

Submission from Mr Jim Allister KC MP on the draft Gambling Levy Regulations 2025

I write to draw the Committee's attention to the Gambling Levy Regulations 2025 that were laid on 12 December.

I do so very much with your terms of reference in front of me and wish to comment specifically under:

'3 (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House'

The Gambling Levy Regulations 2025 are controversial and *politically and legally important and give rise to issues of public policy likely to be of interest to the House* because they exclude Northern Ireland on a ground that does not stand up to scrutiny.

'3 (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act'

The Gambling Levy Regulations 2025 are particularly controversial because of changes that have taken place since the regulation making power was defined twenty years ago.

'3 (d) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation.'

In view of controversy in terms of the scope of 3 (a) and change circumstances in terms of the scope of 3 (b), the explanatory material is insufficient to provide a coherent explanation of the Government's rationale in introducing these regulations.

The following will unpack how 3 (a), (b) and (d) are engaged.

While it might have been correct to state that gambling in NI was wholly devolved and not the responsibility of the Gambling Commission in 2005, that has not been the case since 2014.

This is not to argue that the Gambling Commission has become the Gambling Commission for Northern Ireland as well as Great Britain in every respect, but that it has effectively become Northern Ireland's Gambling Commission in relation to some key points that have direct bearing on the proposed Gambling Levy such that the Levy cannot be dismissed from this legislation and its explanatory material as if gambling is devolved in every respect and as if the Gambling Commission is in no sense the Gambling Commission for Northern Ireland.

Section 5 of the Gambling (Licensing and Advertising) Act 2014 made it an offence for a gambling company to advertise remote gambling in Northern Ireland unless the operator holds a licence with the Gambling Commission. Section 5 is a substantial Section entitled: **'Offence of advertising unlicensed remote gambling: Northern Ireland' where the license in question is one granted by the Gambling Commission.**¹ People in Northern Ireland are consequently targeted with UK wide advertising as a result of the Commission's decision to grant a license as our regulator in relation to this aspect of gambling. Indeed, given that no other

¹ <https://www.legislation.gov.uk/ukpga/2014/17/section/5>

Northern Ireland legislation relating to remote gambling exists apart from the 2014 Act, it is hard to argue that, as a matter of law and practice, remote gambling should be regarded as devolved.

Every online gambling company that advertises in NI does so because the Gambling Commission has granted them a license. This enables them to then make money by trading with Northern Ireland consumers. It is, thus, the regulatory decision of the Commission to grant a license that enables the people of Northern Ireland to contribute to the income of remote gambling companies.

The explanatory notes, while acknowledging the impact of the 2014 Act in relation to Great Britain, ignores it with respect to NI:

'6.1 The Gambling Act 2005 sets out how most commercial gambling is regulated in Great Britain (gambling policy is almost entirely devolved to Northern Ireland). The Act created the Gambling Commission (replacing the Gaming Board) as the sector's principle regulator, giving it responsibility for licensing, monitoring and, where necessary, taking enforcement action against gambling operators.'

6.2 The Act was amended by the Gambling (Licensing and Advertising) Act 2014, so as to extend the Act in 2014 to operators based anywhere in the world who offer remote gambling to customers in Great Britain. The change created a 'point of consumption' regulatory regime, meaning that any gambling company which transacts with British consumers has to have a licence from the Gambling Commission and comply with the licence conditions.'

The reader is left simply with the impression that gambling policy is still 'almost entirely devolved'. This might make some sense if remote gambling was a tiny niche part of gambling but more of the Gross Gambling Yield now comes from remote gambling than from terrestrial gambling!

As the Gambling Commission Industry Statistics - May 2021: Official statistics note:

'Total GGY for the industry was £5.9bn in the half year reporting period April 2020 - September 2020. The next full year's data for reporting period April 2020 - March 2021 is due to be published in November 2021.'

Remote (or online) gambling is the largest combined sector by GGY. With £3.1bn GGY, it comprises 52.3% of the overall market in this reporting period. Online casino games dominate the sector, generating £1.9bn in GGY, mostly from slots games. GGY for remote betting totalled £1.0bn, led by football and horse betting. GGY for remote bingo totalled £98.1m.²

The sense in which the Gambling Commission must be regarded as the Gambling Commission for Northern Ireland for certain regulatory purposes also arises from the fact that Gambling sites can only get a Gambling Commission license, and thus the freedom to operate within the UK, if they provide the online self-exclusion tool GAMSTOP. The result of an amendment brought by a Northern Ireland Peer in 2014, this relates to everyone who lives in the UK, regardless of where they live, including Northern Ireland.

Disaggregation

² [Industry Statistics - May 2021: Official statistics](#)

I understand that Gross Gambling Yield from Northern Ireland and the Channel Islands are disaggregated from GB GGY such that the Levy proposed by these regulations only draw upon the appropriate proportionate contribution of England, Wales and Scotland. That, however, does not make the difficulty go away. It instead confronts us with the fact that since the parent act, and the regulation making powers were passed, as a matter of both law and regulatory practice, key aspects of gambling regulation in NI have been made the concern of the Gambling Commission and in this context it is only appropriate that the Gambling Levy Regulations should make provision for the Gambling Commission to take that part of the levy owed to UK citizens in Northern Ireland relating to remote gambling and the money then distributed to help those experiencing gambling harm in NI. While it will be vital for Stormont to gather the equivalent terrestrial levy, there are grounds for believing that the UK Gambling Levy will be the more important if remote gambling makes a larger contribution to GGY in NI as in GB and given the fact that, as regulation 4 makes plain, the levy on remote gambling is between just over twice and ten times that of terrestrial gambling!

The Moral Imperative

The imperative for this is further developed by the fact that both the Government and Gambling Commission must have regard for the fact that the latest problem gambling prevalence data for Northern Ireland, conducted by the Department of Communities and the Northern Ireland Research Agency, shows that Northern Ireland has a significantly higher problem gambling prevalence than the rest of the UK at 2.3% compared to just 0.5% for England at that time, i.e. it shows the problem is nearly five times worse in NI than in England! It also shows that Northern Ireland's problem prevalence figures are very much at the bad end of the spectrum internationally compared with other countries.³ (The English problem prevalence figures have since increased substantially and, in the absence of any contrary more recent robust statistical analysis to the contrary, and circumstantial evidence testifying to a growing problem, we must assume that things have also deteriorated here in Northern Ireland.)

16 December 2024

Response by the Department for Culture, Media and Sport

Summary

Mr Jim Allister MP's core argument is that no legislation relating to remote gambling in Northern Ireland exists apart from the Gambling (Licensing and Advertising) Act 2014, and thus remote gambling should not be seen as devolved to Northern Ireland. However, provisions in the 2014 Act only relate to remote gambling in a narrow sense i.e. in respect of licensed operators' ability to advertise. Wider regulation of - and protections around - remote gambling, and licensed gambling in Northern Ireland more broadly, is principally for the Northern Ireland Executive (NIE), and certainly not for the Gambling Commission as regulator for licensed gambling in Great Britain.

The amendments made to the Gambling Act 2005 by the 2014 Act are an inappropriate basis for the argument that levy funding should be distributed to Northern Ireland, which is inconsistent with the purpose, aim and scope of the draft Levy Regulations. Mr Allister MP ultimately draws a

³ <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/2016-ni-gambling-prevalence-survey-main-report.pdf>

false equivalence between the ability of gambling operators which are licensed by the Gambling Commission in Great Britain to advertise remote gambling in Northern Ireland in reliance of that licence, and the Gambling Commission's role as the regulator of remote gambling in Northern Ireland. The Gambling Commission is explicit, including in its [formal advice](#) to the UK Government as part of its Review of the Gambling Act 2005, that it is the independent regulator of commercial gambling in Great Britain only.

It is right, therefore, that statutory levy funding is limited to Great Britain only for the following reasons:

1. This is in line with requirements under the Gambling Act which require that the levy be collected from the profits of operators licensed by the Gambling Commission transacting with customers in Great Britain;
2. The territorial jurisdiction of the Gambling Commission;
3. The UK Government's position on gambling policy as an area devolved to Northern Ireland as reiterated in the 2014 Act;
4. Given the devolved nature of gambling policy, the NIE is in the best position to explore whether and how a similar gambling levy could be introduced should it be deemed a priority for the NIE.

Further details on the specific issues raised by Mr Allister are provided below.

Gambling (Licensing and Advertising) Act 2014

Mr Allister is correct on the point that the 2014 Act introduced changes to the regulatory regime. [Section 5](#) of that Act created an offence of advertising unlicensed remote (online) gambling which only applies in Northern Ireland. Section 5 was a consequential amendment that flowed from the switch to a 'point of consumption' regime with the 2014 Act whereby gambling firms, wherever they are based, transacting with British consumers would be caught by provisions in the Gambling Act 2005 and regulated by the Gambling Commission. Thus, the effect of this amendment is that a remote gambling operator who does not hold the required Gambling Commission licence cannot lawfully advertise online gambling in Northern Ireland.

Online gambling firms which transact with British consumers must have a licence issued by the Gambling Commission. Among other things, this licence regulates the activities of gambling operators in respect of online gambling in Great Britain, and the Commission can and does take actions against operators who fail to adequately protect their consumers. Thus if a gambling operator's adverts can be seen by British consumers, they must have the appropriate licence. Section 5 of the 2014 Act was therefore designed to recreate the offence in Section 331 of the Gambling Act 2005 (repealed by the 2014 Act) without which there would be no restrictions on advertising in Northern Ireland. This amendment, however, extended only this specific protection to consumers in Northern Ireland, as opposed to the wider regulatory regime and/or the jurisdiction of the Gambling Commission in respect of online gambling.

This does not therefore mean that (a) the Gambling Commission has become responsible for remote gambling in Northern Ireland nor (b) result in an unjustifiable exclusion of Northern Ireland from the Gambling Levy Regulations. While those in Northern Ireland may be exposed to gambling advertising by online gambling operators reliant on a licence issued by the Gambling Commission, the purpose of section 5 is to criminalise advertising gambling which is not licensed in Great Britain rather than regulating remote gambling itself. Further, any prosecution of the offence of advertising unlawful gambling would not be carried out by the Gambling Commission and Mr Allister's argument would unreasonably extend the Commission jurisdiction beyond

Great Britain with no basis in legislation. It is also therefore irrelevant for the purposes of the proposed Regulations that a majority of gambling profits are derived from online gambling which Mr Allister incorrectly argues provides a rationale for the levy to extend to Northern Ireland.

In sum, consumers in Northern Ireland do not fall under the remit or protection of the Gambling Commission but are the responsibility of the Northern Ireland Executive. It is in this sense that the draft Gambling Levy Regulations stipulate that gambling is a devolved issue (as reiterated by the Northern Ireland Assembly APPG).⁴

Devolution and thus exclusion of Northern Ireland from the statutory levy

The Explanatory note to the 2014 Act sets out the devolution arrangement clearly:

“Gambling is also a transferred matter for the purposes of the Northern Ireland Act 1998. Westminster will not normally legislate with regard to a transferred matter in Northern Ireland without consent of the Northern Ireland Assembly. Sections 3(1), 5 and 6 extend to Northern Ireland. The Northern Ireland Assembly passed a Legislative Consent Motion consenting to these provisions on 17 June 2013.”

The Gambling Levy Regulations are subject to the jurisdiction of the Gambling Act 2005. The Act generally extends to England and Wales, and to Scotland with the exception of sections 148 (legal assistance scheme), 221 (fees) and 346 (prosecution by licensing authority). Sections 43 (chain gift schemes), 331 (foreign gambling) and 340 (foreign betting) apply to Northern Ireland.

While one could argue that consumers in Northern Ireland contribute to the income of remote gambling companies as a consequence of advertising allowed under section 5 of the 2014 Act, there is no legislative basis for the Gambling Commission to levy profits made in Northern Ireland. The Gambling Commission does not collect data on the Gross Gambling Yield (GGY) - the basis on which the levy will be charged - accrued in Northern Ireland, nor is the Commission responsible for the conduct of licensees with customers in Northern Ireland. It is therefore right that profits levied in Great Britain provide funding for projects and services in Great Britain only and there is no basis for Mr Allister’s argument that levy monies should be directed to Northern Ireland on the basis of gambling-related harm in Northern Ireland.

There are also likely to be some indirect benefits of levy funding to citizens in Northern Ireland. For example, the UK Government is clear that prevention and early intervention will form a crucial part of the future levy regime. As such, initiatives such as informational messaging or wider campaigns to raise awareness of gambling-related harm and the support available will likely use online platforms to maximise reach and thus be visible to people in Northern Ireland. Likewise, the levy will provide dedicated funding to increase quality, independent research on gambling and gambling-related harm to fill key gaps in the evidence base and inform future policy and regulation. It is likely this will produce invaluable insights for the Northern Ireland Executive in taking decisions on gambling regulation to better protect players in Northern Ireland.

GAMSTOP

Before the Lords Report Stage for the Gambling (Licensing and Advertising) Bill, Lord Browne of Belmont (DUP) moved an amendment for the Gambling Commission to hold a list of persons

⁴ Written evidence submitted by the Northern Ireland Assembly All Party Group on Reducing Harm Related to Gambling: <https://committees.parliament.uk/writtenevidence/122965/pdf/>

who have registered to be excluded from access to remote gambling websites, and that it should be a licence condition for an operator to make self-exclusion available to consumers.⁵

However, this amendment was not included in the final Act. Further, GAMSTOP applies within Great Britain as set out on the Gambling Commission's website.⁶

“GAMSTOP helps you put controls in place to restrict your online gambling activities. Once registered, you will be prevented from using any gambling websites and apps run by gambling businesses licensed in Great Britain, for a period of your choosing.”

This is reiterated on the GAMSTOP website.⁷ While GAMSTOP may be available for residents of the United Kingdom, GAMSTOP is clear that the regulatory regime for online gambling outside of Great Britain (but within the UK) means that they cannot guarantee that residents would be blocked from accessing all gambling websites and apps run by participating companies licensed in Great Britain if they registered with GAMSTOP.⁸

Ultimately, the extent of GAMSTOP which is focused on Great Britain but may, in some instances, extend to the UK is not an appropriate basis for the argument that the Gambling Levy Regulations should extend to Northern Ireland. These are two distinct issues and any attempt by GAMSTOP to extend protections to residents in Northern Ireland should not be seen as changing the Gambling Commission's jurisdiction for regulatory purposes.

Bid for Gambling Levy proceeds in Northern Ireland

Mr Allister's demand in the penultimate paragraph for levy proceeds to be applied in Northern Ireland are based on the "key aspects" of (i) section 5 of the 2014 Act and (ii) GAMSTOP. As set out above, neither aspect appears relevant to the scope and purpose of the Levy Regulations. As such, we are confident that the argument as a whole does not stand.

Problem gambling statistics in Northern Ireland

As the regulator for commercial gambling in Great Britain, the Gambling Commission does not collect statistics on the prevalence of gambling-related harm in Northern Ireland. We are nonetheless aware that there is evidence to show elevated 'problem gambling' levels in Northern Ireland and the impact harmful gambling can have on individuals, families and communities across the UK.

The UK Government and the Gambling Commission are taking action within their powers to prevent gambling harms before they occur and ensure there is effective support available for those in need. However, as set out in the note above, gambling is devolved to Northern Ireland and, as such, developing the most appropriate approach to tackle gambling-related harm to help residents in Northern Ireland is a matter for the Northern Ireland Executive. DCMS Ministers and officials stand ready to support the Northern Ireland Executive's work to strengthen gambling regulations. **7 January 2025**

⁵ Gambling (Licensing and Advertising) Bill, Amendment to be moved on report:

<https://publications.parliament.uk/pa/bills/lbill/2013-2014/0061/amend/am061-R-h.htm>.

⁶ <https://www.gamblingcommission.gov.uk/public-and-players/page/free-multi-operator-and-national-self-exclusion-schemes>

⁷ <https://www.gamstop.co.uk/>

⁸ <https://info.gamstop.co.uk/hc/en-gb/articles/8980501375122-How-does-GAMSTOP-work-in-the-Channel-Islands-or-the-Isle-of-Man>