

Advertising for betting and gaming



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Introduction

The existing regulation of advertising for gaming and betting is made up of a patchwork of legislation, regulations and codes of practice. The principal areas of law covered by the term, 'gaming' are betting, gaming, lotteries and competitions. The latter two are dealt with in another Lewis Silkin InBrief.

The Gambling Act 2005 (the "2005 Act") is intended to replace all the existing laws into one new statute. It was enacted on 7 April 2005 and it is to be fully implemented by 1 September 2007.

Until the Act is in force, it is necessary to understand both: (a) the current regime under the existing law; and (b) the law that will apply once the new 2005 Act is in full force.

We will therefore consider the current law, under the three principle acts that regulate gambling in the UK: the Gaming Act 1968, the Lotteries and Amusements Act 1976 and the Betting and Gaming Duties Act 1981.

How are betting and gaming defined under the current law?

Betting

Typically, betting includes placing a bet on the outcome of a football match or on a horse race.

Gaming

Traditionally, gaming includes games such as roulette, fruit machines, dice and bingo. However, in practice, much will depend on the way in which games are structured as games that appear to be gaming can technically be categorised as fixed odds betting (e.g. roulette).

Is it legal to advertising betting?

Generally speaking, it is legal to advertise betting without legal restriction, provided that advertisements are not directed towards minors and subject to the media specific regulations discussed below. Bookmakers may purchase bill board advertising space, take out newspaper advertisements and sponsor horse races.

Online betting using servers based in the UK is also legal, provided that a permit has been obtained. On that basis, advertising such online betting (but not gaming) is legal.

Is it legal to advertise offshore betting?

An offshore bet is one placed with a bookmaker outside the UK e.g. a German bookmaker based in Hannover taking bets from punters in the UK or a UK bookmaker who offers bets over the internet via a server located outside the UK, e.g. in Alderney, one of the Chanel Islands, which is technically not part of the UK for these purposes.

Technically, a bookmaker located offshore who accepts bets from UK punters is guilty of an offence if he has not obtained a UK bookmaker's permit, regardless of whether the bet is made online, over the phone or otherwise. This is to prevent UK bookmakers locating offshore to avoid the need to obtain a bookmaker's permit and pay betting duties to the Inland Revenue and Customs & Excise.

It is also illegal to, "knowingly issue, circulate or distribute in the UK, or to possess for that purpose any advertisement or other document pertaining to the making of offshore bets". (Section 9(1)(b) Betting and Gaming Duties Act 1981).

Is it legal to advertise betting websites based overseas?

Although an advertisement for an overseas betting website which is directed at UK residents would be illegal, it is still possible for overseas bookmakers to advertise their offerings via the internet, provided advertisements are not specifically directed to a UK audience. It is debatable whether action would be taken against a bookmaker using a '.co.uk' URL to advertise its services if its website was hosted on servers located outside the UK.

In practice, the Gaming Board (now the Gambling Commission following the introduction of the 2005 Act) has taken a fairly liberal line and, generally speaking, has chosen not to take action against those running offshore betting sites or those advertising such services in the UK.

The number of offshore operators and the difficulties of enforcing judgments overseas are key factors that have persuaded the Board not to prosecute. In addition, the Board is waiting for the new Act to come into force.

Is it legal to advertise on-line gaming?

Under the Gaming Act 1968, gaming may only take place on licensed premises and all participants in the gaming must be present on those premises (e.g. at a licensed casino). There are limited exceptions, mainly for non-commercial gaming.



As legal gaming requires all the participants to be present on the licensed premises, it is therefore generally unlawful to provide online gaming services in the UK. It is not, however, unlawful for UK residents to participate in online gaming.

It is therefore legal to advertise gaming provided that such advertising complies with Section 42(1) (c) of the Gaming Act 1968: *“no person shall issue, or cause to be issued, any advertisement...inviting the public to subscribe any money or money’s worth to be used in gaming whether in Great Britain or elsewhere, or to apply for information about facilities for subscribing money or money’s worth to be so used.”*

An, “advertisement” is defined very broadly to include “every form of advertising, whether in a publication or by the display of notices, by means of circulars or by an exhibition of photographs or film, or by way of sound or television broadcasting (other than a broadcasting service)”. This could include press releases or the like.

In practice, it is generally permissible to advertise a gaming “brand” (such as publishing the location i.e. the URL of a gaming site, games on offer and the rate of payout), provided that there is no express or implied invitation to pay money (such as mentioning money, methods of payment, account-opening etc.).

The Gambling Commission issued a guidance note in conjunction with the Department for Culture, Media and Sport (DCMS) in March 2006, setting out its views on the application of section 42(1) (c) of the Gaming Act 1986. It provides essential guidance for advertisers, publishers and remote gaming operators on the types of advertisement that are in breach of this section.

The DCMS guidance note includes the following:

- “Inviting” extends to any inducement, enticement or encouragement to act in a certain way. To offer a bonus or benefit for taking part in gaming or submitting money for use in gaming is a form of invitation
- Examples of “Inviting the public to subscribe in money or money’s worth to be used in gaming” include: “Play poker everyday”; and “Play online anytime”
- Examples of “inducing/enticing/encouraging the public to subscribe any money or money’s

worth to be used in gaming” include: “We will match your first deposit”; “Free entry”; “Bonus on every deposit”; and “Guaranteed cash prizes everyday”

Factual information about overseas gaming is not illegal e.g. “5 new poker games”, provided they are not inducements. The guidelines may be stricter interpretation of the law than the courts would apply.

A person commits an offence for each day during any part of which a prohibited advertisement is displayed or made accessible, with fines of up to £5,000 and/or up to 2 years in prison.

What are self regulatory controls on non-broadcast advertising?

Internet and other non-broadcast advertising is regulated by the British Codes of Advertising and Sales Promotion’s Non-Broadcast Advertising Code which contain specific rules governing advertising betting and gaming. The specific rules are currently contained in Rule 54:

- The gaming industry and the advertising business accept responsibility for ensuring that marketing communications contain nothing that is likely to lead people to adopt styles of gambling that are unwise
- Marketing communications should be socially responsible and should not encourage excessive gambling
- Care should be taken not to exploit the young, the immature or those who are mentally or socially vulnerable
- Marketing communications should not be directed at people under 18 through the selection of media, style of presentation, content or context in which they appear. No medium should be used to advertise betting and gaming if more than 25% of its audience is under 18 years of age
- People shown gambling should not be, nor should they look, under 25

What are the self-regulatory controls on broadcast advertising?

Television, radio and other broadcast advertising is regulated by Broadcast Committee of Advertising Practice’s (“BCAP”) Television and Radio Advertising Codes respectively.

These Codes are more restrictive than the legal position, and prohibit all betting and gaming advertising in broadcast media, except for interactive or additional TV services (including Teletext).

Television advertising is allowed for lotteries (including the National Lottery, which is also subject to its own Code of Practice), for pools and bingo, subject to the rules currently set out in Rule 11.6 in the Television Advertising Standards Code. These generally reflect the principles set out above in relation to non-broadcast advertising.

Ofcom’s Broadcasting Code came into effect in July 2005, and contains rules on programme sponsorship by betting and gaming companies in Section 9:

- No programme on radio or television may be sponsored by a sponsor that is not allowed to advertise on that medium, with the exception of betting and gaming companies
- Betting and gaming companies must not sponsor programmes aimed at people under eighteen

What are going to be the rules under the new law?

The Act will revoke the current law in its entirety and will make the legislation far simpler. Under the 2005 Act, “gambling” means:

- Gaming
- Betting
- Participating in a lottery
- “Gaming” is, “playing a game of chance for a prize”
- A “game of chance” is a game that involves an element of chance that can be eliminated by superlative skill or which is presented as involving an element of chance, but does not include a sport

- A “prize” (except in relation to a gaming machine) means, “money or money’s worth and includes both a prize provided by a person organising gaming and winning of money staked”

“Betting” is, “making or accepting a bet on (a) the outcome of a race, competition or other event or process; (b) the likelihood of anything occurring or not occurring, or (c) whether anything is or is not true”.

One of the main requirements of the 2005 Act is that the providers of facilities for gambling require an operating licence.

What are the new rules on advertising offshore gambling?

- It will be an offence to advertise gambling outside the European Economic Area (‘EEA’), i.e. “foreign gambling”, including “remote gambling”, i.e. any gambling whereby people participate via the internet, telephone, television or any other technology
- The Government may make exceptions for the benefit of certain places, such as the Isle of Man, Gibraltar, Guernsey and Alderney, which will be treated as being within the EEA
- Remote gambling operators will only require an operating licence if at least one piece of remote gambling equipment used to provide the facilities for gambling is located in the UK. If no relevant equipment is based in the UK, then unlicensed operators will not commit an offence, even if people resident in the UK can participate in the gambling
- It will be an offence to advertise remote gambling facilities which are not licensed or are otherwise unlawful under the Act, even if a licence has been applied for, but not yet issued

- A person commits an offence for each day that a prohibited advertisement is displayed or made accessible

How will the self-regulatory rules change after the 2005 act comes into force?

The ASA will regulate both broadcast and non-broadcast gambling advertisements under the Gambling Act 2005. The Committee of Advertising Practice will draft the rules for advertising gambling, subject to consultation with the Gambling Commission and Ofcom approval.

Primary enforcement will be by the ASA, but compliance with the BCAP and CAP Codes will be a license condition for all gambling operators, enabling the Gambling Commission to apply sanctions against those operators who breach the Codes.

The Gambling Commission anticipates that the Codes will fully reflect the licensing objectives in Part 1 of the 2005 Act, namely:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

The new BCAP and CAP Codes are intended to enter into force at the same time as the 2005 Act and new operator licences in September 2007.

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