

## Update – Gambling (Licensing and Advertising) Bill preparations

The Gambling Commission has received (and answered) a number of questions recently from prospective applicants and lawyers and will be issuing an updated set of FAQs shortly to reflect those that are of wider interest.

In advance of that publication, the Commission is issuing this note to share some of the information with you now.

### Jurisdictions

The Gambling Commission has indicated that, as part of the licence application process, it will require details of the markets that an applicant provides gambling services or facilities to/accepts players from; details of any licences, permits or authorisations that the applicant holds in those markets; and the revenue that each of those markets generates as a percentage of the overall revenue generated by the applicant's remote gambling activities. The Commission has further indicated that it will require (where the applicant does not hold a licence, permit or authorisation within any market they operate in) an explanation as to why the applicant believes it is not illegal for them to provide gambling facilities to those markets.

This has generated much discussion about the Commission's approach particularly in relation to the need for a de minimus cut off and the application to B2B operators particularly those supplying software products. The Commission is considering the various points raised and will issue more detailed information shortly either as part of [an update to FAQs](#) or as an information note to ensure clarity for applicants and their advisers about our information requirements in this area. But in the meantime we should clarify some points.

There are two distinct aspects to our interest in the sources of revenue for applicants – the implications for financial risk if a significant proportion of the prospective licensee's business is with grey markets that could change their approach overnight and the implications for the operator's probity/likelihood of responsible behaviour if they are knowingly or recklessly flouting the laws of another jurisdiction. And of course we have the additional interest shared with those obtaining Gambling Commission licences in deterring black market operators or suppliers competing in the British market.

Our advice to applicants was primarily focussed on the questions we would be putting to B2C applicants where we explained that we will be asking B2C businesses to tell us about any market where they get 3% or more of their total revenue from players or in the case of operators with total revenue of less than £5m per annum – any additional markets they are targeting but where the revenue is more than 10% of their total revenue. (On reflection we realised that 3% of the smaller B2C operators was an unnecessarily demanding requirement) and the percentage of the total revenue they receive from each of those markets.

We will be asking B2C businesses to explain to us for each market why they think provision of gambling facilities is not illegal either because they are licensed to operate in that jurisdiction or because they have satisfied themselves that it is not illegal for them to provide gambling facilities to those players. If businesses are relying on legal advice as part of evidence of responsible due diligence we will expect businesses to tell us who they have been advised by – we will not expect to see legal opinions as such but will wish to understand the legal rationale.

In line with our aim to ensure probity and responsible behaviour we also want businesses to tell us about any additional markets they are actively targeting. By actively targeting we mean for example that the home page is directed towards a jurisdiction and is in that jurisdiction's language and/or that jurisdiction's currency can be chosen and/or payment methods available include those only available in that jurisdiction and/or the homepage has a customer service for that jurisdiction or material aimed at particular countries, this tells us about any deliberate /active marketing to jurisdictions where that would be illegal for the operator to supply into the country or for the player to use the services not covered by the 3%/10% requirement above.

Finally, we will ask B2C businesses to confirm they do not knowingly take business in jurisdictions where it is illegal for the player to access their services or for the business to provide gambling services to them.

We recognise that it is perfectly possible for two operators to come to different views on the issue of the risks of providing facilities for gambling in a given jurisdiction but the key for us is whether the operator is behaving responsibly and has a reasonably coherent arguable rationale for what they are doing – and is not hiding behind wilful ignorance or totally implausible assumptions or arguments.

The reasons for our interest also apply in principle to B2B operators. We understand that the position there is much more complicated and our questions to applicants will need to reflect that. We will be issuing further guidance in this area soon but essentially will be looking to satisfy ourselves about the operators' sources of funds in relation to the two aspects noted above, commercial risk and probity.

## **Information requirements at application stage for applicants who qualify for continuation licences under transitional arrangements**

As part of its information about preparations for the Bill, the Commission has displayed the Multi Jurisdictional Business Form (MJBFB) and the Jurisdictional Rider (JR) on its website for illustrative purposes to show applicants the questions they will be required to answer as part of the application process. Certain questions on the MJBFB and Rider are highlighted and these are the questions that applicants qualifying under transitional arrangements will need to answer when applying.

Such applicants will be able to opt initially to answer only a reduced set of mandatory questions (a reduced set of those highlighted) at the point of submitting an application in order to secure continuation rights during the transition period triggered by the forthcoming statutory instrument. They must, however, complete the remainder of the subset of questions that apply to those who qualify for transitional arrangements within 14 days of submission of the application.

In other words, within 14 days of completing and submitting an application, these applicants must have answered all of the questions that are shown as highlighted on the MJBFB and JR example forms.

## **Domicile of applicant**

The Commission has no requirement that an applicant be incorporated in a particular country or jurisdiction. However, the important thing to note is the requirement in section 69 of the Gambling Act 2005 that an applicant must provide an address in the UK at which a document under the Act may be served.

So if an applicant's head office and registered office addresses are overseas, the applicant will have to provide a correspondence address that is in the UK. That address must be a genuine address at which such papers can be served that will reach the applicant in good time. The address cannot be a PO Box address and needs to be somewhere where the applicant for example has a consistent staff presence or it could be the address of an official representative of the applicant such as an accountant, solicitor or auditor. Such a correspondence address in the UK must be maintained for the life of the licence, if granted.

## **Payment services – proposed Licence Conditions and Code of Practice (LCCP) condition**

Questions have been raised as to how far the Commission expects an operator to go in satisfying themselves that their payment provider is authorised as required by the proposed LCCP condition.

The Commission received some comments on this LCCP proposal during the consultation, and has been having further discussions with operators, the Financial Conduct Authority (FCA) and others about the exact form of the final LCCP provision. We may need to amend the proposed provision as a result of these discussions.

As to how an operator might satisfy themselves, one aspect of the original draft provision which appealed to the Commission is that the FCA keeps and makes available on their website a register of those they authorise in this area as do their equivalent regulators across the EEA. This was felt to be one way in which operators could satisfy themselves that they were meeting the provision as consulted on.

## **Group companies: which entity qualifies for a continuation licence under transitional arrangements?**

Continuation rights currently will only apply to the entity that holds the licence in the EEA or white listed jurisdiction. The Commission is waiting to hear from DCMS on the point of whether continuation rights could be extended to a parent company of a wholly owned subsidiary that holds the qualifying EEA or white listed licence.

However, the question has been raised as to whether, if an organisation chooses to create a new entity (for tax or other reasons) as the vehicle for the licence application to the Commission, would that new entity qualify for a continuation licence under transitional arrangements?

The Commission maintains its view that licences are not transferable and this is the line that the Commission has always taken with both non remote and remote operators. The Commission does not consider it appropriate for continuation rights to extend to a newly formed entity within the group.

There are, however, alternative options that operators can consider if they want to set up a new entity and have that apply for the licence with the Commission but the operator would be taking any of these options at their own risk as they are all in anticipation of the Bill being implemented:

- a) Set up the new entity now and apply in an EEA/white list jurisdiction for a licence, gain that licence and therefore qualify for continuation rights.

- b) Set up the new entity now and apply for a GC licence for all activities they want to offer under a GC licence in advance of the transitional window in anticipation of the Bill being implemented.
- c) Apply for a GC licence in the name of the entity that holds the licence in the EEA or white listed jurisdiction to ensure they have continuation rights and, if the licence is granted, apply for a change of corporate control if appropriate with the new entity taking control of the licensed entity.
- d) Do a) and b) and, if and when the licence for the new entity is granted, surrender the licence held by the entity with the EEA/white listed jurisdiction licence.

## **Upgrade to Personal Licence (PL) application and Annex A personal declaration forms**

The Commission has recently introduced an upgraded version of the PL and Annex A forms which allow the applicant to download the form, type in the answers and then print it and sign it.

Once they have done that, if the operating licence applicant wants to, they can scan in and upload those completed forms as part of the online application for the operating licence. However, individuals completing PML or Annex A forms can still complete them in writing and send them to us by post if they prefer.

## **Criminal record checks**

A number of questions have been raised particularly in respect of the requirements for individuals residing overseas and whether criminal record disclosure applications can be made online.

The Commission already regularly receives applications from or involving individuals based overseas and its requirements in this respect have not changed. If an individual is not resident in England, Wales, Scotland, the Isle of Man or Channel Islands, the individual must provide a police extract or equivalent from their country of residence to evidence their criminal history.

If the individual is resident in Scotland, they must complete a Disclosure Scotland (SCRO) criminal disclosure application form and, if resident in England, Wales, Isle of Man or Channel Islands, must complete a Disclosure & Barring Service (DBS) criminal disclosure application form.

The SCRO and DBS forms must be posted to the Commission; they cannot be completed as part of the online application. The Commission will then check and countersign the forms and send them onto Disclosure SCRO/DBS. Applicants should not go directly to SCRO/DBS as they will be charged a fee by SCRO/DBS when that fee is covered by the application fee paid to the Commission.

## **Timetable**

We are waiting to hear when Royal Assent will be but on current indications it looks as if the requirement to hold a GC licence will not come into effect before 1 August with the deadline for submitting applications for continuation licences not earlier than mid July.

