

Chapter 4

International regulatory environment—forms of liberalisation

4.1 International jurisdictions use a variety of regulatory responses to online gambling, from prohibition to a liberalised and regulated market. This chapter will outline some of the approaches taken by jurisdictions which operate a liberalised model of online gambling regulation. It is important to note that online gambling regulation is a changing area and some countries are currently reviewing their legislation. Therefore some of the details contained in this chapter may have changed by the time the report is published.

The trend towards liberalisation

4.2 Submitters suggested that there is a trend internationally towards increasing liberalisation, with many countries, particularly within Europe, moving towards a liberalised form of online gambling with stringent regulations. The Department of Broadband, Communications and the Digital Economy (DBCDE) outlined this trend in its discussion paper which is part of the government review of the *Interactive Gambling Act 2001* (IGA):

There is a general trend amongst European countries towards regulated access to online gambling including to services prohibited under the IGA. A number of countries including the UK, France, Italy, Malta and Sweden, have legalised online gambling with gambling websites being subject to stringent regulatory requirements.¹

4.3 Sportsbet said that regulation had been 'particularly successful in Europe'.²

4.4 Countries that have a form of liberalised online gambling include, but are not limited to, the United Kingdom (UK), Alderney and France. These regulatory approaches are detailed below.

United Kingdom

4.5 In 2005, the UK introduced the *Gambling Act 2005* (the Act) which covers all forms of gambling in the UK including online gambling (called remote gambling).

1 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 14.

2 Sportsbet Pty Ltd, *Submission 44*, p. 3.

4.6 The Act provides for the legal licensing of 'remote gambling' where individuals participate in gambling via remote communication including internet, telephone, television, radio and other electronic or communication technology.³

4.7 Forms of remote gambling that are permitted under the Act include gaming and games of chance, casino gambling, equal chance gaming,⁴ betting (including spread bets⁵ and competition prizes), pool betting and lotteries. iBus Media Limited outlined the all-encompassing nature of the Act:

The *Gambling Act 2005 (UK Act)* is a comprehensive piece of legislation dealing with all forms of gambling. It is both technology neutral and product neutral in that it provides licences for all types of gambling products (betting, casino, bingo, poker etc.).⁶

4.8 The Act established an independent regulatory authority, the UK Gambling Commission (the Commission), which is responsible for the regulation and licensing of all commercial gambling in the UK except spread betting and the National Lottery.⁷ The Commission provided a submission to the inquiry⁸ and most of the information below is drawn from this.

The roles and functions of the Commission

4.9 Formally established in October 2005, the Commission is responsible for regulating all commercial gambling, including remote gambling, offered in the UK.⁹ It licenses all remote gambling providers with equipment based in the UK and its licensing objectives are:

- 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

3 Gambling Commission (Great Britain), *Submission 33*, p. 5.

4 Equal chance gaming includes games such as poker or bingo, where the chances are equally favourable to all participants and players are not competing against a bank. See http://www.gamblingcommission.gov.uk/gf-faqs/casinos/can_i_hold_a_casino_night/non-commercial_equal_chance.aspx (accessed 25 August 2011).

5 Spread betting is defined as betting on sporting results, movements in the stock exchange, etc., in which the bookmaker predicts an estimated outcome as a spread, and the bettor predicts a result higher or lower than the spread, *Macquarie Dictionary*. See also Australian Racing Board Limited, *Submission 27*, p. 9: '...the returns or losses from a bet are calculated in proportion to the degree to which a bettor's prediction is right or wrong relative to the bookmaker's spread.'

6 iBus Media Limited, *Submission 42*, p. 37.

7 Gambling Commission (Great Britain), *Submission 33*, p. 3.

8 Gambling Commission (Great Britain), *Submission 33*.

9 Gambling Commission (Great Britain), *Submission 33*, p. 3.

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- protecting children and other vulnerable persons from being harmed or exploited by gambling.¹⁰

4.10 The Act provides the Commission with the power to grant and determine the conditions for operating and personal gambling licences, assess applications and current licence holders' compliance with conditions and codes of practice, and take regulatory action against an operating or personal licence holder who breaches these conditions. The Commission also possesses the power to void bets and investigate and prosecute offences committed under the Act.¹¹

The white list

4.11 Online gambling operators regulated in the European Economic Area (EEA) are permitted by the Act to provide online gambling services and advertise within the UK without a licence, provided they meet regulation requirements specified by the Commission. The Act also establishes provisions for a white list of operators based outside the EEA, extending the same rights and responsibilities to them that are provided to operators within the EEA. While the Commission does not formally license or regulate operators within these areas, good practice agreements have been established with regulators.¹² This practice has been used by major online poker operators worldwide:

Despite the availability of a licence, no major poker site has sought a licence in the UK. One of the reasons for this is that the British legislation is fully EU compatible, to the extent that an operator having a licence in the European Union or in a white listed territory (which includes Tasmania), is allowed to advertise its services in the UK as if it had a local licence.¹³

Review of the white list

4.12 In July 2011, the UK Government announced a policy proposal to regulate gambling at the 'point of consumption', requiring all remote gambling operators providing services to the UK market to obtain a licence from the Gambling Commission. This would effectively phase out the current white list and EEA State arrangements. The proposed policy would provide a 'level playing field' and ensure stronger protections for consumers:

These proposals are an important measure to help address concerns about problem gambling and to bridge a regulatory gap, by ensuring that British

10 Gambling Commission (Great Britain), *Submission 33*, p. 4.

11 Gambling Commission (Great Britain), *Submission 33*, p. 4.

12 Gambling Commission (Great Britain), *Submission 33*, pp 4–5.

13 iBus Media Limited, *Submission 42*, p. 37.

consumers will enjoy consistent standards of protection, no matter which online gambling site they visit.¹⁴

4.13 The proposal followed a review of the white list and a consultation process which began in April 2009. It would require all offshore operators wishing to provide services to the UK market to gain a licence from the Commission, pay 15 per cent tax on gross profits and to inform the Commission of suspicious betting patterns.¹⁵

4.14 The proposed policy has been questioned by some who believe that the tax may negatively affect UK-based providers and deter offshore providers from seeking a licence in the UK:

In itself, a 15% tax on gross profits, while high, remains workable (and even seems generous when compared to a number of the turnover taxes proposed in the recent spate of EU market openings). Problems principally arise when it is coupled with the UK's main corporation tax rate of 28%, substantial application and annual licence fees, and the typically high business costs of a UK location. As a result, while some have opted into this system due to the overriding convenience of a UK licence, a number of licensees have relocated offshore, while a greater number of would-be licensees have elected to licence elsewhere.¹⁶

4.15 Others argue that the new system would not achieve its consumer protection goal:

In the absence of any sanctions, it is reasonable to assume that unscrupulous operators will advertise their services to the UK market with impunity. As a result, the burden of any national licensing system will fall exclusively on the operators that play by the rules, while industry 'cowboys' will remain free of any requirement to offer fair gambling and to protect the vulnerable.¹⁷

4.16 While there is no specific timeline in place for the implementation of the proposed policy, the UK Government will be working with the Commission and other stakeholders on the details of the new licensing system which will require amendments to the Gambling Act.¹⁸

14 Mr John Penrose MP, Minister for Tourism and Heritage, *Written Ministerial Statement on Remote Gambling Policy Proposals*, Ministerial Speech, 14 July 2011, http://www.culture.gov.uk/news/ministers_speeches/8293.aspx (accessed 24 August 2011).

15 Mr John Penrose MP, British Minister for Tourism and Heritage, *Britain consumers will be better protected by planned changes to gambling laws*, Media Release 069/11, 14 July 2011, http://www.culture.gov.uk/news/media_releases/8299.aspx (accessed 24 August 2011).

16 Tom Lippiett, 'The UK: 2010 and beyond', *iGaming Business*, Issue 61, March/April 2010, p. 9.

17 Steve Donoughue and Fabian Adams-Sandiford, 'The Great White Hope', *iGaming Business*, Issue 69, July/August 2011, p. 57.

18 Mr John Penrose MP, British Minister for Tourism and Heritage, *Written Ministerial Statement on Remote Gambling Policy Proposals*, 14 July 2011, http://www.culture.gov.uk/news/ministers_speeches/8293.aspx (accessed 24 August 2011).

Providing remote gambling to other countries

4.17 The Act prohibits gambling operators based in the UK from offering remote gambling services to countries where online gambling is prohibited:

- (1) A person commits an offence if he does anything in Great Britain, or uses remote gambling equipment situated in Great Britain, for the purpose of inviting or enabling a person in a prohibited territory to participate in remote gambling.
- (2) In subsection (1) "prohibited territory" means a country or place designated for the purpose of this section by order made by the Secretary of State.¹⁹

Harm minimisation measures

4.18 Harm minimisation measures are set out under section two of the Licence Conditions and Codes of Practice (the codes and conditions). These outline the Commission's principle codes of practice which are established under section 24 of the Gambling Act 2005.

4.19 iBus Media summarised the Codes of Practice:

The Codes of Practice are either:

- ordinary code provisions, which generally describe best practice measures and, whilst compliance is not mandatory, failure to take these provisions into account may be used as evidence in civil or criminal proceedings; or
- social responsibility code provisions, with which a licence holder must comply and which have the same status as licence conditions...²⁰

4.20 The ordinary and social responsibility code provisions cover matters including harm minimisation and responsible gambling measures and player protection. These include access to minors, responsible gambling information, customer interaction and self-exclusion procedures.²¹

Access by minors

4.21 Online gambling operators are required to have in place and to monitor the effectiveness of procedures designed to prevent access and use by underage players. iBus Media outlined specific requirements under the social responsibility code provisions which include, but are not limited to, the following:

19 *Gambling Act 2005*, s. 44.

20 iBus Media Limited, *Submission 42 Attachment 2*, p. 13.

21 iBus Media Limited, *Submission 42 Attachment 2*, pp 13–15.

- operators must provide customers with warnings that underage gambling is an offence and require all customers to affirm they are old enough to legally gamble;
- operators must regularly review age verification systems and implement all reasonable improvements resulting from technological advancements and increases in information;
- operators must ensure all relevant staff have appropriate age verification training;
- websites must allow adults to use filtering software to restrict access (by parents and schools etc.); and
- operators must follow specific age verification strategies depending on the country the player resides in.²²

4.22 In the event that a customer's age is not verified within 72 hours, the account will be frozen and further gambling will not be available until age verification is complete. If the user is found to be underage, the operator is required to return any money paid by the player for the use of the gambling facilities and no winnings are to be paid to the player.²³

Responsible gambling information

4.23 All operators must provide information to customers on responsible gambling and avenues to gain help for problem gambling. This information must cover any features offered to players that enable them to control their gambling, including: the ability to limit their playing time or spend; warning messages that are available on the site; self-exclusion options; and the availability of help and advice.²⁴ This information must be provided to all customers, regardless of whether an operator offers specific

22 iBus Media Limited, *Submission 42 Attachment 2*, p. 14. See also UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011 <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

23 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011). See also iBus Media Limited, *Submission 42 Attachment 2*, p. 14.

24 iBus Media Limited, *Submission 42 Attachment 2*, pp 14–15. See also UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

information targeted at customers who may demonstrate problem gambling behaviour.²⁵

4.24 The ordinary code provisions or 'best practice provisions' also state operators should make this information available in any foreign language in which they market their services.²⁶

Customer interaction

4.25 All operators must have in place procedures and policies for interaction with players who may be demonstrating behaviour indicating problem gambling. These procedures must identify the appropriate level of management to initiate interaction with customers regarding problem gambling and training of staff so that they are aware of the procedures and who is designated to implement them.²⁷ In addition to these measures, policies must identify what behaviours constitute problem gambling and will result in customer interaction, and under what circumstances refusal of service to customers should be considered.²⁸

Self-exclusion procedures

4.26 All operators are required to implement specific self-exclusion procedures, which include:

- preventing any marketing material being sent to a customer who has self-excluded. Operators must take steps to remove contact details from any marketing databases within two days of receiving the self-exclusion application;
- customer accounts must be closed and any funds contained in those accounts must be returned to the customer. The provisions specify that 'it is not sufficient to merely prevent an individual from withdrawing funds from their customer account while still accepting wagers from them'; and
- procedures must be put in place to prevent self-excluded individuals participating in gambling, including maintaining a register of details and

25 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, p. 24, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

26 iBus Media Limited, *Submission 41 Attachment 2*, p. 15.

27 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, p. 25, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

28 iBus Media Limited, *Submission 42 Attachment 2*, p. 15.

card numbers of individual who are excluded and training staff to ensure they are able to operate and enforce the systems.²⁹

4.27 A minimum self-exclusion period of six months is specified in the ordinary code provision which states that operators should take reasonable steps to provide customers with the option to extend to a total of five years. These provisions also specify methods by which customers may apply for self-exclusion and a cooling off period of one day after players actively select to begin gambling again.³⁰ As compliance with these measures is not mandatory in order to gain a licence, they remain best practice and are not enforced.³¹

Accreditation of online gambling providers - eCOGRA

4.28 Submitters pointed out that there are organisations overseas which accredit online gambling websites such as eCOGRA (E-commerce and Online Gaming Regulation and Assurance). Its website reports:

eCOGRA is an independent London-based player protection and standards organisation that provides an international framework for best operational practice requirements, with particular emphasis on fair and responsible gambling.³²

4.29 Clubs Australia reported that eCOGRA 'provides certification to sites that offer responsible and honest gambling practices such as prompt payment, random games, accurate advertising claims, fair trading practices and privacy protections'. However, it added:

...the list of "safe and fair" approved sites contains the names of only thirty casinos. The online industry is unwilling to self-regulate.³³

29 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, p. 27, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011). See also iBus Media Limited, *Submission 42 Attachment 2*, p. 15.

30 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, p. 28, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

31 *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, p. 24, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

32 Information available from: <http://www.ecogra.org/Home.aspx> (accessed 8 September 2011).

33 Clubs Australia, *Submission 24*, p. 6.

4.30 Wesley Mission argued that self regulation by organisations such as eCOGRA is 'dubious, as their standards are pretty low and they lack an effective independent audit process'.³⁴ It emphasised:

Our concern with all of these certification programs is that they are businesses that rely on being paid by the companies they certify as “responsible”. The concept of ‘responsible gambling’ is often described as an oxymoron, and responsible gambling programs vary from worthless tokenism to programs that genuinely endeavour to restrict the incidence of problem gambling.³⁵

Committee view

4.31 The committee notes that while accrediting organisations such as eCOGRA support self-regulation, compliance is voluntary. However, these measures would provide some encouragement for online gambling providers to offer harm minimisation measures.

Advertising

4.32 In addition to adopting a managed approach to online gambling regulation, the UK permits advertising by remote gambling operators licensed under the Act or those that are on the white list, provided they meet the UK's advertising regulatory requirements.³⁶ Advertisements to the UK market must comply with three codes of practice:

- The British Code of Advertising, Sales Promotion and Direct Marketing³⁷;
- The UK Code of Broadcast Advertising³⁸; and
- Gambling Industry Code for Socially Responsible Advertising.³⁹

34 Wesley Mission, *Submission 2*, p. 7.

35 Wesley Mission, *Submission 2*, p. 6.

36 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 35.

37 The Committee of Advertising Practice is responsible for writing and maintaining the British Code of Advertising, Sales Promotion and Direct Marketing which relates to non-broadcast advertising such as print media. See <http://www.cap.org.uk/About-Us/Regulatory-system-at-a-glance.aspx> (accessed 26 August 2011).

38 The Broadcast Committee of Advertising Practice is responsible for writing and maintaining the UK Code of Broadcast Advertising. This code relates to broadcast advertising including advertising online. See <http://www.cap.org.uk/About-Us/Regulatory-system-at-a-glance.aspx> (accessed 26 August 2011).

39 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 35.

4.33 The codes of conduct outline responsible advertising processes including not targeting minors, exploiting vulnerable people in relation to gambling activity or being misleading.⁴⁰

Effect of the Act on online gambling participation and problem gambling

4.34 Comparison of the 2007 British Gambling Prevalence Survey (the 2007 survey) conducted before the Act came into full effect, and the 2010 British Gambling Prevalence Survey (the 2010 survey), shows a small increase in online gambling. The 2007 survey showed the prevalence of online gambling was six per cent. This is significantly lower than the 2010 figure of 14 per cent. However, the difference between the 2007 and 2010 figures can be explained by the inclusion of the National Lottery in the 2010 survey results:

The 2007 survey used a more conservative definition of online gambling, which only included those who bet online, used a betting exchange or gambled online on poker, bingo, slot machine style games or casino games as internet gamblers. Using this comparable definition, in 2010, 7% of adults (10% of men and 5% of women) gambled online on these activities...⁴¹

4.35 Using the same definition of gambling online for the 2007 and 2010 surveys, there was a one per cent increase in the level of participation in online gambling following the introduction of the Act.⁴²

4.36 The Commission noted that the problem gambling prevalence rates observed in the UK showed a slight increase in 2010 when compared to the statistics in the 2007 survey. Using DSM-IV⁴³ and PGSI⁴⁴ measurements, the prevalence of problem

40 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 36.

41 *British Gambling Prevalence Survey*, 2010, prepared by the National Centre for Social Research for The Gambling Commission, p. 22.

42 *British Gambling Prevalence Survey*, 2010, prepared by the National Centre for Social Research for The Gambling Commission, p. 25.

43 The DSM-IV is the 4th edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. It provides common language and standard criteria for the classification of mental disorders. The ten diagnostic criteria constitute a tool created for diagnosis of pathological gambling by clinicians. *British Gambling Prevalence Survey*, 2010, prepared by the National Centre for Social Research for The Gambling Commission, p. 73.

gambling for all forms of gambling increased in 2010 by approximately 0.3% (DSM-IV) and 0.2% (PSGI).⁴⁵

4.37 The Commission noted that problem gambling prevalence rates in the UK were similar to other European countries, and 'lower than countries like the USA, Australia and South Africa' and lower than in Northern Ireland where remote gambling is prohibited.⁴⁶

France

4.38 France has a different approach to online gambling regulation than that of the UK, regulating domestic providers and blocking unlicensed international providers. The Department of Broadband, Communications and the Digital Economy (DBCDE) outlined the French approach:

France has a slightly more complicated model, which allows the licensing of some domestic services and then attempts to block. In a sense, they work both sides: to block the overseas based services but provide for regulation of domestic French provision of the services to French consumers.⁴⁷

4.39 France liberalised online gambling laws in May 2010 with the introduction of Law No. 2010-476 and Decree No. 2010-482 and 2010-518. The laws permit the provision of online poker, sports betting and wagering on horse racing; however, all other forms of online gambling are prohibited.⁴⁸ Licences are provided to online gambling operators who meet licensing and harm minimisation requirements established in the French laws and decrees. iBus Media indicated that provision of other 'greater risk' online games such as casino games may be permitted in the future.⁴⁹

4.40 The Australian Racing Board stated that the aim of the French legislation was to open their market to regulated online gambling consistent with State policy of:

44 The Problem Gambling Severity Index (PGSI) consists of nine items ranging from chasing losses to gambling causing health problems to feeling guilty about gambling. Each item is assessed on a four-point scale: never, sometimes, most of the time, almost always. Responses to each item are given the following scores: never = zero; sometimes = one; most of the time = two; almost always = three. When scores to each item are summed, a total score ranging from zero to 27 is possible. A PGSI score of eight or more represents a problem gambler. National Centre for Social Research, *British Gambling Prevalence Survey 2010*, prepared for the Gambling Commission, p. 74.

45 Gambling Commission (Great Britain), *Submission 33*, p. 9.

46 Gambling Commission (Great Britain), *Submission 33*, p. 10.

47 Mr Richard Windeyer, First Assistant Secretary, Digital Economy Strategy Division, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 19 August 2011, p. 37.

48 iBus Media Limited, *Submission 42*, pp 41–42.

49 iBus Media Limited, *Submission 42*, p. 42.

- Preventing gambling addiction and protecting minors;
- Ensuring the integrity, reliability and transparency of gambling activities;
- Preventing fraudulent or criminal activities undermining the ethics of sports competitions and preventing money laundering;
- Ensuring equitable and balanced development of different types of gambling to avoid destabilization of the economic sectors concerned.⁵⁰

4.41 Online gambling service operators are licensed and regulated in France by the Online Gaming Regulatory Authority (ARJEL) which was established in 2010.⁵¹ The ARJEL is responsible for regulating and licensing online poker, sports betting and horse racing in France.

4.42 Operators applying for a licence must meet stringent harm minimisation requirements and measures to ensure integrity in sport:

To obtain a licence, applicants must satisfy a number of criteria, including a requirement that they have sophisticated systems for identifying players at risk of addiction and protecting them. Operators wishing to conduct sports betting must also sign trade agreements with the organizers of sporting events...⁵²

Harm minimisation requirements

4.43 Licensed operators are required by the legislation and decrees to provide a number of harm minimisation measures in an effort to prevent and combat problem gambling. To gain a licence, all operators are required to provide:

- mandatory pre-commitment;
- self-exclusion;
- rigorous age and identity verification checks; and
- play tracking and statements of wins, losses, promotions and financial transactions.⁵³

Pre-commitment

4.44 Players must set an individual deposit and playing limit. The limit may be changed at any time; however, increases will not come into effect for two days. No transactions or play can take place until a limit has been set.⁵⁴

50 Australian Racing Board Limited, *Submission 27*, p. 28.

51 iBus Media Limited, *Submission 42*, p. 42.

52 Australian Racing Board Limited, *Submission 27*, p. 28.

53 iBus Media Limited, *Submission 42*, pp 41–42.

54 iBus Media Limited, *Submission 42*, pp 41–42.

Self-exclusion

4.45 Players must be provided with the ability to self-exclude at any time. Players may determine the length of exclusion; however, the minimum period must not be less than seven days. In addition, players can apply to the ARJEL to add their name to the blacklist. Service operators cannot offer online gambling services to individuals on the blacklist and are required to check each new account against the list.⁵⁵

Player identification and age verification

4.46 When opening an account, players are provided with a temporary account until identity and age have been verified. This requires the provision of identification documentation and supporting bank account information.⁵⁶ Temporary accounts cannot be withdrawn from and are closed after one month if a player has not provided the required documentation.⁵⁷

Bets resulting in debit

4.47 Licensed online poker operators must not accept any bet that would put the player into debit. Prior to games or tournaments, information must be accessible to players which outlines the amount of money required to place bets. Operators are also required to provide players with a system capable of notifying them of total wins or losses at any time as well as a 12 month play history outlining all wins, losses, bets, financial transactions and promotional offers.⁵⁸

Advertising

4.48 Advertising of online gambling in France is regulated under Decree No. 2010-624 of 8 June 2010. The decree concerns the regulation of commercial communications for operators of gambling and for the information of the players about the risks associated with gambling. All commercial communications for a gambling operator must be accompanied by warning messages and phone numbers for responsible gambling help lines. The decree sets out specific locations and wording for such warnings depending on the medium of communication.⁵⁹

4.49 The decree also prohibits online gambling operators advertising in publications for youth, which are defined in Act No. 49-956. The decree further

55 iBus Media Limited, *Submission 42*, pp 41–42.

56 iBus Media Limited, *Submission 42*, p. 41.

57 iBus Media Limited, *Submission 42*, pp 41–42.

58 iBus Media Limited, *Submission 42*, pp 41–42.

59 Article 7, Decree No. 2010-624, English Google translation, <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022320894> (accessed on 18 July 2011).

prohibits advertisements online 'which by their nature, their presentation or object, appear as primarily intended for minors'.⁶⁰

ISP blocking

4.50 French legislation provides the ARJEL with a number of disciplinary sanctions which it may utilise when dealing with non-compliance by licensed and unlicensed online gambling providers. The Australian Racing Board outlined these options in its submission:

The legislation also provides ARJEL with a set of measures to deal with operators that operate without a French licence. The organisation of unlicensed internet gambling will be punished by three years of imprisonment and a €45,000 fine for each individual offence. The connection to these sites, as well as financial transactions between the illegal operators and players, will be blocked.⁶¹

4.51 The application of ISP blocking was explained by the Victorian InterChurch Gambling Taskforce in its submission:

In August 2010, the French Tribunal de Grande Instance de Paris ordered ISPs to block ready access to unlicensed online gambling sites or face a daily fine of €10,000.⁶²

Other

4.52 However, French legislation has received criticism from some in the online gambling industry for the low rate of return to player set within the legislation and the limited number of authorised gambling activities.⁶³

The problem is the cap rate of return to players imposed by French law. Today, we cannot distribute more than 85% of money [to players]. Everywhere in Europe, but also in France if you did not license, you redistribute 96%. We did not imagine how disappointing this would be for French players, who know that [on other non-licensed sites] distribution rates are much higher.⁶⁴

60 Article 7, Decree No. 2010-624, English Google translation, <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022320894> (accessed on 18 July 2011).

61 Australian Racing Board Limited, *Submission 27*, p. 29.

62 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 7.

63 Stéphane Courbit, Chairman, BetClic Everest Group, *BetClic chairman slams French gaming laws*, EGaming Review, <http://www.egrmagazine.com/news/607892/betcllic-chairman-slams-french-gaming-laws-.thtml> (accessed 11 August 2011).

64 Stéphane Courbit, Chairman, BetClic Everest Group, *BetClic chairman slams French gaming laws*, EGaming Review, <http://www.egrmagazine.com/news/607892/betcllic-chairman-slams-french-gaming-laws-.thtml> (accessed 11 August 2011).

4.53 Revised rates of return to player are under consideration.⁶⁵

Alderney

4.54 Online gambling regulation in Alderney was presented to the committee as an example of one of the more successful regulatory approaches.⁶⁶

4.55 eGambling is regulated in Alderney by three pieces of legislation: the Gambling Law (Alderney) 1999, the Alderney eGambling Ordinance 2009, and the Alderney eGambling Regulations 2009. The Alderney Gambling Control Commission (AGCC) was established in 2000 and is responsible for regulating and licensing eGambling in Alderney.⁶⁷ The AGCC provided a submission to the inquiry.⁶⁸

4.56 While the AGCC was established under Alderney law, the majority of organisations licensed in Alderney are located in Guernsey. The AGCC attributes this to the 'world-class telecommunication infrastructure' and the Alderney eGambling (Operations in Guernsey) Ordinance 2006.⁶⁹

4.57 At the end of 2010, there were 51 organisations licensed to operate in Alderney 'holding approximately 80 different licences'.⁷⁰ Licensing operations in Alderney generated an estimated AUD\$5.8 million in 2010.⁷¹

AGCC objectives

4.58 The AGCC aims to provide a regulatory environment which offers 'robust, enlightened, active regulation while also being responsive to the needs of a changing industry'.⁷²

The objectives of the Commission are to protect the reputation of Alderney as a first tier eGambling jurisdiction by seeking to ensure that:

- all electronic gambling on Alderney is conducted honestly and fairly;

65 Mr Jack Smith, *Online Gambling: a new tax program in France*, 6 September 2011, <http://www.poker777.com/20110906/online-gambling-a-new-tax-project-in-france.php> (accessed 7 September 2011).

66 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 4.

67 Alderney Gambling Control Commission, <http://www.gamblingcontrol.org/> (accessed 11 August 2011).

68 Alderney Gambling Control Commission, *Submission 47*.

69 Alderney Gambling Control Commission, *Submission 47 Attachment 1*, p. 2. See also <http://www.gamblingcontrol.org/legislation.php> (accessed 11 August 2011).

70 Alderney Gambling Control Commission, *Submission 47 Attachment 1*, p. 2.

71 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 4.

72 Alderney Gambling Control Commission, *Submission 47, Attachment 1*, p. 2.

- the funding, management and operation of electronic gambling on Alderney remains free from criminal influence; and
- electronic gambling is regulated and monitored so as to protect the interests of licensees', customers as well as the young and vulnerable.⁷³

Licensing

4.59 The Alderney eGambling Regulations provide for three types of gambling licences:

- Category 1 eGambling licences permit licensees to 'contract with customers to organise and prepare the customer for gambling'. This includes entering into agreements, registering and verifying customers' identity, managing customers' funds and promoting and offering services to customers. A Category 1 eGambling licence can only be held by an Alderney company.⁷⁴
- Category 2 eGambling licences permit licensees to 'effect gambling transactions'. This includes striking a bet, operating software or hardware which is used to conduct a gambling transaction and recording the outcome of gambling transactions. A Category 2 eGambling licence can only be held by an Alderney company.⁷⁵
- Temporary eGambling licences permit a foreign company to act as both a Category 1 and Category 2 eGambling licensee for a limited period of time. Temporary licences are 'primarily designed for temporary use by foreign company licensees whilst their usual gambling operations are interrupted'. A Temporary eGambling licence cannot be held by an Alderney Company.⁷⁶

4.60 Before an eGambling licence is approved, all applicants are 'carefully and rigorously scrutinised to confirm that the individual or organisation applying for

73 Alderney Gambling Control Commission, http://www.gamblingcontrol.org/about_us.php (accessed 11 August 2011).

74 Alderney eGambling Regulations 2009, pp 15–27, http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

75 Alderney eGambling Regulations 2009, pp 15–27, http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

76 Alderney eGambling Regulations 2009, pp 15–27, http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

approval is likely to run a highly regulated business within both the spirit and the letter of the Commission's regulations'.⁷⁷

4.61 While each licence type has specific general conditions, all licences are required to adhere to a set of operational requirements. These include control systems and equipment standards, requirements surrounding financial accounts and reporting, monitoring and investigation of gambling activity, and strong harm minimisation and player protection measures.

Harm minimisation and player protection

4.62 All operators licensed in Alderney are required to adhere to stringent harm minimisation and consumer protection measures as a requirement of licence. These measures focus on registration of customers, marketing, identification of problem gambling, availability of responsible gambling information for customers and the ability for customers to place limits on their gambling.⁷⁸ The AGCC regulations also:

...provide extensively for rigorous customer verification; the protection of customer funds; customer complaints; the identification of problem gambling activity and self exclusion mechanisms.⁷⁹

4.63 All Category 1 eGambling licensees are required to register customers prior to accepting bets. Registration must include a risk assessment of the player and stringent age and identity verification checks.⁸⁰ A regular review of any risk assessments must be carried out by licensees to ensure they are up to date.⁸¹ No licensees are permitted to set up anonymous accounts and are required to provide players with information about the rules and requirements of each game being wagered on, including the expected return to player for each game.⁸²

77 Alderney Gambling Control Commission, *Annual Report 2010*, p. 13, http://www.gamblingcontrol.org/userfiles/file/annual_report_2010.pdf (accessed 2 September 2011).

78 Alderney eGambling Regulations 2009, pp 161–175, http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%202011%20and%202011%20amendments.pdf (accessed 11 August 2011).

79 Alderney Gambling Control Commission, *Submission 47 Attachment 1*, p. 3.

80 Alderney eGambling Regulations 2009, pp 161–162, http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%202011%20and%202011%20amendments.pdf (accessed 11 August 2011).

81 Alderney eGambling Regulations 2009, p. 163, http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%202011%20and%202011%20amendments.pdf (accessed 11 August 2011).

82 Alderney eGambling Regulations 2009, p. 166, http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%202011%20and%202011%20amendments.pdf (accessed 11 August 2011).

4.64 All licensees are required to 'establish and maintain procedures...to identify customers who are, or appear to be at risk of becoming, problem gamblers'.⁸³ The regulations require licensees to provide information to players exhibiting problem gambling behaviours and if necessary prevent customers from continuing to gamble.⁸⁴

4.65 In addition to providing responsible gambling information, licensees are required to offer customers the ability to impose limits on their gambling.⁸⁵ A customer may apply in writing to the licensee to place specific limitations on their gambling activity. These may include limits on:

- total spend;
- total time played;
- the number of wagers made; and
- deposits made.⁸⁶

4.66 Each limitation may apply to a single transaction or extended period of time.⁸⁷ Players may elect to set a limit of zero, effectively self-excluding themselves from the activity.⁸⁸

4.67 Upon receiving written notification from a player of their requested limit, a licensee must not encourage a player to increase or remove their limit. Where a customer has set a limit of zero, a licensee is prohibited from 'directly marketing or otherwise publicising its gambling services to that customer whilst the customer's limit continues at zero'.⁸⁹ A customer may, by written notice to the licensee, increase

83 Alderney eGambling Regulations 2009, p. 166,
http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

84 Alderney eGambling Regulations 2009, pp 166–167,
http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

85 Alderney eGambling Regulations 2009, p. 167,
http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

86 Alderney eGambling Regulations 2009, pp 167–168,
http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

87 Alderney eGambling Regulations 2009, p. 167,
http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

88 Alderney eGambling Regulations 2009, p. 167,
http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

89 Alderney eGambling Regulations 2009, p. 168,
http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

or remove their limit; however, this will not take effect for 24 hours. Any notification from a player to reduce their limit will come into effect immediately.⁹⁰

Advertising requirements

4.68 In addition to player protection measures, providers licensed in Alderney are required to adhere to various advertising requirements when promoting services to customers. Advertisements must be truthful, not be distasteful and must not promote gambling to persons under 18 years of age. In addition, advertisements must not link gambling success to personal status, should not encourage or 'dare' individuals to gamble and must not bring into disrepute the island of Alderney or the AGCC. All advertisements must also comply with any regulations in the jurisdiction in which they appear.⁹¹

Non-compliance

4.69 The AGCC has a number of disciplinary sanctions which may be enforced if licensees do not adhere to licensing regulations and requirements.⁹² These sanctions were outlined by the AGCC in its 2010 Annual Report:

The AGCC has a range of sanctions at its disposal, including financial penalties and, for the most serious regulatory breach, suspension or revocation of a licence or certificate. The Commission can also issue a “direction to rectify” – in other words, instructions that the regulatory breach must be rectified within a specified time.⁹³

Taxation

4.70 In contrast to many other jurisdictions, Alderney does not require eGambling providers to pay tax on gambling-related activities if they are licensed in reputable overseas jurisdictions. This enables operators licensed and paying tax in other jurisdictions to avoid paying tax for the same activity twice:

Alderney's unique approach allows the services of platforms, on which all manner of approved and certified games are deployed, to be offered to operators licensed in other reputable jurisdictions without the need for them

90 Alderney eGambling Regulations 2009, p. 168, http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

91 Alderney eGambling Regulations 2009, pp 17–18, 22–23 & 27, http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20201%20%202%20and%202011%20amendments.pdf (accessed 11 August 2011).

92 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 4.

93 Alderney Gambling Control Commission, *Annual report 2010*, http://www.gamblingcontrol.org/userfiles/file/annual_report_2010.pdf (accessed 2 September 2011), p. 16.

to acquire a local license and thereby avoid double taxation and/or double license fees.⁹⁴

4.71 As only Alderney companies can be licensed by the AGCC, companies established by eGambling providers who are licensed overseas for the sole purpose of gaining an eGambling licence in Alderney may qualify for an exemption where they are not required to pay income tax, instead paying a fixed annual fee.⁹⁵

4.72 In a 2008 study, the European Parliament observed that 'European offshore' jurisdictions or 'rock jurisdictions' offer tax advantages such as the zero per cent gambling tax in Alderney as an attempt to attract and retain online gambling operators and compete with other jurisdictions such as the UK.⁹⁶

Effectiveness of regulation in Alderney

4.73 Regulation in Alderney has been regarded as quite successful in providing high quality regulation of eGambling combined with strong harm minimisation and consumer protection measures. Dr Gainsbury and Professor Blaszczynski argued that the AGCC provides an example of a 'successful regulatory framework for Internet gambling and has a 'highly regard[ed] reputation within the Internet casino industry'.⁹⁷

4.74 The AGCC stated that regulation in some offshore jurisdictions such as Alderney is of a similar standard to other reputable online gambling jurisdictions and that the purpose of regulation was not to increase profits, but to provide a safe online gambling environment:

...there is no evidence to suggest that the standards applicable in these offshore jurisdictions are any lower than those applicable in the UK or in some of the new remote gambling jurisdictions in the EEA. It could be argued that the recent flurry of remote gambling laws in Europe and elsewhere in the world has often been motivated by revenue generation rather than attempts to improve player protection. In Alderney, the intention was never to maximise revenue at the cost of regulation but rather to provide a regulatory environment which offers robust, enlightened and active regulation while being responsive to the needs of the industry.⁹⁸

4.75 Success of regulation in Alderney has been attributed to the rigorous testing of online gambling licence applicants' business processes, equipment and overall product

94 Mr Robin Le Prevost, Director of ecommerce Development, Alderney eGambling, 'Alderney: Setting the Standards in Online Gaming, *iGaming Business*, issue 69 July/August 2011, p. 82.

95 States of Alderney Channel Island, <http://www.alderney.gov.gg/Online-Gambling> (accessed 2 September 2011).

96 European Parliament, Policy Department Economic and Scientific Policy, *Online gambling focusing on integrity and a code of conduct for gambling*, November 2008, p. 60.

97 Dr Sally Gainsbury and Professor Alex Blaszczynski. *Submission 7*, p. 4.

98 Alderney Gambling Control Commission, *Submission 47 Attachment 1*, p. 3.

prior to approval and ongoing compliance checks following licensing. Dr Gainsbury and Professor Blaszczyński offered Alderney as an example that could be used to guide the creation of an Australian online gambling regulatory framework which could be refined through consultation with stakeholders and researchers.⁹⁹

99 Dr Sally Gainsbury and Professor Alex Blaszczyński, *Submission 7*, pp 4–5.

