

EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (ADVERTISING OF FOREIGN GAMBLING)
(AMENDMENT) (No.2) REGULATIONS 2008

2008 No. 2829

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

These Regulations amend the Gambling Act 2005 (Advertising of Foreign Gambling) Regulations 2007, which specify the places that are to be treated as an EEA State for the purposes of enabling them to advertise their gambling services in the United Kingdom. The purpose of these Regulations is to add Antigua and Barbuda to the list of places that shall be treated as an EEA State for the purposes of section 331(2) of the Gambling Act 2005 (“the Act”), but only in so far as that subsection applies to remote gambling.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None

4. **Legislative Context**

- 4.1 The provisions concerning gambling advertising are contained in Part 16 of the Act. Section 331(1) of the Act makes it an offence to advertise foreign gambling other than a lottery (Part 11 of the Act contains separate provisions relating to the advertising of lotteries). Foreign gambling means-

- (a) non-remote gambling which is to take place in a non-EEA State,
and

- (b) remote gambling none of the arrangements for which are subject to the law about gambling of an EEA State.

For the purpose of this offence Gibraltar is to be treated as though it is an EEA State.

- 4.1 Section 331 of the Act extends to Northern Ireland¹. The effect of section 331(1) is that countries or places which are situated outside the EEA and Gibraltar are not permitted to advertise gambling in the United Kingdom. However, section 331(4) of the Act allows the Secretary of State to make regulations specifying countries or places which are to be treated as though they were EEA States for the purposes of advertising gambling in the UK.

¹ See section 361 of the Act.

- 4.2 During the passage of the Gambling Bill Richard Caborn stated that *“In order to be approved for inclusion on the whitelist, a country must be able to demonstrate that it has a regulatory regime that meets the standards set out in the Bill and fulfils the Government’s principles of fair tax competition and transparency”* (See Hansard, 16th December (17th sitting) 613-614).
- 4.3 The Gambling Act 2005 (Advertising of Foreign Gambling) Regulations 2007 (referred to in this Memorandum as the “Principal Regulations”) specify those places which are to be treated as though they were an EEA State for the purposes of allowing them to advertise their gambling services in the UK. Those Regulations named the Isle of Man for the purposes of remote gambling and non-remote casinos; and named the Island of Alderney for the purposes of remote gaming only.
- 4.4 The Principal Regulations were amended by the Gambling Act 2005 (Advertising of Foreign Gambling) (Amendment) Regulations 2008², which specified Tasmania as another place which is to be treated as an EEA State for the purposes of advertising remote gaming.
- 4.5 These Regulations amend the Principal Regulation to add Antigua and Barbuda to the list of places to be treated as an EEA state, for the purposes of advertising remote gambling. The effect is that any place which is regulated by the gambling laws of Antigua and Barbuda will be able to advertise their remote gambling services in the United Kingdom without committing an offence under the Act. However, the section 331 offence will still apply in respect of advertising of non-remote gambling.
- 4.6 These Regulations revoke the Gambling Act 2005 (Advertising of Foreign Gambling) (Amendment) Regulations 2008 (referred to in this Memorandum as the “Amendment Regulations”). The Amendment Regulations substituted regulation 2 of the Principal Regulations for the purpose of adding Tasmania to the list of places which are to be treated as an EEA State for the purposes of section 331(2) of the Act. These Regulations include a reference to Tasmania in the substituted version of regulation 2, thereby making the Amendment Regulations redundant.

5. Territorial Extent and Application

This instrument applies to the United Kingdom

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

² SI 2008/19.

- ***What is being done and why***

- 7.1 Section 331 of the Act makes it an offence to advertise foreign gambling. Foreign gambling is gambling which either physically takes place in a non-EEA State (e.g a casino in Australia) or gambling by remote means which is not regulated by the laws of any EEA State. For the purposes of this offence Gibraltar is treated as if it is an EEA State. The policy intention is to uphold the licensing objectives by protecting consumers from exposure to unregulated and potentially exploitative gambling.
- 7.2 To ensure compliance with the UK's European Community obligations there is no blanket restriction on the advertising of gambling which takes place in, or originates from, an EEA State.
- 7.3 However, the Secretary of State has powers to make regulations that allow countries or places that fall outside the EEA and Gibraltar to advertise their gambling services.
- 7.4 The aim of the policy is to provide an incentive for gambling regulators in other countries to meet Britain's high standards of regulation. This will help protect British consumers, who are the main market for a number of internet gambling operators based all over the world.
- 7.5 In January 2007 the Government started the process of assessing the suitability of jurisdictions to be named in the Regulations. The process sought to achieve fairness, openness and consistency throughout. Jurisdictions were required to make representations to the Secretary of State against the Government's published criteria. This document was published in January 2007 and was placed in the library of both houses on 10th July 2007³.
- 7.6 In summary, the criteria required that jurisdictions have a robust system of regulation, based on the objectives of fair, open, crime-free gambling and the protection of children and vulnerable people. Jurisdictions must have been able to show that they had the legislative authority, enforcement powers and resources to implement their regulatory regime. There was particular emphasis on social responsibility. There were also fair tax criteria, set by the Treasury. Furthermore, all gambling operators permitted to advertise their gambling activities in the UK are subject to strict rules regarding the form and content of advertising set out by the Advertising Standards Authority.
- 7.7 Each jurisdiction was able to make representations to the Secretary of State in respect of the terrestrial (premises-based) gambling it regulates; the remote gambling it regulates; or both.

³ Gambling Act 2005 "Whitelisting" – Criteria to be applied in respect of this provision – guidance document.

- 7.8 The criteria did not prescribe the conditions which a jurisdiction must apply to its licensing regime in order to qualify for consideration under section 331(4). Neither did it demand that a jurisdiction's regime must mirror the licensing regime under the Gambling Act 2005. However, jurisdictions wishing to make representations were asked to set out in writing how they have embedded within their licensing regimes the values which underpin our licensing regime, that is to say, that they too regulate gambling in order to protect children and vulnerable people from being harmed or exploited; to keep crime out; and to ensure that gambling is conducted fairly, and that they have the facilities and resources in place to ensure compliance and enforcement with those values and the regulatory regime in operation.
- 7.9 In addition, jurisdictions needed to be aware that, in addition to UK law and regulations, there are a number of EU-wide regulations and policies with which British-based gambling operators must comply, such as money-laundering. A jurisdiction making representations was required to confirm that its gambling regime and gambling operators are subject to rules on money-laundering, specifically, and financial probity, in general, which are no less stringent.
- 7.10 Jurisdictions must also have demonstrated that they adhered to fair tax principles, in particular, they were judged on openness, equal availability and equal treatment.
- 7.11 By the deadline of 2 April 2007, 7 jurisdictions had made representations. Officials considered each application against the published criteria, in consultation with the Gambling Commission and Treasury (on tax issues). The assessment process involved officials examining the detail of each jurisdiction's representation to gain a good understanding of their regulatory system in order to determine whether they meet the published criteria. After the initial assessment, officials wrote to each jurisdiction with follow-up questions, to clarify certain points and ensure that Ministers would have sufficient evidence to take an informed decision. The jurisdictions were also offered the opportunity to make oral representations. Each jurisdiction provided further information as requested and officials assessed this. No jurisdictions took up the opportunity to give oral evidence. Officials then brought all the evidence to a panel made up of senior officials from DCMS, the Treasury and the Gambling Commission which decided which of the jurisdictions should be recommended to Ministers to be named in the Regulations. Ministers subsequently approved the jurisdictions named in the Principal Regulations.
- 7.12 The jurisdictions of Alderney and the Isle of Man were those who were considered suitable and have a robust system of regulation in this area. Tasmania was also considered to have a robust system of regulation, but did not meet the fair tax criteria on the basis that it charged a higher rate of tax to persons placing bets in Australia to those placing bets from outside Australia. However, Tasmania amended its legislation to the effect that

one rate of tax is applied to both domestic and overseas customers. As a result Tasmania was considered to meet all the published criteria and therefore was specified as a place that could advertise its remote gambling services to the UK.

7.13 Following a request from the Secretary of State for further representations from the jurisdiction of Antigua and Barbuda they were able to demonstrate that their regulation and licensing system is robust and they have the appropriate mechanisms in place to ensure its regulations are enforced across their licence holders.

7.14 Antigua and Barbuda have been informed in writing of the Secretary of State's decision. As with the other jurisdictions, the Secretary of State has asked Antigua and Barbuda to inform the Government of any future changes to their gambling regulatory regime and to ensure that their licensed operators are aware of and compliant with the relevant legislation for Great Britain and Northern Ireland, the ASA's codes and other voluntary codes affecting gambling advertising in the UK. It has also been informed that the Ministers decision will be subject to review at regular intervals.

7.15 The Secretary of State reserves the right to remove a jurisdiction from the list of countries or places permitted to be treated as a EEA state for the purposes of section 331(2) of the Act, under the provision of section 331(4) if, at any stage, if there is concern that the jurisdiction no longer satisfies the criteria set out in the published document. The Secretary of State may also decide to add other jurisdictions to the list later, if the Department invites and receives further suitable representations.

- ***Consolidation***

4.7 These Regulations revoke the Gambling Act 2005 (Advertising of Foreign Gambling) (Amendment) Regulations 2008 (referred to in this Memorandum as the "Amendment Regulations"). The Amendment Regulations substituted regulation 2 of the Principal Regulations for the purpose of adding Tasmania to the list of places which are to be treated as an EEA State for the purposes of section 331(2) of the Act. These Regulations include a reference to Tasmania in the substituted version of regulation 2, thereby making the Amendment Regulations redundant. There are no plans to consolidate these Regulations with the Principal Regulations at this time.

8. Consultation outcome

8.1 There has been no public consultation on these Regulations. These Regulations name Antigua and Barbuda as an EEA state for the purposes of advertising remote gambling in the UK. The decision to name Antigua and Barbuda for these purposes was made in accordance with published criteria. Accordingly, it was inappropriate to consult in this case.

9. Guidance

9.1 The decision to add Antigua and Barbuda to the list of countries permitted to advertise will be notified by the Department for Culture, Media and Sport on its website. In particular, the Northern Ireland office and other Government Departments, such as HM Treasury and the Foreign and Commonwealth Office (FCO), and other relevant agencies, such as Ofcom and the Advertising Standards Authority (ASA) will be notified in writing.

10. Impact

10.1 No Impact Assessment (IA) has been prepared in respect of this particular order and therefore none is attached. The impact on business, charities or voluntary bodies of regulating gambling advertising were considered as part of the Regulatory Impact Assessment (RIA) which was undertaken at the time of Royal Assent of the 2005 Act. The individual Order does not impose any new costs or burdens on United Kingdom businesses.

10.2 The impact on the public sector is limited to the Gambling Commission, and the ASA which both undertake enforcement and monitoring work in respect of gambling advertising. But this is marginal to their normal activity.

10.3 An IA is not therefore required.

11. Regulating small business

11.1 The legislation does apply to small business but does not impose any additional regulatory or administrative burdens. It is allowing remote gambling operators which are regulated by Antigua and Barbuda to advertise their gambling services in the UK.

12. Monitoring & review

12.1 Jurisdictions will be subject to ongoing monitoring to ensure compliance with the published criteria that has been set. The list of countries or places permitted to advertise may also be reviewed at regular intervals, at which point, jurisdictions may be asked to revise and resubmit their representations. The Secretary of State has the power to remove a jurisdiction from the list of countries or places permitted to advertise as if it were an EEA state, if he considers that the jurisdiction no longer meets the criteria.

13. Contact

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