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UK Government Announces Wide-Ranging Changes for Both Retail and Online Gambling in the UK

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SPEED READ

- On 17 May 2018, the U.K. Government published its “response to the consultation on proposals for changes to Gaming Machines and Social Responsibility Measures” (link [here](#)), comprised of 78 pages.
- There will be new rules for Retail operations to include a £2 maximum stake at Fixed Odds Betting Terminals, possible limits on duration of customer play and customer losses, along with enhanced Compliance requirements. No commencement date has been specified but 2020 seems likely.
- Online businesses will be required to significantly enhance their focus on customer care and responsible gambling, with proposals for additional age verification and customer due diligence requirements.
- Rules concerning advertising are to be revised to emphasise responsible gambling and the protection of minors; a possible levy on operators to fund research and treatment for those suffering gambling related harm is floated.
- Operators should ensure that senior level engagement takes place with Compliance functions, that appropriate staff are recruited early to meet forthcoming demands and that they invest in appropriate technology to meet the likely new requirements.
- Comment: In spite of the inevitable challenges ahead, operators should not lose sight of the competitive advantage that can be gained by being at the leading edge of customer care and compliance, particularly as customers become more sensitised to responsible gambling issues and intervention. Nevertheless, operators deserve support and understanding at a very challenging time for the industry and the Government should ensure that there is an open and constructive dialogue with operators if the changes are to be implemented successfully.

Introduction

On 17 May 2018, the Government published its “response to the consultation on proposals for changes to Gaming Machines and Social Responsibility Measures” (the “**Paper**” — link [here](#)), comprised of 78 pages.

In the opening line of the ‘Ministerial Foreword’, Tracey Crouch MP (Minister for Sport & Civil Society) notes that “*Millions of people enjoy gambling responsibly and the Government is committed to supporting a healthy gambling industry that generates employment and investment*”. She goes on to note that “*gambling also carries a serious risk of harm for individual players, as well as for their families and the communities they live in*” before stating that the purpose of the Government’s review “*was to strike a balance between socially responsible growth and protecting the most vulnerable, including children, from gambling-related harm*”.



The most drastic change set out in the Paper is the reduction in the maximum stake at B2 gaming machines - also known as Fixed-Odds Betting Terminals ("**FOBTs**"). However, the Paper also sets out a number of additional steps that the Government either proposes to take, or consult on, in the future.

Whilst the Paper takes every opportunity to reiterate the Government's support for the gambling industry, operators are unlikely to take much comfort from the tone and direction of travel set out in the Paper. Retail outlets will likely suffer a significant hit to their business in circumstances where no concessions are offered in relation to the maximum stake at FOBTs. Further requirements to limit the duration of customer play and the maximum losses that customers can incur, as well as enhanced compliance requirements are likely to be imposed in the future. The impact on jobs and the viability of many premises should not be underestimated.

Online operators will also take little comfort. At a time when they are already struggling to keep up with the pace of regulatory change, the clear focus on enhanced Responsible Gambling ("**RG**") interactions, additional proposals concerning age verification requirements and Customer Due Diligence ("**CDD**") at the point of on-boarding (amongst others) will add significantly to the existing burden.

This article sets out the key points in the Paper that particularly caught the attention of the authors. It also offers brief comment on the likely implications for industry.

Retail

The major change in the Retail space is the reduction in maximum stakes from £100 to £2 at FOBTs. According to the latest data available (for England only), the Government notes that "13.6% of players of gaming machines in betting shops are problem gamblers, the highest rate for any gambling activity". It is further noted that "the highest proportion of those who contact the main gambling addiction provider (GamCare) identify machines in betting shops as their main form of gambling and gaming machines in betting shops also account for one of the highest proportion of those in treatment for gambling addiction". In justifying the new maximum of £2, the Government notes that "over 170,000 sessions on B2 roulette ended with losses between £1,000.01 and £5,000. These sessions persist at average stakes of £5 and £10, but by contrast, none involved average stakes of £2 or below". It is also noted that those who play FOBTs tend to live in areas with greater levels of income deprivation compared to the population average. The implementation date for the new maximum stake is not set out in the Paper. Given that it will require legislation to pass through Parliament and that operators will be given a "reasonable" period to implement the changes, it seems unlikely that they will be in force before 2020.

The Paper notes that, in its response to the Consultation, the Association of British Bookmakers ("**ABB**") referred to a number of other social responsibility measures that it saw merit in pursuing in relation to FOBTs, "including: hard stops when current voluntary time and spend limits were met; debit card blocking as a supplementary tool to the self-exclusion scheme; and expansion of a treatment pilot they have supported aimed at areas of high economic deprivation". The Paper goes on to note that the Government "very much welcome[s] these proposals and encourage[s] the ABB and operators to work with the Commission and the [Responsible Gambling Strategy Board] on how to take these forward". It would therefore appear that, in spite of the reduced maximum stakes, the Government also expects industry to implement the ABB proposals.

The Paper also noted the view of the UK Gambling Commission ("**GC**") that "there is a strong case in principle to make tracked play mandatory across Category B1, B2 and B3 machines... The Commission's advice was that regardless of the level of stake cut Government decides on, a stake cut alone on B2s would not go far enough to address the wider risk of harm, and it proposed to take forward an additional package of measures which we support, including:



- *Banning the facility for machines to allow different categories of games to be played in a single session*
- *Working with industry and others on steps to make pre-commitment tools more effective - this could include ending sessions when consumers reach time and money limits..."*

Given these comments, it seems likely that industry will need to consider how to best implement tracked play and pre-commitment tools in Retail environments, all of which are likely to further reduce revenues in Retail spaces.

The Paper confirms that the Government is not proposing to make any changes in respect of B1 machines (largely located in casinos), B3 machines (located in casinos, betting arcades and bingo venues), Category C machines (located, amongst other venues, in pubs), or Category D machines. The Paper makes clear that, before the Government will allow any increases to permitted stakes or levels of prize money on these machines, they will want evidence that the industry has demonstrated an appropriate improvement in player protection / customer care efforts.

In a slight concession to industry, the Paper notes that, in relation to prize gaming, the Government will permit an uplift in the maximum participation fee from £1 to £2, and an increase in prize limits from £70 to £100. This has been permitted on the basis that "*activities associated with prize gaming are low-risk*".

The Paper confirms that, for the time being, the Government has rejected a call from industry to permit contactless payments, albeit the industry and Commission are encouraged to keep matters under review.

Comment

It remains to be seen whether the very significant cut from £100 to £2 for FOBTs will have the intended effect, or whether those most in need of protection will simply turn their attention to other gambling activity. In balancing the impact of the new limits, account should also be taken of the inevitable job losses and lost revenue to the industry and the Exchequer. Perhaps most importantly, the industry's ability to invest in more holistic initiatives, targeted at those truly at risk, will inevitably be impacted.

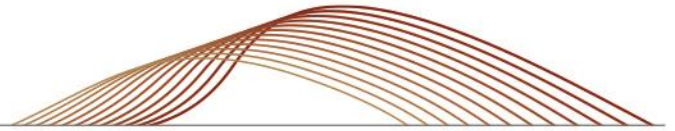
Online

The Paper notes that the "*online market is now worth £4.7bn per annum*" and that, according to a recent report, 10% of the adult population in the U.K. had gambled online in the past year.

The Government's position is that more needs to be done to protect those gambling online. The Government expects operators to immediately trial a range of measures to strengthen the existing protections in place. In what might be seen as a veiled threat, the Paper notes that "*If operators fail to demonstrate sufficient progress then the Government and the Commission has powers to introduce additional controls or restrictions on the online sector*". In addition, the Paper refers to the review undertaken by the GC of the online gambling sector, published on 26 March 2018, which found that "*although online operators are taking steps to minimise harm, progress in this area has been slower than expected - and is not consistent across the sector*".

The Paper reflects on four areas where the GC will bring forward proposals for consultation:

1. **Age verification** — a proposal to remove the current 72 hour period in which operators can carry out age verification, with the new proposed requirement being that age verification must be completed before funds can be deposited to gamble, or allowing consumers to access free-to-play games;



2. **Customer identification** — introducing new requirements meaning that operators will have more information about customers at an earlier stage, as well as proposals for mandatory limits on player spending which can only be increased once an operator has verified certain customer information *“for example via an affordability check”*;
3. **Unfair terms and conditions** — following recent findings by the Competition & Markets Authority, the GC proposes to *“carry out compliance activity to test how remote operators are making changes to ensure promotions are clear and fair to consumers”*;
4. **Ineffective customer interaction** — taking steps to *“strengthen the requirements to interact with consumers who may be experiencing, or are at risk of developing, problems with their gambling”*, as well as using data more effectively to identify potential indicators of harm at an earlier stage.

The GC is also noted to be progressing work in the following five areas, before deciding whether additional consultations and changes to the LCCP are required: (i) effectiveness of the current consumer protections; (ii) game and product characteristics; (iii) requirements on the protection of customers funds and protections around dormant accounts; (iv) gambling on credit; and (v) withdrawal of funds. In the interests of brevity, we do not set out details of each of the above here. However, we note the very significant impact on industry that will inevitably occur if the deposit of funds using credit cards is banned.

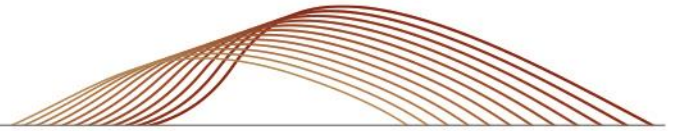
The Paper notes that, since the original consultation was published, the Government has seen progress in the measures being taken to protect players from harm, particularly through (i) the implementation of new rules that require operators to provide customers with more information about their gambling activity to help them manage their time and spend; and (ii) the launch of a new multi-operator self-exclusion scheme allowing customers to self-exclude from all licenced online operators (GAMSTOP).

Nonetheless, the Government is clear that more must be done to protect those gambling online, particularly highlighting the power of technology and algorithms to help identify potentially harmful behaviours and patterns of play, supported by targeted interactions. The Paper notes that the Government *“expect[s] operators to act now and to trial a range of harm minimisation measures using customer data to strengthen their responsible gambling policies and processes. Interventions should be evaluated to ensure they are effective and outcomes should be shared across industry, to raise standards across the sector. If operators fail to demonstrate sufficient progress then the Government and the Commission has powers to introduce additional controls or restrictions on the online sector”*.

The Government notes that it expects to see GAMSTOP rolled out to all online licensed operators *“at the earliest opportunity”* and also suggests that those who utilise the GAMSTOP service should immediately be removed from all direct gambling marketing.

Perhaps most notably for the Online industry, the Paper notes that *“The Commission will also collect further data from operators - including on time of play - in order to consider calls raised by respondents to the consultation for prohibitions on gambling online between midnight and 6am. This will inform the Commission’s understanding of the sector and any future action”*. This is a development which industry will no doubt wish to monitor closely.

The Government is clearly of the view that the online industry is not sufficiently protecting its customers, noting that *“We expect the industry to make rapid improvements to the player protection measures currently in place by gaining a better understanding of the impact of existing and new measures through effective evaluation. We will continue to pay close attention to progress in this area”*.



Advertising

The Paper notes various changes to advertising rules, most notably that “*The Industry Group for Responsible Gambling (IGRG) will amend their codes on gambling advertising to ensure that a responsible gambling message appears for the duration of all TV adverts*”. The emphasis on the tone and target audience of advertising suggests that this is an area which will continue to be the subject of focus, with the Government confirming that its previously announced responsible gambling advertising campaign, set to run over two years with a budget of £5 – £7m per year, will go live later in 2018.

Research

The Paper notes the current arrangement by which GambleAware is funded by industry on a voluntary basis. Acknowledging the importance of research, education and treatment, the Paper notes the GC’s position that “*industry needs to meet funding targets in full on a sustainable and guaranteed basis and if these targets cannot be met, the Commission thinks that there is a strong case for implementing a statutory levy*”. If such a levy is implemented, this will effectively represent a further tax on operators at a time when they are already under great stress as a result of the significant up-scaling of compliance requirements across all areas of the industry. The Paper notes that “*Industry contributions to GambleAware in 2017/18 totalled £9.4m, up 16% on 2016/17*”. Operators will of course be interested to know how much more they will be expected to contribute in the event that a levy is imposed. The Paper also notes the funds paid to GambleAware as a result of ‘voluntary settlements’. However, the Government makes it clear that such settlements ‘*cannot be considered a sustainable source of funding*’.

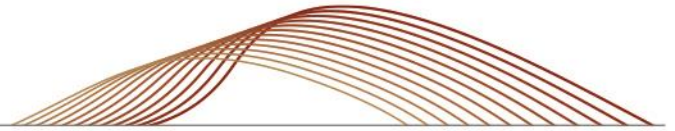
In relation to problem gambling, the Paper notes that:

- the latest statistics for Great Britain (based on the 2015 Health Survey) indicate that 0.8% of the population are problem gamblers, with 3.9% ‘at risk’ (2.8% counted as low-risk, 1.1% as at moderate risk);
- only a small proportion of problem gamblers seek help or receive dedicated treatment. Most dedicated treatment is funded by donations from industry to the voluntary sector rather than from public funds; and
- the charity GamCare, commissioned by GambleAware, provides a telephone helpline, online advice and (with partners) face to face counselling. 8,000 people accessed counselling last year, with 30,000 contacting the helpline.

Throughout the Paper, there is an understandable focus on protection for young people. The Paper notes that “*Recent statistics from the Commission’s 2017 study into young people and gambling, highlighted that 6% of 11-16 year olds had participated in gambling in the past week on commercial premises (such as arcades or LBOs)*”. This will clearly continue to be a major focus throughout the industry and government alike.

Comment

It is abundantly clear that the pressures and demands on gambling operators, in both Retail and Online, are only set to rise in coming years. Compliance costs will only increase, the bottom line will inevitably be hit across both platforms and, as demonstrated by recent enforcement actions, the sanctions and fines on those deemed to fall short of the standards prescribed by the LCCP are likely to occur more routinely and to become more severe. Licence reviews may become the default position for all but the most trivial transgressions and it is also likely that action against individual PML holders will be seen before too long.



Having said this, the focus on protecting those who are most vulnerable to gambling related harm is a welcome development and the industry will be keen to support the overall aim of the proposals, providing that the measures imposed are proportionate, manageable and consistently regulated. An open and constructive dialogue with the industry is essential to ensure that this happens.

Operators should start planning now for the challenges ahead and may wish to consider the following:

- educating senior management as to the clear trend towards increasing regulatory requirements in the short, medium, and long term. Board level engagement will be crucial in helping Compliance teams secure the resourcing and backing that they need to navigate the increasingly demanding landscape ahead and to ensure that precious resources are properly targeted;
- good quality Compliance and Responsible Gambling professionals are in increasing demand but short supply. Operators should take urgent steps to ensure that these key functions are properly resourced, trained, and supported by up-to-date technology;
- as demands to use customer data to identify markers of problem gaming increase, operators should ensure that their in-house Data Management, Analytics and IT teams are sufficiently resourced. Operators should take steps to ensure that their data and databases are robust and that their technology will permit the use of complex analytics.

With a clear direction of travel evident from the Government's comments and recent enforcement actions by the GC, the best way to protect both customers and the bottom line is to upgrade policies and procedures and invest in a more efficient way of doing the right kind of business. On a positive note, operators can take comfort from the competitive advantage that can be gained by those who are at the leading edge of customer care and compliance. As customers become more sensitised to RG issues and interventions, those operators who can distinguish themselves as 'best in class' and offer more attractive betting environments will inevitably attract custom from the right kind of players and gain market share.

The fear that customers will be lost to unscrupulous competitors is largely misplaced when taking a longer term view. The effect of the current proposals and more aggressive enforcement will be to seriously marginalise 'cowboy' operators and may ultimately put many of them out of business. In the meantime, operators who deal responsibly should be congratulated for providing entertainment to millions, employing over a hundred thousand people in the UK and making a very valuable contribution to the economy. Those same operators also deserve support and understanding at a very challenging time for the industry — and occasionally a carrot, not just more stick.



If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings lawyers in London:

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