

Remote implementation: progress report

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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 issues arising
 - remote compliance activity, including: new LCCP requirements, website reviews, security audit reviews
 - remote enforcement action taken to date on those considered to be operating illegally
3. Our overall assessment of progress is that the transitional arrangements were implemented successfully, despite the delay in implementation resulting from the Judicial Review. All those requiring transitional licences applied by the revised deadline which was extended from 16 September to 23 October 2014 and were issued with continuation licences by the new implementation date, 1 November 2014. Processing of applications has been slightly slower than expected due to the disappointing quality of some of the applications received which have been either incomplete or have required further evidence to satisfy the suitability criteria. The majority of applications are now complete and we are making good progress towards determining the applications. Arrangements with third parties to disrupt illegal operators appear to be working well.

Licensing

Transitional applications

4. A total of 176 transitional applications were received by the revised deadline of 23 October 2014. This was slightly more than the 130 -150 originally anticipated with the increase in anticipated demand being as a result of companies deciding to maintain separate licences for each area of business rather than consolidating under one licence for example Betfair applied for five separate licences, Bet 365 three, William Hill for two, Gala Coral two, and the larger than expected number of B2B applications received. The breakdown in respect of EEA/White list jurisdictions was Malta (66), Alderney (38), Isle of Man (35), Gibraltar (30), Republic of Ireland (3), Antigua and Barbuda (1), Denmark (1), Finland (1), Tasmania (1). Characteristics of the applications received including activities applied for, location of Head Office, location of key equipment and details of other jurisdictions where licensees are currently operating can be found in the tables in the attached Annex A.
5. All those that applied during the transitional window met the transitional provisions and were issued with a continuation licence on 29 October 2014 ahead of the implementation date of 1 November. Those issued with a continuation licence were required to pay their first annual fee for the activities included on the licence by 30 November 2014 or face revocation of the licence - therefore losing any rights to transact with GB consumers until such time as the application was determined. Thirteen had failed to pay by the deadline and were issued with a final reminder to pay by 10 December; four operators had failed to pay by that date and were advised that unless payment was received their continuation licence would be revoked at midnight on 20 December. Three of those operators paid, the other withdrew their application and the continuation licence lapsed. No continuation licences were therefore revoked for non payment of annual fees

6. The background note 'Consideration of Remote Applications' presented to the October Board provided an overview of the general approach to be adopted in relation to remote operating licence applications and we have been following that approach. Processing of the applications has been slower than expected due to the disappointing quality of the applications. 84% (147) of the 176 applications received were either incomplete or required further supporting evidence or clarification. The main areas included:
 - management structures and key personnel – not clear or insufficient PMLs applied for
 - details of operations in other jurisdictions and rationale for operating in those jurisdictions
 - detail/clarification on how they would comply with Remote Technical Standards (RTS) and Licensing Conditions and Codes of Practise requirements (LCCP)
 - key equipment – what and where located
 - failure to supply information on games currently operated and confirmation of testing of those games
7. We have now received the majority of the missing information and are making good progress in determining the applications. To date ten applications have been determined in full and many are nearing completion. There however remains a number which will require further consideration and investigation. These include those that have convictions/sanctions for operating in restricted or illegal jurisdictions, potential issues with access to data where key equipment is not in an EEA or previous white list jurisdiction, ability to comply with LCCP in particular provision of information relating to reporting of suspicious activities and protection of customer funds, ongoing operations in other markets for example China and reliance on third party corporate service providers to provide key management functions, in particular compliance.
8. We have received a number of statements of assurances from other gambling regulators providing background and compliance history on applicants and persons relevant to the application and we are actively engaged with all regulators to seek clarification and further detail where applicable. Where key equipment is located outside EEA/ex-white list jurisdictions we have sought confirmation from the operator that there will be no issues with access to or provision of data and also sought such assurance direct from the jurisdiction, for example the Kahnawake Gaming Commission has confirmed to us in writing that there will be no issues with us requesting or receiving data from equipment based in their territory or with Commission personnel accessing/inspecting key equipment located in Kahnawake .To date all gambling regulators have been co-operative in providing the Commission with information. As part of the licensing process we are also engaging with other relevant third parties.
9. There are also a number of applicants where there have been delays in assessing the application due to changes made to the original application that include changes in ownership, changes to key personnel, changes to trading and domain names, relocation of key equipment, internal restructuring.
10. From assessment of the applications there are some key areas emerging that post licensing we will want to monitor as part of our ongoing compliance activity, including for example changes to an operator's terms and conditions, whether the management structures and controls that the operators have in place work in practice, where there are arrangements with third party corporate services providers to provide key management functions how successfully they are working and whether those arrangements remain as per any contract seen by the Commission at the application stage .

Applications for new licences

11. In addition to those applying under the transitional provisions, 64 new remote applications have been received since June 2014, 18 of which are from outside GB including seven from outside EEA. Of those seven, one is based in USA, two in Curacao, two Australia and two Singapore.
12. In advance of the introduction of a licence condition on 31 March 2015, that requires Commission licensees to only accept supply of gambling software from holders of Commission gambling software licences we have been proactively targeting both B2Cs and potential B2Bs to remind them of the condition and the consequences should they not be able to meet the requirement from 31 March. To date we have received 77 applications including 24 new applicants, seven variations to existing Commission licences to add gambling software and 46 of the transitional applicants applied for software at the same time as their continuation licences. We expect further 30 - 40 applications. Twelve applications have been determined in full including two of the major software suppliers in the industry, Playtech and IGT. The 46 operators who applied for software licences alongside their transitional activities will be having their software licence determined at the same time as their application is determined in full.

Compliance

LCCP requirements

13. All those issued with a continuation licence are required to comply with LCCP. Website reviews are being conducted as part of the application assessment process with any shortcomings found raised with the operators and rectified. In addition we undertook an exercise in the second week of November to ensure that all continuation licensees were complying with the provisions of 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 web pages that are used to access gambling) to their licensed status with the Commission as shown on the public register.
14. The focus of the above exercise was on B2C operators with 134 operators' websites checked. The intention of the check and subsequent engagement with operators was not only to ensure compliance but to take an early opportunity to let the operators know that they were subject to Commission regulation and that we were actively monitoring compliance. Sixty three operators were fully compliant on the initial check. Seventy quickly fixed/ displayed the link within five days of the Commission advising them that they were not fully compliant. One operator who sought to delay display of the link to fit in with their IT change process was formally written to advising them they were in breach of their licence and the consequences should they continue to be in breach past a given deadline. The operator complied by the deadline.

Security audit reviews

15. 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.
16. We continue to monitor timely submission of security audits. There are currently ten existing operators who failed to submit an audit within the required timescale and we are actively engaged with those operators to obtain the audit. We expect all to comply. Those who applied under the transitional arrangements who did not submit a security audit with their application are required to submit one by 1 May 2015. Reminders will be sent 12 weeks prior to this date.

Complaints and disputes

17. From 1 November to 9 January we have received 956 'complaints' from customers in respect of those operators who hold a continuation licence. The top four concerns relate to marketing issues - (includes bonus and promotional offers), ID verification- (includes non-payouts), self exclusions, (many of these centre around customer misunderstanding of what self exclusion is and what it covers and the difference between self exclusion and "cooling off" periods – we will be looking to provide further information and clarity for customers on our website) general issues with terms and conditions. We continue to follow our policy of advising the customer to follow the operator's complaints procedure and the independent third party dispute arrangements. We will monitor complaints against individual operators and where applicable take them into consideration when assessing the application.
18. All operators must have in place an effective written procedure for handling customer complaints and disputes and have arrangements in place for customers to be able to refer any dispute to an independent third party offering alternative dispute resolution services (an ADR entity). As part of the application process we are looking closely at those arrangements, the clarity of the terms and conditions and the suitability of the named ADR to provide the dispute resolution service across the range of activities applied for. In addition we are reviewing and developing our processes for handling such complaints. This includes developing customers understanding of what we mean by a complaint and dispute, that is, a 'complaint' means a complaint about any aspect of the licensee's conduct of the licensed activities, and a 'dispute' is any complaint which relates to the outcome of the complainant's gambling transaction and is not resolved at the first stage of the licensee's complaints procedure. The review will also look at raising customer awareness and managing their expectations as to the role of the Commission in relation to complaints and disputes in particular in relation to return of any monies and will form part of our wider consumer awareness plans.
19. In addition we are putting in steps to assess the competence of and monitor the performance of ADRs in preparation for the implementation of the Alternative Dispute Resolution for Consumer Disputes (Designation of Competent Authorities) Regulations expected July 2015. From that date the Commission will become a competent authority under those regulations and will be required to assess and approve ADR entities against specified quality requirements.

Enforcement

20. Our planned approach to enforcement was set out in paper GCP(14) 21(b) presented to the Board at its March 2014 meeting. This focused on three broad areas of activity to:
 - inform and empower consumers
 - disrupt illegal financial transactions
 - tackle illegal advertising.

Inform and empower customers

21. All remote operators are now compliant with the condition to display their licensed status on their websites which provides a direct link to the Commission's public register. This allows consumers to check what activities the operator is licensed for so that so they can make informed choices when deciding whether or not to transact with an operator.

22. As part of our wider consumer awareness plans, two short information notes for consumers, one targeted at people who gamble, or intend to gamble; the other aimed at individuals, in particular parents, with a broader interest in gambling and how it might affect them and their family were published on 1 November and are available on the Commission's website along with a series of frequently asked questions.

Disrupting illegal financial transactions

23. We have continued to have ongoing discussions with MasterCard, Visa and PayPal regarding the voluntary agreement reached with them to disrupt illegal gambling transactions. The detailed operational arrangements are now in place with these organisations and we have tested the processes with them. We have attended acquirer events with both Visa and MasterCard recently, to ensure that the payment industry is fully aware of our disruption approach and the implications for acquirers. Both MasterCard and Visa sent global bulletins to their acquirers outlining how they can help disrupt illegal activity in September and November respectively.
24. PayPal completed a review of all their GB facing merchants, with our assistance, to ensure that all were correctly licensed. This activity resulted in a small number of PayPal merchants having their agreement with PayPal terminated or amended to specifically exclude GB transactions, although none of those merchants were currently transacting with GB consumers. PayPal has been very thorough in implementing internal processes that ensure a gambling merchant is correctly licensed prior to their merchant agreement being signed.
25. We have used our relationship and voluntary agreement with PayPal very effectively to disrupt illegal activity recently, where we have found evidence of illegal lotteries being funded using PayPal.
26. Much discussion was provoked within parliament regarding the use of e-wallet providers and how effective our voluntary agreements would be where a gambling operator was making use of a third party e-wallet other than PayPal. Whilst we do not believe that at this time this accounts for a significant volume of gambling transactions it is correct that this payment method is growing in popularity and our existing disruption techniques would be less effective in this area. We have commenced discussions with Skrill, who are the largest gambling specific e-wallet provider and hope that we will have similar voluntary arrangements in place with them early in 2015. If other e-wallet providers increase in popularity we will approach them in due course.
27. A steady number (around nine in total) of apparently illegal online gambling operators have come to the attention of the Issue Management Group (IMG) since 1 November. IMG in conjunction with the Complex Case Group (CCG) is currently working up plans to gather evidence of the illegal activity, assess the scale and hence the proportionate action to take on a case by case basis. It is likely that we will be utilising our agreements with Visa and MasterCard for disruption on some of these cases imminently.

Tackling illegal advertising

28. The Commission continues to work closely with third party carriers of advertising to prevent, disrupt and remove any instances of illegal advertising. In a recent case, Facebook closed an offending account within 48 hours of being notified by the Commission.

29. On 18 November the Commission met the Federation Against Copyright Theft (FACT) and the City of London Police's Intellectual Property Crime Unit (PIPCU) to receive a further briefing on 'Operation Creative' and to discuss our role in helping to prevent gambling advertising being associated with websites which feature copyright infringing content. We are now in the process of agreeing information sharing arrangements, which will enable us to access the 'Infringing Website List' (IWL). We are also awaiting a more detailed breakdown of the statistics relating to adverts placed by gambling operators and/or their affiliates. This data will help inform FAQs and/or published advice to industry on the responsible use of online marketing affiliates.

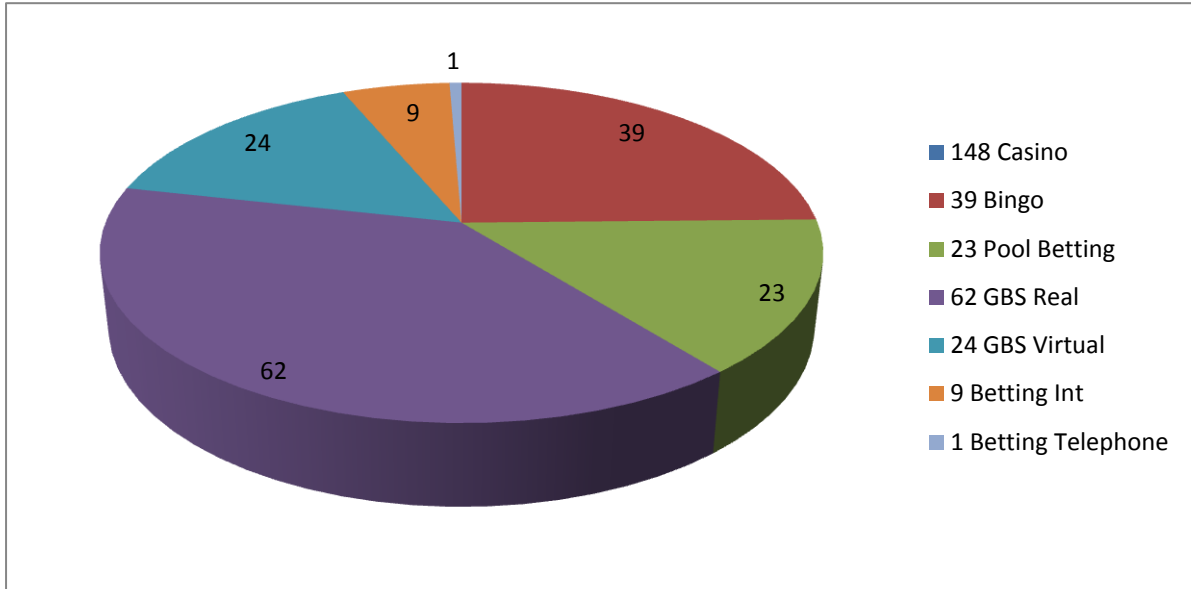
Recommendations

30. The Board is asked to note progress on remote implementation and to raise any specific observations or concerns

Characteristics of transitional applications

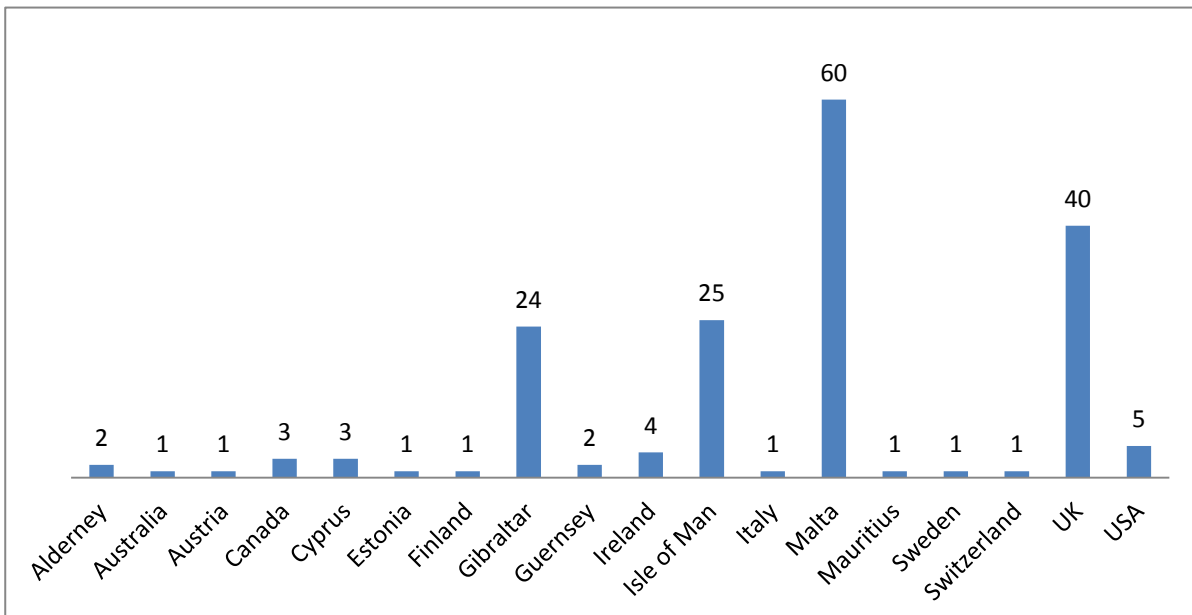
Types and number of activities on continuation licences

- The chart shows the number and types of activities authorised by continuation licences. Several applicants applied for more than one activity under the transitional provisions. As anticipated casino, bingo and betting on real events were the main activities applied for.

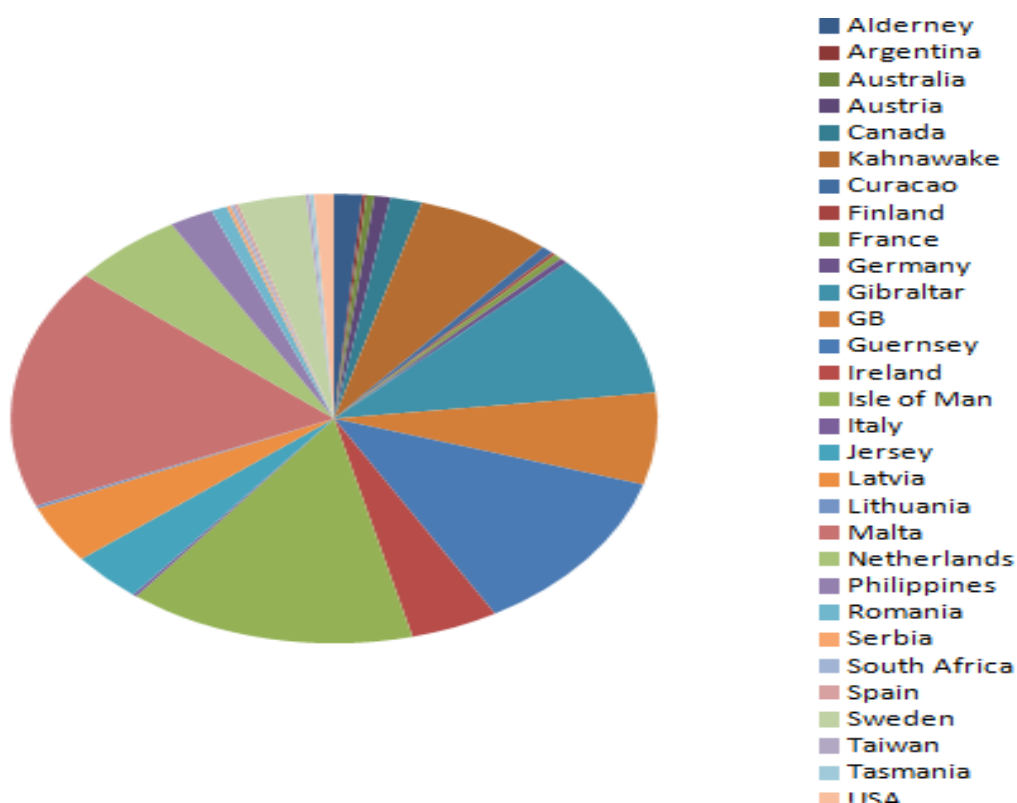


Location of Head/Registered Office

- This table shows the location of head /registered offices of those who applied under transitional provisions. The majority are located within UK or other EEA states. In considering applications where an applicant has no physical presence in GB, we will look for evidence and assurances about how the Commission will be able to fulfil its compliance functions. This will for example include requiring timely access to key personnel



Location of Key equipment



3. The chart shows the location of key equipment which as can be seen is global with some operators having key equipment in multiple jurisdictions. 86% of all key equipment is located in EEA/ex white list jurisdictions, with the majority located in Malta, Isle of Man, Gibraltar, Guernsey and Great Britain. Outside EEA Kahnawake is the most popular location for key equipment. Where key equipment is located outside EEA/white list we are seeking assurances that the Commission is able to receive data on demand and there will be no access restrictions.

Scope of current operating market

4. The charts below show where operators who applied for continuation licences are also operating in addition to transacting with GB consumers.
5. The charts show the number of operators operating in each of the jurisdictions based on 3% or more of their total revenue coming from those markets (some operators may be operating in more than one). They do not show the extent of the business coming from each jurisdiction which varies operator by operator and which we are looking at on an individual basis as part of the assessment process. One of the factors that will be looked at as part of the assessment of an applicant's financial and other circumstances and integrity, will be the extent to which the applicant is financially reliant on revenue from those other markets and whether they have conducted due diligence in relation to the legality of providing facilities for gambling to the jurisdictions they supply. We also assess whether the applicant has properly considered the consequences of their continuing to provide facilities for gambling in markets where there are real doubts about the legality of providing such services.

