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Gambling

Introduction

The Gambling Act 2005 (the Act) came into force on 1st September 2007. With it came much greater freedom for gambling operators to advertise in Britain.

In 2005 the online gambling industry was worth about \$10 billion, but UK casino and betting operators were only allowed to advertise their services in an extremely limited manner. A loophole in the law, however, allowed foreign operators to advertise more freely, albeit with certain restrictions. The Government therefore introduced the Act, in order, among other things, to try to deal with this disparity and thus enable UK gambling operators a greater chance to get a piece of the action.

What does the Act cover?

The Act relates to all aspects of the gambling industry. This Ad Guide deals only in the changes to the rules on advertising of gambling.

Gambling is defined in the Act as gaming, betting or participating in a lottery. The law on lotteries and prize promotions introduced by this Act are dealt with in a separate Ad Guide.

Under section 6 of the Act, gaming means “*playing a game of chance for a prize*” which the Act goes on to define further. Section 9 of the Act defines betting as “*making or accepting a bet on:*

- a) *the outcome of a race, competition or process,*
- b) *the likelihood of anything occurring or not occurring, or*
- c) *whether anything is or is not true.”*

What does the Act provide?

Under the provisions of the Act, gambling operators (i.e. those providing gaming or betting services) must be licensed by the Gambling Commission in order to advertise in Great Britain. Any advertising is subject to the provisions of the CAP and BCAP Codes and an industry code (see below).

Gambling operators who are licensed by their respective authorities within the European Economic Area (EEA) are also allowed to advertise, as are operators from certain jurisdictions have been “white-listed” by the Gambling Commission, including Tasmania, Antigua and Barbuda, Alderney and the Isle of Man. Any other off-shore gambling operator will need to be licensed by the Gambling Commission before being permitted to advertise.

What do the CAP and BCAP Codes provide?

The CAP and BCAP Codes contain specific rules relating to the advertising of gambling. Drafted in order to assuage the concerns of many about the relaxation of the rules on the advertising of gambling, the codes are designed to protect vulnerable members of society, especially children.

In summary, section 16 of the CAP Code provides that the content of advertisements for gambling must not:

- portray, condone or encourage behaviour that is socially irresponsible or which could lead to financial, social or emotional harm;
- exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons;
- suggest that gambling can provide an escape from personal, professional or educational problems such as loneliness or depression;
- suggest that gambling can be a solution to financial concerns;
- suggest that gambling can enhance personal qualities;
- link gambling to seduction, sexual success or enhanced attractiveness; or
- be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture.

There are a number of further rules which can be found at the following link:

<http://www.cap.org.uk/The-Codes/New-Advertising-Codes.aspx>

These rules in the CAP Code are mirrored almost exactly in section 17 of the BCAP Code for broadcast advertising. Furthermore, scheduling restrictions prevent gambling advertisements from appearing during or immediately before and after television programmes commissioned for, or directed at, or likely to appeal particularly to, people under 18 (section 32.2.2 of the BCAP Code).

What does the Industry's own Code provide?

Shortly before the new provisions of the Act came into force, and in order to deflect political pressure and appease Gordon Brown's new administration, the gambling industry agreed its own code which would operate in addition to the B/CAP Codes. Technically, this industry code is voluntary, but in practice its provisions are followed, especially since the Gambling Commission monitors compliance when deciding on the grant or revocation of licences.

This code, named the "Gambling Industry Code for Socially Responsible Advertising", contains a number of requirements and recommendations:

- a) All non-broadcast gambling advertising should carry the website address www.gambleaware.co.uk, where it is "feasible, practical and necessary to do so". This address should be presented in a way that it is clearly legible. The same principle applies to broadcast advertising, but the code recognises that in radio advertising, this may cause difficulties, especially if the advertisement refers to the gambling operator's own website address. If this is the case, then the advertisement should carry an educational message – see below

The code goes on to state that, although inclusion of the website address alone is sufficient to meet the basic requirement of this code, advertisers should, where possible, include the phrase "For more information and advice, please visit..." as well.

- b) In addition to the website address, gambling operators are encouraged to include educational messaging, such as "Please play responsibly", "If it's no longer fun, walk away", "Winners know when to stop" or "Don't let the game play you".
- c) Gambling operators are not required to include on their advertisements the fact that they are licensed, but this Code states that they are free to do so if they wish, in which case it is recommended that the advertisement includes the words "Licensed by the Gambling Commission (Great Britain)".
- d) Gambling products should not be advertised on television before the 9pm watershed. This prohibition does not extend to bingo advertising which was permitted under the previous regime.
There is, however, an exemption for the advertising of sports betting around televised sporting events (but not sports themed entertainment programmes).
- e) This industry code also requires that gambling operators should not allow their logos or other promotional material to appear on any commercial merchandising, such as football shirts and the like, which is designed for use by children. The industry code specifies that such merchandise is to be defined as merchandise that does not attract VAT.

Northern Ireland

The Act has not yet been implemented in Northern Ireland, which has its own law, the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, as amended ("the Order").

Under this Order, no advertiser is permitted to issue "any advertisement

- (a) informing the public that any premises in Northern Ireland are premises on which gaming takes place or is to take place, or
- (b) inviting the public to take part as players in any gaming which takes place, or is to take place, on any such premises, or to apply for information about facilities for taking part as players in any gaming which takes place, or is to take place, in Northern Ireland, or
- (c) inviting the public to subscribe any money or money's worth to be used in gaming whether in Northern Ireland or elsewhere, or to apply for information about facilities for subscribing any money or money's worth to be so used".

This prohibition covers the advertising of both remote and non-remote gaming, wherever that gaming operator may be based or licensed.

A gambling advertiser is permitted under the Order to advertise the fact that it offers gaming services and indeed, the games that it offers: it is the invitation to consumers to pay "money or money's worth" which is the problem. Offering an incentive to play would be unacceptable, as would inviting "free entry", which could be regarded as an indirect invitation to subscribe for money, especially if the website includes pay-for-games as well as free-entry ones.

Broadcasters need to take care. Any gambling advertisement which is broadcast in Northern Ireland must comply with the terms of the Order. The inclusion of a disclaimer stating that the advertisement does not apply to Northern Ireland or to Northern Irish residents, would not be acceptable, and would leave the broadcaster open to liability.

Enforcement

It is the Advertising Standards Authority (ASA), not the Gambling Commission, which has taken on responsibility for ensuring that gambling operators comply with the codes. Any non-compliant advertisement must be withdrawn and not run again. If a gambling advertiser seriously or repeatedly breaches the codes, then the ASA may refer them to the Gambling Commission to consider further sanctions.

Final Thoughts

The Act has allowed UK based gambling operators much greater freedom to advertise, which is certainly beneficial. A number of advertisers have, however, been caught out in failing to comply with the advertising codes. Frequently, gambling operators have tried to push the boundaries of the codes, but have had complaints about their advertisements upheld by the ASA. It is therefore imperative for gambling operators to remember to comply strictly with the codes. They also need to bear in mind that many consumers, especially some Christian groups, still regard gambling as a vice that should not be advertised, and will therefore be motivated to complain about an advertisement where opportunities are given to them to do so.

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