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Culture, Media and Sport
Committee

Pre-legislative scrutiny of the draft Gambling (Licensing and Advertising) Bill

Sixth Report of Session 2012–13

Volume II

Additional written evidence

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The Culture, Media and Sport Committee

The Culture, Media and Sport Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Culture, Media and Sport and its associated public bodies.

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Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), Grahame Danby (Second Clerk), Kevin Candy (Inquiry Manager), Victoria Butt (Senior Committee Assistant), Keely Bishop (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

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Written evidence

Written evidence submitted by Geoff Banks

FIRST

I run a small telephone credit betting business, based in Surrey, with around 200 active clients. It is natural for business's such as my own to seek to provide the best and easiest betting experience for my clients. With this in mind, I have sought to include, in the general portfolio available to customers wagering with me, an option to wager online. This is for wagering on sport only, and not to include any casino products.

However, under current Gambling Commission regulations governing fees, I would be shouldered with an annual license cost for running a website of £13,500. This representing the minimum band available to me. £67.50 for each customer I currently do business with, in a business which has an extremely low risk factor attached to it.

The fee band is an enormous burden to undertake. Compare this to firms such as William Hill or Betfair. Both of whom pay £155,000 annually. Hills with some more than 100,000 online clients paying £1.55 per customer and Betfair with 2,000,000 clients paying just 7 pence per customer. It's massively iniquitous. It highlights how the current restrictions on banding leave small operators paying a wildly disproportionate share of the Gambling Commission's costs.

The standard response from the GC has been the issue is one decided by DCMS. It's readily apparent they sat down with large concerns to agree a fee table. Small businesses such as my own are forced either out of business—or abroad to survive. This is surely not the intention of good governance

SECOND

The Gambling act uses the term “in the course of business” to distinguish between the activities of a casual punter and a bookmaker. Yet today we see a routine abuse of that phrase, and surely not the intention of the act. We are surrounded by clear evidence of companies and individuals, conducting business via exchanges on a day to day basis. Some negotiating thousands of bets an hour using BOT trading devices and the like. Companies and individuals describe their “jobs” as “Betfair Traders” and yet are not subject to the same license requirements or taxation as a Bookmaker. Although this has been tested in law by William Hill vs Betfair, surely if the law comes down on the side of exchanges and permits unlicensed traders to ply their trade without fear of fees or taxes, it's the law that is at fault?

It follows that only an individual or company who declares himself as a Bookmaker and therefore in business, is taxed fairly. This situation has gone on far too long. If a man negotiates or lays thousands of bets a day-week-month, they are in the course of doing business, and surely it's overdue for Parliament to close this loophole.

I would point out further, that country after country rejects Betfair's arguments as to the laying of bets as simply “one man wagering with another.” It's a nonsensical argument, and it's time we fell into line with sensible countries such as Germany, the USA and even Ireland. Who treat exchange layers as just that and charge all layers 1% on turnover, without exception.

THIRD

What is the point of the Gambling Commission at all? An expensive and unnecessary quango with a pathetically low conviction rate and certainly never identified or challenged anyone who is not declaring themselves as a Bookmaker, who in fact, by the very size and frequently of “lay trades” is precisely that. I would add my voice to those who call for its abolishment.

Would the committee examine these issues affecting small operators, in the interest of not only fair taxation, fees—but fair and open gambling.

December 2012

Written evidence submitted by 888 Holdings Plc

EXECUTIVE SUMMARY

- 888 welcomes the Government's reform of remote gambling regulation in the UK, but for the industry to understand how the new system will work, more regulatory detail is needed from the DCMS and the Gambling Commission (GC).
- Whilst a renewed focus on remote gaming regulation is welcome, 888, as a Gibraltar company already meets the high standards required to protect its customers and is pleased the UK Government recognises the robust regulatory regime in Gibraltar.

- “Point of consumption” regulation may require companies to be licensed and regulated by the UK (and therefore the GC), but the unknown rate of a “point of consumption” tax will have a greater impact on remote gaming companies in where they decide to locate and thus place greater responsibility for the GC to liaise with external regulators.

1. 888 Holdings plc is a Gibraltar company listed on the London Stock Exchange since 2005. 888 has offered online gaming since 1997, making it one of the world’s first operators in the field. Today, 888 offers a variety of online casino, poker, bingo, sports betting and other offerings, to customers located in a large number of countries worldwide (excluding the United States and other restricted jurisdictions). 888 operate using its proprietary technological infrastructure, e-payments and marketing capabilities.

2. 888 is committed to the regulation of online gaming. In addition to its Gibraltar licences, 888 obtained online gaming licences from other EU jurisdictions including France, Italy, Denmark and Spain.

3. 888 is committed to responsible gaming. 888 believes that it is first and foremost in the interest of operators that minors, problem gamblers, fraudsters and other prohibited participants be precluded from accessing online gaming services. This contributes to the reputation of operators and industry, prevents undesirable activity on the sites, contributes to the enjoyment of other players and prevents complaints.

4. 888 complies with both the GamCare¹ and the eCOGRA² guidelines. In 2010, these efforts were recognised when 888 was awarded Socially Responsible Operator of the Year at the eGaming Review Awards. In 2011, 888’s Director of CSR and Responsible Gaming worked with Gambling Therapy and GamCare, aiming to enhance the training of our customer support representatives in order to help them identify potential compulsive players’ profiles and the most effective way that they can be helped before a problem arises.

5. 888 imposes a number of safeguards for customers and for those who may need help with controlling their gaming. 888 undertakes the following:

- Self-assessment test—For customers who are worried about their gambling habits and want to know more about the signs of compulsive gambling, 888 provides self-assessment tests.
- Controlling deposit limits—Should customers feel the need to, they can control their gambling by self limiting the amounts they deposit per day, per week, or per month.
- Supporting customers—888 works closely with Gambling Therapy and GamCare to ensure that its customer support representatives are trained to identify potential compulsive players’ profiles and the most effective way that they can be helped before a problem arises. In addition, our sites have links to agencies who offer help and we have placed a number of safeguards for those who need help controlling their gaming.
- Self exclusion—A customer can request to be self excluded for a chosen period, due to different concerns. Based on internal studies we decided to increase time periods available for customers to cool off. Customers can choose from six different exclusion periods from one day to six months. During this period, 888 blocks the account and no promotional e-mails are sent to them.
- Underage gambling—This is strictly prohibited and 888 takes the prevention of under-age gaming extremely seriously. Our offering is not designed to attract minors, and every effort is made to prevent them from playing on the sites by using sophisticated verification systems as well as a third party verification supplier to identify and track minors if they log into the software.
- Pro-active policy of corporate and social responsibility—888 is committed to a pro-active policy of corporate and social responsibility which reflects the high professional and ethical standards it has set for itself. Conducting business responsibly is fundamental to the future success of 888 and the sustainability of the business. 888 understands that its responsible approach is both a correct way to do business and supports its development.

6. 888 welcomes the Government’s reform of the remote gaming regulation in the UK, but more detail is needed from DCMS and the GC as how “light-touch”³ they will be on regulation and how much the GC will rely on the work of regulators outside of the UK to provide the necessary technical data with which to regulate remote gambling companies. 888 would like assurances from DCMS as to how much “hope”⁴ they have that other European jurisdictions will open up their gambling markets and adopt the same procedures as the UK.

7. Whilst a renewed focus on remote gaming regulation is welcome, 888 as a Gibraltarian company already meets the high standards in protecting its customers and is pleased the UK Government recognises the robust regulatory regime in Gibraltar.

8. The “point of consumption” regulation may require companies to be licensed and regulated by the GC, however the as yet unknown rate of a “point of consumption” tax will have a greater impact on remote gaming companies in where they decide to geographically locate. 888 would like assurances that the DCMS and

¹ GamCare is the leading authority on the provision of counselling, advice and practical help in addressing the social impact of gambling in the UK

² eCOGRA ensures that approved online casinos are properly and transparently monitored to provide player protection

³ *Draft Gambling (Licensing & Advertising) Bill*, page 18, second paragraph

⁴ *Draft Gambling (Licensing & Advertising) Bill*, page 18, second paragraph

HM Treasury are working contingently on the implementation of both “point of consumption” regulation and taxation.

January 2013

Written evidence submitted by London Clubs International Ltd

London Clubs International is a UK based on-shore gaming company, currently a wholly owned subsidiary of Caesars Entertainment, LCI has a history of over 40 years in the British casino gaming industry and very considerable international experience.

We continue to be dismayed at the government’s piecemeal approach to gambling legislation. It has continually failed to address the flaws of the 2005 Act—many recognised by the CMS Select Committee in its previous report—and it now proposes legislation that not only fails to recognise the value and contribution of the UK on-shore gaming industry to the British economy but which also puts jobs, growth, tourism revenue and investment at risk.

As the law currently stands it is perfectly legal for an individual to bring *their own* mobile device (lap top, smart phone etc) into a casino and to play remotely on any casino website (including one operated by the operator of the casino whether licensed in the UK or not) but they cannot be *offered* that facility in any manner by the casino operator. Consequently, none of the social responsibility measures applied to non-remote play—including play on slot machines—are applicable and any such play is of no value to the operator and is more often than not also not subject to UK taxation. This is an anomaly we have long sought to overturn and one which formed part of a previous submission by the industry trade association (the National Casino Industry Forum) to the CMS committee.

In his forward to the draft bill, the minister refers to the unfairness to GB licensed gambling operators that competitors benefit from access to the market in Great Britain without necessarily bearing a fair share of the cost of regulation, or of research, education and the treatment of problem gambling. We whole heartedly agree with that sentiment and the idea that regulation should be fair and focused at the point of consumption. However, the minister’s claim that the proposed reforms ensure a “level playing field” for British based operators is completely without merit or foundation. They do no such thing. The entire UK on-shore regulated casino industry—which is credited with creating the safest place in which to gamble—is completely excluded from the provisions of the bill. The proposed legislation does not address the unfairness to the UK on-shore casino industry

The highly respected report by the Gambling Review Body under the chairmanship of Professor Sir Alan Budd to which the “Overview of the current regulatory system” refers also says:

24.9 We do not think there is any reason of principle or practice to prohibit casinos from offering on-line gambling based on a real live game. Operators wishing to do so (like operators wishing to offer virtual gambling) would have to obtain a licence from the Gambling Commission before doing so. The Commission would need to satisfy itself that the games were fair, including that they were broadcast live. If it were the case that the Commission could not be satisfied that a game based on a live casino would be conducted fairly, it would not be approved. We recommend that gaming remotely on the outcome of “live gaming” should not be prohibited.

Since 2001, when Professor Sir Alan Budd’s committee made the above comments endorsing the principle of on-shore casinos being able to offer remote gambling products, the on-line gambling industry has grown exponentially along with on-line commerce generally. Consumers now expect high street brands to have equivalent on-line offerings. Public confidence in on-line shopping, banking and commerce has grown. The internet is no longer a niche for a technophile minority; it is an integral part of the way successful customer facing businesses need to operate. The advent of 4G and the government’s latest £500 million commitment to improving broadband speed and penetration will mean that on-line gaming companies will have fresh opportunities to offer fast content rich gaming on mobile platforms to tens of millions of users—all playing anywhere but in the controlled casino environment.

With this bill, the government continues to impose a legislative barrier between the on-line and the conventional casino product which is unnecessary creates unfairness for the land-based operator and which threatens British jobs and investment. Critically, by failing to allow casinos to offer the most desirable modern products in the safest environment, it also encourages consumers to play alone on games which offer faster rates of play and with much higher stakes and prizes than those allowed in a casino.

To some degree the number of companies permitted to advertise has till now been restricted by the current law only allowing EU and “White List” licensed companies to advertise in the UK. The impact of the Draft Gambling (Licensing and Advertising) Bill will be to remove that restrictions and to increase the competitive pressure on on-shore bricks and mortar casinos still further by encouraging more off-shore remote operators to cannibalise the UK market at a preferential tax rate to the on-shore premises—the “*safest place in which to gamble*”—and which provide employment and higher rate taxation in the UK.

The government argues that this legislation also reduces confusion for consumers. If passed un-amended it will continue to be lawful for a person to play an on-line roulette game provided by London Clubs as a licensed operator *outside* its casino—perhaps sitting with children on a bench in Leicester Square—but not inside the adult only environment of the Empire Casino a few yards away where all we will be permitted to do by this legislation is advertise the same product. Is that not confusing for a consumer?

It makes no economic or social policy sense to allow a bona fide, licensed and regulated UK on-shore casino operator to be permitted to provide access to an on-line gaming product only *outside* the confines of the licensed and regulated premises it operates.

We urge the Committee to recommend the government amend the Draft Bill to allow UK licensed on-shore casinos to be permitted to offer on-line gaming within the licensed premises.

January 2013

Further written evidence submitted by London Clubs International Ltd

I am aware, that through the submission from the industry trade association, the National Casino Industry Forum, we have made a detailed submission to you and we fully support that submission. On behalf of my own company I want to highlight the continuing damage the failure of government to comprehensively address gambling policy is doing to our business and the threat it poses to British jobs.

London Clubs has been a presence on the High Street for approaching fifty years. We operate 11 of the 146 operating terrestrial casino businesses in the UK. As a sector, the terrestrial casino industry employs around 15,000 people and offers, not just jobs but genuine career opportunities with transferable skills to a wide range of young people, including many whose educational qualifications limit other opportunities. We make a significant contribution to the UK economy through a range of taxation measures, which includes £200 million Gaming Duty at a rate of up to 50%. However, despite responding to the challenge of creating the “*safest places to gamble*” (As confirmed by the evidence of the Rt. Hon Tessa Jowell and Richard Caborn’s evidence to your committee in 2012) the industry has not grown by any significant measure and receives no support from government.

Now, we face the most challenging trading environment in half a century.

Despite the availability of 16 new licences under the 2005 Act and 40 dormant 1968 Act licences being available for development, the number of operating premises has only increased from 143 to 146 in almost a decade.

The Remote Gambling (Licensing and Advertising) Bill is the clearest sign yet that the government does not understand the dynamics of the gambling market and the impact of e-commerce on the high street. This proposed legislation completely ignores the UK terrestrial gambling sector and in so doing compounds an anomaly created by the 2005 Act.

The only place a responsible and licensed casino operator cannot advertise or supply an on-line gambling product is in a casino.

This week Philip Graf, the Chairman of the Gambling Commission is reported as saying (Coinslot 25–31/1.2012) that gambling appears to be treated by a younger and more media-savvy generation as just another form of media based entertainment alongside TV, video games, film, etc. We agree with that. He challenges the whole industry to take ownership of the 2005 Act’s licensing objectives, to deliver gambling products responsibly, while continuing to grow and innovate. How does the terrestrial industry meet that challenge if we are prevented from providing the product?

Compared to the market conditions, other high street retailers face, the UK terrestrial gaming industry is significantly worse off. The closest analogy is with music suppliers. HMV, for example did not have its prices fixed; it had no controls on the products it could offer and the domestic tax rates for on-line and terrestrial businesses are identical. UK terrestrial gaming business has none of these advantages. Our prices are fixed by government (through a Byzantine mechanism, which has not operated effectively for nearly eight years); we are prevented from offering a competitive range of products and the proposed tax rate for on-line gaming offered in the UK is significantly more advantageous than that which we pay.

We accept entirely, that gambling is a different product to music or books etc: that is precisely why we have the range of safeguards in place that we have; why we have licensed staff, trained annually in accordance with the Licence Conditions and Codes of Practice on responsible gambling, why we have our businesses independently audited by Gamcare and of course why we have a powerful regulator to ensure our compliance.

This Bill, if not amended, will continue the anomaly that prevents terrestrial operators from offering on-line products and at the same time will open the UK market to *worldwide* competition. It was introduced by the

minister as being deliberately narrow in its focus: it risks being widely damaging in its impact. On behalf of London Clubs International, I urge the Committee to recommend changes.

January 2013

Written evidence submitted by the Campaign for Fairer Gambling

The Campaign is strives for fairness in gambling and so is centred around the three licensing objectives of the Gambling Act 2005, aimed at:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- ensuring that gambling is conducted in a fair and open way; and
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

We aim to:

- Engage with politicians to toughen legislation.
- Gather evidence of unfairness and non-transparency.
- Rally support from special interest groups to highlight the negative social and economic impact caused by problem gambling under the current legislation.

The Campaign believes that gambling regulation should be not be designed to protect the gambling sector operators, the politicians that approved it, or the regulators that should enforce it. It should be designed and interpreted to protect the consumers—the gamblers. The Campaign has no commercial interests.

The Campaign gives permission to the Committee to publish the contents of our submission. Also the Campaign requests permission to publish our submission at the earliest opportunity.

1. A SUMMARY OF OUR POSITION IS

1.1 At a minimum this Bill should become law. It should be impossible to raise any reasonable objections to this Bill.

1.2 Taxation level is relevant to understanding the impact of this Bill.

1.3 There are many other policies for remote gambling legislation that should be considered also, which are outlined below (section 4 A-O). If these other policies are not incorporated into this Bill then the Campaign will endeavor to focus on these once this Bill has been passed and when the Campaign has prevailed on the issue of FOBTs.

1.4 The international regulation of remote gambling is very weak as it has focused on accommodating the providers rather than protecting consumers. Once the Bill is approved there will be no excuse for not moving towards stricter regulatory standards through tightening of the Gambling Commission Licensing Conditions and Codes of Practice (LCCP). This will enable Britain to be more selective regarding which jurisdictions are of adequate regulatory standard and will deter non-British based operators from acting in the British market. Then not only gambling tax, but corporate taxes based on gambling profits will be captured in Britain rather than lost overseas.

2. COMMENTS ON THE DCMS INTRODUCTORY DOCUMENT

2.1 In the DCMS document at section 3 Overview of the current regulatory system the text states “*The then government decided that gambling operator is based (ie place of supply)*” meaning where the server was located.

2.2 This was a serious error of judgment that was influenced by the Government paying too much attention to the representations of the proponents of remote gambling, that remote gambling was just another financial service. But this was inconsistent with the Government position on other aspects of gambling. If gambling is just another financial service there is no logic in limiting the number of casinos and the location of casinos.

2.3 Further the social and economic cost of problem gambling is always where the player is rather than where the supplier is. But, the remote gambling sector had obtained “paid legal opinions” that gambling was where the supplier was. This enabled the sector to engage in accessing gamblers in jurisdictions where the authorities were claiming this activity was illegal. But the government did not want to concern itself with the concept that future licensees could have been engaged in profiting from illegal gambling.

2.4 In marked contrast, the government accepted that betting shop FOBT gambling was where the gambler was in the betting shop premises, not at the off-premises central server. The contrary opinion, that the gambling was where the server was, would have meant that FOBTs were illegal. But again government was more interested in allowing the sector stakeholder interests to prevail rather than logical or legal consistency.

2.5 In the DCMS section 5. Summary of Proposals we are very pleased that Ministers acknowledge they “*have responsibility for protection of consumers.*” However, in practice Ministers have been negligent in this role, particularly in respect of remote gambling and FOBTs.

3. REMOTE GAMBLING TAXATION

3.1 If a number of remote gambling operators are deterred from accessing Great Britain’s gamblers by either the remote gambling taxation rate or this Bill (or both) then this is not detrimental. Essentially gambling products such as roulette are similar from operator to operator. The individual bricks and mortar sectors of casinos and betting shops are dominated by a handful of operators and this is considered acceptable.

3.2 The remote gambling sector is very profitable but spends a substantial amount of its profits on extensive marketing to attract new players. With a gross machine tax duty of 20% being introduced in 2013, there is no reason why remote gambling should not be taxed at 20%. Representations to the contrary by the remote gambling sector for its own commercial interest should be ignored.

3.3 Similarly representations from politicians too close to the remote gambling sector, such as Philip Davies MP, who wrote in an Association of British Bookmakers supplement to the New Statesman, recommending that remote gambling tax should be lower than contemplated, should be ignored. Mr. Davies had enjoyed the hospitality of BetFair, a major remote gambling company, at the World Cup in Paris, but did not refer to that relationship in the article.

4. POLICIES TO BE CONSIDERED

A. *Remote Advertising Only Allowed*

(i) There is growing discontent with the proliferation of advertising of remote gambling. Licensees should be considered as privileges rather than as rights. There is no reason to allow advertising of remote gambling in any media other than remotely.

B. *Ring Fencing of Player Deposits*

(i) The Gambling Commission LCCP does not require player deposits to be ring-fenced. In the interest of consumer protection this position must be reversed.

C. *Guaranteeing of Player Winnings*

(i) The LCCP does not require player winnings to be guaranteed. In the interest of consumer protection this position must be reversed.

D. *Terms and Conditions Validity (T&Cs)*

(i) The LCCP does not require terms and conditions to be truthful. For example, sites have been allowed to claim in the T&Cs that they own or licence all the site content. However, where a game on the site has an owner that has not licensed the game to the site then the T&Cs are invalid. In the interests of consumer protection this position must be reversed.

E. *Viable Self-Exclusion*

(i) Self-exclusion from one site accessing British players should result in self-exclusion from all such sites. This self-exclusion program should be monitored by the Gambling Commission and established by GamCare with Responsible Gambling Trust funding. Researchers should have access to all non-personal data.

F. *Regulation of Affiliates*

(i) William Hill in trade magazines advertises that affiliates can obtain up to 70% of player losses. In this case the affiliate is the primary revenue beneficiary of the activity. But there is no requirement for affiliates to be licensed or investigated by the regulator. This is an absurd situation, as the affiliates could be operated by organized crime or terrorist organizations.

(ii) The affiliates are often “information” sites which “recommend” gambling sites with players unaware that they are being steered towards the site that the affiliate has the commercial relationship with.

(iii) If there is only a limited number of UK licensees under the combined new tax regime and this Bill then there may be less need for aggressive marketing. Therefore the role of affiliates could diminish. The best regulatory model would be to not allow any affiliate programs.

G. *Control of Play for Free*

(i) When play for free is allowed and the results do not represent real scenarios then remote gambling is being deceptively presented to entice players. The most deceptive method is to allow winning events to occur more frequently than would be the case. Even if placing absolute control on licensees to mitigate deception,

this problem persists if affiliates exist and are not regulated. Free play is very common on social media sites, but these sites could then easily apply to become licensees, after building a player base attracted by deceptive free play.

H. *Monitoring the 18 to 21 Age Group*

(i) When gambling was first formally legalised in the late 1960s most 18 year olds had already been employed for a couple or so years. Today a far higher proportion of 18 to 21 year olds are either students or unemployed. If working, many are only part-time or temporary or interns earning low or minimum wage. It is socially irresponsible for any gambling sector to target the 18 to 21 age group.

(ii) With the nature of social media and video gaming resulting in addictive behavior it is even more dangerous for this age group to be targeted by the remote gambling sector.

(iii) Bricks and mortar sectors do not generally have training programs to allow underage gamblers to learn how to play. Whether the remote sector actively does this or not, the reality is that the remote sector benefits from underage gamblers learning how to play on deceptive free play.

(iv) It is becoming understood that the process of brain development in young persons can contribute to problem gambling if exposed at too early an age.

(v) All the above factors suggest that it would be prudent to seriously monitor the 18 to 21 age group remote gambling behaviour.

I. *Addressing Remote Problem Gambling*

(i) In respect of gambling activities in public, such as FOBTs in betting shops, it is very easy for persons skilled in understanding player behaviour to observe the degree of problem gambling. However, Ministers' current position is to ignore representations related to this, but accept the representations of operators that there is no evidence of FOBT problem gambling. With remote gambling there it will be far harder for observational evidence, and for Ministers to more easily ignore remote problem gambling.

(ii) When speaking recently at a public hearing regarding internet gambling to the Nevada Gaming Policy Committee, Jim Ryan of bwin.Party described how the company had a million unique players per month and how their software identified 71 problem gamblers per month, so illustrating that remote problem gambling was a very small factor. But of course this representation is flawed.

(iii) The international consensus is that problem gamblers account for at least 1% of gamblers. So the software should have identified 10,000 problem gamblers. Therefore, the software is flawed and was probably designed to be flawed. So again representations from this deceptive business sector should be ignored.

(iv) All problems gambling research should take into consideration the social and economic cost of problem gambling. Research that does not do this cannot be used to make best policy decisions.

(v) Further gambling research should not focus on what percentage of gamblers are problem gamblers, but what percentage of revenue is from problem gamblers. The remote gambling sector has more information on player behavior than any sector. There should be a system in place to enable access by researchers to all data that can be permissibly disclosed on remote gambling behavior as a condition of a license.

J. *Sign-Up Bonus Control*

(i) Whilst some sophisticated players can abuse generous sign-up bonuses, these offers can also be deceptive for many players as bonuses cannot be obtained without unrealistic extensive play. Sign-up bonuses are part of the enticing aggressive marketing. The best regulatory practice would be to not allow any sign-up bonuses.

K. *Site Ownership Control*

(i) Popular brands often allow their names to be used with sites they do not operate. Players may play on the site based on trust in the brand when in reality control of the site could be with another entity, such as a software company or an aggregated site for which the brand name is a skin. At a minimum, on the front page, in text as large as any other text on the page, this position should be explained if applicable. The best regulatory practice would be to require the site owner and the site operator to be the same entity.

L. *Seal of Approval Control*

(i) Many sites display a "seal of approval" for a standard of fairness. The seal merely means that when the software was tested the random number generator met specifications. It does not mean that the games are fair in any sense. For example, the house advantage on a game could be very high. Also casino table games play far faster on the internet than in real casinos, so player losses grow far quicker on the internet versions. These seals are used as marketing gimmicks and best regulatory practice would be to prevent their use.

M. Withdrawal of Funds Parity

(i) Some operators require more verification of identity at funds withdrawal than at funds deposit. This is done to frustrate players and encourage them to play their remaining balances, rather than withdraw funds. There should be identification parity of funds deposit and withdrawal processes.

N. Overseas Server Access

(i) Where the site is based overseas the Gambling Commission and researchers should have the same level of access to the server as if it was based in Great Britain.

O. Tightening of the LCCP

(i) Whilst Ministers have responsibility for protection of consumers, in reality this is handed off to the Gambling Commission (GC) and Local authorities (LAs). The current position regarding the LCCP for betting shop licenses is very informative. Here the GC has decided that turnover or profits should not be used to determine the primary activity of the betting shop. This position does not help achieve any of the licensing objectives of the Act in any way. The LAs have no power to act to control FOBT proliferation as the bookmakers will rely on the GC LCCP in court.

(ii) The Orwellian double-speak of the GC enables betting shops that are not genuine betting businesses to have betting licenses, when it is the FOBT gambling that makes the shops viable.

(iii) In the knowledge that the social and economic cost of problem gambling related to FOBTs is increasing, the LCCP is contradictory to the licensing objectives. The GC needs to be subject to greater scrutiny by Ministers. Its LCCPs should be designed to protect consumers, not the regulator, or the sectors it should be regulating, or the politicians that approved the regulations.

(iv) There must be clear Government direction that the purpose of LCCP is to achieve the licensing objectives.

January 2013

Written evidence submitted by the FA

INTRODUCTION

1. The FA is the National Governing Body of football in England. Our remit includes governing the rules and regulations of the game including financial regulation within the game and the game's integrity.

SUMMARY

- The FA welcomes the Draft Gambling (Licensing & Advertising) Bill.
- The 2005 Gambling Act must be considered ineffective if bets made in the UK do not come under the remit of the Gambling Commission.
- The fact that this is the case should be considered an unintended consequence of the 2005 Gambling Act which needs to be corrected.
- Ensuring overseas operators adhere to UK Licensing Conditions and therefore share information with national governing bodies of sport is vital for the integrity of sport.
- The Bill would also further protect sport by ensuring that the Gambling Commission has the ability to consider inappropriately high-risk bets taken by overseas operators.

SUPPORTING NOTES

2. It is vital for football that supporters and participants alike know that the game is played on a level playing field and is a fair contest. The FA is concerned that football's reputation could easily be tarnished by integrity issues caused by betting. For this reason The FA monitors bets using a private company called Sportradar which allows us to scrutinise unusual betting patterns.

3. Such monitoring, however, can be ineffective if data on unusual betting is not made available by bookmakers so that betting patterns can be traced back to individual accounts. The current legislation means that offshore bookmakers have no obligation to share information on unusual bets with the national governing body. Without this information our efforts to ensure that our sport's integrity remains in place is much more difficult.

4. The FA has a good working relationship with the Gambling Commission's Sports Betting Integrity Unit. Both the Gambling Commission and The FA have sought information from offshore companies in the past and have encountered some difficulties in receiving data in a prompt fashion or sometimes at all. For a full and timely investigation to take place, The FA considers an obligation for bookmakers operating in the UK market to provide information to be vital—regardless of where they are based.

5. It is unfortunate that our sport's integrity is under threat due to the fact that our product is used externally by third parties for financial gain and that we cannot access data on bets which cause concern in our sport. We consider the fact that overseas bookmakers do not have to adhere to British licensing conditions as a loophole that this Bill rightly addresses.

6. A change to a point of consumption model which will ensure that bookmakers adhere to UK Licensing Conditions and provide information to sports governing bodies on unusual betting patterns would be very welcome and hugely important in our efforts to combat match-fixing and promote integrity. Until this loophole is closed, the 2005 Gambling Act must be considered ineffective.

7. Adhering to UK Gambling Commission regulations not only ensures gambling operators pass on information when information may lead to the Gambling Commission voiding a bet, but also when any bet breaches the rules of the national governing body or when there may be information of where there may have been commissioning of an offence under the Gambling Act. In such incidents, while the bookmakers may not incur any losses, the potential consequences for a sport's integrity could be huge. The FA considers accessing information through these conditions as very important tools for safeguarding the integrity of sport.

8. The Gambling Commission also has the power to determine whether high-risk bets should be taken and this Bill will ensure that overseas operators are captured by this. This is tremendously important for sport; for example The FA strongly believes that betting on under-18 matches and competitions is inappropriate, but without bookmakers coming under UK licensing conditions there is no prescribed course of action to discuss such bets with overseas operators.

9. As the Bill notes, the proposals are cost- and benefit-neutral to British based gambling operators. It does, however, ensure that the British public can have confidence that bets made in Britain come under British jurisdiction and that sports can access vital information with regards to match fixing and betting integrity.

CONCLUSION

10. The FA strongly supports the introduction of the Gambling (Licensing & Advertising) Bill. The measures included create no additional cost for UK based bookmakers and corrects an unintended consequence of the Gambling Act which allowed overseas operators to avoid measures put in place to protect the British consumer and sport's integrity.

January 2013

Written evidence submitted by Camelot UK Lotteries Limited

Camelot UK Lotteries Limited, the operator of The National Lottery, welcomes the Draft Gambling (Licensing & Advertising) Bill and the stated intention that regulation of remote gambling will in future be at the "point of consumption", in effect closing the remote gambling loophole. This is a development we supported in our response to the DCMS consultation on the Regulatory Future of Remote Gambling in Great Britain (June 2010).

We are particularly pleased that the Bill, if enacted, will prevent overseas operators from accepting bets from UK consumers on The National Lottery, as s95 of the Gambling Act 2005 will apply to remote operators who offer services in the UK. This is an issue that has long concerned us and in respect of which we have previously made representations to Government. We have found it very disappointing that major operators who are licensed in the UK, but who have part of their operations outside the UK (for example in the Isle of Man or Gibraltar), are able to offer bets on National Lottery games through their overseas businesses. We have always viewed this as a development which clearly sought to avoid, through a legal technicality, the policy which s95 embodies.

Whilst welcoming the change, we note that without effective enforcement the policy will be seriously undermined, and we would ask the Government to consider how it will seek to ensure that the new law will be enforced against unlicensed off-shore entities. In relation to those off-shore entities which have affiliates licensed on-shore, we would ask the Government to consider if it could effectively enforce the law via the on-shore affiliates.

We would also like to draw attention to one issue which strikes us as an omission. This relates to the Gambling Act's overarching licensing objective of "*ensuring that gambling is conducted in a fair and open way*". For several years Camelot has repeatedly expressed concerns to both Government and the Gambling Commission about consumers being misled by gambling operators offering betting products which are deliberately made to resemble lotteries. These games free-ride on the equity of lotteries and are marketed in such a way as to encourage consumers into thinking they are playing lotteries. It is a matter of public policy that lotteries (whether run as part of The National Lottery, by societies or by other lawful means) are exclusively the preserve of good causes and are operated for the public good. Given that DCMS is reforming the regulatory regime for gambling, it does seem sensible that this particular point should be addressed at the same time.

January 2013

Written evidence submitted by Gala Coral Group

Further to your recent call for evidence, in respect of the draft Gambling (Licensing and Advertising) Bill I would like to make the following submission on behalf of the Gala Coral Group.

The Gala Coral Group is Europe's largest fully integrated betting and gaming group with circa 1,700 Coral betting offices in the UK, 26 Gala Casino's, 140 Gala Bingo clubs, 350 Eurobet Italia betting offices in Italy, a casino/bingo/betting complex in Gibraltar and online sites regulated in Italy and Gibraltar. The Group has a turnover in excess of £1.2 billion, employs circa 17,000 people and serves over three million unique customers in the UK each year.

We have noted your request for short written submissions and would therefore like to make the following headline observations:—

1. The Gala Coral Group supports the concept of strong and effective regulation of online gambling provided that it is proportionate and creates a level playing field between competing online operators.
2. Gala Coral are only too well aware of the significant advantages accruing to operators in low (internet) tax regimes. Having resisted going "offshore" for several years, our coral.co.uk betting site has been at a significant disadvantage to offshore operators such as William Hill, Ladbrokes, Party Gaming and Bwin. Despite having a 20% share of the UK retail betting market we only enjoy a (circa) 3% share of the online betting market in the UK.
3. The reasons stated for introducing point of consumption regulation are not supported by the evidence. Indeed a previous regulatory impact assessment states that "no specific public protection risks have yet arisen". We would urge the Select Committee to insist that the Government justifies its decision by recourse to facts and evidence.
4. The proposed Bill is a clear restriction on trade between EU states and as such is only permitted in very limited circumstances, namely a proven need for greater consumer protection. The Government have not made the case for such a need (greater consumer protection) or that the proposed legislation will be effective in providing such protection. Moreover, rather than ensuring greater protection, we believe that a point of consumption regime (regulation and taxation) will result in poorly regulated or underground sites becoming more attractive and significantly growing their volumes due to their inbuilt (tax) competitive advantage, which will erode not increase consumer protection in the UK. Therefore, as things stand, we believe that the proposed legislation is disproportionate to any perceived risk and is thus contrary to European law.
5. The vast majority of online operators marketing to UK consumers are regulated in Gibraltar, Alderney or the Isle of Man. These jurisdictions are closely affiliated to the UK and have very similar regulatory regimes to the UK. This was acknowledged by the Government when it placed Alderney and the Isle of Man jurisdictions on the so called "white list" of regulatory bases from which operators can advertise in the UK. Gibraltar based companies were already allowed to operate into the UK under the Gambling Act 2005 which automatically included "EEA member states and Gibraltar". Therefore we see the additional and costly burden of UK point of consumption regulation as being wholly unnecessary and totally disproportionate to a risk which has not been evidenced or quantified. Any move to introduce point of consumption regulation should target jurisdictions which present clearly evidenced risk and exclude well regulated jurisdictions such as Gibraltar, Alderney and the Isle of Man.
6. From the above facts it is not hard to come to the conclusion that the only reason to bring in the new legislation is to impose point of consumption taxation.
7. Treasury (HMT) has a clearly stated intention to introduce point of consumption taxation by December 2014. This will impose a huge additional tax burden on an industry which is well regulated and socially responsible. Many are major UK companies, which collectively employ upwards of 50,000 people in the UK and already paying twice as much tax as they make in profit from the UK. Such companies will be competitively disadvantaged when compared to off shore operators who chose to remain in less well regulated jurisdictions and flaunt/avoid paying tax in the UK. Put very simply if a £100 bet is subject to a gross profits tax of 15% instead of 1%, the risk/benefit ratio means that the higher taxed regime will only be able to offer significantly less attractive odds (prices), and other incentives, to the consumer and will therefore suffer a considerable competitive disadvantage and lose market share to the lower taxed environment.
8. There will inevitably be those who will, for their own competitive advantage, support point of consumption regulation and taxation in the UK, notably:
 - (a) Betting exchanges who already enjoy an unfair competitive advantage and this will be multiplied many fold in a higher tax regime. Assuming that exchanges collect a 2.5% commission on a £100 win at 1% they will pay 2.5p in tax and at 15% they will pay 37.5p, a 35p increase, whilst a non-exchange bookmaker will pay £15 instead of £1 a £14 increase!

- (b) Operators with a significant overseas (non UK) client base and a small UK client base may well see the UK as a tax haven. Furthermore by introducing a point of consumption regime (regulation and taxation) the Government may unwittingly create a haven for operators, with a small UK client base, who seek to avoid tax and regulation in other international jurisdictions and target jurisdictions like China, the USA and Turkey where online gambling is specifically prohibited.
 - (c) Those who have no intention of becoming licensed or taxed in the UK will continue to be based in less well regulated environments and trade into the UK without penalty and thus gain huge competitive advantage.
9. Handing competitive advantage to “rogue” operators based in “dubious” regulatory jurisdictions will have serious social implications. Consumers will be naturally drawn to better odds/prices being offered by such sites and social and consumer protection will be non-existent for a growing share of the market. The draft Bill contains no reference to enforcement mechanisms. Techniques such as ISP blocking, payment provider blocking and advertising restrictions have proved to be totally ineffective and to assume that such (rogue) operators will be “frightened” by UK sanctions is naive in the extreme, one only has to look at USA attempts at prohibition to see how poker volumes were sustained but moved from reputable providers (who abided by the prohibition) to “rogue” operators in “dubious” regulatory environments. Whilst HMT may be happy to collect 70%/80% of a tax take they do not currently have, driving 20%/30% of the market underground in poorly regulated environments will have serious consequences for consumer protection, protection of the young and vulnerable in society advertising (online) standards. Indeed without workable enforcement measures the underground or black market could grow as big (50%) as the regulated market in the UK, with huge negative consequence for consumers in the UK.
 10. By contrast, regulators in Gibraltar, Alderney and on the Isle of Man ensure that operators have age verification and responsible gambling procedures in place, and consumers are thus already protected by the current regulatory regime. Online operators in these jurisdictions also make significant voluntary contributions to the Responsible Gambling Trust in the UK. Therefore it is not hard to reach the conclusion that the introduction of point of consumption taxation will have the reverse/unintended consequence of weakening consumer protection. It will also severely damage the competitiveness of major online operators who are based in the UK and who have major UK based retail estates, which employ tens of thousands of people in the UK and contribute significantly to the UK economy.
 11. In summary we feel that the proposed legislation is wholly unnecessary and is little more than a front for the imposition of a point of consumption tax which will be very damaging to large UK operators such as Gala Coral by seriously impacting our ability to compete with non-compliant operators. It also appears to be contrary to European law and could thus be subjected to extensive legal challenge.

We hope that you find the above comments a useful addition to your body of evidence. Gala Coral would be delighted to give oral evidence on the draft Bill, to the Select Committee if required. Indeed we strongly recommend that the Committee allows sufficient time to take verbal evidence from major UK operators such as Gala Coral as a point of consumption regime has huge implications both for our businesses and the UK consumer.

January 2013

Written evidence submitted by William Hill plc

INTRODUCTION

William Hill endorses the submission made by the Remote Gambling Association, but makes the following detailed observations and suggested solutions.

William Hill is the UK’s largest retail bookmaker (25% of the UK retail market) and it also has the largest share of the UK’s remote gambling market (15%). William Hill PLC is listed on the London Stock Exchange and its Group Headquarters is in Wood Green in North London. In order to effectively compete in a highly competitive global gaming market, William Hill Online, is licensed and operates from Gibraltar, and licenses the rights to use the William Hill brand in the UK from its UK parent. William Hill supports 13,000 retail jobs across the UK including 800 support staff based in its UK operational headquarters in Leeds, as well as providing jobs in various locations including Gibraltar, Bulgaria, the Philippines, Israel and Nevada in the USA. A significant number of these are Leeds-based colleagues work for or support the Gibraltar-based William Hill Online business.

The Group is a substantial UK tax payer. With the nature of gambling taxes and the VAT exempt nature of the business, the Group already pays as much in taxes to the UK Government as it makes in operating profit (2011 operating profit of £275 million, tax of £272 million). William Hill has offered sports betting online since 1998 and gaming products since about 2001. Sports—betting was, before 2008, based in Leeds. Gaming

has never been based in the UK because until 2007 it was illegal to operate an online gaming business from the UK. That business was moved to Gibraltar in 2007 and became part of William Hill Online in 2008. In 2009, partly in light of the failure by Government to address the unfair competition from betting exchanges and uncompetitive UK tax rates applicable to online gambling businesses, the sports betting business was closed in Leeds and a new William Hill branded business set up in Gibraltar as part of William Hill Online; to allow the Group to compete on the global market, to enable growth and the sort of investment in innovation required to establish and sustain a market-leading position.

THE EFFECT OF GOVERNMENT PROPOSALS

William Hill and other UK major brands are now faced with ill-conceived regulatory legislation and a linked proposal on tax, to tax businesses on the place of residence of the customer, rather than the location of the provision of the service (the “Point of Consumption” or “POC”). The Group believes that the combined proposals, as well as limiting growth and innovation, will impose unnecessary dual regulation and add significant costs on its online business, hampering the ability to compete effectively in its chosen global markets.

We believe that the Regulatory Impact Assessment agreed by the Regulatory Policy Committee is defective. Neither the Regulatory Impact Assessment nor the explanatory notes accompanying this draft bill seem to have taken into account detailed market modelling or the views of operators. The Government’s policy case lacks rigour and the proposed policy will, in reality, do nothing to increase levels of UK consumer protection and may in fact have a detrimental effect by creating incentives for black market operators to try and service the UK market. And yet, despite this risk, it is legislation without any teeth to tackle those who do not comply or to prevent detriment to the competitiveness of those who do. The current estimation of expected voluntary levels of compliance at official level is very optimistic.

The Government predicates these proposals on the weakest of foundations, demonstrated most starkly by the reference to 57% of consultation respondents by number (from a total of 38 responses) agreeing with the preferred government option; a sort of “never mind the quality—feel the width” test.

The DCMS have failed to produce a detailed consultation response which analyses a range of clearly conflicting responses, or the cogent and credible research provided by operators at significant time, cost and effort. These seem to have been ignored because they do not accord with a deeply flawed policy proposal and has been progressed regardless of that informed contrary set of data.

There can be little doubt here that the regulatory proposals are merely being used here as weak cover for the proposed new taxation measures. Objectively there is no need for what is proposed, unless it is a necessary pre-requisite for the tax proposal that follows.

The DCMS Select Committee is in danger here of being misused by the Department to rubber stamp this flawed policy, which we have been advised is incompatible with EU law (see below).

RESEARCH BASE

We have already provided research from Deloitte and the independent industry commentator Gambling Compliance to the DCMS, HM Treasury and this Committee that:

- at a 15% rate, these taxation proposals will have a significant distortive effect on what is a mature online gambling market;
- consumer protection objectives will be defeated by tax proposals; and
- a weak enforcement regime will discriminate against major UK operators like William Hill.

As we have demonstrated in our previous submissions to both the DCMS and Treasury (appended) that the case for increased levels of dual regulation by the UK’s Gambling Commission is poorly evidenced, especially for Gibraltar-based operators. Indeed, the Government has recognised that the majority of operators currently targeting British consumers are subject to “established and effective” regulatory regimes.

The three reports in question are:

- Online Gambling Regulation—Striving for Sustainability, Player Protection and Competition (Gambling Compliance August 2011);
- The Impact of a Point of Consumption Tax on the Remote Gambling Industry (Deloitte December 2011); and
- Online Gambling Regulation—Restrictive Tools and Competitive Markets: The Latest Evidence (Gambling Compliance March 2012).

A summary of the research is set out below.

Gambling Compliance

- No one regulatory model can simply be transplanted into another jurisdiction with the same success.

- EU jurisprudence makes clear that financial imperatives can only be an “incidental beneficial consequence” of an EU Member State’s gambling policy and not the real motive for the policy.
- A policy which restricts fundamental freedoms under EU law must also limit gambling opportunities in a consistent and systematic manner. Should any regulatory change based on reducing problem gambling rates selectively target one channel, especially the online sector in general, this may well give rise to the argument that the policy is not addressing consumer protection concerns in a consistent or systematic manner.
- In whatever regulatory environment, a black market will always remain. Players, as consumers, will seek out the best offers available, be they regulated or unregulated.
- Black market competition is impossible to eradicate completely through enforcement measures such as ISP or payment processing blocking.
- The best place for citizens to gamble is a well-regulated, competitive marketplace, as opposed to an alternative black market.
- The use of bilateral agreements with regulators such as Malta, Gibraltar and the current “white listed” jurisdictions (as opposed to a dual regulatory system) may prove to be at least as effective a tool, and possibly better, in promoting compliance with their regulations which are already targeted at the stated public policy objectives of the proposals.
- The UK’s position of trying to adopt a policy of “controlled closing” creates a unique set of circumstances that have not yet been considered by the European Commission.
- The consequences of a retreat from the original free-trade principles of the EU treaties, recognised by the Gambling Act as enacted originally, are unknown and untested from a market, consumer and legal perspective.
- With the UK as the largest online gambling market in Europe, great care will need to be taken to ensure not only the legality from an EU law perspective, but also the effectiveness in deterring an efficient market from clandestine offerings.

Deloitte

- The highly competitive online environment means that operators would be unlikely to be able to pass a significant proportion of any POC tax through to consumers.
- Given the very low returns that a significant proportion of operators currently earn, even relatively low levels of POC tax could force some of the smaller firms to exit the online gambling market.
- International evidence from jurisdictions such as the US, France and Italy indicates that regulations in these jurisdictions have previously led to the emergence of a large unregulated sector. These examples highlight the potential for customers to switch between licensed and unlicensed sectors, and point towards some of the challenges that are involved in introducing effective measures to prevent this occurrence.
- Consistent with this, modelling by Deloitte indicates that in the absence of effective enforcement procedures, a 5% POC tax could lead to as many as 13% of UK online gambling customers moving into the grey market. Up to 27% could move into the grey market at a 10% POC tax rate (at 15% it is 40%).
- Such moves raise important questions over the impact of the POC tax on the over-arching consumer protection policy objectives.
- Unless enforcement is effective, the growth of the grey market will also serve to reduce the scale of potential tax revenues. Moreover the economic modelling undertaken by Deloitte indicates that under a scenario with ineffective enforcement the tax raised could peak at a 10% rate, with further increases in the rate leading to declines in revenue as the black market attracts an increasing proportion of consumers.

Key implications of the Deloitte modelling

- Effective enforcement of the tax and licensing regime are essential to maximising tax revenues and achieving customer protection objectives by limiting the size of the grey market.
- The international examples indicate that enforcement is difficult and challenging, with no system being entirely effective and some regimes losing very significant shares of the market to unlicensed operators.
- This suggests that the Government may wish to be cautious about the manner in which any such tax is introduced. In particular, it appears prudent to consider the introduction of any tax at a low rate initially in order to:
 - evaluate the actual impact on UK online gambling operators;
 - observe effects in markets such as Italy and France who are currently have reasonably high POC tax rates; and

- develop effective enforcement mechanisms to limit the ability of grey market operators to target UK consumers.

We believe that there is now other research in existence which supports the Deloitte and Gambling Compliance findings.

EU CASE LAW

Whilst EU case law gives significant discretion to Member States to restrict gambling on relevant public policy grounds, restrictions nevertheless have to be objectively justifiable, necessary and proportionate.

As the UK has operated its current regime for remote gambling for over five years, we would have expected any objectively justifiable case to be based on real evidence of failure rather than theoretical and uncrystallised risk.

The GB case (excludes Northern Ireland for regulatory purposes) for a controlled market closure is completely different from the cases in most other European states where there has been a move away from state monopoly control of gambling to a more open licensing regime.

If the DCMS has clear evidence of significant failures in consumer protection or significant barriers being presented to the Gambling Commission during the investigation of betting integrity cases then we would have expected such to be articulated (at least in redacted form). In fact, during the 2012 Olympics, the Joint Assessment Unit (JAU) received a high level of voluntary co-operation from offshore operators in the efforts to protect the integrity of the Olympic Games.

Instead, the DCMS relies on obtuse references to “new and emerging European jurisdictions where little is known about the level of regulation and consumer protection” or on the idea that simply because UK consumers have to deal with a non-UK regulator that in some way they are disadvantaged. Consumers here face no different a challenge than they do in transacting other types of e-business and there is no evidence that UK consumers face a disorderly or unfair remote gambling market; just the opposite.

The fact that a complaint cannot be investigated by the UK Gambling Commission does not mean it cannot be dealt with properly by, for example, the Gibraltar regulator. Indeed, the Gibraltar regulator deals with consumer complaints directly whereas the UK Gambling Commission insists that they are dealt with by a third party.

Further contrasts with Gibraltar show that there are equivalent testing and technical controls in that jurisdiction and Gibraltar is extremely selective about who it licenses, with operators expected to uphold the good name of Gibraltar as a remote gambling jurisdiction as part of their licensing conditions.

It is clear that the UK Government realises that fundamental EU principles relating to establishment and free movement cannot be breached for tax purposes alone and, therefore, the case for a “controlled closing” of the UK remote gambling market has been based on dubious regulatory grounds.

There is no articulation of how the Gambling Commission expects to deal with conflicts between domestic law and the data protection laws of home jurisdictions, and there will still be a strong reliance on mutual assistance between regulators. Of most concern is the reference to a “light touch” regime and the failure to address issues of extra territorial enforcement and measures such as ISP or financial transaction blocking, however ineffective they have shown themselves to be elsewhere.

We do not believe that either the legislation or the operational processes within the UK Gambling Commission are fit for purpose in terms of the enforcement of advertising restrictions (particularly online advertising) and companies like William Hill face the prospect of uncontrolled competitive challenge from operators who choose to remain outside the regulatory and tax net, but still target the UK market. The experience of other jurisdictions shows that it is the competitiveness of the offering that is key for consumers. Where licensed operators can effectively compete in a market, consumers choose those operators over unlicensed offerings. The current market in the UK demonstrates this, and these distorting proposals are, in the Group’s opinion, likely to lead to more UK customers betting with unlicensed operators than currently.

The proposed legal framework, in its current ill conceived form, will lead to a strong and sustained legal challenge because the case is not made out for lawful implementation and the legislative proposals clearly have a disproportionate effect on the major UK gambling operators. Major operators like William Hill are competitively disadvantaged by the weakness of the legislation, which will do nothing to raise consumer protection levels and could completely backfire if the research is correct and some 40% of UK customers migrate to sites in less well regulated jurisdictions outside the EU.

In our view the policy is contrary to Articles 49 and 56 of the TFEU, the policy cannot be justified on the evidence presented in terms of an overriding public interest and this matter would fall within the jurisdiction of the TFEU.

POTENTIAL SOLUTIONS

Whilst we oppose this policy, we recognise that there may be more than one solution to the issues raised by Government or what the Group believes to be the true motive of the proposal, namely taxation.

Firstly, Gibraltar has been granted EEA status under the relevant legislation and with Gibraltar having special status as a British Overseas Territory and with equivalent Gambling legislation (and arguably tighter operational control in Gibraltar), it would be possible to allow the status quo to exist in that jurisdiction. There is no clear regulatory case for UK dual regulation of Gibraltar-based companies. There is also no reason why a white list cannot be maintained and enhanced.

Secondly, the Government could implement the overall regime at an online tax rate of say 5%. As has been shown in the case of Denmark, it may be an acceptable solution, in terms of European law, to have a separate rates of tax for gambling for the retail and online channels; justified by the need to incentivise compliance with the licensing regime and discourage illegal activity.

Gross profit margins are considerably tighter for online gambling businesses than for land-based ones and, whilst there is overlap, the online and retail gambling markets are not currently interchangeable. A lower rate of gambling tax for online businesses is entirely justifiable and would facilitate continued growth and innovation in the sector.

The market cannot sustain current levels of growth and a 15% rate of tax would slow growth more quickly and damage smaller businesses and the substantial technical, financial media (and other services) supply chain.

There is no significant social problem caused by remote gambling. Therefore, there is no justification for imposing a double figure rate of tax and using it as a regulatory brake.

The Government needs to strike the right balance between the efficacy of enforcement rates, the tax rate and the overall effect on a mature and competitive market. Current proposals do not achieve this balance.

APPENDICES⁵

We append to this submission the following documents:

Online Gambling Regulation—Striving for Sustainability, Player Protection and Competition (Gambling Compliance August 2011).

The impact of a point of consumption tax on the remote gambling industry (Deloitte December 2011).

Online Gambling Regulation—Restrictive Tools and Competitive Markets: The Latest Evidence (Gambling Compliance March 2012).

HM Treasury Tax Consultation Response.

Response to the DCMS consultation on the future regulation of remote gambling in Great Britain.

January 2013

Written evidence submitted by the Federation of Racecourse Bookmakers Ltd

1. This submission is sent on behalf of the Federation of Racecourse Bookmakers Ltd, which is an umbrella organisation representing those racecourse bookmakers who are members of the National Association of Bookmakers, the Rails Bookmakers Association and the Association of Racecourse Bookmakers.

2. While it is true that the large majority of our members will be unaffected by this legislation, because they are already licensed and regulated in Great Britain, we do have some larger members who may be impacted; we also have a general interest in the overall licensing environment insofar as it bears on the betting industry as a whole.

3. However, because our direct involvement is tangential, we will restrict this submission to brief headline points which we consider the Committee should address in more depth with DCMS.

4. *Justification.* The first and most obvious point is that the supporting paper issued by DCMS lacks compelling evidence either that the current arrangements whereby those operators who are based in “white listed” jurisdictions (particularly Gibraltar, Alderney and the Isle of Man) are in any way inadequate in terms of regulation and consumer protection; or that the proposed licensing requirement will add anything significant in either respect. It is acknowledged that the regulatory standards extant in these jurisdictions are comparable in their rigour to those applied in Great Britain. Moreover, in an earlier consultation round, the Department conceded that these risks were low and it effectively repeats this view in the RIA which actually says that “no public protection risks have yet arisen”. We do not consider that the case has been made that the regulatory and consumer risks are of such a scale that this legislation is necessary. The proposals are, in short, not proportionate to the risks they purport to address.

⁵ Not printed.

5. *Taxation.* What is clear, from the Treasury consultation in June 2012 on taxing gambling companies at the point of consumer consumption, is that there is a will to raise additional taxation from those elements of the sector which are currently and perfectly legitimately operating into the UK from offshore jurisdictions. Licensing in Great Britain would be a key feature of such a policy and it seems evident to us that the current proposals are no more than a vehicle for introducing a regulatory structure which will facilitate extending UK taxation to those operators who are currently not liable to pay it, presented to appear as a consumer protection measure. Taxation is, of course, outside the purview of the DCMS, which is presumably why no direct mention is made of it in the supporting paper. However, it is perhaps stretching credibility too far to expect the industry to draw any other conclusions, given the lack of evidence on the need for consumer protection.

6. We are advised that any trade restrictions between EU states, which would include changes to licensing regimes, may only be permitted under certain conditions which, in the case of the regulation and licensing of remote gambling, include a manifest requirement for greater consumer protection. Clearly and certainly in respect of those companies regulated in Gibraltar, Alderney and the Isle of Man, no robust evidence of any such requirement has been produced and we would urge the Committee to invite the Department to support its assertions that greater consumer protection is needed with hard evidence. We are further advised that EU case law is clear that licensing may not be used simply as a tax raising measure so we would emphasise the importance of the Committee establishing evidentially that additional consumer protection measures are needed at all.

7. *Sporting Integrity.* We challenge the assertion that overseas operators will have to report unusual betting patterns to the Gambling Commission. Quite apart from the fact that liaison between regulators and organisations such as the European Sports Security Association (ESSA) is already a regular feature of mutual co-operation, the obligation will and can only apply to those operators who are licensed in the UK. As is already widely acknowledged, the principal threat to sports betting integrity comes from unlicensed, unregulated, often criminal operators targeting the UK and other markets from outside the EU. It is hard to see how these proposals will make any difference to this situation or enhance the cause of sports betting integrity to any meaningful degree.

8. *Research, Education & Treatment.* We also challenge the assertion that companies operating offshore do not make a fair contribution to the research, education and treatment programme. The DCMS document makes the point that “operators ...will be “required” to contribute”; since contributions to the RGT from all other operators are voluntary, it is unclear how overseas operators can be required to make a contribution on a compulsory basis, or why it is fair that they should do so. Furthermore, as a matter of record, four of the largest voluntary donors to the RGT in 2011–12 were overseas-based remote operators.

9. *Enforcement.* If the objective is enhanced consumer protection, it is not possible to see how this will be achieved by these proposals. Provided that the financial mechanisms can be put in place to effect the necessary transactions, any gambling website anywhere in the world can be accessed and used by UK consumers and could thus take bets from them, irrespective of where such sites are licensed or regulated, if, indeed, they are either. Indeed, the whole issue of enforcement is scantily addressed in the paper and we consider that this is another important area where the Committee could usefully require much greater detail from the Department.

10. *The Explanatory Notes.* The Notes suggest that the proposals are cost neutral to British-based operators but ignores the costs which would be incurred by those who would be required to take out licences here. These costs will be considerable and will have a clear negative effect on those companies which incur them. That needs clearly stating somewhere in the supporting paper, together with an assessment of what they might amount to in monetary terms.

11. Those operators who were hitherto based in the UK moved offshore because the levels of taxation imposed on them rendered them uncompetitive in the global market place. Quite contrary to the assertion in the Notes, it had little, probably nothing, to do with escaping the regulatory supervision of the Commission as evidenced by the fact that all are currently located in jurisdictions with at least equivalent levels of regulation.

12. *Conclusion.* We are drawn to the conclusion that these proposals have much more to do with paving the way for an extended tax regime than they have with consumer protection, the need for which remains to be demonstrated convincingly. The discussion on tax will no doubt come later but it remains the case that to subject operators to punitive levels of taxation when compared with other nations simply places UK-based companies at a material disadvantage in the very competitive global online gambling market.

Written evidence submitted by Betfair

INTRODUCTION

1. This paper constitutes the response of Betfair Group plc (“Betfair”) to the Culture, Media and Sport Select Committee (“the Committee”) Inquiry into the Draft Gambling (Licensing & Advertising) Bill (“the draft bill”).

2. This submission offers a summary of Betfair’s views on the overarching aims and contents of the draft bill as well as some additional introductory information about Betfair and a conclusion.

3. Given the limited time available to the Committee for taking oral evidence on the draft bill, Betfair is happy to be represented by its trade association, the Remote Gambling Association (RGA) on this occasion.

ABOUT BETFAIR

4. Established in 2000, Betfair⁶ is one of the largest UK-betting companies operating purely online with its services headquarters in the UK. The Betfair Group has four million registered customers worldwide and processes more than seven million transactions per day; more than all the European stock markets combined. Betfair employs over 2,000 people worldwide, with over half of those jobs providing services to our operating companies from our UK offices in London, Stevenage and Halifax.

5. Betfair’s core product is the world-leading online betting exchange, a concept which it pioneered. The exchange mechanism uses technology similar to a stock exchange allowing Betfair to offset its risk perfectly by exactly matching sports betting supply and demand in a way not possible for traditional bookmakers. Betfair offers casino, exchange games and poker products and has recently launched a sportsbook. Betfair also has a business-to-business relationship with the UK Tote Pools (“the Tote”).

6. Betfair has twice been named the UK’s “Company of the Year” by the Confederation of British Industry and is the only online gambling company to have won a Queen’s Award for Enterprise. It was awarded its first in 2003 for innovation and its second in 2008 for international trade.

7. Betfair currently holds licences in the UK,⁷ Malta, Gibraltar, Italy, Australia, Denmark, Spain, Germany (Schleswig-Holstein) and the US (through its horseracing TV channel TVG).

8. Until 2011 Betfair was one of the few remaining online gambling companies licensed and paying General Betting Duty (GBD) in the UK. In March 2011 Betfair took the commercial decision to switch its betting exchange from operating under a UK licence to a Gibraltarian one. However, Betfair’s services headquarters remains in the UK and it is committed to meeting, and exceeding, the same social responsibility standards as those required by the Gambling Commission (“the Commission”). Betfair continues to work with the Commission’s Sports Betting Integrity Unit, which includes sharing information about unusual or suspicious betting activity.

9. Betfair makes annual contributions to the Responsible Gambling Trust. In 2012 Betfair signed a landmark five-year commercial deal with British horseracing worth £40million which provides a template to help secure the long term funding of the sport. Betfair also works with UK sports charity SportsAid to directly fund grassroots sports clubs via a programme called Cash4Clubs.⁸ Cash4Clubs offers all sports clubs in the UK the chance to win grants ranging from £250 to £1,000. It is a simple scheme aimed at giving community clubs the opportunity to raise the money they need to invest in their club. To date grants totalling £181,000 have been awarded to 251 clubs.

AIMS OF THE DRAFT BILL

10. Betfair understands the motivation of the UK Government to reform the regulatory and fiscal structure for online gambling. While it is beyond the remit of the Committee, it is essential that regulatory and fiscal policies are addressed in unison to ensure a viable regime is established on any “point of consumption” basis. While the introduction of “point of consumption” regulation and gross profits tax is being undertaken via different pieces of legislation, the feasibility of both is mutually dependent. An effective regulatory policy is a key enforcement tool for fiscal policy, while the latter has the chance to undermine the former if the tax rate is set at a level that proves a considerable disincentive to being regulated in the UK.

11. In seeking to justify the need for a change in the law the materials published on 3 December 2012 that support the draft bill raise as many questions as they seek to answer. In order to avoid unnecessary repetition Betfair’s response will not duplicate the questions posed in the RGA’s submission to the Committee and we would simply reiterate that it is essential that the Government can provide the facts and evidence needed to justify the case for change.

⁶ Betfair became a public company in October 2010 entering the FTSE 250: <http://corporate.betfair.com/>

⁷ Betfair retains a UK licence for software development but is not transacting business under it

⁸ www.cash-4-clubs.com/

CONTENTS OF THE DRAFT BILL

12. As currently drafted clause 1.3b can be interpreted as meaning that any company with facilities anywhere in the world with the capability of taking bets from British customers would require a licence from the Commission. This is supported by paragraph 19 of the Explanatory Notes which sets out that if an operator wants to avoid having to obtain a licence it would need to “*block internet access for customers in Great Britain*”. Given the enormous number of online gambling companies active in the global market it would be incredibly difficult for the Commission to make the necessary checks needed to support the licensing regime to determine whether all licensed operators who have not taken up a UK licence have put the blocks in place.

13. Our understanding, as outlined by the Minister in the Ministerial Foreword, is that the aim of the draft bill is to ensure companies “*will be required to hold a Gambling Commission licence to enable them to transact with British consumers and to advertise in Great Britain*”. From the Minister’s statement it would be logical to deduce that if an online gambling company is not transacting with British customers or advertising in Great Britain it would not be required to hold a Gambling Commission licence. Clause 1.3b would be more likely to achieve this publicly stated objective if it directly reflected this in the drafting rather than throwing the net as wide as it currently does.

CONCLUSION

14. Betfair is confident that the Government, with which the company has engaged constructively on both regulatory and fiscal issues, is aiming to establish a sustainable regime for online gambling. In summary this will only be achieved with a coordinated regulatory policy and fiscal regime which does not inhibit the highly competitive online gambling market currently enjoyed by British consumers.

January 2013

Written evidence submitted by the Rank Group Plc

1. EXECUTIVE SUMMARY

Rank is pleased to have the opportunity of responding to the Select Committee’s request for evidence in relation to its inquiry into the draft Gambling (Licensing & Advertising) Bill.

In principle, we support the draft Bill but believe that it does not go far enough to create a level playing field for British gaming companies.

- Rank supports in principle the proposals set out in the draft Bill to apply remote gaming duty on a point of consumption basis.
- However, the proposals fail to address the regulatory and fiscal inequalities between land-based and remote gaming.
- In particular, we are concerned that the maintenance of lower rates of duty for online games (eg online bingo websites) compared with the same games played in land-based venues (eg licensed bingo clubs) may constitute state aid.
- Clarity is required with regard to how the Government intends to enforce regulation and taxation—to ensure that licensed operators are not competitively disadvantaged by compliance while unlicensed operators remain free to address the UK market.

In addition to the information submitted here, we would be happy to participate in the oral evidence stage of the committee’s inquiry.

2. ABOUT THE RANK GROUP PLC

2.1 Rank is headquartered in Great Britain and has been entertaining the nation for more than three-quarters of a century. The Group is listed on the London Stock Exchange (RNK.L).

2.2 Throughout its history, Rank has made a substantial contribution to UK Exchequer and to the economy at large. At the time of writing, the Group’s UK operations include 97 licensed bingo clubs (under the Mecca Bingo brand), 36 casino venues (under the Grosvenor Casino brand) and online and mobile gaming sites under the Mecca Bingo, Grosvenor Casinos and Blue Square (sports betting) brands. In addition, Rank operates 11 bingo clubs in Spain and two casinos in Belgium.

2.3 During 2012, our brands served more than 2.6 million unique customers and received in excess of 28 million customer visits. The Group employs more than 9,000 team members and its activities support wider indirect employment (in a range of support and supplier companies). Rank has outlined plans to accelerate its investment in the UK by increasing its casino estate to 45 casinos by 2015, creating more than 1,400 new jobs in the process. These plans may be supplemented by substantial additional investment, should Rank’s acquisition of Gala Casinos Limited be completed.

3. GOVERNMENT APPROACH TO REGULATION AND LEGISLATION OF THE GAMING INDUSTRIES

3.1 Rank is supportive in principle of the Government's proposals as set out in the draft Bill. The Group believes, however, that these proposed changes to licensing need to take place within the context of a broader review of the regulation and taxation of gaming and betting in Britain (whose very flaws the Select Committee has identified in its 2012 report). If the Government genuinely desires appropriate and effective consumer protections and a level playing field for British gaming and betting companies, then it must seek to address the regulatory inequalities which currently characterise the industry and which penalise those sectors that do most to uphold the aims of the Gambling Act.

3.2 It is clear that the Government intends to not only change the licensing requirements for remote gaming operators but also the taxation of those operators, which HM Treasury has consulted upon. As Rank has made clear in an earlier paper, "*Responsible Taxation: Fairness, Simplicity, Sustainability*" the Group supports in principle the application of taxation to remote gaming operations. However it is disappointing that these two fundamental changes to remote gaming operations are now progressing out of step and have not formed part of a broader review of the harmonisation of British gambling taxes or regulation. Whilst we understand that the Committee has only been tasked with looking at the Draft Bill, we would argue that this piecemeal approach to regulation of our industry is destabilising and therefore the Draft Bill, as a single piece of legislation is inadequate.

3.3 It is also disappointing that the changes proposed in the draft Bill cannot be understood within the Government's broader approach to gaming. We had expected this approach to be outlined in the Government's response to your Committee's report "*The Gambling Act 2005: A Bet Worth Taking*". The whole gaming industry requires certainty to allocate investment and plan for the future and it is therefore disappointing that five months have passed without a response being made.

4. CONSUMER PROTECTION

4.1 We offer our full support to the Government and the Gambling Commission in ensuring customers are protected. Our concern is that, undertaken in isolation the creation of a new licensing regime will fail to create a level playing field and may in fact penalise those operators who do most to uphold the aims of the Gambling Act—to protect young people and the vulnerable, to keep crime out and to ensure fairness.

4.2 As an example, the Draft Bill has no regard to operators that remain outside of the new licensing regime. There is a real risk that the new regime will offer significant opportunities for illegal operators to gain a foothold in the UK gaming market. "A tax free" consumer offer made by operators staying out of the UK regime who advertise online outside of the reach of the Gambling Commission is a real risk. We believe the Government must demonstrate how it will enforce non-compliance for operators who have no UK ties and who have no broader interest in remaining compliant with the UK's licensing regime.

4.3 The draft Bill will also reinforce the differing gaming opportunities offered to consumers online that are denied to the same consumers in highly supervised land-based venues. In forcing remote operators and their services to be brought under the Gambling Commission's licensing regime, it will provide these differences in regulation greater validation. As an example, remote operators may offer an unlimited range of gaming machines and table games and a level of machine stakes and prizes (essentially, Category A machines) that are denied to the land-based industry.

4.4 At the same time, even remote sites currently licensed in the UK can offer games of bingo, poker or roulette at a tax rate that is substantially lower than in land-based operations (where up to 50% may be payable in gaming duty). We agree with the recommendation contained within your Committee's report that "bingo should be taxed in line with other forms of gambling at 15%". We are also concerned that the perpetuation of higher tax rates for licensed bingo clubs (where duty is one-third higher than online) may constitute state aid; and we question both the legal validity and the economic wisdom of providing state aid to offshore companies at the expense of British-based businesses.

4.5 The playing field between well-regulated remote gaming operators and well-regulated land-based gaming operators will never be level until such times as government appreciates and addresses the real source of the problem. We appreciate that these are complicated matters but it seems illogical that the Government should allocate as a matter of policy greater commercial freedoms to remote gambling operations than to their land-based equivalents.

5. CONCLUSION

5.1 Rank is supportive in principle of the policy intent behind the draft Bill. If the draft Bill were to have formed part of a coordinated approach to the reform of gaming and its taxation that recognised gaming as a form of entertainment enjoyed by millions of people in the UK which encouraged proper supervision and promoted responsibility we would have been entirely supportive. Instead, the piecemeal approach being taken

is disappointing and may prove destabilising for UK companies that aim to meet consumer leisure demands responsibly.

January 2013

Written evidence submitted by the Advertising Association

1. I am writing on behalf of the Advertising Association in response to the Committee's call for evidence with respect to the scrutiny of the above draft Bill.

EXECUTIVE SUMMARY

2. The following is a summary of the main points we address in this submission:

- Fundamentally, we are concerned that this Bill has an inaccurate and unhelpful headline, focusing on advertising when its focus is really on taxation. While its intentions may be to increase UK tax revenue, we are concerned that there could be significant unintended consequences of the Bill as currently drafted.
- The current self-regulatory system for the advertising of gambling services has been highly effective in ensuring the responsible advertising practice currently undertaken by the sector and as such, should not be compromised.
- The wording of the Bill must be made clearer in its understanding of what "advertising" actually is as failure to do so could lead to considerable market uncertainty.
- Any changes to the current gambling regime should not lead to disincentives for gambling operators to advertise in British-based media.

THE ADVERTISING ASSOCIATION

3. The Advertising Association is the only organisation that represents all sides of the advertising and promotion industry in the UK—advertisers, agencies and the media. In the UK, the advertising industry employs nearly 300,000 people. In 2011, advertising expenditure was £16.1 billion.

OVERVIEW: GAMBLING ADVERTISING IN THE UK

4. The Gambling Act 2005 provided a comprehensive regulatory framework for the advertising of gambling (betting, gaming and lotteries) which has enabled the lifting of gambling advertising restrictions in Great Britain. Gambling advertising has been widely permitted on British television and in other British media since 2007, when the new rules in the Advertising (CAP and BCAP) Codes came into force. These rules have been supplemented by the industry's own *Gambling Industry Code for Socially Responsible Advertising*.

5. The advertising sector has benefited considerably from the liberalisation of this market with annual advertising spend currently around £200 million. These financial benefits have been achieved while meeting the three core objectives of the Act: keeping out crime; protecting the young and vulnerable; and treating consumers fairly. We believe that the self-regulatory framework that industry put in place for gambling advertising has not only worked to protect children and other vulnerable persons, but has also addressed concerns that were raised about the impact of liberalisation on problem gambling.

THE RESPONSIBLE ACTIONS OF THE GAMBLING INDUSTRY

6. The Gambling Act was drafted in such a way as to allow the Advertising Standards Authority's (ASA) independent self-regulatory model to enforce codes to ensure that all gambling advertisements are socially responsible. The Advertising Codes lay down rules for advertisers and media owners to follow. They include general rules that state advertising must be responsible, must not mislead, or offend. In addition to the rules on gambling, they contain specific rules that cover advertising to children and advertisements for other products.

7. The Codes make it clear that gambling advertisements should not portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm, nor should they exploit the susceptibilities, aspirations, credulity or lack of knowledge of children, young persons and other vulnerable persons. The provisions apply to advertisements for "play for money" gambling products and advertisements for "play for free" gambling products that offer the chance to win a prize or explicitly or implicitly direct the consumer to a "play for money" gambling product.

The gambling industry has also developed its own code for socially responsible advertising. The Gambling Commission provides regulatory backing to both this code and the CAP/BCAP codes through the licence conditions which require that "licensees should comply with the advertising codes of practice which apply to the form and media in which they advertise their gambling facilities or services".

OVERVIEW: CROSS-BORDER GAMBLING OPERATIONS

8. The advertising rules were put in place following extensive discussions with the gambling and advertising industries as well as through dialogue with the new Gambling Commission and the DCMS. They allow gambling operators to advertise in British-based media, subject to the advertising rules, as long as they have a Gambling Commission licence or, in the case of remote gambling operators, that they are based in EEA member states, Gibraltar or “white listed” jurisdictions with similar regulations to the ones in place in the UK.

9. The current cross-border regime ensures that all advertising in the UK is responsible and we do not think that the draft Bill will improve the current responsible actions of gambling operators. Evidence suggests that the current framework is very effective. Compliance with the CAP/BCAP codes is extremely high, with the ASA’s *Gambling Advertising Survey 2010* reporting a 96.1% compliance rate. In the cases of non-compliance, the ASA reacted swiftly and comprehensively and obtained reassurances that the responsible advertisers would not place the same ads again. We, therefore, believe that the Bill is primarily intended to increase UK tax revenue from overseas gambling operators and that it should be more clearly promoted as this being its regulatory intent.

CONCERNS ABOUT THE DRAFT BILL

10. There could be significant unintended consequences to the draft Bill’s attempts to use advertising as a device to increase UK tax revenue, particularly in how it aims to regulate the global internet and how it defines “advertising” itself. Specifically, the Bill would introduce a requirement for all operators selling into the British market to hold a Gambling Commission licence—and the Bill suggests in the footnotes that “selling into the British market” equates to “advertising to/transacting with British consumers.” There is a lack of clarity here as “transacting with” is very different to “advertising to”. In fact, a gambler may opt to visit a gambling website without seeing advertising in the first place. It is further possible to envisage a scenario where a British consumer engages with an operator without completing a transaction. Put simply, there is such vagueness in the Bill’s wording that it is likely to mean that enforcement of the rules online will be virtually impossible.

11. In light of the above, the AA can only assume that practically all gambling operators, who combined spend considerable sums of money on television and print advertising in particular, as well as online, will be forced into the less-competitive UK tax regime. The Bill could therefore easily incur higher costs on these operators, who are also major advertisers, and in doing so impact on this important area of advertising spend.

CONCLUSION

12. In conclusion, we question the prominence given to advertising in the proposed Bill taking into account that the current self-regulatory model for the advertising of gambling services has proven to be highly effective in meeting the three core objectives of the Act. We therefore urge the Committee to reduce the emphasis on advertising in the title and content of the Bill; it must be absolutely clear that the Bill is primarily concerned with taxation rather than the advertising of gambling services and that the current self-regulatory model is not compromised. Furthermore, the wording in the Bill must be made clearer in its understanding of what “advertising” actually is as failure to do so could lead to considerable market uncertainty. It is essential that the Committee ensures that any changes to the current gambling regime do not lead to gambling operators being discouraged to advertise in British-based media. The AA would therefore welcome the opportunity to further discuss the definition of “advertising” with the Bill team.

January 2013

Written evidence submitted by Phillip Brear, Gibraltar Gambling Commissioner

This paper addresses the contents of the Draft Gambling (Licensing & Advertising) Bill published by DCMS on 3 December 2012. The author submitted evidence to the CMS Committee in January 2012 and this note is a continuation of that document. The DCMS publication is not page or paragraph numbered but the comments here are in the same sequence.

SUMMARY

1. The following remarks are made from an operational and regulatory perspective. Over half of the UK remote gambling addressed by the Bill has been based in Gibraltar for up to 15 years.

2. The opportunity to again assist the Culture, Media and Sport Select Committee with its work is welcomed, however, the main elements of the policy proposals, though substantially incomplete in many critical areas, are without precedent, incoherent and contradictory. We can find no credible support for them outside the sponsors of the scheme.

3. The contents of the DCMS publication are contradicted by the Gambling Commission’s own Prevalence Surveys and Omnibus Surveys, other academic and industry studies, and the professional advice offered to the Commission and to DCMS by Europe’s most established and respected operators.

4. Remote gambling is a mature commercial market, an almost “perfect market” in economists’ terms, and market principles will apply to its behaviour. This has been the experience of all states with gambling populations.

5. Whilst the risks associated with gambling mean effective statutory controls can and should be imposed on such markets, experience shows that these are best realised through rigorous licensing, and must be followed up by a direct supervisory regime, actions some regulators now avoid.

6. Some fine tuning of the existing UK arrangements could bring benefits to consumers and the public good, but the proposals as they stand offer only to destabilise what is currently a safe, competitive and well managed market.

7. The proposals invite licence applications from companies established in jurisdictions which may be unregulated, opaque or worse. This will include companies that do not hold licences in their “home” jurisdiction and jurisdictions which do not even issue licences. The material needed to test such applications is not likely to be accessible to the Gambling Commission.

8. Such companies, if successful, will be permitted to disperse their staff and equipment across the globe, without any limitations. Such arrangements are unique and amplify the risks associated with remote gambling. Despite being located elsewhere, such companies will also be able to market throughout the world, based on a brass plate “UK” licence.

9. In parallel to this new supply chain, the suppressed grey and black market which UK consumers currently ignore, will be given a huge competitive advantage by the increased cost base (as much as 25%) imposed on UK customers and the existing industry.

10. No indication as to the scale of fees to be charged to licence applicants/renewals has been given. Indeed, it appears that the Gambling Commission will be allowed to charge what it deems necessary to investigate companies located anywhere in the world. This should be set against £3 million or 25% of the Commission’s current income of £12 million already arising from the UK based remote gambling industry.

11. The Commission continues to insist it is under resourced in this area and devotes only a handful of its 200 staff to the sector.

In terms of the documents issued for comment:

MINISTERIAL FOREWORD

12. This section repeats many of the statements of the Minister’s predecessor. As previously indicated, most of these do not stand scrutiny. The statements are exaggerated and contradicted by available evidence. The more likely policy consequences are unstated, whilst suggested outcomes are over optimistic and contrary to experience elsewhere. This is not a safe or reliable basis for policy making.

13. Public domain and industry statistics show that the remote gambling market targeted by the policy is in decline in the UK and that the vast majority of British consumers are well served by only a few dozen licence holders licensed in a handful of jurisdictions, all posing few regulatory risks. There are no new jurisdictions emerging and targeting UK consumers.

14. The only UK remote gambling market which is increasing in the National Lottery.

15. GREaT (now the Responsible Gambling Trust) has a voluntary funding scheme. Only a handful of existing Commission licence holders contribute. All of Gibraltar’s, and a higher proportion of non-Commission licence holders contribute.

16. The new arrangements will substantially increase the cost base of the existing remote industry by way of tax, duty and horse race levy payments. This will be reflected in the products’ price and diminish their appeal. This will re-incentivise the unlicensed and unregulated remote gambling market located in far-away jurisdictions, where there will be no new overheads or interest in obtaining licences and complying with UK regulations.

17. The new arrangements are explicitly designed to invite foreign interests in the UK market whilst making no provision whatsoever to prevent unlicensed foreign sites targeting UK consumers. Likewise, no explanation is given as to how foreign based companies who do apply for UK licences will be subject to extra territorial due diligence or supervision.

18. As has happened in other major jurisdictions, the proposals will lead to many brands being offered through standard internet marketing tools outside the purview of the ASA. These sites will be without proper controls in respect of ownership, fairness and integrity or underage access. Sites of this nature already exist, but currently have very limited commercial attraction to UK consumers. There are no provisions to block such sites.

19. There is no UK “regulatory gap” to be bridged. The new arrangements offer to create one and encourage British consumers to step outside the existing regulatory framework.

20. The mystery shopping exercise conducted by the Gambling Commission and referred to as evidence for change was substantially flawed and undertaken outside UK Government's own guidelines on such exercises.

21. The Commission's own and other academic research shows there is a miniscule interest in remote gambling by persons under the age of 18. The Commission permits UK licence holders to supply remote gambling to other states without age verification being undertaken.

22. Far from addressing match and spot fixing, the measures offer to aggravate the problem. The majority of suspicious betting reports submitted in to the UK precipitate little or no reaction. A high level of dubious betting practices around certain UK sports is tolerated on the basis of "custom and practice" or "low priority".

23. The Bill opens the UK market to global supply lines and globally aggregated markets. Operators in jurisdictions refused access to the white list, or which have never sought white listing, will be eligible for UK licences. Obtaining reliable information to assess such applications will be extremely problematic.

24. The Bill makes no provision to prevent or deny unlicensed foreign operators from accessing the UK market. An applicant denied a licence in a foreign state will simply be able to operate without one, in a cloud of other foreign offers, short only of overt advertising opportunities.

2. BACKGROUND

25. There is no evidence that the Gambling Act "is not working as well as intended and has become unsustainable". The three objectives of the Act are being well met by the primary jurisdictions supplying remote gambling services. On the contrary, there is evidence that lower standards than the Act anticipated have entered or remain in the gambling chain, in terms of criminal ingress, protecting the young and vulnerable, and in ensuring fairness and transparency. Recent failures in remote regulation have arisen from known high risk operators being allowed into the supply chain, under inadequate supervision.

26. The 2009 "joint review of remote gambling regulation" was conducted with no known consultation prior to the March 2010 position paper being published. The documents associated with the initial review warrant careful scrutiny. It has only just been revealed that the 2009 mystery shopping exercise conducted by the Commission was at the behest of and with funding from DCMS, seemingly to find the evidence to justify the review. It did not find that evidence.

27. The DCMS consultation document published in March 2010 pronounced its conclusions but made no provision to test the work or assumptions underpinning the decisions. This document and its construction were fundamentally flawed.

28. The consultation document transcended a general election campaign and a change in Government. Many commentators believed the document would be abandoned by the Coalition. It did not form any part of the Coalition Agreement or any manifesto.

29. It is misleading to state that "the majority (of respondents) favoured the proposals". It can be argued much more legitimately that the majority of respondents expressed concerns about the proposals, as the majority of respondents did express reservations.

3. OVERVIEW OF CURRENT REGULATORY SYSTEM

30. Contrary to what is claimed, a significant number of remote gambling operators are substantively located within the UK but do not hold Gambling Commission licences. This arises for a number of reasons, including a very relaxed interpretation of the Gambling Act with regard to the meaning of "key equipment", but also an apparent lack of priority in investigating UK based operators who avoid the existing licensing regime.

31. The upshot is that numerous remote gambling companies employ large numbers of people in offices around the UK, handling customer accounts and making or settling gambling decisions/records on locally based IT systems, but without obtaining a UK licence. Some of these companies have no operating licence anywhere in the world, others have "brass plate" licences in other jurisdictions.

32. There was an expectation in 2005 that large elements of the industry would re-locate to the UK under the new Act and a favourable duty regime. When this did not materialise the remote industry remained outside the UK. It is a myth that there has been an exodus of remote gambling from the UK since 2007. Most of it was not there in the first place. The handful of operators cited as moving their operations to Gibraltar have moved only small parts, whilst retaining, and in many cases growing, their major offices within the UK.

33. The Gambling Commission LCCP does not offer anything that the primary jurisdictions do not provide for. Whilst there may be differences in emphasis and process, there is no evidence that LCCP requirements are not paralleled; in some places they are being exceeded.

34. The White List. It is widely accepted that the white list process has some shortcomings. This is in large part due to structural flaws in the DCMS Criteria for approval. Where the March 2010 consultation document stated that the white listing process would be revised and improved, and the Ministerial statement of June 2011 said only that it would be "phased out". What is now proposed is its complete abandonment. This will aggravate its defects.

35. The Advertising Codes. Breaches to the advertising codes are characterised by a very small number of complaints, as few as one, often by a competitor or an interest group, and turning of fine definitions of the relevant Code. The ASA itself has complimented the remote gambling industry on its high levels of compliance. Whilst permitted advertising may be unappealing to many viewers, there is no case within advertising to change the licensing and regulation system.

4. THE CASE FOR CHANGE

36. This section starts with a statement that is misleading and untrue. The Gambling Commission's bi-annual Prevalence Surveys and quarterly Omnibus Surveys unambiguously show that the increase in remote gambling by UK consumers since 2008 is all related to the very substantial growth in the online purchase of National Lottery products.

37. The most recent Omnibus Survey confirms a marked decline in the use of remote gambling by UK consumers since 2008 (as much as 75%), other than the National Lottery. Moreover, the economic climate means the UK market value is declining in value. It is highly misleading to suggest that the remote gambling services under scrutiny are growing at a rapid rate when published research shows the opposite to be the case.

38. *Risks to British Consumers.* The assertion that the existing arrangements put British consumers at risk is frequently repeated, yet there is no evidence of this occurring. The evidence is to the contrary, that higher cost local licensing regimes will drive high value and vulnerable UK players to unregulated sites, where they are at greater risk of exploitation. The primary jurisdictions provide safe and reliable remote gambling to British consumers.

39. It is untrue to state there are "new and emerging European jurisdictions where online gambling sites have begun targeting British consumers." A review of the top 500 English language sites shows none of them fall into this categorisation. It is the proposed policy which will stimulate foreign interest in the UK market, and allow applications for licences from operators in any country in the world, irrespective of local governance arrangements.

40. Neither the DCMS nor the Commission have explained how they will approve or disapprove applications from such jurisdictions, including the more opaque jurisdictions. The new UK policy will expose UK consumers to operators in "new and emerging" jurisdictions of concern but where there is no admissible evidence of impropriety to deny an application.

41. The Gambling Commission has already licensed operators and individuals which/who have been declined licences in other jurisdictions due to criminal histories and associations. There is nothing in the Bill to prevent this practice escalating, but the opposite.

42. There is widespread consensus amongst European jurisdictions with regard to technical standards and software testing. There is no evidence that British consumers are met with varying standards of any significance when they gamble remotely with the current range of preferred suppliers.

43. In some significant areas of consumer protection, current British standards are lower than those in Gibraltar and other jurisdictions. This includes licensing criteria, age verification and anti-money laundering requirements. The Gibraltar gambling Act has parallel objectives to the UK and is predicated on maintaining the good reputation of the jurisdiction.

44. It is wholly inappropriate for the DCMS paper to cite compliance by other regulators with UK equivalent data protection laws as a weakness or criticism. I can find no examples of any lawful information requests by the Commission being denied. An unlawful request was denied. Historically, it has been difficult to obtain information from the Commission, taking up to 10 weeks and multiple requests to secure the release of data known to be in its possession. This compares to a 24–72 hour service provided to them.

45. In terms of enforcement, the Gambling Commission has a record of pursuing very long term criminal investigations with little prospect of success, due to weaknesses in their analysis of "suspicious" betting and sports incidents.

46. My office is copied in on all suspicious betting reports provided by Gibraltar licensees to the Gambling Commission. Very few of these result in visible interventions by any party in the UK. The impression is that there is insufficient capacity within the Commission to deal with all of the reports, with the vast majority being "filed" or referred to sports bodies for their information and attention.

47. With regard to LCCP Condition 15, "suspicious" is a very imprecise construct and the Commission could be overwhelmed. The new proposals will not bind all operators with the obligation to report suspicious bets. A new and unregulated market will thrive under the new proposals and ignore this requirement.

48. Outside UK horse racing, the major suspicious betting cases have not involved mainstream or licensed bookmakers, but betting facilities in countries much further afield, countries which will, for the first time, host companies who will be able to obtain UK operating licences, even if they do not hold a local licence, or there is no local licensing regime, as currently occurs under Commission policy.

49. The issue of confused customers has been grossly overstated. Where confusion arises it is often because the brand is a UK “High Street” name, or simply because the language used is English and the customer has failed to read or react (click) to the information on the webpage indicating the relevant regulatory body. Additionally, it is universally the view amongst regulators that the large majority of complainants are remorseful losers seeking to recover losses, or customers who have knowingly breached terms and conditions in their efforts to obtain free bets and other bonuses. When these bets win, the win is declined as the customer has “cheated”. The customer then complains.

50. It is also disingenuous for DCMS to use other regulators’ complaints processes as a reason for change. The Gambling Commission does not investigate consumer complaints, it refers them all back to operators or industry funded arbitration services. In contrast, other regulators record and investigate all consumer complaints that operators do not remedy. This service will be taken away from UK consumers.

51. In terms of illegal advertising, I understand that in five years there has been one, unintended, but illegal advertisement, by a white listed operator. No regulatory action was taken against any of the parties as it was, apparently, unintentional. This is the case cited by DCMS as illustrating a weakness in advertising regulation.

5. SUMMARY OF PROPOSALS

52. This section states that the proposals will simplify the licensing and regulatory system at the same time that licensed operators may be located anywhere in the world, and may put their entire equipment anywhere in the world, including many different locations. This claim is transparently untrue. The proposals will allow a licence holder to have nothing in the UK except a legal presence. Some jurisdictions already permit the dispersion of equipment and management to other locations. This massively dilutes regulatory control and accountability and makes IT and process monitoring demonstrably unreliable.

53. The proposals make repeated reference to the current cost of regulating the remote sector without providing any references to costs or Commission income or expenditure. Note that the Commission already receives 25% (c£3 million) of its income from the “small” UK remote licensed sector, but it has less than a handful of staff devoted to the sector. No explanation has been given as to how future fees will be constructed or expended, but it is clear a new and duplicate regulatory model will be constructed, and the licensed industry will be required to pay for it, whilst the unlicensed industry reaps the benefits.

54. The document indicates that different operators will be required to pay different fees in inverse proportion to the quality and transparency of their existing regulatory regime. Fee construction in these circumstances will be a complex and difficult task and the work supporting this model warrants greater transparency and examination.

6. SUMMARY OF REGULATORY IMPACT ASSESSMENT

55. It should be noted that much of the DCMS document has been copied from the unpublished Regulatory Impact Assessment (IA) completed in June 2011 and released for examination only on request in late 2012. The IA is not published on DCMS website at the time of writing and is registered as a refused FOI request in the first quarter 2012, ie it was deliberately held back from publication for up to 18 months. The IA bears little resemblance to the principles and guidance set out in BIS guidance and its defects are wide ranging.

56. The IA lacks any figures but reveals that DCMS paid for the Commission’s mystery shopping exercise in 2009 of 25 websites at a cost of £108,000, in parallel to 50 UK betting shops being tested. The shops had a 95% fail rate, the websites around 25%—but using a discredited and possibly illegal methodology, contrary to UK Government’s own guidelines on such exercises.

57. The proposals are not cost and benefit neutral to British businesses. The overwhelming majority of the current UK facing remote industry is headquartered in the UK and has very substantial support and complementary operations within the UK. Such companies have doubled and trebled in size in the UK due to the international success of their Gibraltar operations. In the future these companies will be allowed to obtain UK licences whilst being domiciled anywhere in the world.

58. Additionally, the existing companies spend vast amounts on infrastructure services, R&D, IT procurement and marketing within the UK. These budgets will be reduced and/or transferred outside the UK as these services are diluted and “internationalised”.

59. I can only advise that the policy proposals are substantially flawed and in numerous areas are impossible to deliver. They will weaken UK consumer protections and UK businesses, and will contribute little to UK plc, whilst substantially increasing the licensed industry’s cost base. The proposals contradict reality, research and the evidence base.

Written evidence submitted by the European Sponsorship Association

1. SUMMARY

1.1 In summary, the European Sponsorship Association (“ESA”) submits that the proposals set out in the draft Gambling (Licensing & Advertising) Bill (“Draft Bill”):

- (a) are likely to reduce competition in the UK sponsorship market and reduce overseas investment in British sport, as well as investment in sport in other European countries;
- (b) are contrary to the express wishes of the European Parliament and European Commission described in paragraphs 4.1 and 4.2 below; and
- (c) may be subject to challenge as an unjustified restriction of the fundamental freedoms enshrined in Articles 49 and 56 TFEU, which the European Commission has recently stated its commitment to enforcing in its recent Communication “Towards a comprehensive European framework for online gambling”.

1.2 ESA submits that, as a minimum, the Draft Bill should be amended and/or clarified, so that:

- where a gambling operator enters into a sponsorship agreement with a sports club or participant which is lawful in the EU member state(s) in which the parties are based, neither party should be at risk of prosecution, or other sanctions, simply because the club or participant plays in a match or competition in Britain; and
- the meaning of “capable of being used” in Great Britain should be clarified.

2. THE EUROPEAN SPONSORSHIP ASSOCIATION

2.1 ESA is the trade organisation of the sponsorship industry in Europe. Its members are drawn from across Europe, and range from brand owners, sponsorship agencies and consultancies, to rights owners (including sports teams, events, governing bodies and cultural organisations), and also include a number of suppliers and professional advisers such as lawyers and accountants associated with and working in the sponsorship industry.

2.2 ESA is committed to corporate responsibility and best practice and strives to raise industry standards through education, including the ESA Diploma and the ESA Continuous Professional Development scheme. It also runs education briefings and workshops and an annual two-day conference. It provides members with a library of information and encourages continued learning. In addition to its networking activities, ESA is active in policy and governance, representing the sponsorship industry at national and EU levels.

2.3 ESA supports and promotes the principles and values enshrined in the chapter on Sponsorship in the International Chamber of Commerce’s Consolidated Marketing Code (“ICC Code”), not least that all sponsorship should be legal, decent, honest and truthful.

2.4 Businesses within the gambling sector are significant investors as sponsors of sports teams and events in Europe. The financial support the gambling industry offers sport, in particular, through sponsorship activities has increased in recent times, with the growth of sponsorship by online gambling businesses being particularly notable.

2.5 The amendments to the regulation of sponsorship by gambling operators proposed in the Draft Bill are of great significance to our members, and the European sponsorship industry as a whole.

2.6 This submission sets out ESA’s comments on those areas of the Bill which it feels are of most relevance to the sponsorship industry in Europe.

2.7 In this Submission, where we refer to “gambling” we mean betting, gaming and participating in lotteries.

3. CROSS-BORDER SPONSORSHIP BY GAMBLING OPERATORS

3.1 The gambling sector has in recent years quickly become a significant source of sponsorship funding for sports organisations in the UK and Europe. For instance:

- the number of gambling operators becoming leading shirt sponsors in the top five markets in Europe grew from one in 2002–03 to 26 in 2010–11;⁹
- gambling sponsors were ranked joint 7th of all business sectors for worldwide reported deals in 2011, with 73 gambling sponsorship deals reported in 2011 compared to 21 in 2007, making the sector one of the fastest risers up the list, with almost 350% growth in five years;¹⁰ and
- “the value of gambling sponsorship deals reported since 2007 runs into the hundreds of millions and the upward trend is continuing”.¹¹

3.2 We note the views of the European Commission’s Expert Group on the “Sustainable Financing of Sport”, which include:

⁹ Sport + Markt “Sport, Gambling & Sponsorship: The Financial Relationship” presentation, September 2010 (this is the most recent figure ESA has on this point)

¹⁰ The World Sponsorship Monitor, 2011

¹¹ The World Sponsorship Monitor, 2011

- that “according to a survey in 2008, grassroots sport (2.05 billion EUR) received almost twice as much financial support from companies as elite sport (1.1 billion EUR)” from sponsorship and donations;¹² and
- the importance of solidarity mechanisms, whereby elite sports bodies support grassroots sport (which include each Premier League club having a dedicated co-ordinator working locally with sports clubs and schools to maximise opportunities for young people, as part of the £3.8 million “Premier League 4 Sport” programme).¹³

3.3 Sponsorship, by its nature, regularly crosses borders, and sports sponsorship in particular is one of the most versatile forms of cross-border communication. For example, where a gambling operator sponsors the shirt of a sports team which plays in European and international competitions or matches, that team might wear shirts with the operator’s logo on them when playing in those competitions or matches in a variety of countries. The same applies to sponsors of the organisers of the competition itself. Further, popular sporting competitions are televised around the world, so sponsors of those competitions and the participants in them are able to obtain global exposure for their brands.

3.4 That cross-border exposure is built into the value obtained by the sports industry from sponsorship deals.

3.5 Sports teams and organisations in the UK benefit from overseas investment from gambling operators, whose objectives may extend beyond the UK market to overseas countries. For example, there may be gambling operators who sponsor FA Premier League football teams to target overseas countries where the Premier League is widely televised and extremely popular.

3.6 In addition to regulation under existing legal frameworks, sponsorship is largely self-regulating in practice. The relationship of partnership between the sponsor and sponsored party means that organisations customarily conduct due diligence on potential sponsors in order to avoid the negative publicity of entering into sponsorship relationships with the wrong partners. That is particularly the case in sectors which are seen as higher risk, including gambling. Furthermore, the FA Premier League requires any sports betting operator entering into a sponsorship deal with a Premier League club to also enter into an agreement with the FA Premier League, with a view to safeguarding the integrity and reputation of the league. As a result, the UK sponsorship market is already largely closed to gambling operators who do not maintain a responsible reputation.

4. CURRENT LEGAL FRAMEWORK

4.1 The European Parliament, at paragraph 43 of its resolution of 15 November 2011 on online gambling in the Internal Market (2011–2084(INI)):

*“... emphasises the need for **pragmatic solutions with regard to advertising for, and sponsoring of, sports events by online gambling operators**; is of the opinion that common advertising standards should be adopted which provide sufficient protection for vulnerable consumers, but at the same time **make sponsorship of international events possible**”* (bold added).

4.2 The European Commission, in its 1996 Green Paper on Commercial Communications in the Internal Market, endorses the country of origin principle for commercial communications, whereby a commercial communication which is lawful in its country of origin within the EU should be lawful throughout the EU, wherever possible and appropriate.¹⁴

4.3 Sponsorship falls within the broad definition of “advertising” in section 327 of the Gambling Act 2005 (“Act”) (although ESA considers sponsorship to be distinct from advertising). Under the current sections 331 and 332 of the Act, any gambling operator which is subject to the gambling laws of an EEA member state, Gibraltar, or a country of the UK government’s “white list” may sponsor a sports competition which takes place in Great Britain, or a team which plays in such a competition.

4.4 The Act is, therefore, largely compliant with the clear wishes of the European Parliament and European Commission described in paragraphs 4.1 and 4.2 above, both of which ESA endorses, and is also compliant with the fundamental freedoms enshrined in Articles 49 and 56 TFEU, and the principle of mutual recognition.

4.5 We are aware that the jurisprudence of the CJEU has to date permitted member states a broad discretion in justifying the exclusion of online gambling services from the benefit of the fundamental freedoms enshrined in Articles 49 and 56 TFEU and the principle of mutual recognition. Nevertheless, ESA notes that the UK government did not consider it necessary to restrict those fundamental freedoms in 2005 under the Act, and considers that the failure of the Draft Bill to respect those fundamental freedoms now would create both legal and practical problems for the European sponsorship industry. ESA further notes that, in its Communication “Towards a comprehensive European framework for online gambling”, the European Commission has stated that it “*will, wherever necessary, take action to enforce the relevant Treaty provisions in respect of any national rules not complying with EU law*”.

¹² Report from the second meeting (22 May 2012) of the European Commission’s Expert Group on the “Sustainable Financing of Sport”, “Sponsorship and Donations” section

¹³ See www.sportandrecreation.org.uk/policy/policy-areas/europe/european-solidarity-mechanisms-sport

¹⁴ European Commission Green Paper “Commercial Communications in the Internal Market”, COM(96) 192, 8 May 1996, p12

5. DRAFT BILL

5.1 ESA believes that the Draft Bill would have the effect that only gambling operators licensed by the Gambling Commission in Great Britain would be entitled to sponsor any sports team which plays any match in Great Britain, or to sponsor any sporting competition of which any part is played in Great Britain. To sponsor any such team or competition without a licence from the Gambling Commission would be a criminal offence under section 330 of the Act (as amended by the Draft Bill)—the only exception being if that operator’s gambling facilities are not “capable of being used” in Great Britain.

5.2 The concept of gambling facilities being “capable of being used” in Great Britain is not entirely clear, and one which (if the Draft Bill proceeds) ESA respectfully submits that the Government should clarify. For example, if an overseas gambling operator uses geo-blocking software to prevent persons with British IP addresses accessing its site, would that be sufficient to fall outside the proposed revised section 330 offence, even though British consumers could circumvent that software relatively easily by using a proxy server? Similarly, will financial transaction blocking of British-registered cards (which can also be circumvented with relative ease) be sufficient to take an overseas gambling operator outside the scope of such an offence? What if the site is not provided in the English language?

5.3 If gambling operators were required to obtain British licences in order to advertise in Britain (and, one assumes, be required to pay UK tax), this is likely to increase the financial and administrative burden on those operators. As well as the impact this might have on the attractiveness of their consumer offering (as operators may not be able to offer the same rate of return to customers when their profit margins are reduced), it may also have a material detrimental impact on their marketing budgets and their investment in British and European sport.

5.4 The Draft Bill also risks creating the problems that have already been experienced elsewhere in Europe where similar prohibitions on advertising by gambling operators apply. An example is French football club Olympique Lyonnais being ordered to remove the gambling sponsor’s logo from their shirts for their 2010 UEFA Champions League match at Real Madrid, whilst Madrid were permitted to wear shirts bearing the name of their own gambling sponsor in the same match. By way of illustration in the UK context, consider a Spanish football team whose shirt sponsor is a Spanish-facing gambling operator. The matches of that team in La Liga, the Spanish domestic league, would be widely available to watch on British television, and British consumers would therefore be accustomed to watching that team play with its normal shirt sponsor logo. However, if that team were to play a UEFA Champions League match in Britain, it would risk committing a criminal offence unless it removed the sponsor logo from its shirts, thereby denying the sponsor (and, by extension, the club) the value of the exposure for that shirt sponsor in all of the television markets in the world in which that UEFA Champions League match is broadcast.

5.5 For the reasons described in paragraphs 5.1 to 5.4 above, the Draft Bill would, in ESA’s view, make sponsorship of British sport by gambling operators less attractive than it would otherwise be, as it would prevent both the gambling sponsor and the sponsored party from obtaining the currently anticipated value from a relationship which would be activated on a cross-border basis. It would also have a detrimental effect on the sports sponsorship markets in other European countries, if overseas teams were not permitted to wear their shirt sponsor’s logos when playing matches in Great Britain.

5.6 ESA is of the view that it seems highly likely that UK sports bodies in particular will receive less funding than they do under the existing law. Any gap may have to be met by the Government, for otherwise less money can be invested in grass roots activities and encouraging participation, which is recognised as a priority by the UK Government following the 2012 Olympics, and also by the European Commission, including in its 2007 White Paper on Sport.

6. ESA SUGGESTIONS

6.1 As set out in paragraph 1.2 above, ESA submits that, as a minimum, the Draft Bill should be amended and/or clarified, so that:

- where a gambling operator enters into a sponsorship agreement with a sports club or participant which is lawful in the EU member state(s) in which the parties are based, neither party should be at risk of prosecution, or other sanctions, simply because the club or participant plays in a match or competition in Britain; and
- the meaning of “capable of being used” in Great Britain should be clarified.

6.2 The current Act respects mutual recognition and the fundamental principles of EU law in relation to online gambling services, which ESA supports. If the UK Government is not able to act on our recommendations in paragraph 6.1 above, then ESA submits that the future of the UK sponsorship industry, and the future funding of UK sport, is likely to suffer a detrimental effect.

Written evidence submitted by the Association of British Bookmakers

The Association of British Bookmakers (ABB) is the leading trade association for betting shop operators on the UK's high streets. The ABB's members include four of the five biggest UK betting shop operators, along with about 100 operators of family owned independent medium-sized and small estates and single shops. Together our members operate 80% of the betting shop market.

Britain's high street betting shops already pay one billion pounds a year in taxation, and contribute over three billion pounds a year to the UK's economy. Britain's betting shops employ over 40,000 people and we are one of the UK's largest employers of women and young people—in fact, a quarter of all our staff are aged 18–24. At a time when major retailers like Clintons, Comet and now Jessops are closing down or going into administration, bookmakers are opening shops and creating jobs right at the heart of the UK's high streets and town centres.

While the ABB represents the land-based high street betting operations, a number of our members also operate remote betting platforms.

They are represented in that by the Remote Gambling Association which is making a detailed submission, but the ABB has some additional comments we wish to make.

We acknowledge that under the proposals, all operators selling into the UK market will be required to hold a licence from the Gambling Commission.

As we said in our submission of 30 November 2011 in response to Treasury's consultation on the proposals for remote gambling taxation, we feared that it would limit competition and make it harder for UK betting operators to compete if this was not the case, so we welcome this commitment. However, we would urge the Committee to ensure that issues of enforcement by the Gambling Commission have to be carefully considered.

Already a highly taxed industry, the Association of British Bookmakers would also note that the proposed changes will add additional costs, running into hundreds of millions of pounds a year for the industry overall, at a time when bookmakers are about to see the introduction of Machine Games Duty (MGD) on 1st February, a major punitive tax rise in itself. The rate of MGD set by the Treasury is not, we believe, "revenue neutral" and ignores the fact that many betting shops operate on very low margins. Almost 20% of the big five operators' shops make a profit of less than £13,300 a year.

MGD will mean Licenced Betting operators will be paying an additional £318 million in tax over the next five years. We anticipate this could lead to profits falling by 17% on average as a result which could make profitable businesses unprofitable overnight. The proposals for a point of consumption tax would add additional costs running into hundreds of millions of pounds a year, on top of the additional costs incurred by the introduction of MGD. One of our own Members estimates they will be paying an extra £44million in tax because of these proposals.

Our point is that the industry is being hit by a substantial tax change now, affecting their high street, retail businesses, at the same time as major changes to their remote betting operators are being considered. There cannot be many successful British industries that are facing such substantial changes to the way they are taxed at the same time.

The proposals also note that under the terms of securing a Gambling Commission Licence, those licence holders would be required to contribute towards British problem gambling and regulatory costs.

The gambling industry already voluntarily contribute over £5 million a year, expected to rise to over £7 million over the next few years, towards helping people who have identified themselves as problem gamblers. Without this funding, many charitable organisations such as Gamcare National Problem Gambling Clinic and the Gordon Moody Association would not be viable. The proposal gives the impression that additional payments would be required, when the industry already contributes millions of pounds voluntarily already.

January 2013

Written evidence submitted by the Rugby Football Union

The Rugby Football Union is the governing body for English rugby. The RFU supports grassroots and elite rugby in England, and stages major domestic and international rugby events. The RFU supports 1,900 autonomous rugby clubs in its membership, approximately 180,000 weekly participants and 40,000 volunteers.

The RFU is a member of the Sports Betting Group and the Sports Rights Owners Coalition. The RFU supports both of their submissions to the Committee on this consultation.

A core function for the RFU, as with all sports governing bodies, is to maintain the integrity of the sport. This is vital to protect the reputation and financial interests of the sport, as participants and fans must have confidence in the genuine nature of the competition. Although industry experts have advised that rugby union is currently at a low risk of corruption though betting, the RFU and International Rugby Board (IRB) are keen that this remains the case and are introducing regulations to ensure that the rugby community is vigilant to the risks.

Given the rapid increase in sports betting, the RFU supports measures to ensure that commercial operators offering bets in Britain are properly regulated. The RFU strongly supports Gambling Commission Licence Condition 15 which makes information sharing between sports and betting operators a statutory requirement and places a duty on operators to report suspected breaches of integrity. These will both assist the RFU in helping keep rugby free from corruption through betting.

It is vital however that Licence Condition 15 applies to all betting companies operating and/or advertising into the UK, otherwise the protections offered will become undermined as betting operators move abroad to avoid these regulations. The RFU therefore strongly supports the Government's proposal to introduce legislation to ensure that all betting operators which have UK-facing business interests must obtain a licence from the Gambling Commission. It is important that this loophole in the regulation of betting operators is addressed.

The RFU urges the Committee to support the proposal, and to encourage the Government to bring forward the Draft Bill at the earliest opportunity.

January 2013

Written evidence submitted by the Gibraltar Betting and Gaming Association

INTRODUCTION

I am writing on behalf of the Gibraltar Betting and Gaming Association ("GBGA"), Gibraltar's industry body comprising the largest and most experienced online gambling operators in the world, in relation to the proposed measures contained within the Draft Gambling (Licensing and Advertising) Bill (the "Draft Bill"). As in the case of our submissions to HM Treasury on its proposed fiscal reforms (and in response to its consultation paper of April 2012), this letter represents the view of the GBGA in response to this consultation on the Draft Bill.

Operators based in Gibraltar represent a very important part of the online gambling offering available to UK customers. The majority of online gambling transactions entered into by UK consumers are undertaken with Gibraltar licensed operators. In the betting sector it is likely that most UK customer transactions are with Gibraltar operators. Indeed, online gaming has become a major component of the Gibraltar economy and has significant economic impact on the adjacent Campo region of southern Spain. This sector directly represents approximately 12% of all employment in Gibraltar and contributes employee earnings of some 17.5% of total gross earnings. The total direct, indirect and induced effects of the online gaming industry on the economy of Gibraltar is £209.7 million income, 4,020 jobs, a total output level of £344.2 million and contributes overall to total Government revenue by £70.5 million (which we have been able to establish having regard to Gibraltar Government published information, represents over 15% of annual Government receipts). This is thus a significant component of an economy that has a total GDP of £1,207.5 million and just over 22,000 jobs (Fletcher Report (2011)).¹⁵ Accordingly the proposals contained within the Draft Bill (and the related fiscal measures) are of critical importance to our members and to the financial stability of the jurisdiction.

This letter should be read in conjunction with the submission on the Draft Bill made by Phill Brear, the Gibraltar Gambling Commissioner, which has been shared with the GBGA prior to this submission.

EXECUTIVE SUMMARY

- The proposed Draft Bill is misconceived and unwarranted on any objective analysis of the online gambling industry and the levels of consumer protection achieved by the existing UK regime.
- The assertion that UK consumers are exposed to a very large and rapidly increasing number of online gambling websites that may be poorly regulated is without foundation. The vast majority of UK customers are currently served by online operators in jurisdictions such as Gibraltar, Alderney, the Isle of Man and Malta which are long established, well regulated jurisdictions within the EEA or white listed territories.
- From a regulatory perspective, the only possible and partial justification for the Draft Bill is based on a perceived but unsubstantiated threat to UK customers arising from operators in emerging jurisdictions targeting the UK market. This is acknowledged by DCMS in its regulatory impact assessment which clearly fails to establish any wider detriment based on consumer protection. Even if this limited justification was proven, the Draft Bill is clearly disproportionate since it does not bolster the current white list (including EEA) regime with a requirement for increased reciprocity in the exchange of information and management of consumer protection (which would adequately protect against such risks).
- The proposed measures would be impossible to enforce, indeed no enforcement measures are proposed.

¹⁵ Fletcher Report (2011)—Report commissioned by the Government of Gibraltar to assess the financial impact and effects of the proposed UK licensing and fiscal measures on the Gibraltar economy and that of the immediate adjacent area.

- The proposed measures will not achieve the stated objective of enhancing consumer protection. In fact they will be inimical to that objective, driving UK consumers towards operators in poorly or even unregulated jurisdictions who will simply ignore any new UK legislation and tempt consumers with low cost offerings. Operators that comply with the new measures will incur very significant new costs and taxes which will need to be recouped from consumers and will necessarily make their offerings less attractive and uncompetitive. The experience of other jurisdictions that have introduced restrictive regimes (eg the USA and France) demonstrates that there is an inevitable consumer migration towards such poorly regulated operators.
- There is an astonishing dearth of evidence or analysis advanced by the Government to support a fundamental change from an open to a restricted market. Such evidence as does exist, in fact, augurs powerfully against the proposed changes which further casts doubt on the stated assertions put forward to justify the Draft Bill.
- Far from being “unsustainable”, the current UK regime strikes a proportionate balance between the goal of ensuring integrity and a high level of consumer protection and the creation of a competitive and vibrant remote gambling industry.
- The Draft Bill is ill-timed and counter intuitive. It is inappropriate for the UK to be seeking such fundamental reforms to the licensing and taxation of online gambling just as the EU Commission is formulating policy at the European level.¹⁶
- The proposed measures both separately and together with the related changes to the tax regime for online gambling are unlawful in terms of EU, national and international law and are liable to successful legal challenge. The GBGA has been so advised by specialist Leading Counsel.
- Absent some cogent evidential and rational basis for the change, EU law will not permit the UK to arbitrarily switch from a free market system that it specifically set up and reinforced in the Gambling Act 2005 to a significantly more restrictive regime that takes no account of licensed operators established and regulated within the EEA. It is a well established principle that where trading and fiscal rules are to be changed, the compatibility of any new rules with EU law must be examined in light of the pre-existing regime.
- The proposed measures are wholly disproportionate and irrational.
- The proposals also violate the European Charter of Human Rights guaranteeing freedom of expression and the peaceful enjoyment of property.
- There is a total lack of clarity as to what is meant by the term “point of consumption”. The UK has always acknowledged the point of consumption is the location of the gaming operator’s servers. The customer is travelling virtually via the internet to that location. The attempt to circumvent this problem by focussing on whether the facilities are “capable of being used” by UK consumers establishes that the real justification for the proposed changes is to facilitate the collection of the additional fiscal revenues that it is hoped will result from the proposed shift to point of consumption taxation.
- The proposal to exempt non-UK transactions from taxation is both discriminatory and constitutes unlawful State aid.
- The related fiscal measures will not in fact achieve the significant tax revenues expected by the Treasury.
- The costs involved in these proposals and related tax measures will cause marketing and other expenditure in the UK by operators to drop markedly resulting in reduced levels of economic activity and tax revenue for the UK.
- A level playing field between domestic and overseas operators will not be achieved given the widely different tax treatment and compliance costs that each will be subject to.
- The proposed measures will be at the expense of the UK’s broader, and more important single market, free trade and internet/e-commerce priorities. If enacted the Draft Bill will be seized upon by others as blatant protectionist measures in defence of a selfish national interest and they will clearly represent a wholly retrograde step for the UK (particularly undermining it within the context of any attempts to minimise unnecessary barriers to the supply of cross-border e-commerce services within the EEA).
- The proposed measures will have a severe impact on the economy of Gibraltar and the immediate surrounding area in southern Spain.

It follows that the GBGA strongly opposes the regulatory changes that the Draft Bill seeks to achieve together with the proposed shift to a point of consumption basis for the taxation of remote gambling to which they are clearly related.

¹⁶ Internal Market Commissioner Barnier announced the launch of a European Commission drive entitled “Towards a Comprehensive Framework on Online Gambling” at the European Parliament on 23 October 2012. The strategy involves an action plan to pursue a series of initiatives over the next two years aimed at clarifying the regulation of online gambling and encouraging cooperation between Member States. Commissioner Barnier is quoted as follows “Consumers, but more broadly all citizens, must be adequately protected, money laundering and fraud must be prevented, sport must be safeguarded against betting-related match-fixing and national rules must comply with EU law. These are the objectives of the action plan we have adopted today” (see European Commission press release 23 October 2012).

FURTHER REPRESENTATIONS AND ORAL HEARING

We are limiting our representations to general submissions as requested. Given the composition of the GBGA and the critical importance to our members and Gibraltar of the proposed measures, we would be grateful for an opportunity to further expand on these submissions whether by means of oral evidence to the Committee and/or by way of further written representations.

In support of the above we set out more detailed responses in reply to each of the numbered sections of the DCMS paper.

MINISTERIAL FORWARD

(i) The GBGA endorses the Minister's concerns that "effective consumer protection measures are afforded to all British based customers". However, we fundamentally disagree with the assertion that the system currently prescribed by the Gambling Act 2005 has failed to deliver a high level of consumer protection. We believe the Minister has not been well informed if he has been so advised.

(ii) No evidence has been produced to prove the assertion that the Gambling Act 2005 has failed to protect British consumers adequately. Indeed the GBGA believes not merely that no such evidence can be produced, but that such published data as does exist positively proves the contrary. Our members will rely on that data and on additional evidence to establish that the current regulatory regime is entirely fit for purpose and that it is the changes proposed by the Draft Bill that threaten to undermine consumer protection in the remote gambling sector.

(iii) It is wholly disingenuous to assert that participation in remote gambling in the UK (other than National Lottery) is becoming more prevalent or increasingly problematic. The Gambling Prevalence Survey 2010 and other quarterly omnibus surveys demonstrate that participation in the UK (other than the National Lottery) is at best stable or actively decreasing.

(iv) We are also concerned over the accuracy of the advice given to the Minister that has caused him to assert that online gambling operators licensed overseas make no contribution to the funding of research into problem gambling in Great Britain, or to the education and treatment of British problem gamblers. Worryingly, an assertion is being made in a ministerial document that bears no relationship to reality. The fact is that remote gambling operators licensed in Gibraltar (and also in Alderney and the Isle of Man) make substantially larger contributions to the Responsible Gambling Trust ("RGT") than the vast majority of UK licensees. Furthermore, a higher proportion of remote operators generally contribute to the RGT than those licensed in the UK.

(v) Preventing underage play is critical to our members' operating philosophy. Operators licensed in Gibraltar have accordingly developed highly sophisticated systems to ensure that the risk of underage players gaining access to their services is reduced to an absolute minimum. Indeed, the industry's efforts in this area enjoy wide acclaim and recognition. Our members would assert that these systems are the equal of, if not superior to, any currently used by operators licensed in Great Britain. It would be wholly inaccurate to assert that British children and young persons are being put at risk by the existing regime or that the measures proposed in the Draft Bill would in any way improve the situation. In fact the opposite is the case.

(vi) The Minister asserts that he seeks to achieve "a level playing field" by the introduction of these measures. In fact this already exists in the regulatory sense, in that the vast majority of UK consumers are doing business with operators in well regulated jurisdictions that already guarantee levels of consumer protection equivalent or indeed superior to, those provided in the UK. If, however, the related changes to the taxation of remote gambling as set out in Treasury's document published in April 2012 are introduced, the resulting playing field will be anything but level. Given that UK licensed operators will not pay remote gambling taxes on transactions with their non-UK customers, non-UK operators will be placed at a huge competitive disadvantage. Far from creating a level playing field, the intention and likely effect of the proposed regulatory and fiscal changes will be to drive operators currently licensed in Gibraltar and other overseas jurisdictions to relocate to the UK. The GBGA has obtained Leading Counsels' opinion that the proposed fiscal measures would be discriminatory and unlawful State aid.

(vii) Although this is primarily a matter for the Gibraltar Gambling Commissioner to comment upon, it is the experience of our members that the GC is frequently unable to effectively process and deal with even the small number of suspicious betting activity reports when it receives them. Furthermore, their understanding is that suspicious betting activity is overwhelmingly associated with distant jurisdictions (in particular in the Far East) and not with those facing the UK market. The complaints profile referred to in the Ministerial forward bear no resemblance to the complaints actually received, the majority of which relate to systemic abusers seeking to extract monies that they are not entitled to.

1. *Background*

(i) This states that "experience since the existing regulatory regime came into effect in 2007 suggests that the regulation of overseas based remote gambling operators selling products in Great Britain is not working as well as intended and has become unsustainable". Reference is made to the Regulatory Impact Assessment ("RIA") in support of these assertions. We do not accept that the RIA provides any proper basis for the

conclusions quoted. The RIA is clearly outdated and factually very defective. In our view it would be positively irrational to rely on the RIA as providing any basis in fact for the proposed measures. Our members believe, and will demonstrate, that it is wholly unfit and inadequate for that purpose.

(ii) We do not accept that the results of the June 2010 consultation produced a majority favouring the proposals. We believe this is a misleading representation of the outcome of the responses and concerns expressed by respondents.

2. Overview of the current regulatory system

(i) The Overview states that:

“a freer approach to advertising would provide maximum reciprocal benefits for British businesses in terms of European and International markets. It was also expected that by demonstrating best practice in gambling regulation in relation to operators here, Britain would be influential in improving standards of regulation across Europe and internationally”.

This is key to understanding the real reason behind the proposed reforms which represent a total U-turn in policy. It was indeed Britain’s expectation (and incidentally that of Gibraltar based operators) that “best practice” as promoted by the 2005 Act would position the UK favourably in arguing the case for improved standards of regulation throughout Europe and internationally. This goal is predicated upon the basis that the 2005 Act represented a balanced, effective and EU compliant regime that would provide a model for the achievement of a single market in online gambling services. The sad reality is that recent regulatory regimes introduced in France, Germany, Italy, Spain and other EEA States have failed to achieve (or attempt to achieve) a free and open market for such services. The historical disinclination of the European Commission to bring infringement proceedings against those Member States has been disappointing to say the least. In addition, the fact that these Member States are able to raise fiscal revenue from overseas business as a result of the partial reforms that they have introduced seems unfair to the UK which opted for a freer market. The fact, however, that UK “best practice” in regulation has not yet prevailed does not mean that the UK model is unfit for purpose nor can it provide a lawful pretext for a retreat into a protectionist and ultimately counterproductive regulatory and fiscal regime. It is hard to escape the conclusion that this draft legislation represents a short-sighted ‘if you can’t beat them join them’ reaction to the increasing balkanisation of online gambling within Europe. In the absence of a strong and pro-active European Commission, the UK has the opportunity to continue to assert its commitment to the basic principles and laws of reciprocity of freedom to provide services by persons established within the EEA. The current review relates to the regulation of online gambling, but it would be dangerous to assume that if the Draft Bill is enacted, the real principles that underlie these proposals (rather than the ones asserted in the Draft Bill) will not have a negative impact on the future development of the wider e-commerce industry and the regulation of the internet (and on UK based e-commerce operators doing business in other territories).

(ii) Although much prominence is given to the current position in respect of advertising, the three advertising Codes of Practice and the supervisory role of the ASA, there is no suggestion of any proposed changes. In our view, the current arrangements generally work well. As recognised by the ASA, the CAP and BCAP enjoy very wide compliance. The most significant effect of the proposed reforms will be entirely negative. They will add very significant costs to the industry, thus forming a very marked reduction in discretionary marketing and sponsorship expenditure in the UK.

3. The case for change

(i) This advances the Government’s view that “the current system is flawed and can no longer adequately ensure the continued protection for British consumers the Act envisaged in a changing and international landscape”. This assertion has no factual basis whatsoever. The document is self-contradictory in that it goes on to concede that “the majority of operators currently targeting British consumers are subject to established and effective regimes”. We believe the latter statement to be a fundamentally correct (albeit somewhat understated) assessment of the true situation. The fact is that the overwhelming majority of overseas operators regularly providing online gambling services to UK consumers are located in jurisdictions providing equivalent if not superior regulatory safeguards to those provided in Great Britain. It is therefore wholly disproportionate to impose a UK licensing requirement on all overseas operators doing business with UK consumers, irrespective of the quality of regulation in the jurisdiction where they are currently established and licensed. Leading Counsel have advised that the proposed measures are unlawful in terms of EU law on this ground also.

(ii) The document signally fails to mention the first class regulatory systems in place in jurisdictions such as Gibraltar and other jurisdictions in which the vast majority of operators providing services to UK consumers are located and licensed. GBGA members are subject to an internationally acclaimed regulatory system which imposes standards at least on a par with those imposed pursuant to UK legislation and the Licensing Conditions and Codes of Practice (“LCCP”) imposed and made thereunder. We have seen no evidence that the regulatory requirements of the LCCP conditions are not being met by Gibraltar based operators. The Gibraltar Gambling Act 2005 (the “GGA”) and regulations made thereunder incorporate all of the protections contained in the UK Gambling Act 2005 and more. Gibraltar has uniquely linked the regulation of gambling to the international standing and reputation of the jurisdiction. Thus the Gibraltar Gambling Commissioner is under a statutory

duty to ensure that operators so conduct their businesses as to maintain the good reputation of Gibraltar (GGA 2005 s6(4)(c)).¹⁷

(iii) If the DCMS and the GC are concerned about a perceived risk from “emerging” jurisdictions, it should be noted that no operator in any of these jurisdictions appears in the leading three hundred websites in the English language used by UK customers. To use this as a pretext for requiring all operators wishing to transact business with UK consumers to be licensed in the UK is wholly disproportionate and, we are advised by Leading Counsel, on that basis unlawful. The overwhelming majority of UK facing operators licensed in overseas jurisdictions maintain a substantial body of employees in the UK and spend heavily in the UK on marketing, information technology, research and development etc. If implemented, the proposed measures will impact heavily on the ability of those operators to continue to maintain those staffing and spending levels.

(iv) The proposal to require operators licensed elsewhere in the world to also apply for a UK licence merely because their remote gambling equipment is capable of being accessed by consumers in the UK will pose unprecedented and indeed insurmountable regulatory challenges for the United Kingdom authorities to the extent that the system would become entirely unworkable and ineffective. Whilst the document warns of the risks associated with dispersed technology, the proposed legislation would still permit UK licensed operators to be located and also to locate the totality of their remote gambling equipment anywhere in the world, ie effectively a “brass plate” presence beyond the supervisory and investigative powers of the GC. The GBGA has been advised by leading Counsel that such an approach is disproportionate to any proven risk, it is also practically unworkable and therefore irrational within the asserted grounds for the Draft Bill.

(v) Although the document asserts that the legislative objective is to enhance consumer protection, the inevitable result of the proposed legislation would be the very antithesis of that objective. The proposal reveals a total lack of understanding of the international online gambling market and of how consumers behave. The reality is that UK consumers will be attracted away from high quality, well regulated operators into the hands of operators in less well regulated or unregulated jurisdictions who will be able to tempt them with low cost offerings. There is already powerful evidence to this effect in the Deloitte Report commissioned by William Hill.¹⁸ This has also been the direct result of restrictive measures introduced in other jurisdictions (eg US and France). Our members believe that the Government is deliberately choosing to ignore this evidence because its real agenda is to use the regulatory changes as a vehicle for facilitating the collection of the additional tax revenues it intends will result from the proposed change to a point of consumption basis for taxing online gambling revenues.

4. Summary of proposals

(i) The Draft Bill proposes a fundamental change from the current “place of supply” basis for regulation to a “point of consumption” basis. This is bizarre as it has always been acknowledged by the UK authorities that the point of consumption is the place where the gambling transaction actually takes place, namely the location of the gaming operator’s servers where the risk is assumed by the operator. Under this contractual analysis, which has been adopted both by the GC and HMRC, the consumer is said to be “travelling” virtually to the location of the server in order to transact his gaming and betting business. This is consistent with the standard terms and conditions upon which the operators do business with consumers. The GBGA’s views on this matter have been more fully set out in its response to HM Treasury’s consultation paper published April 2012.

It is neither logical, nor in accord with the legal principles governing the formation of contracts to treat the location of the customer as the point of consumption. The Government’s view of the point of consumption becomes untenable, for example, in the context of an online poker forum, where games are played between participants who are located in multiple jurisdictions. To apply that analysis in this example would have the result that each participant would be consuming the service in a different jurisdiction.

The Draft Bill seeks to circumvent this problem by focussing on whether the facilities are “capable of being used” by persons in the UK. We believe that this is a wholly arbitrary and irrational basis on which to assert that the point of consumption is in the UK. We have been advised by leading Counsel that the premise underpinning the entire basis for the reform is unsound and therefore open to legal challenge.

(ii) The document asserts that “*the Government considers it essential for the Gambling Commission to have a greater degree of oversight in respect of gambling into Great Britain*”. It goes on, however, to propose a light touch approach in respect of operators in well regulated jurisdictions. As we have previously shown, the great majority of UK customers deal with operators based in Gibraltar, Alderney, Isle of Man and Malta which are all regarded as well regulated jurisdictions by the UK and other authorities. We therefore see no regulatory justification for an across the board licensing requirement. It can serve no useful regulatory purpose to impose a token licensing requirement on operators who are already adequately regulated. This merely serves to fuel our members’ suspicion that the real motive for the proposed regulatory changes is to facilitate the collection of tax.

¹⁷ It should be noted that Gibraltar’s licensing and regulatory regime has been extensively investigated by the Nevada State Gaming Control Board (“NSGCB”) in the context of applications for Nevada operating licences by GBGA members. The NSGCB which is recognised to have probably the strictest regime of any jurisdiction in the world has taken a very favourable view of the regulation of online gambling in Gibraltar.

¹⁸ Deloitte Report (30 November 2011)—The Impact of Point of Consumption Tax on the Remote Gambling Industry.

(iii) We believe the current UK system that allows access to the UK market by EEA and white listed jurisdictions has worked well. If (which our members doubt) there genuinely is a problem with operators in one or two poorly regulated jurisdictions targeting UK consumers, it would be a wholly disproportionate response to require all operators doing business with UK consumers to hold a UK licence. It is the very operators located in such poorly regulated jurisdictions who would be the least likely to comply with such a requirement and to continue their activities. The proposal to require all to be licensed in the UK would therefore be as ineffective in securing enhanced consumer protection as it would be disproportionate. Its most likely consequence would be to drive consumers increasingly in the direction of those non-compliant operators in poorly regulated jurisdictions. A proportionate response might be to review the workings of the white list (inclusion in which could be made the subject of a fee and reciprocal regulatory support frameworks) and to take up with any white-list or EEA jurisdiction any issues which the GC believes may adversely impact on UK consumer protection. This would be a more targeted and effective use of resources in tackling such issues.

5. Summary of regulatory impact assessment

As we have previously stated, the Regulatory Impact Assessment is fundamentally flawed and provides no basis for the changes to be made by the Draft Bill. There would be no point in producing a new RIA, since it is our members' firm view that no evidence-based RIA could possibly be relied upon to support the proposed measures.

6. Draft Bill and explanatory notes

(i) We do not believe that any proposal requiring the blocking of internet access would prove effective. The experience of other jurisdictions that have attempted to enforce ISP and other blocking measures is that they are doomed to failure. It is unclear how the GC would be able to ensure that any blocking mechanism is effective.

(ii) The innuendo that operators have established themselves overseas in order to "escape" the regulatory supervision of the GC is thoroughly disingenuous. Many such operators are, in any event, headquartered outside of the UK. Others with closer links to the UK have done so because the fiscal regimes of jurisdictions such as Gibraltar are more business friendly, and the costs bases are lower, matters quite unconnected to gambling regulation. Indeed in the case of Gibraltar, which is highly selective in its choice of the operators to which it is prepared to grant licences, operators have chosen to submit themselves to a regulatory selection process more rigorous than that operating in the UK and to a regulatory regime that is in significant respects more exacting.

(iii) The explanatory note asserts that the proposed changes are cost and benefit neutral to British remote gambling operators. This may be the case with regard to UK based operators; it is certainly not the case with regard to British headquartered and in some cases listed operators licensed in Gibraltar and other UK territories. For those operators the cost implications of a dual licensing regime will be very significant and will also make them uncompetitive vis-à-vis those operators who will choose not to bear the fiscal and licensing costs of the proposed new regimes.

CONCLUSION

Based on the foregoing, we would strongly urge the Committee to persuade the DCMS to abandon the regulatory changes proposed in the Draft Bill. In the event that the Government determines to proceed with the proposed legislation and fiscal reforms, the GBGA will regrettably have little alternative but to institute judicial review proceedings to challenge these measures.

January 2013

Written evidence submitted by Paddy Power

OVERVIEW

1. As the largest UK and Irish online betting firm with a market cap of £2.5 billion, Paddy Power welcomes the Culture, Media and Sport Committee's pre-legislative scrutiny of the UK Government's Draft Gambling (Licensing & Advertising) Bill. Paddy Power operates, either directly or via partners, in the legal jurisdictions of the UK, Ireland, Italy, Australia, France and Canada, all of which are fully licensed and tax compliant. We are happy to offer our expertise of the online sector and provide the benefit of our international experience.

2. Paddy Power fully supports any measures that help ensure that operators serving UK customers act legally and responsibly, particularly in relation to consumer protection, and therefore support the aims of the draft Bill. We are committed to acting fairly and operate some of the leading practices in the industry, and welcome the Bill's intention to hold UK operators to a high standard and contribute towards problem gambling.

3. Paddy Power is concerned that despite the draft Bill's stated aim of providing additional consumer protection, the main motivation behind this legislation is taxation. HM Treasury set out its intention at the Budget in March 2012 to progress with taxation of online gambling based on a point of consumption, which precedes this draft Bill (which seems designed to support the architecture of an anticipated new tax regime) by eight months.

4. The principle of imposing either a betting tax or a licensing regime based on a customer's location does not, in itself, concern us. What seriously concerns us is the high likelihood that either the tax regime or licensing system incentivises some operators to not comply, putting compliant operators at a disadvantage and jeopardising the objectives of increased consumer protection and/or raising tax revenues.

5. To prevent the encouragement of non-compliance and, in turn, ensure the success of the licensing regime it's essential that:

- (a) The licensing regime is properly enforced via multiple stringent measures including but not limited to:
 - (i) the requirement for financial deposits which are put at risk in the event of breach;
 - (ii) definitive advertising and IP address restrictions which make any breach clear cut;
 - (iii) equipping a regulatory authority with strong enforcement powers, including that of criminal proceedings.
- (b) The tax rate is set at an absorbable rate (5–8%). This encourages operators to remain within the boundaries set by the licensing regime without being overly disadvantaged compared to non-compliant operators. If the tax rate is set too highly, international experience proves that many online gambling operators will seek to circumvent the new licensing regime, thereby undermining the intentions of the Bill.

ONLINE GAMBLING INDUSTRY & INTERNATIONAL EVIDENCE

6. Paddy Power believes that the Government is overestimating how effective the draft Bill will be in preventing unlicensed and illegal online gambling operators from reaching British consumers under the new regulatory system. The Bill contains no reference to enforcement mechanisms other than a restriction on advertising.

7. It is extremely difficult to effectively police the internet and online gambling is no exception. Experiences from other countries prove that compliance with either licensing or taxation regimes within the online gambling and gaming sector is fundamentally weak:

- In Australia there are estimated to be 2,200 online gambling providers, generating \$1 billion in revenues, in contravention of the Interactive Gambling Act. Furthermore, such unlicensed activity is not confined to unknown operators.
- In Italy the regulator, AAMS, conceded that for some online betting products, up to 50% of the market may be operating illegally.
- In France, ARJEL, the regulator, presented to a special parliamentary committee in March 2011, stating they have served 410 websites with “cease and desist” letters, of which 285 continued to operate illegally.
- In Norway the gambling regulator has admitted its online payments ban has “not been a success” in deterring illegal operators.
- In the US where online poker flourished for many years despite a legal clamp-down, effective enforcement against illegal operators was only made possible due to criminal proceedings under laws unconnected with online gambling and after two years of investigation by federal authorities.

ENFORCEMENT MEASURES

8. The learning from other jurisdictions shows that no single enforcement measure has been successful in tackling the problem of illegal operators. Effective enforcement requires the deployment of a wide range of mechanisms. These should include:

- (a) A framework that gives regulatory bodies sufficient teeth in the implementation of such a licensing regime, including the *revocation of licenses*.
- (b) *Financial penalties*, including financial deposits being put at risk.
- (c) UK authorities should apply all possible measures, including *criminal proceedings* to enforce compliance.
- (d) *Objective compliance criteria*, requiring operators to undertake a series of objectives tests to identify a client's location at the time of registration.
- (e) A *simple definition of location*. The clearer the definition of location is, the harder it is for operators to wilfully circumvent the regime.
- (f) A framework that gives regulatory bodies the right to *fine critical partners* who ignore warnings about hosting illegal & unlicensed operators and make them financially liable for any unpaid taxation/fees.
- (g) IP blocking.

Without enforcement, compliant operators are disadvantaged and the objectives of protecting consumers and raising taxation go unfulfilled.

IMPLICATIONS OF RATE OF TAX ON CONSUMER PROTECTION

9. The online betting industry is extremely competitive, with a highly price-sensitive customer, which has resulted in dramatic downward pressure on prices. Online customers are served well by price comparison websites and are able to easily seek out the best offers. Online operators therefore have to absorb taxes rather than pass them onto customers, creating an incentive and environment where non-tax compliant operators can gain a competitive advantage.

10. Under the proposed plans to move to a point of consumption licensing and taxation system (based on the Government maintaining the 15% or similarly non-absorbable rate), online gambling operators will face two scenarios:

- *Operate legally* but risk going out of business due to the competitive nature of the industry removing any ability to absorb the tax; or
- *Operate offshore and illegally*, in order to thrive by offering more competitive prices than legal, onshore players due to the advantage created by not paying tax.

11. In order to ensure that operators choose the first option and drive real benefits for consumers, the Government should set a tax rate of between 5%–8% of net customer takings, enabling operators to absorb the charge and ensure compliance.

12. However, if the tax rate is too high and some operators continue to operate offshore and illegally, customer protection will be highly dependent on the ability of Government to enforce regulations through measures such as IP blocking, which have been unsuccessful in other jurisdictions.

13. In order for consumers to receive the protection that the draft Bill aims for, the Government will either need to ensure that all online operators supplying to British consumers are licensed in the UK (which is significantly impacted by the taxation rate) or successfully prevent those operators who remain offshore from advertising and providing services to British consumers (which depends on enforcement by HMRC, DCMS and the Gambling Commission).

SPECIFIC BILL REFERENCES

14. Paddy Power takes its responsibilities to consumers extremely seriously. We are committed to acting fairly and operate some of the leading practices in the industry.

15. The statutory requirement through this Bill for operators to contribute towards problem gambling is welcomed—indeed Paddy Power does this already on a voluntary basis, making significant donations to the Responsible Gambling Trust.

16. As part of our commitment to responsible gambling, in 2011 we engaged a respected expert in the field of responsible gaming, Professor Mark Griffiths, to both review our existing responsible gaming practices and to compare them with other operators in the industry. Professor Griffiths is Professor of Gambling Studies and Director of the International Gaming Research Unit at Nottingham Trent University and concluded in his review that “Paddy Power’s social responsibility policies and initiatives constitute some of the most innovative and socially responsible practices that an online gambling operator can engage in. Paddy Power provides a comprehensive and integrated social responsibility infrastructure. Paddy Power can say that they have a very socially responsible gaming site”.

17. On the whole, the industry has a strong track record and its efforts on age verification in particular have been praised by Parliament.

18. Paddy Power takes the issue of sports integrity extremely seriously and cooperates with the industry and industry bodies in alerting any suspicious activity. It is widely recognised that match fixing is something that national regulators should address on a bilateral and multi-lateral basis as they already do with other multi-jurisdictional crimes such as money laundering and fraud. There are established procedures and procedures for information sharing on this basis. In our experience, the current system works and historically there has not been high prevalence of these problems.

Written evidence submitted by Ladbrokes

INTRODUCTION TO LADBROKES

Ladbrokes is the world's largest retail bookmaker, employing 14,500 people across 2,100 shops in the UK and a further 2,000 people internationally. In 2011 Ladbrokes plc paid £155.6 million in taxes and duties to the Exchequer, while its profit for the year was £118.2 million.

Retail bookmaking continues to account for over 80% of Ladbrokes net revenues but remote gambling operations are extremely important to the future growth of the Ladbrokes business as it offers growth opportunities in the UK and internationally. Ladbrokes headquarters are in Harrow, North London where over 1,100 people are employed in retail and remote operations, international operations, marketing, IT, finance, security, compliance and customer services.

LADBROKES' REMOTE GAMBLING OPERATIONS

Ladbrokes online operations are regulated and licensed in the British overseas territory of Gibraltar. Ladbrokes first acquired a licence in Gibraltar to offer telephone betting services to the global market place (excluding the UK) in 1992. Its first online betting and gaming services were launched from Gibraltar in 2000. At the time there was no legislative framework for online *gaming* (casino, slots and poker) in the UK—so all online gaming services were based outside the UK and Ladbrokes gaming operations have been located there since launch. From 2001 to November 2009 Ladbrokes online *betting* services were operated from the UK, but due to increasing competition from operators benefiting from significant tax advantages it was forced to relocate these back to Gibraltar in November 2009. As a pioneer in the field of regulation of online gambling Gibraltar has a strong and robust regulatory regime, with many features being similar to the UK's own regulatory standards.

In 2011 Ladbrokes online net revenues (customer losses including free bets) were £163m, with around £130m of this coming from UK customers. Ladbrokes net online profits were £55 million in 2011 but analyst expectations are for it to be in the region of £38 million for 2012. In recent years Ladbrokes has had to invest significant sums in technology and marketing in order to stabilise the business and enable it to compete, having suffered from significant commercial disadvantages when its online betting services were located in the UK. By the end of 2009 this position became untenable and Ladbrokes was faced with the choice of either moving its betting operations offshore or remaining in the UK and watching its customer base migrate to offshore competition. As a publicly limited company the latter choice was not an option and Ladbrokes relocated its online betting services to Gibraltar in November 2009. Gaming accounts for around 55–65% of Ladbrokes online revenues, with the remainder being betting. Ladbrokes share of UK remote gambling market is estimated to be around 7.5%.

Ladbrokes is a member of the Remote Gambling Association and supports the consultation response that it has submitted.

EXECUTIVE SUMMARY

- While the UK remote gambling market is highly competitive with a large number of operators the vast majority of operators are regulated effectively in territories with close links to Britain and with regulatory frameworks that are similar to those in the UK.
- There is therefore no 'regulatory problem' in need of a legislative solution. The issues identified in the 'case for change' with regard Protection of the Young and Vulnerable, Sporting Integrity and funding of Problem Gambling Research, Education and Treatment are all currently covered by the regulatory regimes in place in Gibraltar and the other main jurisdictions in which UK-facing operators are based. There is no evidence provided that any issues arise from operators being licensed in Gibraltar or other territories, rather than the UK.
- The legislation is therefore primarily about paving the way for a new tax regime which, far from supporting any regulatory objectives will in fact undermine them.
- Ladbrokes has continually warned that an extension of UK tax rates to remote gambling operators will put UK based companies at a significant disadvantage to operators who will choose to sit outside of the tax and regulatory net. The impact this legislation will have will not only be to tax operators who are already effectively licensed and regulated, but also to hand a significant competitive advantage to operators who will not comply.
- This is made more acute by the complete lack of any enforcement measures included in the bill. While mention is made of Advertising, any reliance on restricting TV and print advertising will be completely ineffective as digital and email marketing will be almost impossible to police.
- Even in territories where significant enforcement measures have been introduced large unregulated markets continue to exist (ref; Poker in the United States and the large unregulated markets in France, Italy, Greece and Turkey).
- If the Government's objective is genuinely about regulation it should focus its efforts on those operators and jurisdictions where regulation is lacking.

- These proposals clearly highlight that regulated operators will be subject to UK taxation, yet the Regulatory Impact Assessment completely fails to take any account of the significant financial impact this will have.
- We see no reason why the Government could not simply recognise Gibraltar’s regulatory regime.
- Consideration of a regulatory regime without the tax regime being considered alongside it is to fail to recognise the importance of the tax rate to likely levels of compliance and therefore the likely success of the proposed legislation.
- Precedent has already been set for a lower rate of online taxation in other territories and Ladbrokes has continually argued that a lower rate of online taxation will ensure higher rates of compliance and reduce the negative impact on UK-based companies like Ladbrokes.

STRONG CURRENT REGULATION

Ladbrokes has experience of operating remote businesses in both the UK and Gibraltar. While we continue to have a high opinion of UK regulation and an excellent working relationship with the Gambling Commission, our experience is that the regulatory standards in Gibraltar are comparable with those in the UK. In fact in many instances regulation is based on the British 2005 Gambling Act.

In all the key areas of regulation mentioned in the legislative preamble Ladbrokes is fully compliant with UK standards under Gibraltar’s regulatory framework—namely we contribute to Problem Gambling Research, Education and Treatment; we actively share information in relation to potential sports integrity issues and we employ effective age verification techniques to the highest possible standards.

In addition to this Ladbrokes is also regulated and licensed in the UK for telephone and retail operations, and proactively works with the Gambling Commission and sporting bodies to ensure adequate sharing of information with regards to sports integrity. Ladbrokes is a member of the European Sports Security Association, and played a leading role in forming the working group ahead of London 2012 to ensure adequate sharing of information between companies and regulators.

There is no evidence that operators based in Gibraltar have any regulatory failings—nor have we seen any evidence relating to the other territories where most operators are based.

However the biggest impact of this legislation will clearly be in imposing UK taxation on a place of consumption basis—something not considered at all in the Regulatory Impact Assessment.

IMPOSITION OF HIGH TAXATION WILL UNDERMINE REGULATION AND DISADVANTAGE UK BUSINESSES

Ladbrokes has always argued that the 15% level of Remote Gaming Duty set by HM Treasury in 2007 was too high and far from encouraging companies to locate in the UK it further embedded the competitive advantage enjoyed by operators based entirely offshore. In a low margin business like betting and gaming, tax advantages can be used to gain significant commercial advantage through aggressive marketing offers and through increased investment in product, technology and research and development. Over time this inevitably results in customers migrating to competitors offering better value or superior product. In order for Ladbrokes remote betting business to survive and compete it became essential to either relocate the business to compete on a level playing field, or see the customer base ‘relocate’ to our competitors over time.

A fundamental principle which should govern the foundation of the proposed point of consumption system is that lower rates of tax encourage higher rates of compliance. This has been proved across a variety of schemes and industries, and the UK is itself a prime example of what can go wrong if the tax regime is flawed. Following implementation in 2007 of the Gambling Act 2005, the vast majority of the major players in the online gambling market either chose not to base themselves in the UK or felt compelled to relocate outside of the UK because they could not compete under the British system with companies in jurisdictions with more favourable tax rates. As such, the UK lost business, jobs and tax revenue due to its uncompetitive fiscal regime.

Although the draft bill states that “the proposals are cost- and benefit-neutral to British-based remote gambling operators, as there will be no additional costs”, this misses the important point that significant tax increases will be imposed on online businesses.

For a company like Ladbrokes with significant operations in the UK, we will of course comply with the new tax regime, but there is a significant risk that large numbers of companies will continue to operate outside of the regulatory system, from new jurisdictions. Using online marketing techniques and aggressive marketing offers, funded by the tax advantages they will enjoy, it will be exceptionally difficult for Government to prevent these companies from operating in the UK marketplace.

In an industry which works to very tight margins in an extremely competitive market there are very few ways to absorb the additional tax burden. The online market is also subject to more intense competition than the retail sector, with much lower profit margins and a much lower concentration of market share (as an example Ladbrokes UK remote gambling market share is 7% compared with 24% in retail).

Therefore it is inevitable that operators will have to look at potential cost saving measures such as reducing marketing spend, value to consumers, investment in R&D and potential other cost savings including personnel costs. The reduction of spending in areas such as research and development would inevitably have a knock-on impact for other businesses such as software programmers, games designers and manufacturers, algorithmic programming and network architecture. It would also affect the potential advertising spend on platforms such as Sky and Channel 4 Racing. All of these impacts would have a negative effect on jobs in the sector which are based the UK. Should the tax impact on the overall valuation of the company then Ladbrokes ability to invest in its retail and telephone operations as well as its digital operations will be impaired.

HM Treasury have already indicated the tax is proposed to be introduced at 15%, adding yet another tax to the existing high tax burden on betting and gaming businesses. We have calculated that to achieve the stated objectives whilst also ensuring compliance and gaining revenue, the ideal rate would be around 5% of gross profits. At this level the advantages of operating freely in the UK market place would outweigh the advantages of operating outside the system for the vast majority of companies.

If further proof is needed HMT need only look at other jurisdictions where high tax rates and restrictive regulation have led to significant unregulated operations. Unless otherwise stated the estimates are from GamblingData:

- In France around 50% of the sports betting market is estimated to operate outside of the regulatory framework and the online casino market is entirely unregulated.
- In Italy the regulatory body AAMS estimates that 75% of the online gaming market is unregulated with 40% of the sports betting market estimated to operate outside of the regulatory framework.
- In Turkey it is estimated there are over 400 sites active despite a ban on online gambling (Source: <http://www.hurriyetdailynews.com>).
- According to the European Association for the Study of Gambling in 2010 the annual turnover generated by illegal online operators in Greece was estimated to be 2 billion Euros for sports betting and a similar figure for poker and casino.
- Estimates for the German sportsbetting market are that over 37% will remain unregulated post the new legislative framework.
- The United States has a Federal ban on online gambling and has introduced financial transaction bans to enforce it. However after the introduction of transaction blocking (2006–11) the US poker market was estimated to be worth over \$1 billion annually (GamblingData) and while it has declined since then a number of sites continue to accept US players and deposits.

Most of these cases are where regulation is being introduced where restrictive or monopoly markets have been in place. In the UK's case it is moving from a marketplace in which operators licensed and regulated in the EU have competed in line with EU principles of cross border competition, to one where new regulation will aim to support a new tax regime, but without an effective enforcement mechanism. It is highly likely that unregulated operators will begin to target the marketplace post-regulation and therefore the illegal market will grow over time as the fiscal advantages enjoyed by unregulated operators takes hold. The Regulatory Impact Assessment does not appear to have taken any account of this likely scenario.

As presented we believe there is a likelihood the legislation will be challenged by some operators in Europe, with the risk of regulatory and fiscal uncertainty over the UK based industry for a prolonged period. This would not benefit Government, UK operators or consumers.

LACK OF ENFORCEMENT

In previous submissions Ladbrokes has been very clear that any regulatory framework supported by advertising restrictions alone would be deficient and would place UK companies at a significant disadvantage.

If the proposed regulation and taxation is introduced it should be fully and fairly enforced, otherwise it offers an open door to unregulated operators who would have a significant tax advantage. There have been numerous examples in the past of companies receiving no penalties for flouting the laws, particularly with regard to advertising. If the system is not enforced, it simply hits those major UK-based operators such as Ladbrokes that have a retail base and are compliant, further disadvantaging us against our competitors. While it is far from certain whether measures such as IP and credit card bans are effective enough mechanisms to ensure compliance and prevent individual cases from 'slipping through the net', it is clear that the current proposals offer no effective mechanism for enforcement.

Such a situation would clearly lead to a failure of both the proposed tax regime and the social policy associated with the planned licensing reforms. As such, the proposals risk failing to improve (but succeeding in disadvantaging) the situation for any of the key stakeholders associated—the government, the consumer and the operator.

REGISTRATION PROCESS

The legislation is unclear as to whether there would be any cost to operators for applying for or gaining a licence. This should certainly not be the case for those with an existing licence in a regulated jurisdiction. The draft bill's statement that "Operators in well-regulated jurisdictions whose regulators can provide the necessary compliance information, will not face significant increases in licensing costs" seems to be an admission that some costs will be incurred. As an established and trustworthy business of over 100 years standing, with thousands of shops and a significant remote business based within a well regulated jurisdiction already, we would strongly question any additional requirements or costs associated with a new licence.

We would suggest that mere recognition of Gibraltar's existing regime should have minimal costs associated with it and this should be reflected in any fees.

CONCLUSION

There is no evidence of any policy need for changing the regulatory regime for remote gambling. With the vast majority of operators located in jurisdictions with close ties to the UK—then recognition of existing well run regulatory regimes such as Gibraltar would be more appropriate.

Importantly any consideration of regulation cannot be considered without reference to taxation. The level of compliance will depend entirely on the level of taxation and at the current suggested rate of 15% the Government will only succeed in undermining its regulatory objectives rather than reinforce them.

Additionally this is another cost increase for our business to add to the already significant financial burden during an extremely difficult economic period. For this reason it is essential that the rate of the point of consumption tax is right, and our strong belief, backed by significant empirical evidence, is that the proposed rate of 15% is too high and will have a severe negative impact upon our business and our ability to compete with unregulated operators. There is no mention of the proposed rate within the draft bill, but we would strongly advise a rate of 5% to maximise the level of compliance among operators.

There is also no mention in the draft bill of how the new scheme will be enforced, and we are concerned that with a high tax rate, compliance rates will decline and operators will actively target the UK, attracted by the significant competitive advantages. This will succeed in lowering consumer protection, and leaving the UK-based regulated operators with an increased financial burden.

January 2013

Written evidence submitted by the National Casino Industry Forum

THE SUMMARY

- The draft bill continues to exclude the licensed and regulated on-shore gaming industry in the UK from offering on-line products in highly regulated environments, jeopardising jobs and investment.
- The offer to consumers is confusing.
- The on-shore industry would require an additional licence to advertise a product it could not offer.
- NCiF suggest an amendment which levels the playing field, offers consistency of consumer protection and promotes economic objectives and encourages innovation.

NATIONAL CASINO INDUSTRY FORUM—WHO WE ARE

1. The National Casino Industry Forum (NCiF) is the major trade body representing the land based casino industry. NCiF represents all the major operators in the UK and a number of smaller operators who together hold around 163 of the issued 186 casino licences.

2. To date eight of the 16 new 2005 Act Casino licences have been awarded, four to NCiF members, of which one is operating and three are in development: the development position of the remaining four licences awarded to date is unknown.

3. Additionally, NCiF membership includes gaming lawyers, academic institutions and specialist service providers.

PROVISIONS OF THE DRAFT GAMBLING (LICENSING & ADVERTISING) BILL

4. The NCiF has read the Draft Gambling (Licensing & Advertising) Bill with interest. The Ministerial Foreword emphasizing the Government's commitment to strengthening the regulation of remote gambling, ensuring effective consumer protection and ensuring a level playing field for British based operators is welcome, as is *Section 3, The Overview* which draws on the recommendations by the review body, *chaired by Sir Alan Budd in the 2001 Gambling Review Report*. In light of these statements the NCiF questions the rationale of denying the on-shore casino industry the ability to modernise by omitting to include it in the draft bill and to continue to prevent the sector from the ability to provide designated remote gaming facilities to

their “n-house” customers. On this basis the NCiF respectfully draws the Committee’s attention to section 24.9 and the recommendations by the Gambling Review Body:

5. “24.9 We do not think there is any reason of principle or practice to prohibit casinos from offering on-line gambling based on a real live game. Operators wishing to do so (like operators wishing to offer virtual gambling) would have to obtain a licence from the Gambling Commission before doing so. The Commission would need to satisfy itself that the games were fair, including that they were broadcast live. If it were the case that the Commission could not be satisfied that a game based on a live casino would be conducted fairly, it would not be approved. We recommend that gaming remotely on the outcome of “live gaming” should not be prohibited”.

6. The Culture Media and Sport Select Committee was similarly supportive of UK casinos operating to a single regulatory regime in its 2012 Report (A bet worth taking?) and whilst, on this occasion, the Committee’s comments referred to an anomalous position between the facilities offered by 1968 and 2005 Act casinos, these current proposals would compound and create new anomalies between the on-shore and the on-line industry to the detriment of UK businesses.

7. The internet is no longer a niche market for a technologically savvy minority. It is an important and integral element for all businesses. The government now proposes that the UK gaming market is to be further opened and legitimised to companies that are online and off-shore and with lower operating costs and more favourable taxation and where there is more choice, accessibility and the games offered are more advanced than those permitted to UK on-shore operators. The playing field is not just uneven, it’s precipitous and the draft bill in its current form will place on-shore jobs and investment in jeopardy.

8. The UK casino industry has been consistent in lobbying for the UK on-shore industry to be treated fairly and recognized as both a significant contributor—through Gaming Duty and other taxes—to the UK exchequer and the accepted “safest place in which to gamble”.

9. Consequently, we ask that this draft Bill be amended to allow the UK on-shore casino sector to provide its customers with the same remote gambling experience the government seeks, through this bill, to licence and legitimise outside a casino. *We have taken legal advice and consulted a Parliamentary draughtsman, we now have a simple and straightforward draft amendment which if introduced would enable land based casinos the ability to offer online casino games to their clientele.*

THE GOVERNMENT’S CASE FOR CHANGE

10. The background document to the Draft Bill correctly identifies that remote gambling is steadily increasing. However, there is no mention of the government’s £500 million investment in faster broadband or of the introduction of 4EE which is already rolling out across Britain. These innovations will enable customers to access content rich casino based gaming products at an enhanced download speed (circa 10x the current download speed) outside the framework of measures in place to ensure responsible gambling within a bricks and mortar casino, where highly trained staff with social responsibility credentials are accessible at all times.

ONLINE GAMING IN CASINOS

11. It is farcical and beyond anomalous that UK casino operators cannot offer their own websites and online gaming in their own UK licensed casinos. Whilst it would be perfectly lawful for a casino operator ie London Clubs Ltd to promote its online casino offering in a casino (subject to ASA rules) or on billboards and screens around Leicester Square, it could not offer designated access through its group’s own terminals, within the supervised adult environment of its Casino at the Empire in the square.

12. The argument from DCMS has been this would constitute a “back door” way of casinos getting more gaming machines’. NCiF argues strenuously that the access to online gaming is already so pervasive—with millions of access points through televisions, PCs, Laptops, tablets, PDA and smart phones—that the impact of a few hundred more in the controlled and regulated environment of casinos is de minimus.

FAIRNESS

13. The gambling Commission quotes that “80% of on-line gambling in Britain takes place with operators based overseas”. The Minister’s foreword and background document to the Draft Bill refers to this as being “unfair to the GB-licensed gambling operators that overseas competitors benefit from access to the market”. However, the “unfairness” will continue to be perpetuated for the on-shore casino sector. The ability for a casino operator to supply and advertise on-line gaming into the UK via the new license regime, whilst at the same time being prevented from providing their on-line product to their customer simply by virtue of the built environment is without rationale, we refer again to the recommendations, 24.9 of the Gambling Review Report.

REGULATION AND ENFORCEMENT

14. The NCiF welcomes the references in the background document to regulation, enforcement and fairness. The draft bill is designed to enable additional revenue into the Gambling Commission from licensing and additional revenue into the Treasury by way of taxation. NCiF questions how the Gambling Commission and

Treasury will enforce compliance and penalise illegal operators under the proposed Draft Bill? How will the enforcement, penalty and consumer protections compare to the on-shore casino sector which is second to none?

GAMBLING ACT 2005

15. There was an expectation that the Gambling Act 2005 would be an example of forward thinking and innovation that others would follow. We do not see that as a reality.

16. Regulators in Europe are already in dialogue with land based casino operators in their jurisdictions to allow them the right to offer remote gambling to their clientele. They appear to acknowledge the acceleration and innovation that remote gaming can offer, but more importantly, they recognise the growing customer demand, the positive impact of tourism and at the same time the high level consumer protection casinos offer.

17. The UK land based casino industry is a large scale employer, providing in excess of 15,000 jobs across the UK. Continuing to prohibit on-shore casinos from providing online gambling will further negatively impact the sector. Overseas companies have invested circa £1.4 billion into the UK industry in the last 5 years and would be keen to increase their investment if the conditions were right. It makes no economic or social policy sense to allow a UK on-shore casino operator to advertise a remote gambling site (including its own remote product) within an on-shore casino, and at the same time prevent it from providing access to the product in *“the safest place to gamble”*.

January 2013

Written evidence submitted by the High-Growth Forum

1. We are writing in response to your Committees invitation for submissions focussed on the provisions of the draft Gambling (Licensing and Advertising) Bill.

2. The High-Growth Forum is an association of smaller, technology-focussed, companies in the online and mobile gambling sector. Companies like us are driving innovation, employment and investment in this industry in Britain. Our joint objective is to make policy makers aware of the particular circumstances of the many smaller companies in the remote gambling sector so that innovators and investors can continue to grow and create value here.

SUMMARY OF OUR COMMENTS

3. The key provision relating to territorial application doesn't reflect how these technologies actually work and where they are going in the next few years. A simpler formula is suggested which will better meet the Governments objectives and support the innovators in the industry.

4. There is an opportunity to correct an anomaly relating to licenses for Software development in Clause 41 of the 2005 Act which gives foreign software developers an unfair advantage over UK companies.

5. The industry faces a Compliance Cliff if the new Bill is passed without clarifying section 97 of the 2005 Act, relating to technical standards for gambling software. We fear that smaller companies will be squeezed out and costs to operators will increase, with no gain for consumer protection.

DETAILED COMMENTS

A. Making territorial application work

6. The Bill as currently drafted proposes a new formula for defining the provision of facilities for remote gambling where no such equipment is situated in Great Britain but the facilities are capable of being used there. It is vital to the success of the Bill, and by extension to the industry, that Parliament gets this part right.

7. Everyone accepts the fact that the location of the player is entirely independent of the location of the server. The Governments aim is, in fact, to regulate on the basis of place of consumption rather than place of operation.

8. Our concerns are that the draft Bill would hamper implementation:

- (a) Relating the territorial application to the location of gambling equipment is confusing, costly to British business and, ultimately, unnecessary to the effectiveness of the proposed legislation.
- (b) We don't understand therefore why the amended Bill still makes reference to the location of the gambling equipment at all. Particularly in the era of cloud computing, the notion of what is and is not a piece of gambling equipment simply makes no sense in this context.

BACKGROUND

9. When the original Bill was first drafted, remote gambling companies—like any online businesses—had little choice but to own and maintain their own servers. It was obvious what was and was not gambling equipment.

10. This is no longer true. Since the original legislation was passed, Cloud computing has emerged as a way to enable low-cost hosting of data and applications in distributed, virtual environments. It is now possible to create an online business without even knowing where the computers are on which it runs. Instead, gambling software and data can be hosted in the Cloud by a hosting company which distributes, duplicates and secures the service in multiple locations optimised for efficiency and cost.

11. Smaller companies are particularly attracted to this way of operating because it offers a low cost route to world class infrastructure. According to UK Trade & Investment, 18% of SMEs use cloud computing solutions and a further 30% plan to do so during 2013. The market for Cloud computing, UKTI believes, will be worth £6.1 billion by 2014.¹⁹

ANOMALIES

12. The proposed wording for section 36 subsection (3) would lead to some strange anomalies:

- (i) A non-UK-based gambling operator which does not service the UK market would not be able to use UK datacenters for disaster recovery, since under para (a) at least one piece of gambling equipment might be located in the UK. They would need a licence even if the service cannot be used by consumer located in the UK.
- (ii) Any gambling business worldwide which wanted to use a Cloud computing service for their local market would have to ensure that its Cloud provider did not have a footprint in the UK. This would be almost impossible (in the nature of Cloud computing) and highly prejudicial to UK businesses.
- (iii) A UK based gambling technology business which has no UK customers and only licences its software, or provides a hosted service of its own for foreign companies, would be regulated by the Gambling Commission even though there is no consumer interest to protect.
- (iv) The definition of what is, or is not, gambling equipment becomes almost impossible to pin down in an environment of virtual servers and distributed databases. Disputes are almost certain to arise in the application of the proposed new clause.
- (v) In order to prove that a gambling service based outside the UK requires licensing, the Gambling Commission would have to go to every country, set up accounts there, and travel back to the UK, then attempt to access the service from here. If the service can be accessed, it would have to be regulated.

SOLUTIONS

13. All of these problems could be avoided with the simple solution of amending Section 36 of the 2005 Act (and related clauses) to state that the offence applies to the provisions of facilities for remote gambling by persons present in Great Britain.

14. This would allow the Gambling Commission to set down in its technical standards the methods which it deems acceptable for validating the location of the player and clarify that these standards only apply to services which are used by people actually in the UK.

15. It could protect consumers visiting the UK but who are not resident but who participate in remote gambling with UK operators whilst they are here.

B. Protect UK software developers by repealing of s41 of the 2005 Act

16. Section 41 of the 2005 Act is directly harmful to the UK's position as a place to set up and run a software company addressing the global gambling software market.

17. It creates an offence if a person supplies, installs or adapts gambling software without an operating licence.

18. This means, bizarrely, that companies have to secure an operating licence even if they are designing software which will never be used in the UK or be subject to the technical standards required by the UK Gambling Commission. This would apply, for example, if the company is designing lottery games for China or betting terminals for Latin America.

19. This provision also gives non-UK based technology companies a clear competitive advantage over UK companies even in our own market: foreign companies are free to develop their software without seeking an Operating Licence from the Gambling Commission, or the cost associated with it.

20. Repealing this provision of the 2005 Act would not in any way prevent the Gambling Commission from ensuring that software used by UK consumers meets their technical standards. These standards can continue to be applied to software used by operators. It would, however, send a strong signal that the UK is open for business and investment in this area.

¹⁹ www.ukti.gov.uk/investintheuk/sectoropportunities/ict.html

C. Avoiding the Compliance Cliff by amending s.97 of the 2005 Act

21. Section 97 of the 2005 Act enables the Gambling Commission to establish standards governing the manufacture, supply, installation or adaptation of gambling software. Currently, this section is not amended by the proposed Bill.

22. We believe it should be amended in order to reduce the compliance costs to software companies of supplying the sector with innovative products, for the following reasons:

- (i) Most on-line gambling operators do not design or maintain their own software. Typically, they will source software and games from a number of specialist suppliers and combine these together into their offering to consumers.
- (ii) This is a very competitive field, with software designers typically paid a small percentage of revenues generated by their client (the gambling operator) after the deduction of gambling duty.
- (iii) If a high rate of gambling duty is applied, this will leave software suppliers significantly worse off as their revenues will fall accordingly. As the Committee knows, games of chance have no mechanism that allows operators to pass increases in gambling duty on to consumers in any way, which places a real focus on the costs of developing and supplying the software to the gambling operator. A large part of this cost, which is nearly always borne entirely by the software supplier, is compliance with technical standards.
- (iv) Compliance testing and certification for a single game can run into many thousands of pounds. If revenues fall significantly after taxes are increased, this will make a lot of businesses unviable and deter investment in new technologies.

23. Currently, a gambling operator based in (say) Gibraltar, is able to use software in the UK which is compliant with the Gibraltar technical standards. 24. Because software compliance is a key condition of holding an operating licence, under the proposed new legislation, both the software supplier (even if he is not based in the UK) and the operator will be forced to re-certify their software under the UK technical standards. We believe this would be wrong, for the following reasons:

- (i) It will be duplicative, costly and time-consuming, to no obvious gain for anyone other than the testing companies themselves. Many smaller software companies will simply not be able to afford it. Some operators will choose to reduce the number of software companies they work with in order to reduce their compliance overhead, which may have a knock-on effect on jobs in the UK.
- (ii) As the pre-amble to the Bill points out, there is no evidence that the technical or operating standards enforced by the major offshore jurisdictions are any worse than those in the UK. The net result will not be better consumer protection through better standards, but less consumer choice and fewer software companies able to supply the industry.

25. These unnecessary consequences would be avoided if Section 97 of the 2005 Act were amended so that it can only be applied to software supply only. This would mean that a developer can receive certification once for their product, and their clients (gambling operators) will not require additional certification before using it.

26. It would also make sense for Section 97 to be expanded to allow the Gambling Commission to make arrangements with other Gambling regulators for mutual recognition of certification under relevant technical standards. This would prevent the industry facing a compliance cliff after the new legislation is in place.

27. We would be happy to appear as witnesses in front of the Committee if you wish us to clarify any of the points in this letter.

January 2013

Written evidence submitted by bwin.party digital entertainment plc

EXECUTIVE SUMMARY

- bwin.party welcomes any initiative to further improve consumer protection however every regulatory system needs to strike the right balance between freedom and the necessary degree of control.
- The multiplication of costs for multi-licensed operators—which will be the result of these proposals—will force many regulated operators out of the market and has no added value for consumer protection.
- The current UK model is tried and tested and has established a very solid and balanced regulatory regime that sufficiently protects its consumers while at the same time allowing a healthy gambling market to prosper. These proposals might in fact endanger what is a balanced and successful system for the consumer.
- Requiring all online gambling operators to hold a UK licence even though some of them are already licensed in Member States which provide for comparable consumer protection requirements would pose a restriction to the EU fundamental freedoms and is unlikely to pass the proportionality test under EU law.

- Proposed changes to the UK regulatory model would put operators licensed in long-standing and trusted regulations with a robust system of control and enforcement (such as Gibraltar) on equal footing with others that hold no license or hold licenses in newly regulated markets that do not have the expertise and experience.
- The spirit of mutual trust that the UK has so far followed through the current system should be a role model for the rest of the EU and the UK should take the lead in EU developments.
- Only common standards shared across the EU can indeed secure addressing the cross-border challenges appropriately and we have severe concerns with regards to the current proposals and any situation which further fragments the regulatory regimes.
- bwin.party has always promoted the regulation of remote gambling in to-be regulated markets and has been at the forefront of developing the CEN “Responsible Remote Gambling Measures”²⁰ in the absence of cross-border rules.
- It is a fact that the more competitive a regulated market, the harder it is for black market operators to compete with the regulated offer and vice versa, resulting in positive impact on consumer protection.
- The UK is one out of a few countries which accompanied the market opening with prevalence studies. Those studies show that there has been no significant increase in (online) problem gambling.

1. INTRODUCTION

bwin.party welcomes the opportunity to comment on the Draft Gambling (Licensing & Advertising) Bill (in the following “Draft Gambling Bill”) and is pleased to share its vast experience as a leading multi-licensed online gambling operator with the Committee. Publicly listed on the London stock exchange and headquartered in Gibraltar, bwin.party is a British company generating around 10% of its business in the UK, and has hence a particular interest in commenting on the proposals.

Following the merger of bwin Interactive Entertainment AG and PartyGaming Plc in March 2011, bwin.party digital entertainment plc (“bwin.party”), the parent of the bwin.party Group, has become the world’s largest listed online gambling company, regulated and licensed in multiple territories including Gibraltar, Italy, France, Austria, Denmark, Spain and Germany (Schleswig-Holstein).

A pioneer in online gambling with millions of customers, we see ourselves as ambassadors for digital freedom as well as for digital responsibility. Whether we are talking about online gambling, marketing, payments, data transfer or other aspects of e-commerce, bwin.party is determined to meet the highest standards and to lead by example, proving that freedom in a digital world is not something to be feared, but something that can and should be embraced for the benefit of all.

bwin.party welcomes any initiative to further improve consumer protection but every regulatory system needs to strike the right balance between freedom and the necessary degree of control. Compared with newly regulated markets and certainly due to its long tradition, particularly in fixed-odds betting, the UK has established a very solid and balanced regulatory regime that seems to sufficiently protect consumers while at the same time allowing a healthy gambling market to prosper.

bwin.party has always promoted the regulation of remote gambling in to-be regulated markets and has been at the forefront of developing the CEN “Responsible Remote Gambling Measures”²¹ in the absence of cross-border rules. Gambling over the internet by definition crosses borders and the challenges that are to be met would most efficiently be addressed across borders. Fraudsters (match-fixing, money laundering) seize exactly those loopholes that emerge from regulating an international service along national borders.

We have always applauded the UK leading the way in remote gambling regulation but we are concerned that these proposals might in fact endanger what is a balanced and successful system for the consumer. In this response, we outline our views on the envisaged reforms and what we believe can be the right solution for the future in the interest of all stakeholders.

2. THE UK REGULATION—A ROLE MODEL

Most Member States have introduced or are about to introduce online gambling regulations, however the UK has always been one, if not several, steps ahead of most EU Member States when it comes to the regulation of remote gambling. Section 4 of the Draft Gambling Bill (“The case for change”) states that the Government recognises that the majority of—but not all—gambling operators currently targeting British consumers are subject to established and effective regulatory regimes.

bwin.party has been licensed in one of these established and effective regulatory regimes, Gibraltar, for more than a decade. Gibraltar is part of the EU having joined under the terms of the UK’s membership and accordingly is also part of the EEA. Pursuant to Article 355 para 3 of the Treaty on the Functioning of the European Union (TFEU), the core EU freedoms, such as the freedom of establishment and the freedom to provide services (Articles 49 and 56 TFEU) also apply to Gibraltar. Gibraltar standards in the online gambling sector are based on a robust system of control and enforcement and follow the same aims as the UK regulation.

²⁰ www.cen.eu/cen/Sectors/TechnicalCommitteesWorkshops/Workshops/Pages/WS58eGambling.aspx

²¹ www.cen.eu/cen/Sectors/TechnicalCommitteesWorkshops/Workshops/Pages/WS58eGambling.aspx

The spirit of mutual trust, shared values and common aims that the UK has so far followed through the current system should be a role model for what is currently being discussed and developed both through the EU Commission's initiatives as well as among individual national regulators.

The EU Commission has published its action plan which also aims at introducing cross-border standards for cross-border issues (consumer protection, advertising, sports integrity, fighting against money laundering and fraud). The EU Commission's action plan established a formal expert group to come up with recommendations for consumer protection, advertising standards and the protection of sports integrity. In parallel, select like-minded regulators develop platforms to steer the gambling debate in what they have realised cannot be tackled at national level.

Unfortunately it appears that regulators of very recently opened markets, take the lead in those platforms—Member States which do not have the extensive expertise and experience as the UK, let alone accompanied by scientific evaluation. Thus, it is all the more important that regulators with the most expertise and experience—such as the UK and Gibraltar do not follow the example of newly regulated markets but take the lead and continue to stay ahead of developments.

We understand that there may be concerns about the prospect of operators based in jurisdictions with non-existent or flawed online gambling regimes and controls accessing UK consumers. We believe the appropriate and proportionate response to such concerns is to strengthen regulatory cooperation between the relevant national authorities (whether of EEA or non EEA jurisdictions.) This would be a more targeted and effective way of dealing with any existing or potential issues that may arise with emerging jurisdictions targeting the UK.

Requiring all online gambling operators to apply for and hold a UK licence even though most of them are already licensed in EEA or white listed territories which provide for comparable consumer protection requirements, would be disproportionate. It would pose a restriction to the EU fundamental freedoms which, according to constant case law of the Court of Justice of the EU (CJEU), are solely justified provided that the Member State follows a legitimate aim in the general interest and the restriction is actually suitable and necessary to follow such legitimate aim.²²

The CJEU held that it is up to the Member States to prove that they actually have a specific problem which they want to solve:²³ “[I]f a Member State wishes to rely on an objective capable of justifying an obstacle to the freedom to provide services arising from a national restrictive measure, it is under a duty to supply the court called upon to rule on that question with all the evidence of such a kind as to enable the latter to be satisfied that the said measure does indeed fulfil the requirements arising from the principle of proportionality”.²⁴

As shown in the Annex, as outlined in the Bill itself and the CMS Select Committee report “The Gambling Act 2005: A bet worth taking?”, operators from white-listed jurisdictions feature equal or better levels of minor and player protection than UK operators. Therefore, given the fact that most online gambling operators which target the British market have suitable consumer protection policies in place we consider that the UK's intention to turn from a liberal online gambling regulation to a regime where *all* operators have to hold a licence is unlikely to pass the proportionality test under EU law.

Almost every EU Member State aims to protect minors and vulnerable people, prevent fraud (match-fixing, AML, cheating, fairness and randomness) and prevent gambling addiction. The UK and Gibraltar standards in the areas of age verification, mandatory information (informed choice), marketing requirements, self-exclusion and game rules requirements, for instance, are highly similar. We believe that only common standards shared across the EU can indeed secure addressing those challenges appropriately and have hence severe concerns with regards to the current proposals and any situation which further fragments the regulatory regimes.

3. CONSUMER PROTECTION CONCERNS—STUDIES PROVE THAT REGULATION IS EFFECTIVE

The UK has one of the longest-standing remote gambling regulations in the EU and beyond, and is actually one out of very few countries that conducted prevalence studies in parallel with the opening of the remote gambling market so as to keep track of the consequences of a regulated opening. While continuous tracking of the prevalence rate of problem gambling failed to find consistent indication of an increase in problems,²⁵ further studies have shown that:

- there is no increase of online gambling usage (Annex B);
- online gambling is less associated with problems than other types of gambling (Annex C);
- operators from white-listed and trusted jurisdictions feature at least equal levels of minor and player protection like UK-licensed operators (Annex D); and
- the participation of minors in online gambling was marginal (Annex E, F, G).

²² CJEU 6 November 2003, *Gambelli and others*, C-243–01, para 65.

²³ CJEU, 15 September 2011, *Dickinger and Ömer*, C-347–09, para 66.

²⁴ CJEU 30 June 2011, C-212–08, *Zeturf*, para 70; (emphasis added).

²⁵ One measure for the prevalence rate did not increase; the other measure was at the margin of a statistical significance. As a consequence the authors of the British gambling Prevalence survey recommend further measures to determine whether there actually had been an increase (Annex A).

The CMS Select Committee in its 2012 report similarly concludes: “(133) We have seen no evidence to suggest that the existing White Listed jurisdictions pose a greater threat of problem gambling than UK or EU-based operators”.

On a related note, bwin.party would like to stress that we consider it unfortunate that exactly those studies that are meant to educate policy-makers, healthcare providers and industry on how the regulatory framework performs, seem to fall victim to cost-cutting exercises. In our view, online gambling is too young an industry to rely on existing evidence for future policies.

4. SPORTS INTEGRITY HAS TO BE TACKLED ACROSS BORDERS

When it comes to sports integrity and early warning mechanisms to ensure that fraudulent attempts are discovered at the earliest stage possible, this only works, if there is cross-border cooperation among all regulators, licensees and sports bodies.

As with advertising and consumer protection standards, the issue of match-fixing is certainly not one to be successfully tackled at national level alone. Operators—wherever they hold a license—should be obliged to monitor transactions and report suspicious activities. There should be a central information system among regulators to digest, distribute and double-check the suspicious transactions and initiate the necessary consequences.

5. ADVERTISING CROSSES BORDERS

With respect to advertising, almost all regulated jurisdictions follow the same principles, ie they forbid the promotion of unlicensed gambling, they prohibit targeting minors or vulnerable persons and they do not allow for advertisements which imply that gambling is a means of solving financial or personal troubles. Since advertising online services has a particular cross-border dimension, we believe that cross-border advertising guidelines implemented across the EU or beyond are the route to be followed.

6. FINANCIAL, ADMINISTRATIVE AND OPERATIONAL BURDEN FOR MULTI-LICENSED OPERATORS WITH NO ADDED VALUE FOR CONSUMER PROTECTION

As confirmed in the “summary of proposals”, there is no intention to charge operators licensed in well-regulated jurisdictions with significant fees or to duplicate the work of regulators. It is in this context that even if most regulators share the same goals, the detailed requirements of how to reach these goals differ from Member State to Member State and even from gambling regime to gambling regime.

In principle this causes no concerns with regard to consumer protection, as long as those requirements are proportionate, non-discriminatory and evidence-based. However these small differences cause multi-licensed operators such as bwin.party severe financial, administrative and operational burden upon market entry and beyond. Remote gambling operators are by their very nature operating across borders and do not focus on a single market.

Based on our experience as a multi-licensed operator, we would like to draw the Committee’s attention to the various cost factors involved in obtaining and keeping a local licence:

- (i) First of all there are costs involved in acquiring a license ie licensing fees.
- (ii) Credit ratings, penal certificates, etc. differ substantially from jurisdiction to jurisdiction and meeting a local regulator’s requirements becomes a lengthy and costly exercise.
- (iii) Requirements often leave much room for interpretation and in particular in later stages of the application process. This fact results in multiple re-works according to changing interpretations of vague and unclear requirements (as technical interfaces just to name one example). Those re-works are not only cost—and resource-intensive but also lead to gaps in quality.
- (iv) Costs for license applications also include translations (certified or not) and legal advice.
- (v) Multi-licensed operators have to operate jurisdiction-specific websites. There’s no “one website fits all” scenario; not only customer-facing elements have to be adapted, but also backend systems.
- (vi) Each label then in turn requires resources for its maintenance (eg system upgrades) and operations (eg customer service, bookmakers, compliance staff, administration, legal counsel, etc).
- (vii) Operators offering their remote gambling services in numerous jurisdictions need to employ a high 3—or even 4-digit number of employees and have to bear high running expenses, which can be considered as market entry barrier (NB: This goes for operators developing their own software. Operators buying “out of the box” systems might be able to work with a small number of staff.)
- (viii) Licensees need to have a reporting system up and running in each jurisdiction to enable the regulator to execute its supervisory function (There’s currently no common standard, but individual system requirements in each jurisdiction both, in regards to architecture, as well as database content—Examples: SOGEI Interface in Italy, Frontal in France, SAFE in Denmark,

ICS in Spain). One reporting system per jurisdiction might therefore add up to huge running expenses per year and is a major cost driver. A ‘black box’ constructed for one market cannot be used automatically for another market, so there is no re-usability whatsoever.

- (ix) The maintenance of compliant systems is cost-intensive due to on-going specification changes (see France/Denmark). Like with other aspects, we also believe in terms of reporting there are less intrusive means to ensure the necessary degree of control than to have dedicated infrastructure for each regulatory system. In the long run, a unified system across Europe would make market-entries much easier, both for operators as well as for regulators, as data from different markets could be analysed on a European level, ie for sports integrity purposes.
- (x) As far as audit costs are concerned, regulators often require a software and system certification prior to granting licenses.
- (xi) On top of this, there are annual costs per jurisdictions in the 6-digit area for outsourced systems. There are however also high costs for systems that are developed and operated in-house, as licensed operators have to undergo annual audits in licensing that come on top of other audits (eg financial, PCI, self-regulatory). Each audit costs a fair 5-digit sum, dependent on the scope with an average of approx. GBP 25,000 per audit.

Online operators and their management do not necessarily originate from the jurisdiction where they seek a license. bwin.party’s license applications in France and Spain, for instance, amounted to no less than 5,000 pages all in all.

A PWC study conducted in 2010²⁶ reveals that the average costs for operators to obtain a license in France was EUR 8.7 million. Judging from past experience in other newly regulated markets across the EU, it is fair to say that customising a product to local regulations and running through the licensing process is a GBP 6 to 7-digit investment.

8. COMPETITIVENESS OF A REGULATED MARKET

Costs imposed on licensed operators need to be seen against the competitiveness of a given market. The UK remote gambling market, as one of the longest-standing in Europe, has evolved over the past decade and British consumers have got used to a broad range of gambling services that is both attractive and secure.

By means of comparison, 288 remote gambling licenses held by 207 operators in the UK²⁷ compete with around 170 licensees in Italy,²⁸ 25 licensees in Denmark,²⁹ 22 licensees in France³⁰ and around 50 licensees in Spain.³¹ The planned reforms will result in many licensed operators leaving the UK market, as it will simply no longer be economically viable to bear above-mentioned costs for a market which in the global context of the given company is not that significant. This will lead to less consumer choice in the long run and—if consumers will turn to the unlicensed offer, even less consumer protection.

As experience in newly regulated markets has shown, the unlicensed offer is virtually just one click away in an online environment. To respond to this with repressive means such as payment or IP blocking seems to have severe shortcomings, both from a practical perspective and legal one. The EU Commission has recently concluded in its Communication “Towards a comprehensive European framework on online gambling” that *“responsive enforcement measures, such as limiting access to websites offering unauthorised gambling services or blocking payments between players and unauthorised gambling operators, have certain benefits but also possible shortcomings. Such measures also need to be carefully assessed in the light of safeguarding fundamental rights and fundamental freedoms of the TFEU.”* The unintended side consequence of driving responsible operators out of the market could be that consumers turn towards the unregulated offer.

High market entry costs force licensees to lower the resources they have available to invest in advertising, customer support services and UK operations. Black markets thrive where regulatory systems fail. The evidence shows that a regulatory system that promotes fair and vigorous competition gives great value to consumers and is the most effective way of fending off black market dangers. The UK Government should be supporting industry, and should accept that the best way of keeping consumers safe is a healthy and competitive regulated global market.

9. FINANCIAL CONTRIBUTION

As the world’s largest online gambling company, headquartered in Gibraltar and publicly listed on the London Stock Exchange, we are a British business generating around 10% of our business in the UK, employing over 150 employees here and paying taxes in the UK.

²⁶ PriceWaterhouseCoopers (2010): “Estimation du coût d’obtention de l’agrément et de l’homologation des jeux en ligne en France”

²⁷ DCMS „Draft Gambling (Licensing & Advertising) Bill“, p. 13.

²⁸ MAG (2012): “Online gaming in regulated markets. Update on regulatory developments in France and Italy in 2011”, p. 14

²⁹ <http://cms.skat.dk/getFile.aspx?Id=102123>

³⁰ www.arjel.fr/-Liste-des-operateurs-agrees-.html

³¹ www.minhap.gob.es/es-ES/Areas%20Tematicas/Ordenacion%20del%20Juego/Paginas/JuegoSeguro.aspx

Apart from investing resources and manpower into elaborating state-of-the art and scientifically tested consumer protection tools, bwin.party is committed to contributing financially towards social responsibility. We are a significant contributor to the Responsible Gambling Trust.

January 2013

Annex

(A) NO INCREASE IN PROBLEM GAMBLING ACCORDING TO UK PREVALENCE SURVEY 2011

DSM-IV problem gambling prevalence was higher in 2010 (0.9%) than in 2007 and 1999 (0.6% for both years). This equates to around 451,000 adults aged 16 or more in Britain. The increase was significant at the 5% level. However, the p-value was 0.049, showing that this increase is at the margins of statistical significance. Some caution should be taken interpreting this result as there may be some other underlying factor affecting estimates between survey years. Where possible, differences between the responding samples were taken into account and the result remained significant at the 5% level ($p=0.046$). Further surveys are needed to examine if this is evidence of an upward trend in problem gambling prevalence or simply random fluctuation in the data.

Problem gambling prevalence rates as measured by the PGSI did not increase significantly between survey years. Estimates were 0.5% in 2007 and 0.7% in 2010 ($p=0.23$). This equates to around 360,000 adults aged 16 or more in Britain. There is increasing evidence from the BGPS series that the DSM-IV and the PGSI screens are capturing slightly different people and different types of gambling-related problems.

(B) NO INCREASE OF ONLINE GAMBLING USAGE

Gambling Commission/ICM Research—proportion of respondents gambling by type of gambling activity

	2009	2010	2011	Sep. 2012
National Lottery	45.7%	45.5%	47.5%	47.5%
National Lottery products only	31.3%	31.4%	33.0%	34.4%
National Lottery scratchcards	10.8%	10.2%	12.7%	12.7%
Tickets for society or other good cause lotteries	10.9%	12.2%	9.6%	9.7%
Betting on horse races or virtual horse races with a bookmaker (does not include online)	3.4%	3.7%	4.5%	3.8%
Online betting with a bookmaker on any event or sport	2.2%	2.3%	2.2%	2.9%
Private betting, playing cards/games for money with family, friends or colleagues	3.3%	3.0%	2.8%	2.7%
Fruit or slot machines	3.3%	2.8%	3.5%	2.6%
Bingo cards/tickets at a bingo hall	3.0%	2.9%	3.1%	2.3%
The football pools	3.1%	2.8%	2.8%	2.2%
Betting on other events or sports with a bookmaker (does not include online)	1.8%	2.2%	2.6%	2.2%
Virtual gaming machines in a bookmaker's	2.5%	1.8%	1.8%	1.4%
Online gambling other than betting	1.8%	1.4%	1.6%	1.1%
Betting Exchanges	1.1%	2.1%	1.4%	1.1%
Table games in a casino	0.9%	1.0%	1.3%	1.0%
Betting on dog races or virtual dog races with a bookmaker (does not include online)	1.3%	0.7%	1.0%	1.0%
Organised poker in pubs and clubs	1.0%	1.1%	0.7%	0.6%
Spread betting	0.5%	0.5%	0.5%	0.4%
Any other gambling activity	1.0%	0.8%	1.8%	2.1%

(C) ONLINE GAMBLING LESS ASSOCIATED WITH PROBLEMS THAN OFFLINE TYPES OF GAMBLING

Table 6.4

Problem gambling prevalence, by gambling behaviour

Past year and regular gamblers with a valid DSM-IV score 2010

Gambling activity	Past year gamblers			Bases (weighted)	Bases (un-weighted)	Regular (at least monthly) gamblers			Bases (weighted)	Bases (un-weighted)
	DSM-IV problem gamblers	95% Confidence interval				DSM-IV problem gamblers	95% Confidence interval			
National lottery Draw	%	1.3	(1.0, 1.8)	4545	4636	1.5	(1.1, 2.0)	3522	3615	
Another lottery	%	1.3	(0.9, 1.9)	1943	1994	2.8	(1.6, 4.6)	639	664	
Scratchcards	%	2.5	(1.8, 3.6)	1893	1881	4.0	(2.8, 5.9)	938	937	
Football pools	%	7.5	(4.7, 12)	344	316	9.9	(6.1, 15.8)	245	228	
Bingo ^a	%	2.9	(1.7, 4.9)	678	698	4.1	(2.3, 7.2)	362	379	
Slot machines	%	4.0	(2.9, 5.7)	1007	957	8.7	(6.1, 12.2)	390	357	
Fixed odds betting terminals	%	8.8	(6.0, 12.7)	333	291	13.3	(6.7, 19.7)	173	152	
Horse races ^b	%	2.9	(2.0, 4.0)	1257	1237	9.1	(6.4, 12.9)	317	313	
Dog races ^b	%	7.1	(4.6, 10.7)	344	319	19.2	(12.6, 28.1)	97	90	
Sports betting ^b	%	4.4	(3.0, 6.4)	674	595	8.1	(5.5, 11.8)	323	278	
betting on non-sports events ^b	%	7.8	(5.1, 11.7)	323	310	13.8	(8.7, 21.4)	150	147	
Casino games ^c	%	6.8	(4.7, 9.9)	414	367	13.9	(8.7, 21.3)	146	124	
Poker at pub/club ^d	%	12.8	(8.0, 19.8)	155	136	20.3	(12.0, 32.2)	78	68	
Online slot machine style games/instant wins	%	9.1	(5.5, 14.8)	218	201	17.0	(9.7, 28.2)	88	78	
Spread betting	%	7.5	(3.0, 17.7)	80	63	[10.7]	[[3.7, 26.8]]	42	30	
Private betting	%	3.1	(2.1, 4.7)	888	817	7.6	(4.8, 12.1)	281	252	
Online gambling activities										
Any online betting ^d	%	3.0	(1.5, 5.6)	272	250	f	f	f	f	
Any other online gambling ^e	%	3.0	(2.0, 4.3)	1000	982	f	f	f	f	
Any online gambling (excluding National Lottery)	%	5.3	(3.6, 7.6)	568	534	f	f	f	f	
Number of gambling activities										
1-2	%	0.3	(0.2, 0.6)	3434	3531	0.6	(0.0, 4.1)	3236	3331	
3-4	%	0.7	(0.2, 1.8)	1406	1424	1.9	(0.9, 3.9)	604	600	
5-6	%	2.9	(1.0, 7.5)	495	462	4.8	(2.5, 9.2)	174	162	
7-8	%	9.6	(5.8, 15.4)	187	170	17.6	(9.9, 29.3)	70	64	
9+	%	12.7	(7.5, 20.6)	136	119	27.8	(17.6, 41.1)	64	58	

^a Includes bingo played at a club or online.

^b Includes bets made online, by telephone, or in person, with a bookmaker or a betting exchange.

^c Includes casino games (such as roulette, poker, blackjack) played in a casino or online.

^d Includes online bets on horse races, dog races, other sports or non-sports events made with a bookmaker or betting exchange.

^e Includes using the internet to play the National Lottery, other lotteries, bingo, football pools, casino games, online slot machine style games.

^f Data not available.

(D) OPERATORS FROM WHITELISTED JURISDICTIONS FEATURE EQUAL OR BETTER LEVELS OF MINOR AND PLAYER PROTECTION THAN UK OPERATORS

<i>Minor Protection</i>	<i>Number tested</i>	<i>No weakness</i>	<i>Weakness identified</i>	<i>Inconclusive result</i>
UK operators	37	19 (51%)	13 (35%)	5 (14%)
White-listed operators	64	34 (53%)	23 (36%)	7 (11%)

<i>Player Protection</i>	<i>Number tested</i>	<i>Advice on social responsibility measures easily accessible</i>	<i>Self-exclusion available</i>	<i>Financial limits available</i>
UK operators	21	20 (95%)	17 (81%)	16 (76%)
White-listed operators	64	59 (92%)	55 (86%)	54 (84%)

(E) UK GAMBLING PREVALENCE SURVEY 2007

Produced by the National Centre for Social Research under scientific supervision by Prof Griffiths (Nottingham Trent University); commissioned by the UK Gambling Commission.

While this aspect is not detailed in the final report, the raw data specifies which games were played by the minors who were part of the representative sample at least once during the 12 months prior to the survey:

<i>Gambling product</i>	<i>% of minors played it during the last 12 months</i>
National lottery	23.8 %
Slot machines	22.1 %
Private betting	20.5 %
Scratch cards	15.2 %
Horse races	8.6 %
Dog races	5.7 %
Virtual gaming machines (in bet shops)	5.7 %
Sports betting	5.3 %
Other lottery	4.5 %
Online gambling	4.1 %
Online betting	3.3 %
Table games (in a casino)	2.5 %
Betting exchanges	0.4 %

Online gambling marked in bold

The participation of minors in online gambling was marginal, while other forms of gambling were used rather frequently by minors.

(F) BRITISH SURVEY OF CHILDREN, THE NATIONAL LOTTERY AND GAMBLING 2009

Produced by Ipsos MORI under scientific supervision by Prof Collins (Salford University); commissioned by the National Lottery Commission.

This study focusses on a representative sample of minors and investigates, which types of gambling are used regularly among minors. The study concludes that gambling among minors has strongly reduced since 2006. Furthermore online gambling plays a completely marginal role, while the usage of slot machines is still rather high.

<i>Gambling product</i>	<i>% of minors played it during the last 7 days</i>
Slot machines	9 %
Private betting (for money)	7 %
Private card games (for money)	7 %
Other gambling machines	4 %
Scratch cards	4 %
Bet shops	2 %
Lotto	2 %
Online gambling	1 %
Online gambling marked in bold	

(G) MYSTERY SHOPPER STUDIES 2009

The UK Gambling Commission itself produced in 2009 Mystery Shopper studies by trying to breach minor protection in land-based bet shops and online gambling sites. Among the online gambling operators tested, the majority was compliant, resulting in the fact that more than 95% of all gamblers in the UK were registered with operators that had no weakness in their minor protection system. Furthermore they could find no difference in the level of protection provided between UK licensed operators and “overseas” licensed operators.

Written evidence submitted by the Bingo Association

The Bingo Association represents the majority of licensed bingo operators in Great Britain and welcomes the opportunity to respond to the consultation on the above draft Bill.

The Association has responded to all earlier consultations on the regulation of remote gambling and believes that it is desirable that remote gambling is regulated on the same basis and with the same rigour as is land based gambling within the UK.

Whatever the social impact of remote gambling, and there is no evidence that remote gambling presents particular problems, it is desirable that all gambling products which are available to consumers within the UK should be regulated, whatever the geographical location of the operator. Regulating on a place of consumption basis, rather than on a place of supply basis, seems to be the most effective way of identifying those operators who should be brought within the regulatory domain of the Gambling Commission.

It will be imperative that the Gambling Commission is able to identify and communicate with those remote operators providing gambling products to UK consumers, as well as having effective means at their disposal to ensure that it can censure those operators who do not comply with the requirement to obtain a relevant licence from the Gambling Commission.

The proposals state that “operators established in well-regulated jurisdictions, whose regulators can provide, for example, the necessary compliance information, will not face significant increases in licensing costs”. Clearly this will involve some sort of evaluation of each jurisdiction (as well as the operator’s record of compliance), but it is not clear why this would involve a different level of licensing cost. Will a sliding scale be introduced for licence fees and on what basis will this be evaluated and measured?

It is to be hoped that the proposals set out in the draft bill will realise the anticipated reforms, though the document is silent about how enforcement of these amendments to the Gambling Act will be achieved. It is well known that ISP blocking and the banning of credit card payment is fraught with difficulty.

The Minister’s introduction states that “these reforms will ensure consistency and a level playing field as all overseas operators will be subject to the same regulatory standards and requirements as British-based operators”. Though this is a consultation based on the social law, it is imperative that the taxation regime should be part of a wider collaborative change to gambling law to include the wider remote sector. Online operators currently compete with their equivalent bricks and mortar gaming companies, but the current tax treatment favours the online providers. There is no objective rationale for treating these products differently; the main difference between the operators is that one group invests physically in the UK in terms of buildings and employment in the community; and one does not.

January 2013

Written evidence submitted by the England and Wales Cricket Board

I am writing to register the full support of the England and Wales Cricket Board for the Government’s proposals to introduce new Gambling legislation that will bring all betting undertaken in the UK under the remit of the Gambling Commission.

The ECB is an active member of both the Sports Rights Owners Coalition (SROC) and the Sports Betting Group (SBG) and have contributed toward their more detailed submissions which we also fully endorse.

The ECB is the governing body for all cricket in England and Wales. Our responsibility is to promote and develop the game’s growth and success at all levels, from grass roots to domestic First Class and to International cricket. For cricket to maintain the confidence, trust and support of all participants and fans we must do all we can to protect the game’s integrity at every level.

Promoting and upholding the authenticity and integrity of the sporting event is one of the key functions of all sports governing bodies and event organisers. The unique appeal of sport is based on a fair competition between participants under agreed rules. It is a vital principle for every sport that all those involved are competing to win, and are seen to be doing so.

The sport of cricket has recently faced serious issues relating to its integrity at both a national and international level which you will be fully aware of. These types of threat will remain as sports betting continues to grow across the world in both legal and unregulated markets. It is therefore vital that the sport itself works closely with Governments and Regulators to ensure we create an infrastructure to meet those threats.

The ECB itself has recently increased its influence in this field including creating a bespoke in-house integrity function.

Sports integrity is a challenge for every Government in the world. There are of course likely to be bigger threats in other countries, but it is our duty and responsibility to make sure that our domestic market is regulated as effectively as possible. Not only does this Bill afford for greater protection to sports integrity, but it creates a best practice model we can promote to other jurisdictions.

The ECB led the campaign for the introduction of Gambling Commission Licence Condition 15 that makes information sharing between sports and betting operators a statutory requirement. To be effective it must cover all bets placed in the UK and we urge the closing of the loophole that allows overseas operators to evade its provisions as soon as possible.

The ECB therefore strongly endorses the Government's proposal to bring forward new legislation for regulatory arrangements that will require all gambling operators to obtain a licence to transact with British consumers and advertise in the UK. Given the importance of integrity we hope that the Committee will recommend that the draft Bill is introduced as swiftly as possible.

The ECB is grateful to your Committee for taking the time to review this draft Bill and would be pleased to provide any further information that might be required.

January 2013

Written evidence submitted by the European Sports Security Association

1. The European Sports Security Association (ESSA), the private licensed betting industry's integrity body, is pleased to provide the CMS Select Committee with its views on the UK Government's draft legislation proposing reform of its remote gambling regulation.

EXECUTIVE SUMMARY

2. The following is a summary of the main points that we would like to make to the Committee in relation to the sports betting integrity aspects of the draft legislation:

- only Gambling Commission licensed operators will be required to pass on information of suspicious bets and much of the global market will remain outside of this framework;
- far from being a "threat" to consumers and sports as the Government suggests, the major offshore operators are in fact employing advanced integrity systems and protocols;
- the major European licensed operators and the overseas regulators already pass relevant information on the Gambling Commission regarding suspicious betting patterns;
- sports betting corruption is widely acknowledged to be primarily driven by the unlicensed market and criminal elements operating in Asia and therefore outside of this legislation;
- the Bill will not prohibit criminal elements, or corrupt sporting personnel, from being able to easily circumvent the UK Government's legislative framework and reporting practices;
- it is unclear why the UK is proposing a territorially limited statutory action when other more effective and progressive multi-jurisdictional actions are being explored eg by the EU;
- nor why no attempt appears to have ever been made to reinforce sporting integrity and information sharing with the Commission via the White list, if that was necessary;
- there has been no evidence provided by the UK Government to show a clear increased risk to British consumers from operators licensed in EEA and White List jurisdictions;
- the UK Government's arguments to amend the existing legislation on consumer protection and sporting integrity grounds are therefore highly questionable; and
- modern digital technologies provide efficient and effective anti-corruption measures that should be harnessed through cross-sector and multi-jurisdictional partnership agreements.

INTRODUCTION

3. The European Sports Security Association (ESSA) was established in 2005 by a group of leading licensed online sports betting operators specifically to address betting related match-fixing. It presently represents the majority of the major European licensed betting operators international online operations, including Ladbrokes, William Hill and bwin.party to name but a few, and also the Association of British Bookmakers which covers over 7,000 UK betting shops.

4. The organisation's mandate is to: facilitate cross-sector partnerships and to protect operators, their customers and sporting bodies from betting related corruption. ESSA does this by coordinating intelligence from its members' customer base to identify, track, trace and report suspicious bets. That information is then passed quickly on to the relevant national regulators and sporting bodies for further investigation and action if deemed necessary.

5. To facilitate the smooth transition of this data, ESSA has established information sharing arrangements with over twenty major national and international sporting bodies eg IOC, along with the gambling regulators of Gibraltar, Alderney and Malta, as well as the British Gambling Commission. ESSA's information network provides transnational coverage and has proved to be effective in detecting and deterring betting corruption.

SCRUTINY OF THE BILL'S PROPOSALS RELATING TO SPORTS BETTING INTEGRITY

6. The UK Government has made a number of assertions surrounding the apparent necessity to reform the existing legislative framework for online gambling, in relation to sports betting, to ensure the protection of British consumers and its sporting bodies. These assertions do not appear to be underpinned by any significant evidence provided by the UK authorities.

7. The UK Government has drawn attention to the necessity for reform, in significant part, based on a presumed threat of this nature. In particular, the UK Government states that: “there is a potential risk that match-fixing and suspicious betting practices taking place on overseas sites (including those that may have an impact on sports events held in Britain) may not be notified to the relevant authorities, thereby placing consumers at risk.”³²

8. The Government has therefore proposed, via the draft legislation, to change the existing framework and to introduce a regime where “overseas operators will be required to inform the UK regulator about suspicious betting patterns to help fight illegal activity and corruption in sports betting.”³³

9. It should firstly be pointed out that the Government’s plans will only require those licensed by the British Gambling Commission to pass on information and a large part of the global market is likely to remain outside of that framework. The proposed statute could therefore be argued to have particularly limited effect from that perspective and be inferior to alternative and non-statutory approaches, such as strengthening the exchange of information between regulators.

10. Secondly, ESSA contends that, contrary to the comments made by the UK Government,³⁴ the major European licensed operators and their overseas regulators, and stringent regulation under which they operate—which is widely acknowledged to be comparable to the regulatory standards in the UK—already pass relevant information on the British Gambling Commission regarding suspicious betting patterns as a normal part of their business operations. We strongly refute any suggestion that this is not the case and ask that evidence be shown to the contrary.

11. ESSA, whose members represent the major European-based online operators outside of the British framework, also has an agreement with the Gambling Commission (as well as other European authorities) to forward relevant information relating to suspicious betting. Our members offer tens of thousands of sports betting markets each week with millions of bets assessed and taken from a global customer base. In 2011, there were 69 alerts with eight suspicious cases³⁵ referred to the relevant national regulatory authorities; a similar number to 2010.

12. It is important to understand that, unlike other detection systems, only ESSA’s members have access to the detailed information surrounding the amounts and locations of the transactions of its consumers. We are, therefore, and unlike other early warning mechanisms that simply follow changes in odds, able properly to evaluate all of the information required to assess suspicious betting patterns.

13. We have a clear business need to ensure the integrity of sporting events and our associated products. ESSA’s integrity figures demonstrate the value of the sophisticated detection, deterrent and risk assessment protocols we employ to protect consumers, sports and betting markets. In short, corrupters are generally steering clear of ESSA’s well-regulated and vigilant European licensed sports betting operators; our detection systems are too effective.

14. Many of ESSA’s members’ online operations also have UK land-based betting facilities covered by the existing legislation. Their various betting platforms share many of the same systems, staff, security and integrity protocols and it would be incongruous to suggest that different approaches are applied to integrity and which put British consumers and sports in jeopardy.

15. It is, therefore, difficult to fully understand the UK Government’s stance and the necessity for legislative change, as far from being a “threat” to consumers and sports as the Government suggests, the major offshore operators are in fact employing advanced systems and protocols. Indeed, private betting operators were promoting effective non-statutory information sharing arrangements between stakeholders long before the current legislation was in place.

16. The industry has also long understood the limitations of territorially isolationist integrity actions and, through ESSA and others within the sector, has focused on cross-jurisdiction measures to protect consumers and sports alike. This was most recently demonstrated by the “statement of intent”, signed by the major operators, IOC and the Gambling Commission prior to the London Olympic Games. Under the principles, operators located offshore reaffirmed their commitment to report information to UK authorities and also to not knowingly take bets from IOC accredited individuals and to ensure that monitoring systems are manned 24/7 during the Games.

³² Page 14—Draft Gambling (Licensing and Advertising) Bill

³³ Ministerial Foreword—Draft Gambling (Licensing and Advertising) Bill

³⁴ Page 14—Draft Gambling (Licensing and Advertising) Bill

³⁵ See www.eu-ssa.org/images/essa%202012%20integrity%20report_final.pdf

17. The offshore licensed betting sector endorsed this non-statutory approach even though, as the British Gambling Commission has stated, the threat to the Games and British consumers was relatively “low”³⁶ and where the industry had seen no instances of betting-related integrity breaches in past Olympics. However, the sector viewed this as an important joint action—as it has done with regard to other major sporting events—with benefits for all stakeholders.

18. ESSA believes that such multi-party agreements have the potential to be far more effective and have greater impact than the proposed legislative change, which will bring only a limited number of operators within its statutory scope. Indeed, it is fundamental to remember that the corruption of sporting events is widely acknowledged to be primarily driven by the unlicensed market and criminal elements operating in Asia and therefore outside of this legalisation.

19. The UK is fortunate in that cases of match-fixing within its territory are relatively few and far between.³⁷ However, given that the scope of the global options (for legal and illegal on and offline betting operations) to place bets on British sporting events abroad, the reforms presented by the Government will not prohibit criminal elements, or corrupt sporting personnel, from being able to easily circumvent the UK Government’s legislative framework and reporting practices.

20. It is understandable that the UK authorities may view the reform of its statutory arrangement as the most appealing approach in meeting sporting integrity challenges. However, given the transnational scope of betting and the multitude of operators available to British consumers to access—there appears to be no proposal to stop British citizens seeking out non-Gambling Commission licensed operators—it is a potentially limited and flawed approach.

21. As the British Gambling Commission has acknowledged, “we know that much of the corrupt betting takes place in illegal markets overseas so the importance of overseas co-operation at all levels cannot be overestimated. We are already working with a range of organisations such as the EC, the Council of Europe, international sporting bodies and law enforcement bodies and have sought direct support from specific overseas regulators.”³⁸

22. The European Commission published its Communication “Towards a comprehensive European framework for online gambling” in October 2012, following an extensive consultation exercise in which all stakeholders, including the UK Government, were engaged in, and which addresses transnational consumer protection and sporting integrity issues. It is committed to facilitating administrative cooperation between gambling regulators and to explore the exchange of information and cooperation between Member States during 2013.

23. Indeed, the Commission has noted the need “for more cooperation between betting operators, sport bodies and competent authorities including gambling regulators, both at national and international level.” It plans to adopt a Recommendation on best practices in the prevention and combatting of betting related match-fixing and explore the possibility of including the protection of the integrity of sport and combatting match-fixing in discussions with third countries and the competent international organisations in the field of sport.

24. ESSA continues to work with European Commission in this area and to promote cross-sector partnerships. We are also active in the Council of Europe’s deliberations as it progresses towards an international convention on match-fixing, intended to come into force in 2014. That organisation is also seeking to establish international cooperation and sustainable dialogue between regulators, sports and operators as key compound to address a transnational issue.

25. It is therefore unclear why the UK Government is proposing this territorially limited statutory action, as it argues, to protect consumers and the integrity of British sports, at a time when other potentially more effective and progressive multi-jurisdictional actions are being actively explored. Most notably by the European Commission and Council of Europe, and which potentially offer greater protection for British citizens and sporting events from match-fixing.

26. Nor indeed why, with regard to the non-EEA “White List” jurisdictions, no attempt appears to have ever been made by the UK Government to reinforce the adherence to Gambling Act’s three licensing objectives within that framework agreement. In particular, preventing gambling from being a source of crime and ensuring fairness in gambling with regard to sporting integrity, and to sharing related information with the British Gambling Commission, if that was necessary.

27. It is also important to understand that betting consumers are potentially adversely impacted by all forms of match-fixing, that is betting and non-betting related. We are not in any way suggesting that the legislation should be expanded accordingly, but there is a danger within this debate that we become preoccupied with the betting aspect of this corruption and ignore the many examples of non-betting related match-fixing in sport which are not being addressed.

³⁶ Page 20—Gambling Commission Annual Reports and Account 2011–12

³⁷ See page 22 www.gamblingcommission.gov.uk/PDF/Industry%20stats%20April%202009%20-%20March%202012%20-%20December%202012final.pdf

³⁸ Page 20—Gambling Commission Annual Reports and Account 2011–12

28. After all, sporting related match-fixing also has an adverse impact on betting markets and consequently consumers. It also attacks the fairness of those sporting competitions and outcomes, thereby adversely impacting on those that have bet on those corrupted events. For example, whilst we have no indication of any betting related corruption during the 2012 London Games, there were unfortunately non-betting related incidents, notably in badminton.

29. A report by Coventry University in 2011,³⁹ which evaluated the prevalence of corruption in global sport between 2000 and 2010, employing a database of 2,089 cases of corruption (96% being doping related—contrary to the comments from certain sports it remains, statistically, the major source of sporting corruption) found that non-betting related match-fixing represented nearly half of all match-fixing (which itself represents less than 3% of all sporting corruption). That is not to deflect from betting related corruption, it is simply an acknowledgement that match-fixing is a wider issue than just betting and potential solutions also need to recognise that.

CONCLUSION

30. We believe that it is fundamental to the UK Government's argument, and necessity for the reform in legislation, to demonstrate that there is a clear increased risk to British consumers from match-fixing and betting corruption from those operators regulated in other jurisdictions which advertise in Britain. No such information appears to have been made available.

31. It is also difficult to reconcile the UK Government's comments with the empirical and statistical data that is available and the multi-jurisdictional policy approach being taken by other bodies to this issue. ESSA believes that the UK Government's arguments to amend the existing legislation on consumer protection and sporting integrity grounds are therefore highly questionable.

32. ESSA contends that betting related match-fixing is an issue and danger which cannot be addressed in territorial isolation. Modern digital technologies have allowed us to develop more efficient and effective anti-corruption measures—all online transactions are traceable and operators are therefore able to spot, in real time, any irregular betting patterns—and that such tools should be harnessed through cross-sector and multi-jurisdictional partnership agreements.

January 2013

Written evidence submitted by Business in Sport and Leisure Ltd (BISL)

Thank you for giving BISL the opportunity to contribute to the scrutiny process of the above Draft Gambling Bill.

BISL represents the majority of the UK Gambling Industry with most of its Gambling Membership having an on-line presence. Those members have their on-line bases (of not in the UK) in Gibraltar, The Isle of Man or Alderney, all of which have a similar regulatory regimes and protections to that of the UK. We understand that this situation is the same for the vast majority of UK on-line gambling providers, with a small minority operating out of "white listed" jurisdictions.

BISL's main concern with the draft document is that it fails to address the issue of enforcement, and without effective enforcement the new Bill will be a retrograde step. We are aware that other jurisdictions have attempted the blocking of web-sites for various different reasons and have consistently failed to be fully effective. The practicalities around the prevention of "unlicensed" operators reaching UK consumers need to be fully understood and appraised, and then included as a fundamental component of the Regulatory Impact Assessment.

The document makes reference to the proposals as being "cost neutral" to British based operators. If this really was the case then the majority of UK operators would be operating out of the UK today. It is our understanding that the cost to the operators of this regulatory change will run into many millions.

The document also refers to the need for "additional consumer protections" as a reason for the new bill. As already mentioned, the large majority of suppliers to UK consumers operate from respected jurisdictions with good levels of regulation and protections. Indeed, the RIA itself says "no specific public protection risks have yet arisen". We see nothing in this bill that adds value to this situation. Clearly, there is some concern raised about new and less scrupulous entrants to the market that the UK consumer may need protecting from, but

- (a) is this concern a qualified concern? and
- (b) without effective enforcement this point is moot.

If the reason for this new Bill is to enable on-line revenues to be taxed by the UK Treasury then the bill really needs to be written accordingly. There is going to be an inevitable financial benefit to unlicensed operators in circumventing whatever barriers and walls are put in their way of the UK consumer, and they will be constantly (24/7) looking for new ways through these barriers. Who is going to be monitoring the situation, with what technology and at what cost?

³⁹ See www.egba.eu/pdf/Report-FINAL.pdf

BISL would not want to see the DCMS failing in the implementation of this new Bill through lack of appreciation of the extent of the issues at hand.

January 2013

Written evidence submitted by The Sports Rights Owners Coalition (SROC)

INTRODUCTION

1. SROC was established to bring together major international and national sporting organisations. Together it represents many of Europe's (and the world's) most popular sports and competitions. The purpose of SROC is to share ideas and information and present opinions and advice to national Governments, EU institutions and International Treaty Organisations. More information about SROC can be read at <http://sroc.info/>

2. SROC members seek proper recognition of the value of sport and effective protection for their rights. Our members collectively support the need for a closer relationship between governments, regulators, sporting organisations and betting operators in order to combat the integrity threat to their sports posed by match fixing and betting syndicates, and are united in their support of the principle that sporting organisations deserve a fair return from betting operators, who benefit immensely from the sporting events organised by our members.

IMPORTANCE OF PROTECTING SPORT'S INTEGRITY AND SUPPORT FOR THE DRAFT BILL

3. Sporting events derive their value from the premise that they are a fair competition played within the rules. Participants expect this of their opponents and the public who pay to watch sport certainly expect it. Promoting and upholding integrity is therefore one of the key functions that every member of SROC undertakes.

4. In recent years there has been a huge growth in betting on sports through many different platforms, but particularly on-line betting. SROC members are concerned at the threats to their integrity that can arise from gambling on their sport and the increasing allegations of match fixing and prevalence of gambling syndicates.

5. Match fixing undermines public confidence in a sporting competition which in turn can have the effect of wiping out the commercial and moral value that vests in that particular sport with drastic consequences for its ability to secure TV coverage, sponsorship, and growth in grassroots participation.

There are very few sports who have not had to deal with betting integrity and SROC welcomes the UK Government's intention to strengthen the legislative framework for protecting sport from these threats by introducing this Draft Bill. We urge the Select Committee to ratify this policy and call for its early adoption.

EUROPEAN UNION POLICY-MAKING CALLS FOR MEMBER STATES TO ADDRESS SPORTS BETTING INTEGRITY AND MATCH FIXING THREATS

6. In November 2012 the Council of the European Union published their Presidency conclusions on establishing a strategy to combat the manipulation of sport results at an Education, Youth, Culture, and Sport Council meeting.

7. The report cites the importance of all stakeholders being vigilant about the threats from match-fixing and stresses the important lead role that Member States have, through subsidiarity, to address this directly.

8. As the UK has one of the largest and most liberalised betting markets in the world it is particularly important to make sure the framework here is effective both for protecting sport and also to act as an illustration to other National Governments of what needs to be achieved to help fight illegal activity and corruption in sports betting.

9. SROC believes that the introduction of this new legislation, which builds on the existing Gambling Commission framework and provisions of Licence Condition 15 will give the UK one of the EU's more effective regimes and this is to be welcomed.

THE DRAFT BILL'S PROPOSALS

10. The main proposal in the draft Bill is that all Gambling activity taking place in the UK, through UK consumers, is regulated in the UK. This is an important principle that must be enacted so that all of the others laws and regulation the Government applies to betting activity through the Gambling Commission are upheld.

11. This includes the requirement for information sharing between sports bodies, the Gambling Commission and betting companies. Bringing forward this draft Bill means the UK Government is addressing the following important sport specific recommendation from the EU Presidency Conclusions:

"As regards betting related match-fixing, ensure that national gambling regulators have the necessary expertise, resources and tools to deal with it and consider giving them a role as intermediaries between sports organisations and betting operators, eg in the collection of data about suspicious betting activities or patterns. In particular, ensure that gambling regulators,

*in cooperation with the sport movement identify sport-specific risks with regard to gambling".
(Recommendation 6, page 4)*

12. The draft Bill, when enacted, will ensure that every bet taken in the UK is subject to Licence condition 15 which makes statutory information sharing a part of the conditions for being a regulated betting operator. This is of vital importance. It is unacceptable that Sports bodies should have to rely on Memorandum of Understanding and the voluntary goodwill of betting operators just to receive information about betting on their sport.

13. SROC still seeks further reassurance and explanation from the Government and Gambling Commission as to how it will be able to enforce these new arrangements when the betting operator will still be located overseas. The Gambling Commission needs to introduce a fees regime for overseas licensing that allows it to uphold effective oversight.

14. SROC would of course be pleased to answer any further questions that the Committee might have and would request the opportunity to give evidence in person to the Committee should you decide to hold oral evidence sessions.

15. We believe that the Committee might find it useful to hear from someone who represents sports across several national Governments for a discussion of the different regimes that are in place and the importance there is for strengthening these measures and would be happy to discuss this with you further.

January 2013
