

DCMS intends to require all overseas operators to obtain a UK licence

The UK Minister for Sport, Gerry Sutcliffe, has announced proposals to force all remote gambling operators who wish to advertise or provide services to the UK to obtain a licence from the UK Gambling Commission. As foreshadowed in our August 2009 newsletter, this measure is necessary if the Government wishes to create a level playing field for existing UK operators.

There are indications that the changes may include a fast track licensing procedure for those already holding a licence in a white listed country. A consultation period will commence shortly and operators both in the UK and overseas will no doubt want to contribute their views on the plans. Further details of how the new system would operate will appear in the consultation document.

Mr Sutcliffe said, "Online gambling has changed significantly in recent years with

'It would be wrong of us to stand still where things are changing around us'

GERRY SUTCLIFFE, MP

many European countries taking new approaches to regulation. It would be wrong of us to stand still where things are changing around us - especially where the protection of British consumers may be at stake. The new system outlined today will also ensure that all businesses offering online gambling to our consumers adhere to our rules - not someone else's."

Although DCMS focuses on ensuring the same standards apply to all operators targeting the UK market, the proposals were clearly heavily influenced by both by the dwindling number of operators holding UK licences and by the prospect of generating

revenues similar to those achieved by the Italian Government through their new licensing system. Ostensibly, the aim of the new system is to secure contributions towards services such as the treatment of problem gamblers and the horserace industry. If the 15% tax rate is to be applied to all UK licensees, Government coffers will also benefit. DCMS intends to liaise with HM Treasury in relation to the tax implications of the new system.

Changes to the Gambling Act 2005 itself will be required to implement the new proposals, so overseas operators have a stay of execution at least for now. Operators may, however, wish to begin considering applying for a UK licence in advance of the changes. We await the detailed proposals with some trepidation.

FURTHER QUESTIONS?
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- > UK Gambling Law
- > European Union Law
- > Data Protection
- > Commercial
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What's in store for 2010?

2009 saw the European Court of Justice support national monopolies in the Santa Casa case, but also saw various European jurisdictions take steps towards issuing licences, with Denmark and France leading the way and Italy extending the types of licence available. The opening of further European markets is likely to be a key factor for operators in 2010, but this is a lengthy process and we are unlikely to see licences become available in many jurisdictions this year.

Ladbrokes and Betfair continue their long running battle against the Dutch Government for breaching EU laws on the freedom to provide services across Member States. The result of their ECJ case is eagerly anticipated in 2010, following the initial findings delivered by Advocate General Bot on 17 December. The opinion is not legally binding on the Judges, but may give an indication of the eventual decision. AG Bot does not specifically question the right of a Member State to operate a monopoly where it is justified to do so, e.g. to prevent fraud or gambling addiction, but in this case there was no evidence of fraud or addiction. However, he has signalled that it may not be legal for a Member State simply to create its own state monopoly, without having conducted a competitive tender process open to operators licensed in other Member States.

FURTHER QUESTIONS?
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IN BRIEF

Denmark legalises land-based poker

The Danish government has enacted new legislation allowing land-based poker tournaments. The new law came into effect on 1 January 2010. The legalisation of online poker along with betting and casinos is expected to follow.

DCMS consults on product placement on television

The Department for Media Culture and Sports has recently started a consultation to reconsider product placement on television. The consultation closed on 8 January 2010. One of the identified "problem areas" for the DCMS is gambling product placement. Although it would make sense to introduce a 9pm watershed for gambling products and therefore bring it in line with the Gambling Industry Code for Socially Responsible Advertising, the outcome remains unclear.

French liberalisation delayed

It was hoped that France's new system of gambling regulation would be in force in time for the 2010 football World Cup due to take place this summer. However, recent indications are that this is now unlikely, given that a draft bill has not yet been added to the Senate's agenda to be voted upon.

The introduction of a new European Company Form in 2010

New format will help companies to overcome cross-border hurdles

A new European company form, the SPE, is to be introduced and available in the European member States in 2010. The Objective of the SPE is to assist mid-sized companies (with a maximum of 250 employees) with cross-border activities. The intention is to overcome bureaucratic hurdles and administrative associated costs which companies face due to 27 different national company laws. On a national level, the SPE will be complementary to the national limited liability company (i.e. GmbH in

Germany and the Ltd in the UK).

The SPE will have a standardised unitary European company that is based on European Regulation which applies directly to member States. Reference to national law is limited to tax, accounting, criminal, insolvency and employment matters.

Pending a call of alteration by the European parliament, the minimum share capital will amount to Euro 1. The registered seat and the principal place of business of the SPE can be in a different member State. Unlike a UK Ltd company, the SPE can move its registered seat to any other Member State

while maintaining its legal personality. SPE shares are freely transferable but cannot be publicly traded.

The European Commission's advisory group on corporate governance and company law has now drafted sample provisions for the articles of association of an SPE to facilitate a unitary company form. The main advantage hereby is the company's ability to streamline its organisational structure and to avoid discrepancies between national company regulations. Once an SPE is set up, it can be cost – effectively "mirrored" in each Member State.

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Germany



The Interstate Treaty was implemented on 1 January 2008 and prohibits all types of online gambling. The original intention of the Treaty was to prohibit child pornography, but

somehow the German Government managed to squeeze in online gambling as well. While the European Commission is currently assessing the Interstate Treaty, the child-pornography-equals-online-gambling prohibition has already generated a considerable amount of national court cases and further challenges are expected. The good news is however that the federal state of Schleswig Holstein has announced

that it is considering introducing a licensing system for online gambling after the Interstate Treaty expires in 2012. It is expected that the German federal states will not renew the Interstate Treaty and debates have already commenced in Germany on whether online gambling should be handled on a federal or national level.

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Recent research has found that approximately two million German citizens currently participate in online gambling despite the prohibition. Around 85% of online gamblers in Germany are male, compared with around 74% in the UK.

European Union: Social networking sites soon to be governed by consumer protection legislation

The European Commission recently published its new guidance on consumer protection to include blogs and social networking sites. The Commission's main concern is that "social media, which include blogs, social networking sites, have become important avenues for commercial practices, especially hidden ones. For example, several Member States have reported that companies have paid bloggers to promote and advertise their products on a blog". It is further argued that this behaviour amounts to bloggers engaging in hidden commercial practices which should be governed by national consumer protection laws, i.e. the Consumer Protection From Unfair Trading Regulations in the UK.



Many online gambling operators use blogs and networking sites to create online communities and to market their services through community

members. The new guidelines may therefore have a direct effect on these communities and on future marketing strategies.

This proposal mirrors plans by the Federal Trade Commission to introduce Guidelines regulating the use of social media for product endorsements in the United States. A key feature of the FTC's proposed Guidelines is that those endorsing, reviewing or otherwise featuring products or services, for example on a blog, must make it clear if they have received consideration (including free products or services).

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Gambling Commission publishes revised advice on prize competitions

Revised advice note clarifies Commission's views on the boundary between legitimate competitions and illegal lotteries

The UK Gambling Commission has updated its advice to organisers of prize competitions. The amendments come in the wake of the proliferation of house competitions on the internet, which have caused a headache for the Commission in its role of policing the boundary between legitimate prize competitions and illegal lotteries.

A key amendment to the advice, which reflects the Commission's more strict approach, is that competition organisers are now expected to be able to provide evidence to back up their view that their competition meets the skill, judgment or knowledge test in the Gambling Act 2005. The Commission does not think that simply referring to statistics which show the number of people who viewed the website but didn't enter the

competition will be sufficient to prove these people were deterred by the skill, judgment or knowledge requirement. In many cases the best approach would be to carry out market research to test difficulty of questions or other skill requirements.

For those operating 'one-off' competitions with a high value prize, in particular house competitions, the Commission expects particular care to be taken to ensure the test is met. In what we believe is a correct interpretation of the law, the Commission takes the view that for higher value prizes, a higher level of skill, judgment or knowledge is needed to deter potential entrants.

The advice note is not law, but as the Commission is responsible for prosecuting those operating illegal gambling, operators should take note of its interpretation of the law.

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ASA rules on administration of prize competitions

A complaint was received about an online competition, with a prize of a CAD2 Workstation worth £3,695. The complainant received a prize of lower value after the original winner did not respond to the competition promoter. Ultimately, the original winner got in touch with the promoter and was awarded the advertised prize, hence a lower value prize being sent to the complainant. Once they learnt of the complaint, the promoter did offer a prize of equivalent value to the complainant.

In these circumstances, the ASA considered that the original winner ought to have been given a deadline to respond, failing which he would be disqualified. However, because an equivalent prize was eventually offered to the complainant, the ASA did not consider that the competition was unfair.

This ruling highlights the need for promoters of prize competitions to draft terms and conditions dealing with all possible eventualities.

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Rank Group successful in VAT appeal

Rank has won the right to reclaim £25.9m in overpaid VAT on gaming machine income.

The VAT Tribunal found that there had been a breach of the EC principle of fiscal neutrality, which prevents a Government treating similar goods or services differently for VAT purposes. It was

held that jackpot machines must be treated the same as similar machines such as fixed odds betting terminals on which VAT is not charged.

HMRC has since announced that, in addition, main stage bingo should be treated the same as mechanised bingo.

It is thought that the potential claims by other operators following this decision could amount to over £500m. However, HMRC has appealed to the Court of Appeal with a hearing scheduled for April 2010.

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Jersey approves new Gambling Commission

Legislation establishing a gambling commission in the international financial centre of Jersey was approved in December 2009, paving the way for the island to regulate online gambling in the future.

A set of ‘Guiding Principles’ focus on the protection of children and vulnerable persons, preventing fraud and

money laundering and being fair to consumers. Backing up the principles is a provision in the legislation for a social responsibility fund, which the Commission will use to promote these objectives.

This fund will be financed by a statutory levy, which may be set at up to 1% of gross win. A last minute change to the legislation

reduced this from the suggested 2% of turnover, but it is unlikely that even a 1% levy on gross win will be imposed on online operators, not least because this would mean many operators would find Jersey a less attractive jurisdiction than its neighbour Alderney.

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