



# Gambling Act 2005

## 2005 CHAPTER 19

### PART 16

#### ADVERTISING

#### 327 Meaning of “advertising”

- (1) For the purposes of this Act a person advertises gambling if—
  - (a) he does anything to encourage one or more persons to take advantage (whether directly or through an agent) of facilities for gambling,
  - (b) with a view to increasing the use of facilities for gambling, he brings them or information about them to the attention of one or more persons, or
  - (c) he participates in or facilitates an activity knowing or believing that it is designed to—
    - (i) encourage one or more persons to take advantage (whether directly or through an agent) of facilities for gambling, or
    - (ii) increase the use of facilities for gambling by bringing them or information about them to the attention of one or more persons.
- (2) For the purposes of subsection (1) a person shall be treated as bringing facilities for gambling to the attention of one or more persons with a view to increasing the use of the facilities if—
  - (a) he enters into arrangements (whether by way of sponsorship, brand-sharing or otherwise) under which a name is displayed in connection with an event or product, and
  - (b) either—
    - (i) the provision of facilities for gambling is the sole or main activity undertaken under that name, or
    - (ii) the manner or context in which the name is displayed is designed to draw attention to the fact that facilities for gambling are provided under that name.

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### **328 Regulations**

- (1) The Secretary of State may make regulations controlling the advertising of gambling.
- (2) The regulations may, in particular, make provision about—
  - (a) the form of advertisements;
  - (b) the content of advertisements;
  - (c) timing;
  - (d) location.
- (3) Regulations by virtue of subsection (2)(b) may, in particular, require specified words to be included in advertisements.
- (4) In making regulations under this section the Secretary of State shall, in particular, have regard to the need to protect children and other vulnerable persons from being harmed or exploited by gambling.
- (5) A person commits an offence if he contravenes a requirement of regulations under this section.
- (6) Regulations under this section may provide defences (whether similar to those provided by section 330 or otherwise).
- (7) A person guilty of an offence under subsection (5) shall be liable on summary conviction to—
  - (a) imprisonment for a term not exceeding 51 weeks,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.
- (8) Where a person commits an offence under this section by causing an advertisement to be displayed or made accessible, he shall be treated as committing the offence on each day during any part of which the advertisement is displayed or made accessible.
- (9) Regulations under this section may, in particular, make provision generally or by reference to—
  - (a) specified classes of gambling,
  - (b) specified classes of advertisement, or
  - (c) activity undertaken in or in connection with specified places.
- (10) In the application of subsection (7) to Scotland the reference to 51 weeks shall have effect as a reference to six months.

### **329 Broadcasting**

- (1) Regulations under section 328 may not make provision about advertising by way of television or radio services to which section 319 of the Communications Act 2003 (c. 21) applies.
- (2) The Office of Communications shall under that section set, review and revise standards in respect of advertisements for gambling.
- (3) In complying with subsection (2) the Office of Communications—
  - (a) shall consult the Gambling Commission, and
  - (b) shall ensure that the standards reflect the provisions of regulations under section 328.

- (4) Regulations under section 328 may not make provision about advertising by way of a service which—
- (a) is provided by the British Broadcasting Corporation, and
  - (b) would be licensable under Part 1 or 3 of the Broadcasting Act 1990 (c. 42) or under Part 1 or 2 of the Broadcasting Act 1996 (c. 55) were it provided by a person subject to licensing under that Part.

### **330 Unlawful gambling**

- (1) A person commits an offence if he advertises unlawful gambling.
- (2) For the purposes of this section advertised gambling is unlawful if—
- (a) in order for the gambling to take place as advertised without the commission of an offence under this Act it would or might be necessary to rely on a licence, notice, permit or registration under this Act or an an exception to an offence under this Act, and
  - (b) at the time of advertising—
    - (i) arrangements for a licence, notice, permit or registration, sufficient to prevent the commission of an offence under this Act if the gambling takes place as advertised, have not been completed, and
    - (ii) the arrangements for the gambling as advertised are not such as to ensure that an exception to the offence will apply.
- (3) Subsection (1) does not apply to anything done by way of promoting a lottery.
- (4) It is a defence for a person charged with an offence under subsection (1) by reference to action of a kind described in section 327(1)(a) or (b) to show that he reasonably believed that the advertised gambling was lawful.
- (5) Where a person acts in a way described in section 327(1)(c) he commits the offence under subsection (1) above only if he knows or should know that the advertised gambling is unlawful.
- (6) A person does not commit an offence under subsection (1) by reason only of delivering, transmitting or broadcasting a communication or making data available if—
- (a) he acts in the course of a business of delivering, transmitting or broadcasting communications (in whatever form or by whatever means) or making data available, and
  - (b) the nature of the business is such that persons undertaking it have no control over the nature or content of the communications or data.
- (7) A person guilty of an offence under this section shall be liable on summary conviction to—
- (a) imprisonment for a term not exceeding 51 weeks,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.
- (8) Where a person commits an offence under this section by causing an advertisement to be displayed or made accessible, he shall be treated as committing the offence on each day during any part of which the advertisement is displayed or made accessible.

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- (9) In the application of subsection (7) to Scotland the reference to 51 weeks shall have effect as a reference to six months.

### **331 Foreign gambling**

- (1) A person commits an offence if he advertises foreign gambling other than a lottery.
- (2) In this section “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 (whether by being regulated, exempted, prohibited or otherwise).
- (3) Subsection (2) shall apply to Gibraltar as it applies to EEA States.
- (4) The Secretary of State may by regulations provide that a specified country or place is to be treated for the purposes of subsection (2) as if it were an EEA State.
- (5) A person guilty of an offence under subsection (1) shall be liable on summary conviction to—
- (a) imprisonment for a term not exceeding 51 weeks,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.
- (6) In the application of subsection (5) to Scotland or Northern Ireland the reference to 51 weeks shall have effect as a reference to six months.

### **332 Territorial application: non-remote advertising**

- (1) Regulations under section 328 shall apply to anything in the way of advertising which is done—
- (a) wholly or partly in Great Britain, and
  - (b) otherwise than by way of remote communication.
- (2) The prohibition in section 330(1) applies to anything in the way of advertising which is done—
- (a) wholly or partly in Great Britain, and
  - (b) otherwise than by way of remote communication.
- (3) The prohibition in section 331(1) applies to anything in the way of advertising which is done—
- (a) wholly or partly in the United Kingdom, and
  - (b) otherwise than by way of remote communication.
- (4) For the purposes of this section the following are immaterial—
- (a) the nature of gambling to which advertising relates (whether remote or non-remote), and
  - (b) the location of the gambling to which advertising relates.

### **333 Territorial application: remote advertising**

- (1) Regulations under section 328 shall have effect in relation to advertising by way of remote communication only if—
  - (a) the advertising satisfies the test in subsection (4),
  - (b) the advertising satisfies the additional test in subsection (5) or (6), if relevant, and
  - (c) the gambling to which the advertising relates satisfies the test in subsection (9).
- (2) The prohibition in section 330(1) applies to advertising by way of remote communication only if—
  - (a) the advertising satisfies the test in subsection (4),
  - (b) the advertising satisfies the additional test in subsection (5) or (6), if relevant, and
  - (c) the gambling to which the advertising relates satisfies the test in subsection (9).
- (3) The prohibition in section 331(1) applies to advertising by way of remote communication only if the advertising satisfies the test in subsection (4); for which purpose a reference to Great Britain shall be taken as a reference to the United Kingdom.
- (4) The test referred to in subsections (1)(a), (2)(a) and (3) is that the advertising involves—
  - (a) providing information, by whatever means (and whether or not using remote communication), intended to come to the attention of one or more persons in Great Britain,
  - (b) sending a communication intended to come to the attention of one or more persons in Great Britain,
  - (c) making data available with a view to its being accessed by one or more persons in Great Britain, or
  - (d) making data available in circumstances such that it is likely to be accessed by one or more persons in Great Britain.
- (5) In the case of a broadcast by television, the additional test is that the broadcaster—
  - (a) is under the jurisdiction of the United Kingdom for the purposes of Directive [89/552/EEC](#) on the coordination of provisions concerning television broadcasting, or
  - (b) is not under the jurisdiction of an EEA State for the purposes of that Directive.
- (6) In the case of the dissemination of information by way of an information society service within the meaning of Directive [2000/31/EC](#) on electronic commerce, the additional test is that the service provider—
  - (a) is established in the United Kingdom for the purposes of that Directive,
  - (b) is established in a non-EEA State for the purposes of that Directive, or
  - (c) has been notified that the conditions for derogation specified in Article 3(4) of that Directive are satisfied in relation to the application to the service provider of regulations under section 328 and of section 330.
- (7) The reference to notification in subsection (6)(c) is a reference to written notice which—

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- (a) has been given by the Commission,
  - (b) has neither expired nor been withdrawn, and
  - (c) states whether the Commission’s opinion as to satisfaction of the conditions for derogation relates—
    - (i) to the conditions specified in Article 3(4)(a) and (b), or
    - (ii) by virtue of Article 3(5), only to the conditions specified in Article 3(4)(a).
- (8) In a case to which subsection (7)(c)(ii) applies, the Commission shall perform the duties of notification imposed on the United Kingdom by Article 3(5).
- (9) The test referred to in subsections (1)(c) and (2)(c) is—
- (a) in the case of non-remote gambling, that it is to take place in Great Britain, or
  - (b) in the case of remote gambling, that at least one piece of remote gambling equipment to be used in providing facilities for the gambling is or will be situated in Great Britain.