also an opportunity to serve the Court in resolving the largest class action in America’s history.

### 2013 Edition of Indian Gaming Industry Report Released

In February, Alan P. Meister, Ph.D., Principal Economist with Nathan Associates and a California-based member of IMGL, released the new edition of his annual Indian gaming study, the *Indian Gaming Industry Report*. In its eleventh year of publication, the study continues to provide comprehensive and up-to-date nationwide and state-by-state data and analysis on Indian gaming in the United States. A summary of the study’s findings is included in Dr. Meister’s article starting on page 20 of this issue of *Casino Lawyer*.

### Recovery Road Expands Treatment Services

Recovery Road has announced its expansion to include treatment of gambling addiction, providing those living with the illness an opportunity for recovery. Recovery Road has leveraged its current model for addiction treatment and services and added key personnel, including Arnie and Sheila Wexler, two of the country’s pioneers in treating compulsive gambling.

The Wexlers bring more than 40 years of experience working with compulsive gamblers and their families to Recovery Road. Both are Certified Compulsive Gambling Counselors (CCGC) and will be instrumental in the success of Recovery Road’s gambling addiction program, as well as in the hiring of other certified gambling counselors, therapists and staff.