

Gambling Sector Report

1. This is a report for the House of Commons Committee on Exiting the European Union following the motion passed at the Opposition Day debate on 1 November, which called on the Government to provide the Committee with impact assessments arising from the sectoral analysis it has conducted with regards to the list of 58 sectors referred to in the answer of 26 June 2017 to Question 239.
2. As the Government has already made clear, it is not the case that 58 sectoral impact assessments exist. The Government's sectoral analysis is a wide mix of qualitative and quantitative analysis contained in a range of documents developed at different times since the referendum. This report brings together information about the sector in a way that is accessible and informative. Some reports aggregate some sectors in order to either avoid repetition of information or because of the strong interlinkages between some of these sectors.
3. This report covers: a description of the sector, the current EU regulatory regime, existing frameworks for how trade is facilitated between countries in this sector, and sector views. It does not contain commercially-, market- or negotiation-sensitive information.

Description of sector

4. In the Gambling Act 2005, gambling is defined as betting, gaming or participating in a lottery. The commercial gambling sector includes betting, arcades, casinos and bingo - both land-based and online operators. Lotteries can only be run for good causes and cannot be run for commercial or private gain.
5. According to the Government's economic estimates, Gross Value Added (GVA) for the UK gambling sector, including lotteries, was £10.3 billion in 2015. It exported £42 million worth of services to the EU in 2014 and imported £106 million, resulting in net imports of £64 million.¹
6. Gambling is devolved in Northern Ireland, where it is legislated through the Betting, Gaming, Lotteries and Amusements (Northern Ireland) 1985. Order and enforcement of gambling law is a matter for the Police Service of Northern Ireland. It is substantially reserved in Scotland and Wales. The Gambling Commission is the regulator for suppliers of commercial gambling services, lotteries and machine manufacturers in Great Britain. It also regulates the National Lottery under the National Lottery etc. Act 1993.
7. Recognising the growth in online gambling, the Gambling (Licensing and Advertising) Act 2014 changed the licensing regime from a "point of supply" to a "point of consumption"(POC) basis. All operators that offer gambling services to customers in Great Britain are now required to be licensed by the Gambling Commission, regardless

¹ [DCMS Economic Estimates \(2016\)](#), Department for Culture, Media and Sport, August, 2016

of where they are based. This requirement is separate to any regulatory arrangements that may be in place in the jurisdiction where the operator is based.

8. Many of the operators providing gambling services to consumers in Great Britain are located overseas - for example Gibraltar, Malta, Guernsey and Alderney. This may mean they have to be licensed by two regimes, for example, in the case of operators in Gibraltar, if they provide services to customers in Britain, they are licensed and regulated by their own Gambling Commissioner, in addition to the British regulator, the Gambling Commission.
9. All commercial gambling businesses which hold a licence under the 2005 Gambling Act must comply with that legislation and Gambling Commission's Licence conditions and codes of practice (LCCP). The licensing objectives are designed to keep gambling free of crime, ensure it is fair and open, and protect children and vulnerable people from harm or exploitation.
10. The Gambling Commission collects data covering all operators who sell to British customers, wherever they are located. The Gambling Commission estimates that the British commercial gambling market generated £10.2 billion in GGY (Gross Gambling Yield, the amount staked by customers minus winnings paid out) in the year to September 2016.² Including lotteries, the GGY for the year was £13.8 billion.³

Land-based operators

11. The largest of the land-based sectors in terms of total GGY is betting (shops and on-course), which includes GGY from gaming machines in bookmakers and betting on sports and events, with a GGY of £3.4 billion.⁴
12. There are 147 land-based casinos in Great Britain, which generated a GGY of £1.2 billion in 2016.⁵ 83 per cent of casino GGY derived from casino games such as roulette and blackjack, with 17 per cent coming from gaming machines.

Remote / online gambling

13. Great Britain has one of the largest global online gambling markets and as such has developed a pool of expertise. UK listed online gambling companies offer gambling services to consumers in a range of markets including the EU, United States of America and Australia.
14. Remote/online gambling is the largest sector of the British gambling market and accounts for 44 per cent of the commercial gambling market as measured by GGY, with a GGY in 2016 of £4.5 billion and an estimated seven million individual consumers.⁶

² [Gambling Commission industry statistics, 2016](#), Gambling Commission, November, 2016

³ [Gambling Commission industry statistics, 2016](#), Gambling Commission, November, 2016

⁴ [Gambling Commission industry statistics, 2016](#), Gambling Commission, November, 2016

⁵ [Gambling Commission industry statistics, 2016](#), 2016, Gambling Commission, November, 2016

⁶ [Gambling Commission industry statistics, 2016](#), Gambling Commission, November 2016

Lotteries

15. The National Lottery is one of the largest gambling sectors. Sales were £6.9 billion for the 2016/17 financial year (a 9 per cent decrease compared to the year prior) while returns to good causes were £1.64 billion (15% lower than in the previous 12 month period).⁷⁸ Large society lotteries, historically the smallest market share, saw a GGY equivalent increase to £404.2 million, a growth of 8 per cent for the period October 2015 to September 2016; with balance to good causes at £231.8 million, the highest reported to date and up 9 per cent on the previous year.⁹

Horseracing

16. British horseracing, is not classified as part of the gambling sector, but is intrinsically linked to it. The interdependency between the betting and racing industry is recognised by the European Commission in its 2011 Green Paper on online gambling in the internal market stating that ‘a specificity of horse racing compared to other sports is that its primary attraction is for gamblers. Thus, to a greater degree than other sport events, its viability will depend on sufficient proportions of gambling revenues being reinvested into the activity’.¹⁰
17. Horseracing is Britain’s second largest sport in terms of employment and revenues generated annually.¹¹ Off-course betting on horseracing by consumers in Britain generated £4.6 billion turnover in the year to September 2016 yielding £333 million in GGY. Online (remote) betting on racing accounted for a further £5.4 billion in turnover and £353 million GGY.¹² Gambling Commission industry statistics demonstrate that on-course betting on horseracing has decreased from £24 million GGY in 2009/10 to £20.6 million in September 2016.
18. Any operator providing betting services on horseraces must be licensed by the Gambling Commission. However, the Gambling Commission is not responsible for overseeing the sport of horseracing itself. The British Horseracing Authority (BHA) is responsible for the governance, administration and regulation of horseracing and the wider horseracing industry in Britain.

The current EU regulatory regime

19. Gambling legislation is not harmonised at EU level, and each Member State has the right to establish national provisions on gambling. Each Member State has developed and maintains its own national legislation and licensing rules.

⁷ Camelot Media Briefing, October, 2017

⁸ National Lottery statistics – returns to good causes, Gambling Commission, June, 2017

⁹ Gambling Commission industry statistics, 2016, Gambling Commission, November 2016

¹⁰ European Commission Green Paper 2011 on online gambling in the Internal Market, European Commission, March, 2011

¹¹ Deloitte - Economic Impact of British Racing, Deloitte, June 2013

¹² Gambling Commission industry statistics, 2016 (excel sheet, tab 7, remote data), Gambling Commission November 2016

20. Gambling is an excluded sector for the purposes of the EU Services Directive. Article 2(2)h of the Services Directive says that the Directive does not apply to 'gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions.'¹³
21. The freedom of establishment and the freedom to provide services (Articles 49 and 56, TFEU) are general principles of EU law which can be applicable to gambling. However, Member States may impose restrictions on when, and under what circumstances, gambling facilities can be made available. Case law (see for example Läärä, Zenatti and Gambelli) confirms that restrictions of the following kind may be justifiable for overriding reasons relating to the public interest: consumer protection, preventing fraud, preventing "incitement to squander on gambling" and addressing other general social problems.¹⁴¹⁵¹⁶ These various factors closely resemble the licensing objectives set out in the Gambling Act 2005.
22. Although gambling laws are not harmonised at European level, action has been taken against some Member States for unjustified restrictions on the provision of gambling services, including the cross-border provision of internet gambling.¹⁷ Most of these cases involve the reservation by a Member State of rights to offer gambling services to one or more providers. The European Court has recognised in these cases that member states have a wide margin of discretion in this area, given the wide difference in social and cultural traditions across Member States.
23. The Technical Standards Directive (2015/1535/EU) aims to prevent the creation of new technical barriers to trade.¹⁸ Where a Member State wishes to impose a technical regulation (for example, if draft rules will impose quality, safety or performance requirements in relation to an industrially manufactured product), the Directive requires that it must first send a draft of the regulation to the European Commission and other Member States and, except in urgent cases, wait for a period of three months before adopting the regulation. During this standstill period, amendments must still be able to be introduced. Changes made by statutory instrument to permitted stakes and prizes for gaming machines would, for example, be notifiable under the Directive, as would changes made by the Gambling Commission to their own gaming machine technical standards.¹⁹ ²⁰
24. In June 2017 the UK authority, the Competitions and Markets Authority (CMA), launched enforcement action addressing failings by operators around transparency and fairness of gaming sign-up promotions for new customers and practices around free bet offers. A number of online gambling operators were suspected of breaking the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), which is part of the UK's

¹³ [Services Directive \(2006/123/EC\)](#), European Commission, December, 2006

¹⁴ Judgement in the case of Laara, September, 1999

¹⁵ Judgement in the case of Zenatti, October, 1999

¹⁶ Judgement in the case of Gambelli, November, 2003

¹⁷ Infringement and court cases, European Commission

¹⁸ The Technical Standards Directive (2015/1535/EU), September, 2015

¹⁹ The Categories of Gaming Machine (Amendment) Regulations 2014

²⁰ Gaming machine technical standards, Gambling Commission

implementation of the EU Directive 2005/29/EC on unfair business-to-consumer commercial practices.

25. Online gambling operators are data driven and move personal data across national borders in accordance with EU data protection standards. As a member of the EU, the UK is party to the twelve data agreements with third countries that are currently in place.
26. The Gambling Commission cooperates with gambling regulatory authorities of Member States as part of the Commission Expert Group on Gambling Services, primarily for the purposes of data sharing and compliance with applicable laws and regulations, including the protection of consumers and players, the prevention of money laundering and fraud, and the integrity of bets.²¹
27. Casinos (land-based and online) are included in the EU 4th Money Laundering Directive, which is implemented by the Money Laundering Regulations 2017. Having completed a risk assessment, the Government opted to exempt gambling services, except casinos, from the specific provisions of the Anti Money Laundering (AML) regulations but will keep this under review.
28. EU legislation that affects the gambling sector is generally applicable to Gibraltar but not Crown Dependencies or other Overseas Territories.
29. The European Commission has granted State Aid approval for a levy on horserace betting for the benefit of the horseracing industries in the UK, France and Germany.²²²³ In the Britain, the British Horserace Betting Levy requires betting operators to contribute 10% of their GGY on British horseracing derived from customers in Britain. Levy funds are used to support the British horseracing industry, in line with the statutory objectives.²⁴
30. Although the gambling element of horseracing is not governed by EU directives, the movement of people (jockeys and stable staff) is subject to the principles of the European Economic Area (EEA) freedom of movement.
31. In the current system racehorses can move between UK, Ireland and France under the Tripartite Agreement (TPA). The TPA is a derogation from EC Directive 2009/156/EC and enables horses which are of demonstrably higher health status than the general horse population, and therefore at lower risk of transmitting disease, to travel under the TPA without veterinary health certification.
32. A horse travelling within the EU but between the UK and a non-TPA country (e.g. Germany), is subject to further health certification requirements and inspection, however, this is all through the harmonised and streamlined Trade Control and Expert System (TRACES), the EU common database for tracking the movement of animals system

²¹ [Expert Group on Gambling Services](#), European Commission, January, 2013

²² Horserace Betting Levy for Great Britain, European Commission, August 2017

²³ Commission Decision of 19 June 2013 on State aid N° SA.30753 (C 34/10) (ex N 140/10) (France); See Commission decision of 2 July 2013 on State aid N° SA.35200 (2012/N)(Germany).

²⁴ [Betting, Gaming and Lotteries Act 1963](#), s. 24 (1)

which provides for the simple registration and obtainment of a health certificate before a horse is moved.

Existing frameworks for how trade is facilitated between countries in this sector

33. The arrangements described in this section are examples of existing arrangements between countries. They should not be taken to represent the options being considered by the Government for the future economic relationship between the UK and the EU. The Government has been clear that it is seeking pragmatic and innovative solutions to issues related to the future deep and special partnership that we want with the EU.

Gambling and betting services

34. The baseline for trade in services is the World Trade Organisation's (WTO) General Agreement on Trade in Services (GATS). All WTO Members are parties to GATS which sets out general rules, principles and obligations as a framework for trade in services; plus a schedule of commitments which set out how open and non-discriminatory parties commit to be across the service sectors covered.²⁵

35. The gambling and betting services sector is covered by GATS. Legally committed market access for UK gambling operators is therefore dependent on the specific commitments listed in their GATS schedules by WTO Members. In practice, gambling laws and markets can be very different, with some countries restricting or prohibiting certain types of gambling.

36. All of the EU's existing EU trade deals, and those currently under development, look to build on the GATS baseline by expanding the commitments of EU Member States to open up their services markets to each other. The most ambitious of these is the EU-Canada Comprehensive Economic and Trade Agreement (CETA). Gambling and betting are reserved in principle in the CETA, allowing certain Canadian provinces and territories to 'adopt or maintain a measure limiting market access' and EU Member States (with the exception of Malta) to 'maintain any measure with respect to the supply of gambling activities'.^{26 27}

Horseracing

37. Movement of horses between states for racing events is possible between states outside of the EU. The International Federation for Equestrian Sports (FEI), the international governing body of equestrian sports, has developed a non-binding framework with the objective of harmonising the conditions for the international movement of high-

²⁵ The UK is a member of the WTO in its own right, but its current commitments are listed in wider EU schedules.

²⁶ CETA Canadian Provincial and Territorial restrictions, September, 2016

²⁷ [CETA, Annex II Reservations applicable in the European Union](#), September, 2016

performance sport horses. The regulations and administrative processes do nevertheless continue to vary considerably between different states.

Data

38. Underpinning the functioning of the online gambling sector is the ability to collect, share and process personal data. As a member of the EU, in the UK this is made possible by the EU framework for personal data.
39. Directive 95/46/EC on the processing of personal data establishes EU rules for the use and transfer of personal data both within the EEA and between Member States and the rest of the world. From the 25th May 2018, the EU General Data Protection Regulation (GDPR) will replace this Directive as the EU standard on general data processing.
40. The EU data protection framework includes provisions allowing the Commission to give a third country 'adequacy' having assessed that the third country's data protection framework is 'essentially equivalent', which allows personal data to flow freely between the EEA and those third countries. Further detail on issues related to data is set out in the future partnership paper on the exchange and protection of personal data.²⁸

Sector views

[This information was provided by the Government to the Committee, but the Committee has decided not to publish this section]

²⁸ [The exchange and protection of personal data](#), UK Government