

## **Gambling Division, Government of Gibraltar – Written evidence (GAM0026)**

1. This response is made to the call for evidence by the House of Lords Select Committee on the Social and Economic Impact of the Gambling Industry. It is made on behalf of the Gibraltar Gambling Division which is part of the Government of Gibraltar's Ministry of Commerce.
2. The response will deal with aspects of the two questions below from the perspective of an offshore regulator that is nevertheless closely aligned with the UK regulatory model. We propose to confine ourselves to two subject areas, those being the effectiveness of offshore regulation (to include Brexit issues) and research. However, we believe a short exposition of the gambling legislative framework will set matters in context.
  - *Is gambling well regulated, including the licensing regime for both on-and off-shore operations? How successfully do the Gambling Commission, local authorities and others enforce licensing conditions including age verification? What might be learned from comparisons with other regulators and jurisdictions?*
  - *How might we improve the quality and timeliness of research in the UK? What changes, if any, should be made to the current arrangements for funding, commissioning and evaluating research in the UK? What might be learned from international comparisons?*

### **Background and Legislative Framework**

3. Gibraltar is a British Overseas Territory and the Gibraltar Government consists of Her Majesty, represented in Gibraltar by the Governor, and the elected Government. The elected Government has executive competence for all matters with the exception of those matters for which the Governor has responsibility pursuant to section 47 (1) of the Constitution. These are defence, external affairs and internal security.
4. Other than for those three areas, Gibraltar is entirely self-governing. Gambling is regulated under the Gibraltar Gambling Act 2005 and Gibraltar has been a primary hub for online gambling for over a decade.
5. The Minister acts as Licensing Authority and is advised on regulatory matters by the Gibraltar Gambling Commissioner ("**GGC**").
6. The Government operates a selective licensing policy which has resulted in a number of major UK facing online brands being located in the jurisdiction. These include GVC (Ladbrokes/Coral brands), William Hill Online, 888, Bet Victor, Betfred and others. At the time of writing bet365 is also located in Gibraltar although elements of that business will re-domicile in Malta, as a result of Brexit contingency planning.
7. Due to the presence of these major B2Cs, some 15 B2B (mainly games suppliers and aggregators) are located and licensed here. Other games suppliers are "sheltered" with existing licensees (being allowed to supply

Gibraltar licensees under the control of a current licensed operator) and all software suppliers with whom licensees wish to do business are subject to approval by the Gambling Division.

8. We estimate that at least 75% of UK online betting takes place in or from Gibraltar with a significant but lesser percentage of UK online gaming taking place.
9. The gambling industry is a very large part of the Gibraltar economy, contributing around 25% of GDP and employing some 3500 workers. Many of these are cross border workers travelling from Spain into Gibraltar every day to work. Companies based here pay corporation tax, PAYE and a low rate of gaming tax (0.15% of gross gambling yield).
10. That said, and for the avoidance of doubt, these companies pay UK point of consumption tax on gross gambling yield from UK customers. UK facing operators are also subject to a dual regulatory regime being regulated by the Gambling Commission of Great Britain and the Gibraltar Gambling Division.
11. The Gibraltar regulatory regime requires operators to have social responsibility measures in place and for operators to comply with the Gibraltar Proceeds of Crime Act 2015. The Gambling Commissioner is the industry regulator for the purposes of anti-money laundering and countering terrorist financing. Gibraltar is currently in the process of updating its gambling legislative framework to include a more flexible enforcement regime with similarities to the UK regime. A compliance based approach will be maintained, with sanctions reserved for the most serious cases of regulatory failure.
12. As mentioned above, Gibraltar sets a high licensing bar and devotes resources to carrying out robust due diligence on licensees and software suppliers.
13. Through the Joint Ministerial Committee (UK and Gibraltar), Gibraltar is the only jurisdiction which has secured specific guaranteed access to the UK gambling market in a post Brexit environment.

### **Offshore Regulation**

14. It is our view that a situation where UK facing operators are based in Gibraltar does not impede effective UK gambling regulation. In fact, there is the capacity, post-Brexit, to enhance the regulatory alignment between the UK and Gibraltar, given the unique constitutional relationship.
15. There is already a Memorandum of Understanding (MOU) in place between the Gambling Commission of Great Britain (GBGC) and the GGC. This covers policy and cooperation across the wider spectrum of regulation. There is scope for more coordination at a compliance level and in relation to matters of social responsibility.

16. One of the main advantages for Gibraltar, in terms of regulation, is the geographical proximity of the regulator to all of the operators. This has aided an understanding of the industry without undermining the integrity of the regulatory regime.
17. Emerging issues can be dealt with quickly and there is scope in a developed relationship for the GBGC and the GGC to pursue common objectives, including the protection of vulnerable persons, under a regulatory framework that is broadly similar.
18. Gibraltar is in the process of a legislative review that will update both primary/secondary legislation and the wider regulatory framework. The proposals include adopting some regulatory best practice from the UK.
19. Information sharing between regulators (with consent or statutory gateways) may reduce regulatory bureaucracy for operators and increase the effectiveness of UK and Gibraltar regulation.
20. With a will to do so, there is also scope for the passporting of licenses and other regulatory approvals between the two jurisdictions.
21. The tensions that existed between the two jurisdictions during the litigation concerning the imposition of the UK point of consumption tax have all but disappeared and the imposition of that tax did not see a migration of operators away from Gibraltar as predicted by some commentators. Brexit could have a more significant effect.

### **Brexit Issues**

22. The Gambling Commission of Great Britain (GBGC) currently operates a policy of being neutral on the issue of the location of gambling servers and other key gambling equipment under certain conditionality. The primary condition is that in the event of a regulatory investigation or enquiry that data is unequivocally available for review.
23. Before the vote to leave the European Union, the UK Government, through the auspices of DCMS was an active participant in the European Commission debate concerning the abolition of the legislative frameworks of individual EU jurisdictions that supported "data localisation".
24. There was, and still is, a push to create an EU Single Digital Market strategy, in terms of data transfer, with localisation of data (storage on local servers) only being exempted on national security grounds. The intention of the policy was to support the growth of the European IT data industry where certain jurisdictions (Netherlands, Republic of Ireland, the UK and others) with large server farms may have benefitted economically; with this area expected to grow in the short term to around 5% of European GDP.
25. Ironically Brexit and a potential interruption of services between the EU and the UK in the event of a no deal (or a goods only deal) may mean that the UK and Gibraltar may be frozen out of the EU data economy with

an insistence that if UK or Gibraltar entities wish to provide services into the EU, they will need to be (a) domiciled in the EU (b) store data on servers based in the EU (b) be licensed in the EU.

26. That may also mean that on a reciprocal basis that the UK Government has the capability to impose similar restrictions. This could mean that gambling operators with technology based in Malta or elsewhere in the EU may not be able to access the UK market (unless licensed in the UK or Gibraltar and with servers in one of those two locations). This would require a change in GB Gambling Commission policy, but that would be a political decision, not a regulatory one. The change would not require primary legislation.
27. A failure by the UK Government to act quickly on this issue, in the event of "no deal", could have negative effects on the Gibraltar gambling industry and the Gibraltar economy.
28. The landscape is further complicated by the existence of GDPR and the fact that transfers of data can only move externally from the EU if the jurisdiction to which the data is transferred in the event the EU Commission designates the jurisdiction as having equivalent levels of data protection (including abiding by the principles of GDPR). Gibraltar has GDPR compliant data protection legislation but, like the UK, can only apply for equivalence after the departure from the EU.
29. It is anticipated that post-31st October European data regulators will start enforcement proceedings against operators to disrupt the natural flow of data to and from the EU.
30. It is against this background that Gibraltar's B2C operators, with EU exposure have been developing and implementing contingency plans. Those that are UK facing are generally less affected, because access to the UK market has been guaranteed.

### **Research**

31. Gibraltar has already publicly supported the UK's National Harm Reduction Strategy. Gibraltar based operators are leading on technology developments to identify markers of harm and in commitments around funding and other harm reductions measures.
32. Coordination between online operators is essential in terms of sharing best practice and discovering what works and what does not. We believe that objective academic research with access to industry data is an essential part of the process.
33. The University of Gibraltar is in the process of setting up an Academic Chair to lead a faculty on research into problem gambling and provide training on responsible gambling best practice for individuals working in the industry. Operators have provided funding guarantees and commitments in respect of the provision of data which will be made readily available to the wider academic community.

34. Discussions are ongoing with various parties about how this programme can be integrated into the wider UK harm reduction strategy. This process will not only benefit the UK, but have impact on consumers in the wider gambling markets offered by Gibraltar operators. It would be a wasted opportunity if this level of integration with the UK did not take place.

Andrew Lyman  
Executive Director, Gambling Division, Government of Gibraltar

*5 September 2019*