

Remote implementation: progress report

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Prepared by:

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Executive summary

1. This paper provides a progress report on the implementation of the remote provisions of the Gambling (Licensing and Advertising) Act 2014 (the Act).
2. The paper covers progress on:
 - remote licence applications, including: statistics on applications received and anticipated, action being taken by the Commission to encourage the timely submission of applications by the deadline of 16 September, and progress in administering applications by 1 October implementation date
 - remote compliance activity, including: new LCCP requirements, website reviews, security audit reviews and regulatory return reviews
 - remote enforcement, including: arrangements for informing consumers, combating illegal gambling advertising, and disrupting illegal financial transactions
 - communications and engagement activity leading up to 1 October to raise awareness and deter illegal activity and
 - other activity in train to bolster the Commission's readiness for implementation from 1 October.
3. Our overall assessment of progress is that we are broadly on track for implementation from 1 October but the period leading up to that date will require a sustained, intensive effort to process remote licence applications to enable continuation licences to be issued for those that qualify for them, finalise the detailed arrangements and internal guidance for compliance and enforcement, and communicate key messages widely with operators, regulators and other partner bodies. In parallel, we are taking steps to refine and quality assure core internal processes and to ensure we have the appropriate capability and capacity where it is needed.

Licensing

4. Our main priority is to ensure that applications for remote licences are received by the 16 September deadline and processed efficiently. A dedicated remote licensing team has been in place for a number of months and their focus is now firmly on handling transitional applications, i.e. applications for licences from remote operators who wish to provide providing gambling facilities to consumers in Great Britain after 1 October.
5. We continue to have meetings with prospective applicants and their legal advisors and have now met the majority of the larger operators. We have arranged weekly surgeries with two of the leading Industry lawyers, Harris Hagan and DLA Piper, to enable us to handle the large number of queries from them more efficiently, and are answering daily emails and telephone calls from others to assist them with the application process and answer any specific enquiries.
6. On 5 September letters were sent to known potential applicants (i.e. those known to supply the British market currently) who had not commenced an online application to remind them of the need to obtain a remote operating licence should they wish to continue to transact with and advertise to consumers in Britain and to have submitted that application on or before 16 September 2014. A copy of the letter was sent to regulators in Alderney, IOM, Malta, Gibraltar and Antigua with a request that they draw it to the attention of their licensees. We also have a targeted engagement plan in place to encourage along those applications where the application process has commenced but applications have not yet been submitted.

7. To ease the burden after 16 September we have started to prepare continuation licences where we can. As the transitional provisions only allow for a continuation licence to be issued for the type of activity that the applicant is currently licensed for in an EEA or white list jurisdiction, some continuation licences will require individual conditions to be attached to restrict the activities that can be offered pending consideration and determination of the full application¹.
8. The Commission has accepted that there may be circumstances where a group company may come within the scope of a licence held by its parent and not be required to hold its own licence, provided that the company is truly acting in the course of a business carried on by the licence holder and subject to the agreement of the Commission. We have issued an information note 'When can a company operate under another's licence'² which sets out the criteria we would expect to be met for us to consider such an "umbrella licence" arrangement. Each such application will be considered on its merits and any licence issued under such arrangements will have a condition attached restricting those that may operate under the authority of the licence to named companies within the group.

Transitional applications / applications for continuation licences

9. At 9 September, the position was as follows on applications made under the transitional provisions:

Total applications submitted to the Commission:	40
Applications apparently in progress but not yet submitted:	94
10. We had been expecting around 150 applications under the transitional arrangements but, as a result of several restructures and buy-outs in the industry, and the fact that group companies may look to take advantage of an "umbrella " arrangement, actual numbers will be closer to around 125-130. We are expecting a flurry of applications to be submitted in the week leading up to the deadline as applicants tend to leave submission of their applications to the last minute and we are seeing a similar pattern in terms of receipt of applications as we did in 2007.
11. In relation to larger operators, as at 9 September:
 - nine **[Exempt Information under section 43 of the Freedom of Information Act]** have submitted applications;
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 - we are aware of one operator - **[Exempt Information under section 43 of the Freedom of Information Act]** - who have reportedly publicly stated that they will no longer be accepting British customers from 1 October.

¹ For example, in respect of online poker we do not have an equivalent poker licence and our nearest equivalent is a remote casino licence but we would not wish to issue a continuation licence to offer the full range of casino products pending full consideration of an applicant's suitability etc. Therefore we intend to restrict the casino continuation licence in such circumstances to the provision of poker facilities only.

² <http://www.gamblingcommission.gov.uk/pdf/when%20can%20a%20company%20operate%20under%20another's%20licence.pdf>

Applications for new licences

12. In addition to those applying under the transitional provisions, 55 new remote applications have been received since 1 May (as at 9 September). Most of these are for ancillary licences; 18 are for gambling software licences which will be needed, under the revised LCCP requirements, from 30 January 2015³. We are anticipating high volumes of further gambling software applications.

Compliance

13. In order to meet identified gaps in skills and capacity, five new appointments (three additional sector specialists and two remote compliance managers) have been made. All five recruits have commenced employment.

14. **[Exempt Information under section 31 of the Freedom of Information Act]**

LCCP requirements

15. New LCCP requirements were introduced from 4 August 2014. Of particular significance, given it was a Ministerial commitment made during the passage of the Act, is condition 8.1.1 which requires all remote operators, other than those holding ancillary or trading room only licences, to display a link (on all pages that are used to access gambling) to their licensed status with the Commission as shown on the public register. We encouraged operators to comply with this condition from 4 August in order to implement the LCCP amendments in one batch but, because of EC notification procedures, the new condition was not enforceable until 29 August. To enable operators to comply with the condition, the link for display of licensed status was issued to all relevant remote operating licence holders on 24 July 2014 and our IT system was changed so that relevant remote licence holders are automatically provided with this link in the cover letter issued when their remote operating licence is granted. This link will also be issued to all relevant applicants applying under transitional arrangements shortly after 16 September 2014.
16. Given the importance of the new requirement to display licensed status, a specific check of 113 operator websites was undertaken during the first week of September. This showed the majority were not yet fully compliant with this licence condition. Steps are being taken to notify the non-compliant operators to ensure that the position is rectified immediately.
17. Baseline activity is being undertaken on existing remote operators licensed by the Commission to check compliance across all core areas, including compliance with the recent LCCP changes.

Website reviews

18. After an initial assessment as licences go live, all licence holders will have at least one review of one of their websites (mobile sites, apps etc) annually.
19. 48 website reviews of existing remote operators have been completed. 43 had areas where we were not satisfied they were fully compliant (though most of the non-compliance issues were minor) and five were not operational. We have written to the

³ We are in the process of considering whether to defer this date to 31 March 2015.

operators telling them to rectify the situation within 14 days. Website reviews for the remaining 60 operators are scheduled to be completed by mid-September.

20. New applicants and those seeking a continuation licence will have their websites reviewed either on application, if the website is available at that time, or prior to approval being given for them to go live.
21. An escalation process is in place to conduct 'enhanced' website reviews where risks or issues are identified in the initial review.

Security audit reviews

22. All licence holders are required to submit an annual security audit completed by a reputable qualified auditor. The frequency may be increased for some operators depending on other risk factors that are identified as part of routine compliance activity.
23. An initial assessment of 44 operators has been conducted and we continue to monitor and assess as the security audits become due. Changes are being implemented to better monitor timely submission of security audits, track non submission, and train staff in the assessment of audits. The changes include the ability to record security audits electronically, compare audits across the industry and to standardise submitted reports.
24. An escalation process is in place to conduct 'enhanced' security audit reviews where risks or issues are identified in the initial review.
25. We have resolved transitional arrangements for operators either migrating from the old ISO 27001-2005 to ISO 27001-2013 standard or commencing audits on ISO 27001-2013.

Regulatory return reviews

26. All remote licence holders are required to submit quarterly regulatory returns. These will be reviewed and assessed to ensure accuracy and to identify areas of concern; for example high value customers that could indicate a greater risk of money laundering, under/over reporting of self exclusions, customer interactions and complaints.
27. An assessment will be completed so that the compliance of each operator against LCCP and Remote Technical Standards can be monitored, compared with compliance across the sector and to ensure the Commission best understands how they operate.
28. Improved data analysis will take place to inform our regulatory activity including proactive and reactive compliance. This will be documented in the revised operational guidance documents for staff.
29. Baselining of our existing remote operators showed that nine had not submitted their returns on time. Those operators have been chased and if returns are not provided within 7 days they will be issued with a fine.
30. An escalation process is in place to conduct 'enhanced' analysis of regulatory returns where risks or issues are identified in the initial analysis.

Games testing

31. Licensed operators must send to the Commission the results of games testing (i.e. a test house's summary report including: date of testing, game details, scope and approach to testing, result of testing and details of games or versions of games that the game supersedes). Once this has been provided the successfully tested product

can be released into the live environment. We will be using the opportunity of receiving these test reports to build a portfolio of games in the market (including who supplies them, who uses them, who they are tested by etc).

Enforcement

32. Our planned approach to enforcement was set out in paper GCP(14) 21(b) presented to the Board at its March meeting. This focused on three broad areas of activity to:
- inform and empower consumers
 - disrupt illegal financial transactions
 - tackle illegal advertising.
33. The remainder of this section updates the Board on progress in these areas which are at the heart of the Commission's wider enforcement strategy in which the main tools will be deterrence, disruption, education and threat of prosecution.

Informing and empowering consumers

34. The current system makes it impossible for the Gambling Commission to advise consumers to 'buy from Commission licensed operators' as operators from anywhere in the world, subject to a range of different regulatory regimes, can transact with consumers in Great Britain. The new requirement on operators to display their licensed status will make it clear to consumers whether or not operators are licensed to transact with them, and for which activities, so that consumers can make informed choices (bearing in mind that consumers will not be committing a criminal offence if they transact with illegal operators).
35. In addition, as part of our wider consumer awareness plans, we are preparing two short information notes for consumers. One will be targeted at people who gamble, or intend to gamble; the other will be aimed at individuals, in particular parents, with a broader interest in gambling and how it might affect them and their family. We are planning to publish these notes during September and are working with consumer-focused organisations to disseminate these messages as well as looking for wider ways of reaching consumers through appropriate media opportunities.

Disrupting illegal financial transactions

36. We have had ongoing discussions with MasterCard, Visa and PayPal since the Ministerial announcement on 4 March of the voluntary agreement reached with them to disrupt illegal gambling transactions. These discussions have focused on working up detailed operational arrangements in readiness for 1 October.

MasterCard and Visa

37. The underpinning for our agreement with MasterCard and Visa is the consistent contractual term imposed by card schemes whereby the payment method (e.g. credit or debit card payments) can only be used by the merchant (i.e. the gambling operator) in connection with activities which are lawful in the jurisdiction where the card holder is using the payment method. Therefore, where a consumer uses MasterCard or Visa payment facilities for illegal gambling, this may amount to a breach of the card scheme's terms and conditions. Such a breach may result in the gambling operator

having its payment facilities withdrawn by the acquirer (typically a bank). This would result in financial transactions via this method being prevented and the operator being unable to transact with customers using this payment method through this acquirer.

38. The Commission has agreed practical arrangements with MasterCard and Visa⁴ for making referrals to them of suspected illegal gambling financial transactions involving their cards. These referrals will allow MasterCard and Visa to alert the relevant acquirers so that they can determine whether there has been a breach of the card scheme's contract terms and conditions and, if so, take appropriate action to withdraw payment facilities from the relevant operator.
39. These arrangements build on existing processes both in MasterCard and Visa and in the Commission so it is a matter of streamlining and adapting rather than major change or additional burden. Moreover, they are founded on a shared objective to combat illegal activity - no payment system organisation or acquirer can afford to be associated with illegal activity given the damage to brand reputation. This strong shared objective underpins the voluntary agreement the Commission has in place with them and should be a powerful driver of its effectiveness.
40. In order to raise awareness, we gave presentations to MasterCard's annual event for all their UK acquirers on 3 June and to the UK Cards Association Acquirers' Steering Group on 29 July. We explained not only the agreement with the Commission on financial transaction disruption but also what acquirers can do proactively through their due diligence processes when onboarding merchants (e.g. routine checks of merchants' licensed status by accessing the Commission's public register) to combat illegal activity. Further communications are planned with the payments industry during the autumn including a bulletin which MasterCard will issue globally to its acquirers in September, and a Visa event in November.

PayPal

41. Our discussions with PayPal have focused on slightly different arrangements given the different way in which PayPal operates. PayPal only processes payments for services where there are no legal restrictions in the location where the goods are supplied or consumed. PayPal maintains a cross-reference of consumer and merchant locations worldwide which enables it to prevent transactions which are not legal in either the supply or consumption location. In cases where a consumer attempts to purchase goods which local law prohibits an error message appears stating that PayPal is unable to process the request.
42. PayPal has confirmed that the Commission's register of licensed operators will be consulted before PayPal facilities are implemented with a gambling operator and will be checked periodically to ensure that operators for which PayPal processes payments remain licensed. There is also agreement that the Commission will contact PayPal directly should it have a concern that PayPal may be processing payments for an unlicensed operator.
43. PayPal is also working on a system change request, at our instigation, to amend the error message received by consumers in Britain when an illegal gambling transaction

⁴ We have also had discussions with American Express. Gambling is a prohibited industry globally within American Express and therefore Amex Cards cannot be used for transactions coded as gambling. There may be scope for future discussions with other card schemes in particular Japan Credit Bureau (JCB) and China Union Pay (CUP).

is prevented. This would direct consumers to the Commission's website and the public register.

44. Arrangements on financial transaction disruption have been agreed with MasterCard, Visa and PayPal because these will cover the vast majority of relevant transactions. There may be instances of suspected illegal gambling transactions where it is appropriate for the Commission to engage directly with other payment providers (e.g. Skrill, Neteller). Decisions will need to be made on a case-by-case basis through the usual case management process. We are building both our organisational knowledge and contacts within the payment processing sphere rapidly.

Tackling illegal advertising

45. The Commission has now signed a Memorandum of Understanding with the Advertising Standards Authority which will strengthen information sharing arrangements and our ability to detect and disrupt illegal advertising. We also have arrangements in place with a range of advertising bodies and advertising carriers (including Clearcast, the Radio Advertising Clearance Centre, Google, Facebook, Twitter, Microsoft, iTunes, TalkTalk, Virgin Media, BSkyB and BT) to work together to prevent and remove any instances of illegal advertising.
46. Informed by recent discussions with the Federation Against Copyright Theft (FACT), the City of London Police's Intellectual Property Crime Unit (PIPCU), Income Access⁵ and Regulus, the Commission is developing its approach to preventing gambling advertising being associated with websites which feature or promote illegal content (such as copyright infringing content or black market gambling services).
47. We are exploring formal involvement with 'Operation Creative', an initiative designed to disrupt and prevent websites from providing unauthorised access to copyrighted content, led by PIPCU in partnership with the creative and advertising industries.
48. We are also planning to work with the remote gambling industry to encourage them to take greater responsibility for their affiliate marketing. Gambling operators make extensive use of online marketing affiliates (individuals or companies who are paid a fee or earn a revenue share for sending new traffic to a website) which can result in inadvertent association with illegal activity (e.g. licensed operators' advertisements appearing alongside illegal operators' marketing on comparator websites). We are planning to work with the Remote Gambling Association to ensure that operators have robust contractual terms and conditions in place with affiliates. This may also result in a published advice note and a 'tightened' LCCP code provision.
49. Over the past twelve months we have worked closely with advertising bodies, trade associations and carriers of advertising to raise awareness of the changes being brought about by the Act. On 8 September, we published an updated 'Gambling advertising' leaflet⁶ which has been disseminated widely and which serves as a final reminder to carriers of advertising that the law is expected to change from 1 October and that they must check our public register to ensure that only operators holding a valid Commission licence are able to advertise in Britain.

⁵ Income Access is a global company specialising in digital marketing, technologies and affiliate networks. The Income Access 'Network' has over 25,000 affiliates. Income Access's affiliate management team work with relevant affiliates within the network to develop effective marketing partnerships.

⁶ : <http://www.gamblingcommission.gov.uk/pdf/Gambling%20advertising%20quick%20guide%20-%20September%202014.pdf>

Communications and engagement activity to 1 October

50. We have drawn up and are implementing week-by-week plans for wide communication and engagement in the run-up to 1 October with operators, advertisers and advertising carriers, regulators, affiliate networks, payment organisations and others. This builds on the sustained engagement we have had with a wide range of organisations over many months. Communication leading up to 1 October is focused on the core messages of the need for remote gambling operators offering gambling facilities to consumers in Britain to be licensed by the Commission and the consequences of not holding a Commission licence after 1 October. This communication is being played into other organisations' plans and we are already starting to see some practical results (e.g. the Radio Advertising Clearance Centre tweeted on 9 September "*From 1st Oct, we'll approve ads for gambling services only if they're licensed by the Gambling Commission*").

Bolstering the Commission's readiness for implementation

51. The timetable to implementation is extremely challenging. We are directing additional resources and scrutiny to ensure that we focus on priorities and manage risks effectively. We are also being as proactive as possible in encouraging prompt licence applications and raising very wide awareness of the key messages of the new remote legislation and the action the Commission will be prepared to take, working with others, to tackle non-compliance and enforce the Act's provisions robustly.
52. In light of the issues identified and lessons learned following recent cases involving remote operators, a quick review of the processes and procedures applied by Licensing staff when assessing remote applicants is underway, alongside the remedial work on compliance mentioned at paragraph 14. This, together with revision of internal guidance and targeted training for staff, will embed valuable improvements and help bolster the Commission's readiness for remote implementation from 1 October.

Recommendations

53. Commissioners are asked to note progress on remote implementation and to raise any specific observations or concerns. Further updated figures on applications, together with briefing on the state of play on the Judicial Review, will be provided at the meeting on 18 September.