

**EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (ADVERTISING OF FOREIGN GAMBLING)
REGULATIONS 2007**

2007 No. 2329

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. Description

Section 331(1) of the Act prohibits the advertising of gambling taking place in, or originating from, a non-EEA State. These regulations specify places (non-EEA States) which are to be treated as EEA States for the purposes of enabling them to advertise gambling services operating in those places. The regulations make both specific and general provisions for remote and non-remote gambling.

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

These Regulations have been laid during the Parliamentary recess. The reason that they were not laid before recess was because the white list process had not been completed. The process began in April 2007 and took longer than anticipated to complete. This was due to representations being incomplete and the need to request further information.

4. Legislative Background

4.1 These regulations have been made as part of the wider programme of work to implement the Act. They are the first use of these powers.

4.2 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.

- 4.3 Section 331 of the Act extends to Northern Ireland¹. The effect of section 331(1) is that from 1st September 2007, countries or places which are situated outside the EEA and Gibraltar will not be 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. This has become known as “whitelisting”. 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).
- 4.4 These Regulations specify those places which are to be treated as though they were EEA States for the purposes of allowing them to advertise their gambling services in the UK.

5. Territorial Extent and Application

This instrument extends to United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- 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. This has become known as ‘whitelisting’.
- 7.4 The aim of the ‘whitelisting’ policy is to provide an incentive for gambling regulators in other countries to meet Britain’s high standards of regulation. This will

¹ See section 361 of the Act.

help protect British consumers, who are the main market for a number of internet gambling operators based all over the world.

- 7.5 The ‘whitelisting’ process has aimed to achieve fairness, openness and consistency throughout. In order to be considered for inclusion on the whitelist 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 2007².
- 7.6 In summary, the criteria requires 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 show that they have the legislative authority, enforcement powers and resources to implement their regulatory regime. There is a particular emphasis on social responsibility. There are also fair tax criteria, set by the Treasury. Furthermore, all gambling operators permitted to advertise their gambling activities in the UK will be subject to strict rules regarding the form and content of advertising set out by the Advertising Standards Authority.
- 7.7 Jurisdictions were 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.
- 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 which will be in operation in Britain from September 2007 in order to qualify. 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

² Gambling Act 2005 “Whitelisting” – Criteria to be applied in respect of this provision – guidance document.

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 for 'whitelisting' at this time. Ministers subsequently approved the 'whitelisting' of the jurisdictions named in this order.

- 7.12 The jurisdictions of Alderney and the Isle of Man are those who have been considered suitable and have a robust system of regulation in this area.
- 7.13 These jurisdictions have been informed in writing of the Secretary of State's decision. The Secretary of State has asked them 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. The jurisdictions have also been informed that the 'whitelist' will be subject to review at regular intervals.
- 7.14 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.

8. Impact

A Regulatory Impact Assessment (RIA) has not been prepared as this regulation simply names the jurisdictions to be 'whitelisted'. The provision to 'whitelist' is contained in section 331(4) of the Act. The regulation of gambling advertising was subject to an RIA published at the time of royal assent for the 2005 Act.

9. Contact

Eleanor Van Heyningen at the Department of Culture, Media and Sport Tel: 0207 211 6473 or e-mail: eleanor.vanheyningen@culture.gsi.gov.uk can answer any queries regarding the instrument.