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Gaming Law 2021

UK: Law & Practice
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Law and Practice

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1. INTRODUCTION

1.1 Current Outlook

Changing Times

Operating in the gambling industry in Great Britain has become increasingly challenging. In recent years, driven partly by a rising “anti-gambling lobby”, there has been a notable shift in the Gambling Commission’s approach to regulation. An increased emphasis on consumer protection has led to ever stricter provisions to protect players from themselves, and the burden is on operators not only to interact with customers who show signs of problem gambling and question whether they are playing with money legitimately acquired, but also to question customers’ ability to afford their gambling spend.

Numerous stakeholders and commentators have indicated, in various reports, changes need to be made in the British gambling industry. The reports are not only critical of the gambling industry, but also the work of the Gambling Commission, with some recommending a completely new regulator. In September 2021, the Parliamentary All-Party Betting & Gaming Group commenced “an investigation into the competence and effectiveness” of the Gambling Commission. Due to the “volume and severity of evidence submitted so far”, the deadline was extended to 1 December 2021.

As detailed below, the government is currently reviewing the Gambling Act 2005 (the “2005 Act”).

The Gambling Commission has focused on collaboration with the industry through working groups, as well as creating its Digital Advisory Panel, Advisory Board for Safer Gambling and a Lived Experience Advisory Panel.

Gambling was at the forefront of many party 2019 general election manifestos, with the Con-

servatives, Labour, the Liberal Democrats and the Scottish National Party calling for reform of the 2005 Act. The Conservatives pledged to “continue to take action to tackle gambling addiction” and stated that “given how the online world is moving, the Gambling Act is increasingly becoming an analogue law in a digital age”.

In the wake of the government’s announcement regarding a review, a series of reviews have taken place, culminating in no fewer than five recent reports on the regulation of gambling in Great Britain:

- the National Audit Office report, on 28 February 2020, Gambling regulation: problem gambling and protecting vulnerable people;
- the All-Party Parliamentary final report, on 16 June 2020, Online Gambling Harm Inquiry;
- the Public Accounts Committee report, on 22 June 2020, Gambling regulation – problem gambling and protecting vulnerable people;
- the House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry report, on 2 July 2020, Gambling Harm – Time for Action; and
- the Social Market Foundation report, on 5 August 2020, Gambling review and reform: towards a new regulatory framework.

The reports are too voluminous to summarise.

The government published the Terms of Reference and Call for Evidence for its review of the 2005 Act on 8 December 2020 (the “Gambling Review”), stating that the review “is about using the evidence to assess whether we have the balance of regulation right”, that “it is essential that we prevent exploitation of vulnerable people and protect individuals, families and communities from the potentially life ruining effects of gambling-related harm” and that it needs to ensure its “regulatory and legislative systems continue to deliver on the original aims of the 2005 Act”.

To ensure its regulatory framework “can protect children and vulnerable people, prevent gambling related crime, and keep gambling fair and open in the digital age”, the Government set out three objectives in the Gambling Review:

- examine whether changes are needed to the system of gambling regulation in Great Britain to reflect changes to the gambling landscape since 2005, particularly due to technological advances;
- ensure there is an appropriate balance between consumer freedoms and choice on the one hand, and prevention of harm to vulnerable groups and wider communities on the other; and
- make sure customers are suitably protected whenever and wherever they are gambling, and that there is an equitable approach to the regulation of the online and the land-based industries.

The government is currently considering submissions. A White Paper is expected in late 2021. Current estimates are that any resulting legislative changes are very unlikely to receive parliamentary scrutiny until 2022. Experience of the process that led to the passing of the 2005 Act tells us that it would be little more than idle speculation to predict the eventual outcome. Most of the concerns raised as part of the review could be addressed either under the existing legislation or through secondary legislation. However, there may be significant and unpredictable reform as the Gambling Review is debated in Parliament. Key areas of focus include football sponsorship, affordability, advertising, changes to the fees system to introduce flexibility and incentives for compliance, and consideration of the creation of a Gambling Ombudsman.

Increased Enforcement

Anti-money laundering, responsible gambling and consumer protection have been continuing

areas of key focus across UK gambling sectors in recent years, as reflected in high-profile enforcement action, and this is not set to change. This has been coupled with an increased focus on the accountability of personal licence holders (including CEOs), as reflected in various high-profile enforcement cases.

In November 2020, the Gambling Commission confirmed that in the last financial year it had suspended five operating licences, revoked 11 licences and had imposed penalty packages or agreed regulatory settlements for a total of GBP30 million. The increase in holding personal licence holders (including those employed in non-compliance roles; for example, CEOs) to account is also evident, with 49 personal licence reviews having been commenced in the last financial year.

Affordability

In recent years, the Gambling Commission has identified, through its compliance and enforcement work, numerous cases of a similar nature where players have gambled beyond their means through the misappropriation of funds (for example, using stolen monies from their employer) or by taking out unaffordable loans. Gambling on credit cards was banned in April 2020.

In 2021, the Gambling Commission consulted on the issues of customer interaction and affordability. The initial consultation proposed the imposition of additional requirements on remote operators, to address concerns identified by the Gambling Commission through its compliance and enforcement work that players are being permitted to gamble beyond their means. The Gambling Commission’s view is that common to all these cases has been the ineffective controls framework used by licensees to identify and mitigate this risk.

Proposed requirements included the introduction of specific indicators for customer interaction, linked to a requirement to act when a risk of harm is identified. Perhaps most controversial, and possibly why the consultation received approximately 13,000 responses, were proposals that “operators must conduct defined affordability assessments at thresholds set by the Commission”; an expectation that licensees question not merely the legitimacy of the funds used for gambling, but whether it is affordable. Many see this as a step too far, amounting to a paternalistic intervention into private matters, and seeking to restrict, or at least interfere in, the choices adults make.

The Gambling Commission published an update to the Consultation in May 2021, pointing out that some respondents had recognised the need for protection for the most vulnerable and checks to identify and prevent cases of clearly unaffordable gambling, others had emphasised that measures should be proportionate and targeted at those at risk of harm, and customers were concerned about privacy and freedom of choice.

The Gambling Commission stated that its consultation response will set out its detailed actions on the requirement to act where customers are known to be in a vulnerable situation, to take action in a timely manner, and in some cases for that action to be automated. In addition to continuing to feed its advice and evidence into the Gambling Review, the Gambling Commission plans to publish a further consultation on how to address what it considers to be three key financial risks:

- significant losses in a very short time (high-level binge gambling);
- significant losses over time (clearly unaffordable gambling); and
- financial vulnerability.

Affordability remains a top priority and a separate theme in the Gambling Commission’s enforcement report. It seems inevitable that mandatory affordability checks will be introduced in the foreseeable future. Given the regulatory burden and cost of affordability checks, their introduction is likely to transform the British market, with many leaving these shores (by surrendering their licences or having them revoked by the Gambling Commission) or through M&A activity.

Fourth National Lottery Licence Competition

Following an extension to the timeline for the competition to award the fourth National Lottery licence (the current (third) licence held by Camelot was due to expire in 2023 but will now expire in February 2024), the Fourth National Lottery licence will begin in February 2024. The Commission intends to announce the preferred applicant in February 2022. The publicity around the competition and the winner will almost certainly throw a spotlight on the gambling industry, the Gambling Review and government involvement in gambling generally. It is rumoured that the award of the next licence will be challenged by way of judicial review. The fourth licence will have a fixed ten-year term.

Single Customer View

In February 2020, the Gambling Commission began the process of identifying the challenges with achieving a “single customer view” (SCV), the aim of which is to create a single industry-wide solution to help reduce gambling harm, in particular where customers have multiple online accounts. The SCV solution could enable a holistic view of a customer’s online gambling behaviour and help reduce gambling harms. The Gambling Commission highlighted that online customers hold an average of three accounts, with younger customers holding more, and there is an increased risk of harm to customers who take part in multiple gambling activities. In October 2021, the Gambling Commission announced

that the ICO reported that “the sharing of behavioural data between gambling operators in order to identify individuals who may be ‘at-risk’ of gambling related harms via a SCV may be lawful under Article 6 (1)(e) ‘Public Task’ or Article 6 (1)(f) ‘Legitimate Interests’ of the UK GDPR”.

The Gambling Commission has confirmed that at this stage it has no plans to mandate a particular SCV solution, but it does expect the industry to move towards trialling its SCV solution in collaboration with the Gambling Commission and the ICO.

1.2 Recent Changes

Increase in Fees

From 1 October 2021, the Gambling Commission increased its fees for licence applications, variations and annual licence fees, in order to respond to new challenges in regulation in areas of technical development, changes in the size and shape of the market and increasing risks associated with unlicensed operators. The impact is as follows:

- increase of annual fees for remote operating licences by 55% from 1 October 2021 (some combined remote operating licence annual fee increases will be higher (62–72%));
- increase of annual fees for non-remote operating licences by 15% from 1 April 2022 (some combined non-remote licence annual fee increases will be higher (21%));
- all licence application, change of corporate control and licence variation application fees will increase by 60% from 1 October 2021; and
- fees for personal licence applications and maintenance will remain unchanged.

Whether the increase in fees will lead to an improvement in standards of gambling regulation, both from the perspective of the regulated and the customer, remains to be seen.

Regulatory Panel Reform

In July 2021, the Gambling Commission published its consultation response in relation to its proposed changes to its Corporate Governance Framework, in particular with regard to Regulatory Panels. These are the only quasi-independent options available to an applicant/licensee, save for an appeal to the First-Tier Tribunal in appropriate cases, and provide the first opportunity for applicants/licensees to attend an oral hearing to challenge the decisions that Commission staff are minded to take about personal or operating licences.

Despite concerns about the independence and impartiality raised by many respondents to its consultation, the Gambling Commission is introducing the role of adjudicators, who will be Gambling Commission employees, will be legally qualified and employed solely for the purposes of sitting on regulatory panels, and reducing the minimum quorum for regulatory panels to one adjudicator and one commissioner, although the Gambling Commission states the quorum will normally comprise one adjudicator and two commissioners.

Changes are due to come into effect “during 2021 to 2022, once adjudicators can be recruited”.

Gambling Commission CEO

In March 2021 the Gambling Commission’s previous chief executive, Neil McArthur, left his role. The Gambling Commission board decided at that time to recruit for an interim CEO in order to allow the successor to the current chairman, Bill Moyes, whose term of office ends in 2021, to appoint a permanent chief executive. Andrew Rhodes was appointed as the new interim chief executive in June 2021 and is expected to remain in the position for 18 months.

High-Value Customers/VIPs

On 30 September 2020, the Gambling Commission published its response to its consultation on strengthening controls on how licensees incentivise high-spending customers. Its High Value Customers Industry Guidance came into effect on 31 October 2020 and a senior executive who holds a personal management licence must be appointed to oversee the scheme, making individuals personally accountable. The Betting and Gaming Council (BGC) also published an industry code of conduct for High Value Customer VIP Reward Programmes.

New Licence Conditions

The Gambling Commission issued new licence conditions on 31 October 2020 that alter the way in which licensees report money-laundering offences and regulatory returns, and how licensees display their UK licensed status on their website. At the time of writing, there are no expected updates to the licence conditions.

Marketing

The gambling industry has introduced a self-imposed advertising ban that came into effect on 1 August 2019. No gambling advertisements will now be shown during televised live sports before the 9pm watershed, starting and ending five minutes before and after a match. The intention is to curb the potential impact of gambling advertisements on children and others vulnerable to gambling-related harm.

The sixth edition of the Industry Code for Socially Responsible Advertising, now under the custody of the BGC, was implemented on 1 October 2020. During COVID-19 lockdown, all BGC members (accounting for around 50%) voluntarily agreed to the removal of all TV and radio gaming product advertising.

On 22 October 2020, the Advertising Standards Authority (ASA) issued a consultation on new,

strengthened rules and guidance for gambling adverts to protect children and young people. An interim statement was published in August 2021 and revised guidance on protection of adult audiences will come into effect after a transitional period with the ASA considering complaints using the revised guidance from 1 November 2021.

The House of Lords (see below) recommended the licensing of affiliates. In May 2019, the Responsible Affiliates in Gambling body was set up to help raise standards amongst affiliates, particularly in respect of safer gambling and the promotion of social responsibility. Its recent high-value customer industry code also covers marketing.

Game Design

On 25 September 2020, the BGC announced the new Game Design Code of Conduct. The Code is a product of the industry's Safer Products Working Group that was formed in January 2020 and tasked with pursuing the opportunity to reduce gambling harm through game and product design. Compliance with the Code is to be undertaken by BGC members, including where operators use non-BGC game suppliers.

The Code applies to online slot products and is intended to be a "living document, evolving as the research base and understanding around game design continues to develop". The Code sets out 14 principles to show a commitment to "transparency, player education, innovation and research with the overarching aim of enhancing player safety", which can be categorised into the following areas:

- game characteristics;
- informed player choice;
- enhanced control innovation; and
- governance and continuous improvements.

On 2 February 2021, the Gambling Commission published its response to its consultation on online slots game design and reverse withdrawals following concern about the accelerating intensity of slot games that aim to increase the time and spend of players.

As expected, the Gambling Commission proceeded with almost all of the proposed changes that have resulted in the Remote Technical Standards being updated. The new Remote Technical Standards came into effect on 31 October 2021 and predominantly apply to features of slot games. For example, auto-play functions are now prohibited along with reverse withdrawals, and a minimum game cycle of 2.5 seconds has now been introduced for online slots. Members of the BGC will have already introduced some of the new measures in line with the Game Design Code of Conduct.

COVID-19

The Gambling Commission has published various new requirements for online operators based on the perceived risks presented by COVID-19 and consumers spending more time at home and online.

In March 2020, the BGC announced a new ten-pledge action plan for its members in response to COVID-19. The action plan, which came into force on 27 March 2020, aims to strengthen consumer protection and build upon existing safer gambling measures implemented by its members. See **1.1 Current Outlook**.

2. JURISDICTIONAL OVERVIEW

2.1 Online

The following online sectors are regulated in Great Britain:

- betting (live, in-play, fixed-odds and pari-mutuel, betting exchanges and intermediaries);
- bingo;
- casino;
- fantasy sports;
- gaming machines;
- gambling software;
- lotteries; and
- poker.

Free-to-play social gaming is not regulated. The Gambling Commission concluded, following a scoping review in 2015, that the sector did not require regulation but would continue to be monitored by the Gambling Commission for any potential risks.

See **2.2 Land-Based** for product definitions.

2.2 Land-Based

The following land-based sectors are regulated in Great Britain.

- Arcades can be divided into three categories:
 - (a) adult gaming centres;
 - (b) licensed family entertainment centres;and
 - (c) unlicensed family entertainment centres.
- Each arcade category can offer a specific subcategory of gaming machine. Those under 18 years of age may not be allowed access to the adult-only section of a licensed family entertainment centre or an adult gaming centre.
- Betting (live, in-play, fixed-odds and pari-mutuel, betting exchanges and intermediaries). See **3.2 Definition of Gambling** for a definition of betting.
- Bingo is not defined in UK legislation; however, the Gambling Commission has published guidance stating that bingo constitutes “equal chance” gaming. See its website for further guidance.

- Casino constitutes arrangements providing people an opportunity to participate in one or more casino games. “Casino game” means a game of chance that is not equal-chance gaming.
- Fantasy sports is not defined in the 2005 Act, but the Gambling Commission has issued guidance on its website regarding this product. See **12.3 Fantasy Sports**.
- Gaming machines means a machine that is designed or adapted for use by individuals to gamble (whether or not it can also be used for other purposes).
- Gambling software is defined as computer software used in connection with online gambling, which does not include software used solely in connection with a gaming machine. Given the complexity of this term, the Gambling Commission issued an advice note in June 2014 on what constitutes gambling software.
- Lotteries (raffles), excluding commercial lotteries. See **3.2 Definition of Gambling** for a definition of lotteries.
- Poker – in spite of the skill element, the chance element that the deal of a card introduces means that poker falls within the definition of gaming. See **3.2 Definition of Gambling** for a definition of gaming.

3. LEGISLATIVE FRAMEWORK

3.1 Key Legislation

The key legislation applicable to the gambling sector is as follows:

- the Gambling Act 2005;
- the Gambling (Licensing and Advertising) Act 2014;
- the National Lottery Act of 1993 (as amended by the National Lottery Act of 2006);
- the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;
- the Fifth Anti-Money Laundering Directive; and
- the Proceeds of Crime Act 2002 (Part 7).

The 2005 Act is set out as follows:

- part 1 interprets key concepts and contains definitions of important terms;
- part 2 establishes the Gambling Commission’s powers and duties;
- part 3 deals with offences;
- part 4 addresses the protection of children and young persons; and
- parts 5, 6, 7 and 8 deal with various types of licences.

The Licence Conditions and Codes of Practice (LCCP) is issued under the 2005 Act, Section 24, and is, in the authors’ opinion, the key reference document with which all licence holders should familiarise themselves. See also **1.1 Current Outlook**.

3.2 Definition of Gambling

Gambling, in the 2005 Act, means gaming, betting or participating in a lottery.

Gaming means “playing a game of chance for a prize”, including games where the chance element can be eliminated by superlative skill. “Prize” constitutes money or money’s worth and “playing” means a chance of winning, irrespective of whether there is a risk of any loss.

Betting means the making of, or acceptance of, bets on:

- the outcome of an event;
- the likelihood of anything occurring or not; or
- whether anything is true or not.

Subcategories of betting:

- real event betting (ie, fixed-odds betting);
- virtual event betting (based on a random number generator);
- betting intermediary (peer to peer); and
- pool betting.

Lotteries are classed as “simple” or “complex” and they cannot be run for private or commercial gain. Lotteries are “simple” if:

- payment is required to participate;
- one or more prizes are allocated to one or more members of a class; and
- the allocation of prizes relies wholly on chance.

Complex lotteries differ on the point of prize allocation, whereby prizes are allocated by a series of processes, the first of which relies wholly on chance.

Subcategories of lotteries include:

- society lotteries (small and large);
- local authority lotteries;
- incidental lotteries;
- private lotteries;
- customer lotteries; and
- the National Lottery (subject to separate legislation).

The 2005 Act also addresses the following cross-category activities in the event that products may satisfy more than one of the above definitions of gambling:

- betting and gaming;
- lotteries and gaming; and
- lotteries and betting.

3.3 Definition of Land-Based Gambling

Land-based gambling is not specifically defined under the 2005 Act.

3.4 Definition of Online Gambling

Online gambling is referred to as “remote gambling” and means “gambling in which persons participate by the use of remote communication”. Remote communication includes the internet, telephone, television, radio or any other kind of electronic or other technology for facilitating communication.

3.5 Key Offences

Part 3 of the 2005 Act covers all offences; however, key offences are as follows.

Providing facilities for gambling (2005 Act, Section 33):

- without authorisation from the Gambling Commission, whether through a licence or acting in the course of another’s business who holds a licence; or
- in a manner not in accordance with the terms and conditions of any licence held either by the licence holder or in the course of another’s business who holds such licence.

“Providing facilities for gambling” occurs where a person satisfies at least one of the following:

- inviting others to gamble in accordance with arrangements made by them;
- providing, operating or administering arrangements for gambling by others; or
- participating in the operation or administration of gambling by others.

Other key offences of note include:

- inviting, causing or permitting a child (under the age of 16) or young person (not a child,

- but less than 18) to gamble (2005 Act, Section 46);
- manufacturing, supplying, installing or adapting gambling software, in the course of business, without an operating licence whilst physically located in the UK (2005 Act, Section 41); and
 - cheating at gambling or doing anything to enable or assist another person to cheat at gambling (2005 Act, Section 42).

See **9.5 Sanctions/Penalties** for advertising sanctions and penalties.

3.6 Penalties for Unlawful Gambling

There is no pending legislation; however, an updated LCCP, as issued under the 2005 Act, came into force on 31 October 2020 with new licence conditions regarding reporting requirements and display of licensed status.

As mentioned in **1.1 Current Outlook**, the government has committed to a review of the 2005 Act.

3.7 Pending Legislation

The penalties for the key offences listed in **3.5 Key Offences** and **9.5 Sanctions/Penalties** are a maximum of 51 weeks' imprisonment and/or an unlimited fine.

4. LICENSING AND REGULATORY FRAMEWORK

4.1 Regulatory Authority

The Gambling Commission and various licensing authorities enforce the 2005 Act. Under the 2005 Act, Part 2, the Gambling Commission's primary functions include:

- issuing operating licences;
- issuing personal licences;

- specifying general licence conditions for each type of licence and any individual licence conditions that it considers appropriate;
- issuing codes of practice concerning the way in which facilities for gambling are to be provided;
- regulating licence holders;
- investigating and prosecuting illegal gambling and other offences under the 2005 Act;
- issuing guidance to local authorities on their role; and
- advising the Secretary of State on the incidence of gambling, how it is carried out, its effects and its regulation.

The ASA regulates gambling advertising in the UK. See **11. Enforcement**.

4.2 Regulatory Approach

The Gambling Commission's approach to regulation is risk-based, with the aim of continuing to raise standards. The Gambling Commission indicated in its Business Plan, April 2021 to March 2022, that its five strategic objectives continue to be:

- protecting children and vulnerable people from being harmed by gambling;
- a fairer market and more informed consumers;
- keeping crime out of gambling;
- optimising returns to good causes from the National Lottery; and
- improving gambling regulation.

On 6 November 2020, the Gambling Commission published its first National Strategic Assessment (NSA) alongside its Raising Standards for consumers – Compliance and Enforcement report 2019 to 2020. The NSA is a document comprised of the latest available evidence with the aim of assessing the issues and risks associated with gambling-related harm. The report outlines the Gambling Commission's assessment of the

key issues faced in making gambling fairer, safer and crime free, and sets out the priority actions and an overview of progress that has been made since 2019.

4.3 Types of Licences

The types of licences are:

- generally, for companies – operating licences and, if applicable, premises licences; and
- for individuals – personal licences.

Generally, the operating licence types are:

- non-remote for land-based activities (these will require an accompanying premises licence, as detailed below); or
- remote for online activities.

The 2005 Act enables the Gambling Commission to authorise all regulated land-based and online activities outlined in **2.1 Online** and **2.2 Land-Based**, including gambling software. Licences authorising multiple licensable activities (for instance, bingo and casino) are classed as a “combined operating licence”. Subject to exceptions, licences are also amenable to “umbrella” arrangements for those acting in the course of another’s business. “Umbrella” arrangements are approved at the Gambling Commission’s discretion following a review of various factors, including:

- consolidation of company accounts;
- ownership structure;
- responsibility for compliance; and
- governance arrangements.

See also **6. Online Gambling**.

Premises Licences

Premises licences, issued by the relevant licensing authority (not the Gambling Commission), are available that authorise the following activities:

- casinos;
- bingo;
- an adult gaming centre for making Category B gaming machines available for use;
- a family entertainment centre, for Category C gaming machines; and
- betting.

See **5.1 Premises Licensing** for requirements.

Personal Licences

Personal licences are governed by the LCCP and issued by the Gambling Commission. They allow the Gambling Commission to regulate individuals and hold key decision-makers accountable for any inadvertent or deliberate breaches of the LCCP. General conditions for licences, as stipulated by the 2005 Act, Section 75, are listed under Part 3 of the LCCP.

The two types of personal licences are:

- a personal management licence (PML); and
- a personal functional licence (PFL).

The LCCP requires persons with responsibility for any of the below key positions to hold a PML:

- overall strategy and delivery of gambling operations;
- financial planning, control and budgeting;
- marketing and commercial development;
- regulatory compliance;
- gambling-related IT provision and security; and
- the money laundering reporting officer.

Individuals working in a casino who are involved in gaming or handling cash (for example, croupiers, dealers and cashiers) must hold a PFL. Under the 2005 Act, Section 133, personal licences may not be issued to individuals who already hold one but may authorise the performance of more than one function.

4.4 Availability of Licences

Operating licences and personal licences are readily available subject to the fulfilment of application criteria and payment of the application fee.

Land-based casino premises licences are sub-categorised into “small”, “large” and “converted”. Converted casino premises licences were awarded under the repealed Gaming Act 1968. They may be moved to alternative premises within the same licensing authority area but there are no new licences available. Sixteen “small” and “large” casino premises licences were issued under the 2005 Act and awarded by the relevant licensing authority area following a public competition. The majority of these licences have now been awarded, meaning that no other casino premises licences are available (see “Premises Licences” in **4.3 Types of Licences**).

4.5 Duration of Licences

Pursuant to the 2005 Act, Section 110, operating licences are indefinite in duration, subject to the payment of annual fees and compliance with licence terms and conditions.

4.6 Application Requirements

Key Application Requirements for Operators

Operating licence applications must be submitted to the Gambling Commission, which will conduct an extensive investigation (having regard to the licensing objectives) in order to determine the applicant’s suitability to carry out the licensed activities. The Gambling Commission broadly uses the following principles to assess any application:

- identity and ownership;
- finances;
- integrity;
- competence; and
- criminality.

The 2005 Act, Section 69(2), requires that operating licence applications:

- specify the activities to be authorised by the licence;
- specify a UK correspondence address;
- be made in the form and manner decided by the Gambling Commission (applications must now be made via the Gambling Commission’s online system);
- disclose any relevant offences;
- include documents and information requested by the Gambling Commission; and
- be accompanied by the prescribed fee.

Currently, there are no server location or data storage obligations.

Key Differences, if Any, between Application Requirements for Land-Based and Online Operators

Land-based casinos are generally considered to be a high-impact activity in terms of the Gambling Commission’s work, which means that applications may attract a high level of scrutiny and interest. In addition, non-remote casino operating licence applications must be accompanied by a casino premises licence application, which must be submitted to the licensing authority of the area in which the premises is situated.

Key Application Requirements for Directors, Owners or Senior Management

Individuals holding 10% or more equity and/or voting rights in an existing or proposed licensee must apply for an Annex A authorisation from the Gambling Commission.

Individuals who occupy a key management position or who are able to exercise significant influence over the operator must hold a PML.

Key individuals for small-scale operators may be exempt from this requirement to hold a PML and

may apply instead to hold an Annex A authorisation. See **4.3 Types of Licences** for further information on personal licences.

The Gambling Commission assesses personal licences according to the same suitability criteria listed above for operating licences. Furthermore, the Gambling Commission introduced a strict policy, from April 2018, to reject incomplete applications.

4.7 Application Timing

Subject to full information being provided, Gambling Commission guidance indicates that operating licence applications take approximately 16 weeks to process. However, in the authors' experience, this can take longer depending on several factors, including product complexity, ownership structure, source of funding and the Gambling Commission's workload.

4.8 Application Fees

Application fees for operating licences are determined by the types of activities and financial projections for the first year. These can be calculated using the Gambling Commission's online fees calculator. As set out in **1.2 Recent Changes**, all application fees have increased by 60% as of 1 October 2021.

At the time of writing, application fees for personal licences are GBP370. There is no application cost for Annex A applications.

4.9 Ongoing Annual Fees

Annual fees are determined in the same way as application fees, outlined in **4.8 Application Fees**. Annual fees may be found on the [Gambling Commission's website](#) or may be calculated using the online fees calculator. As set out in **1.2 Recent Changes**, the Gambling Commission has removed all annual fee discounts for combined and multiple licences, from 1 October 2021, and will increase annual fees for non-

remote operating licences by 15% from 1 April 2022.

5. LAND-BASED GAMBLING

5.1 Premises Licensing

The requirements for a premises licence are:

- they must be held, or applied for, in conjunction with an operating licence authorising the activity for which the premises is to be used;
- the right to occupy the premises (freehold, leasehold or tenancy); and
- only one premises licence can apply to a particular premises at a time (subject to exceptions).

5.2 Recent or Forthcoming Changes

See **1.1 Current Outlook** and **1.2 Recent Changes**.

6. ONLINE GAMBLING

6.1 B2C Licences

Historically, remote operating licences did not reflect the distinction between B2B and B2C business models. B2B operators hosting games through B2C websites required a licence authorising remote casino, bingo, betting (virtual events) or betting (real events), in addition to gambling software, as hosting games constitutes providing facilities for gambling. However, new legislation introduced in April 2017, the Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2017 (SI No 303, 2017), created B2B-specific "host" subcategories:

- casinos (game host);
- bingo (game host);
- general betting (host) (real events); and
- general betting (host) (virtual events).

However, these licences are subject to various requirements, including:

- the company must hold a gambling software operating licence; and
- the company must not contract with players directly.

6.2 B2B Licences (Suppliers, Software, Etc)

See **6.1 B2C Licences**.

6.3 Affiliates

Affiliates are not regulated by the Gambling Commission, as companies only providing advertising services or branding to a gambling operator do not require an operating licence. Social responsibility code provision 1.1.2 provides that responsibility for third-party compliance lies squarely with the licence holder, who must ensure that third parties “conduct themselves in so far as they carry out activities on behalf of the licensee as if they were bound by the same licence conditions and subject to the same codes of practice as the licensee”. The then Gambling Commission CEO, Neil McArthur, reiterated the obligation on licensees on 25 March 2020 by stating that the Gambling Commission “expects [licensees] to ensure that [their] affiliates are conducting themselves appropriately”.

In December 2020, the government responded to the House of Lords Gambling Industry Committee Report and said that whilst the government shares the Committee’s concerns about the risks posed by marketing affiliates, it has concerns about the potential for a reduction in operator accountability if there was a move to licensing affiliates.

The Gambling Commission’s July 2019 article “Free-to-play games being available through gambling affiliates” provides some additional

guidance on how licensees should approach affiliate marketing.

6.4 White Labels

See **6.3 Affiliates**.

6.5 Recent or Forthcoming Changes

See **1.1 Current Outlook** and **1.2 Recent Changes**.

6.6 Technical Measures

There are no technical measures in place regarding consumer protection and the Gambling Commission does not have direct powers to enforce either payment or website blocking. However, it seeks to protect consumers’ rights, through its powers under the 2005 Act to seek enforcement action.

7. RESPONSIBLE GAMBLING (RG)

7.1 RG Requirements

Responsible gambling – now coined “safer gambling” by the Gambling Commission – is one of the Gambling Commission’s biggest areas of focus, across licensing, compliance and enforcement. Its oversight and requirements are broad, meaning they cannot be summarised in this chapter. The focus, which stems from the third licensing objective (protecting children and other vulnerable persons from being harmed or exploited by gambling), is proper identification and engagement with those who may be at risk of, or experiencing, harm, ensuring terms and conditions are clear, fair and straightforward for consumers and do not target vulnerable or self-excluded customers. The House of Lords Report published on 2 July 2020 recommended adding “making the identification and prevention of potential and actual harm a third aim” of the Gambling Commission.

There have been repeated examples of customers being allowed to gamble significant sums of money in short timeframes, significantly beyond their personal affordability, and without any intervention from the operator.

In October 2019, the Gambling Commission announced the formation of three industry working groups in relation to RG.

- Safer Products – this working group has developed an industry code of conduct for game design. The code includes requirements such as a minimum spin speed of 2.5 seconds on slots and the removal of game features such as turbo play, slam stops and multi-slot play. These requirements took effect from 30 September 2020. Additional measures relating to bonus game notifications and display requirements for wins below the stake size are due to be introduced on 31 January 2021. See **1.2 Recent Changes**.
- Safer Advertising Online – the work of this group led to changes to the Industry Code for Socially Responsible Advertising that came into effect on 1 October 2020. See **9. Advertising**.
- Use of VIP Incentives – the work of this group led to a consultation on high-value customers, including a proposal to restrict and prevent customers under the age of 25 from being recruited to VIP schemes. See **1.2 Recent Changes**.

Key RG requirements include:

- detailed requirements regarding customer interaction (see guidance from the Gambling Commission published in July 2019);
- the provision of gambling management tools (see **7.2 Gambling Management Tools**);
- licensees must, as soon as practicable, take all reasonable steps to prevent any marketing

material being sent to a self-excluded customer;

- at the end of any self-exclusion period chosen by the customer, self-exclusion remains in place, for a further six months, unless the customer takes positive action to gamble again; and
- notwithstanding the expiry of the period of self-exclusion chosen by a customer, no marketing material should be sent to them unless and until they have asked for, or agreed to accept, such material.

7.2 Gambling Management Tools

Gambling management tools include:

- making information readily available to customers on how to gamble responsibly and how to access information about, and help in respect of, problem gambling;
- self-exclusion (operator and national) with a minimum of six months (up to 12 months);
- financial limit (deposit, spend or loss);
- timers;
- reality checks; and
- timeouts (24 hours, one week, one month or such period as reasonably requested by the customer, up to six weeks).

The Multi-Operator Self-Exclusion Scheme (MOSES) assists land-based operators with identifying at-risk gamblers. GAMSTOP is the online equivalent, initiated by the Gambling Commission and led by the Remote Gambling Association. From 31 March 2020, all online gambling operators are required, under the LCCP, to join GAMSTOP.

8. ANTI-MONEY LAUNDERING (AML)

8.1 AML Legislation

The current primary legislation is the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (implementing the Fourth Anti-Money Laundering Directive (the “Fourth AMLD”), which, from 10 January 2020, is amended by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (implementing the Fifth Anti-Money Laundering Directive). Amendments introduced by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 include increased levels of scrutiny required for transactions from high-risk countries and virtual currencies.

Money-laundering offences are outlined in the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 (TACT).

The Gambling Commission has also issued guidance for casinos, and separately for non-casinos, regarding their duties and responsibilities under the POCA. The most recent edition was published in November 2020.

8.2 AML Requirements

See **8.1 AML Legislation**. The AML requirements are complex and cannot be adequately summarised here, particularly given the Gambling Commission’s ongoing focus and extensive casework in this area. Generally, the Gambling Commission expects licensees to comply fully with the terms of their licence, as relevant to AML and CTF, and pay close regard to the various guidance documents it issues.

Compliance and enforcement activity continue to reveal that operators’ AML policies, procedures and controls are not fit for purpose and, in many cases, customers are allowed to gam-

ble using the proceeds of criminal activity. The Gambling Commission has warned the industry that “a failure to digest [its] guidance and implement the legislative requirements applicable to Great Britain... must change, for these are not just regulatory matters but breaches of UK law. Those failing to learn these lessons will face further draconian action.”

9. ADVERTISING

9.1 Regulatory/Supervisory Agency

The ASA regulates UK advertising and, therefore, gambling advertising. However, it does not carry any enforcement powers. Instead, and as the LCCP has specific rules on advertising, any gambling advertising breaches by a licence holder may lead to enforcement action by the Gambling Commission. This includes seeking criminal prosecution, as breach of a licence condition is a criminal offence under the 2005 Act, Section 35.

9.2 Definition of Advertising

“Advertising” is widely defined under the 2005 Act, Section 327, and generally encompasses any action that encourages one or more persons, either directly or through an agent, to engage in facilities for gambling. This covers most forms of advertising, including online content and emails to consumers.

9.3 Key Legal, Regulatory and Licensing Provisions

See **9.2 Definition of Advertising**. Advertising must be socially responsible and comply with the LCCP; in particular, social responsibility code provision 5.1.6. The key LCCP advertising provisions are:

- all advertising of gambling products and services should be undertaken in a socially responsible manner;

- operators should comply with the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the “CAP Code”), the UK Code of Broadcast Advertising (the “BCAP Code”) and the Industry Code;
- adverts must not include a child or young person and no one who is, or seems to be, under 25 may be featured participating in gambling;
- operators must satisfy themselves that their adverts are not misleading;
- operators must comply with any provisions of the CAP and BCAP codes in relation to free bet and bonus offers, including by stating significant terms and directing customers to the full terms, which should be no further than one click away;
- no adverts should appear on any web page that provides advice or information on responsible gambling;
- operators must not place adverts on websites providing unauthorised access to copyrighted content and must take all reasonable steps to ensure that third parties (eg, affiliates) do not do the same; and
- operators must be able to terminate contracts with third parties that breach this provision.

The following codes are also applicable:

- all UK gambling advertising – Gambling Industry Code for Socially Responsible Advertising (Industry Code), administered by the BGC;
- broadcast advertising – the BCAP Code, administered by the ASA; and
- non-broadcast advertising – the CAP Code, administered by the ASA.

The ASA also provides the below additional guidance:

- “Gambling advertising: responsibility and problem gambling” (August 2021);

- “Gambling advertising: protecting children and young people” (April 2019);
- “The marketing of gambling on eSports on social media” (April 2020); and
- on 22 October 2020, the ASA issued a consultation on new, strengthened rules and guidance for gambling adverts to protect children and young people.

An interim statement was published in August 2021 confirming that the CAP and BCAP’s guidance on protection of adult audiences would be updated. The changes seek to reduce the likelihood of advertising appealing irresponsibly through its content and messaging to vulnerable adults, including those with gambling-related issues. The revised guidance will come into effect after a transitional period, with the ASA considering complaints using the revised guidance from 1 November 2021.

Proposals to increase protections for under-18s by strengthening rules that limit the appeal of content included in gambling and lotteries advertising will be published in Q4 2021.

The [Gambling Commission’s web page “Advertising/marketing rules and regulations”](#) provides an overview covering the various LCCP and industry regulations.

9.4 Restrictions on Advertising

See **9.3 Key Legal, Regulatory and Licensing Provisions**. In addition, since 1 November 2014, gambling operators wishing to advertise in the UK must hold a Gambling Commission operating licence pertaining to the type of activity advertised. Separately, the Gambling Commission confirmed that advertising-only licences will not be granted.

As of 1 August 2019, a voluntary “whistle-to-whistle” sports betting advertising ban initiated by the UK betting sector (including a ban on all

TV betting adverts during pre-watershed live sport) came into force.

In relation to online search activity, from 1 October 2020, the industry has introduced a list of negative keywords against which no online gambling advertising should be served. This is a voluntary measure introduced in the Industry Code.

During COVID-19 lockdown, all BGC members (accounting for around 50%) voluntarily agreed to the removal of all TV and radio gaming product advertising.

9.5 Sanctions/Penalties

The following constitute criminal offences and attract up to 51 weeks' imprisonment and/or an unlimited fine.

- Inviting another person under 18 to gamble (Section 46, 2005 Act).
- Advertising unlawful gambling (Section 330, 2005 Act) – excepting lottery promotion, advertised gambling is held to be unlawful if:
 - (a) the gambling advertised requires a licence, notice, permit or registration and, at the time of advertising, these arrangements have not been completed; or
 - (b) arrangements for the advertised gambling are not such as to ensure that any exceptions to the offence apply.

The Gambling Commission also has the power to take regulatory enforcement action for breaches, including seeking to prosecute offenders.

In May 2020, in addition to other failings, FSB, an online gambling operator, was penalised by the Gambling Commission for inappropriate advertising carried out by a third party with which FSB had a third-party business licence arrangement.

In July 2021, in addition to other failings, Daub Alderney was subjected to a financial penalty for

irresponsible placement of digital adverts and for failing to comply with advertising codes.

10. ACQUISITIONS AND CHANGES OF CONTROL

10.1 Disclosure Requirements

Disclosure to the Gambling Commission is required within five working days (or as soon as possible) via a key event notification using the Gambling Commission's eServices, an online self-serve portal.

Separately, a change of control application providing detailed information and the appropriate fee must be submitted to the Gambling Commission for assessment of the suitability of the new controller(s) to uphold the licensing objectives regarding the existing licence. The application or notification of licence surrender must be provided within five weeks of the change occurring, otherwise the licence will be revoked.

Under the 2005 Act, Section 103, advance applications for persons or entities expected to become a controller can also be made prior to the change occurring. Subject to the Gambling Commission's assessment of all necessary information, which it indicates typically takes around 12 weeks, the existing licence will either be granted continuance under the new controller(s) or it will be revoked.

10.2 Change of Corporate Control Triggers

A change of corporate control is defined in Section 102 of the 2005 Act and occurs when a person or legal entity becomes a new "controller" (as derived from the Financial Services and Markets Act 2000, Section 422). This is a complex definition, and needs to be considered in detail, but is generally broken down as:

- 10% or more of the shares in the licensee, as filtered by the corporate layers;
- 10% or more of the voting power;
- 10% or more of the rights to profits/dividends; or
- the ability to exercise significant control over management of the licensee.

Where there is a non-alignment, a cumulative assessment must be made.

10.3 Passive Investors Requirements

The same requirements apply as there are no exemptions for passive investors.

11. ENFORCEMENT

11.1 Powers

Under the 2005 Act, Part 2, the Gambling Commission has the power to investigate and prosecute offences directly. Its regulatory powers also include calling licences for review and initiating investigations in the following circumstances:

- to establish whether its conditions are being complied with;
- where it fears a licensee has been convicted of a relevant criminal offence;
- where it considers a licensee to be unsuitable to continue holding a licence; and
- generally, where a review is deemed appropriate.

The Gambling Commission's sanctions are:

- issuing a warning to a licence holder;
- attaching an additional condition to a licence;
- removing or amending a condition to a licence;
- suspending a licence;
- revoking a licence; and
- imposing a financial penalty following breach of a licence condition.

The Gambling Commission also has the power to commence a criminal prosecution.

The Gambling Commission's approach to enforcement is currently set out in three key documents:

- the Statement of principles for licensing and regulation;
- the Licensing, compliance and enforcement, policy statement; and
- the Statement of principles for determining financial penalties.

11.2 Sanctions

Contravention of the 2005 Act, including the LCCP (issued under the 2005 Act), results in criminal liability. In August 2017, the Gambling Commission set out its "new vision" for its enforcement, emphasising its focus on putting consumers first. The key changes proposed included:

- putting all regulatory tools, including licence review (both of the operator and personal management licences), on an equal footing by removing the then current bias in favour of settlement;
- introducing higher penalties for breach, particularly where systemic and repeated failings were seen; and
- using time-limited discounts to create better incentives for early settlement.

In recent years, the Gambling Commission has garnered a reputation for taking enforcement against its licensees. In certain cases, a "regulatory settlement" is reached, meaning that it is not a sanction and stops short of a formal licence review. This is subject to the Gambling Commission's discretion and will only be considered if various factors are met, including:

- the licensee being open and transparent in its dealings with the Gambling Commission;
- the licensee being able to demonstrate that it has insight into apparent failings;
- a timely disclosure of material facts;
- preparedness to agree to the publication of a public statement setting out the failings in order to deter future non-compliance by others and/or share learning;
- preparedness to make a divestment of any amount accrued as a result of the failing;
- preparedness to follow advice and implement procedures to ensure there is no repetition of failings;
- preparedness to contribute to the direct costs to the Gambling Commission of investigating the matter in respect of which regulatory settlement is sought; and
- preparedness to volunteer a payment in lieu of the financial penalty the Gambling Commission might otherwise impose for breach of a licence condition.

The regulatory settlements and licence reviews are detailed in numerous public decisions or public statements issued on the [Gambling Commission's website](#) and usually include a financial penalty (a record penalty package of over GBP13 million was issued to Caesars Entertainment (UK) Limited in April 2020 and GBP11.6 million issued to Betway in March 2020).

11.3 Financial Penalties

The Gambling Commission is responsible for issuing and enforcing financial penalties regarding any LCCP breaches. Any contravention of the 2005 Act itself is a criminal offence and will trigger a potentially unlimited fine, enforced by the courts, and imprisonment for up to 51 weeks (see **3.6 Penalties for Unlawful Gambling** and **9.5 Sanctions/Penalties**).

It is worth noting that any payment made as part of a regulatory settlement is not a financial pen-

alty (as it is not a sanction) and is a payment made in lieu of a financial penalty. These are treated differently by the Gambling Commission and could, theoretically, be enforced by recommending the licence review.

12. RECENT TRENDS

12.1 Social Gaming

There have been no additional significant updates in this sector since the Gambling Commission's consideration in 2016. See the Gambling Commission's March 2017 position paper "[Virtual currencies, eSports and social gaming](#)" for further information.

12.2 Esports

See **12.1 Social Gaming**.

12.3 Fantasy Sports

There has been an increase in bookmakers offering fantasy sports in the UK. The Gambling Commission's position remains that any fantasy leagues run in the course of business may require a licence (pool betting) where prize values are determined by the number of paying entrants.

12.4 Skill Gaming

This is not applicable in this jurisdiction.

12.5 Blockchain

Although blockchain-related gambling is not currently regulated, the Gambling Commission has responded to stakeholder interest with guidance on its website regarding "[Blockchain technology and crypto-assets](#)". The guidance focuses, in particular, on the importance of source of funding, third-party social responsibility and, for existing licensees, general notification requirements regarding funding and payment.

12.6 Reform

See 1.1 Current Outlook.

13. TAX

13.1 Tax Rate by Sector

The following rates apply for the tax year 2021–22.

Bingo:

- 10% of bingo promotion profits.

Betting:

- 15% of “net stake receipts” for fixed-odds bets, totalisator bets on horse or dog races and bets taken on betting exchanges;
- 3% of “net stake receipts” for financial spread bets;
- 10% of “net stake receipts” for all other spread bets; and
- 15% of bookmaker’s profits from bets that are not at fixed odds and are not on horse or dog racing.

Casino (“gaming duty” on or after 1 April 2021):

- 15% of gross gaming yield for the first GBP2,548,500;
- 20% of gross gaming yield for the next GBP1,757,000;
- 30% of gross gaming yield for the next GBP3,077,000;
- 40% of gross gaming yield for the next GBP6,494,500; and
- 50% of gross gaming yield for the remainder.

Lottery:

- 12% of the price paid or payable on taking a ticket or chance in a lottery.

Machine games:

- 5% of net takings from dutiable machine games with a maximum cost to play of not more than GBP0.20 and a maximum cash prize of not more than GBP10;
- 20% of net takings from dutiable machine games with a maximum cost to play of not less than GBP0.21 and not more than GBP5 and a maximum cash prize of more than GBP11; and
- 25% of net takings from all other dutiable machine games with a maximum cost to play of more than GBP5.

Remote gaming duty (as of 1 April 2019):

- 21% of gross gaming revenues on all remote gaming transactions with customers whose usual place of residence is in the UK.

Please note, the majority of gambling activities are exempt from VAT.

Harris Hagan is currently the only specialist gambling law firm in the City of London. The firm has an international reputation as a trusted adviser to many of the world's largest gambling and leisure operators in all areas of land-based and online gambling, liquor and entertainment. The firm's outstanding reputation has been founded on unparalleled legal experi-

ence, knowledge and an in-depth commercial understanding of the industry. Harris Hagan has also advised overseas regulatory authorities and governments on the regulation of gambling and assisted with draft legislation. The firm is noted for its pre-eminence in advising on highly complex regulatory issues and for advising on a wide range of commercial contracts.

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