

Seasons Greetings
from



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Gambling Regulation

Europe

Following the EU Presidency Report on illegal gambling and Mr Barnier's announcement (and postponement) of a Green Paper on gambling, the Council of the European Union has unanimously backed EU online gambling regulation. This means that all the main EU institutions, the Council, the Commission and the Parliament, now back the regulation of online gambling at EU level. The Council does not have any legislative powers but instead outlines an EU policy on gambling which will recognise the importance of national regulators, therefore confirming the move towards national licensing regimes.

It should be made clear that neither the Council nor any other EU institutions promote full harmonisation, but instead envisage member states sharing information. Bearing in mind data protection laws across Europe, it will be interesting to see how this information sharing will take place. It is hoped, however, that the various national licence requirements and application processes can be streamlined through a clear set of EU rules and closer cooperation between national regulators.

Denmark

The European Commission has launched a formal investigation into Denmark's proposed online gambling tax regime after allegations that the tax rate for online gambling operators gives them an unfair advantage over land-based operators in Denmark and violates EU State Aid rules.

The Danish Government proposes a flat tax rate on online gambling of 20% on gross win, compared to 75% for land-based operators.

The European Commission is inviting interested third parties to submit comments to assist the Commission in gaining a "better understanding of the market throughout Europe". Interestingly enough, with all the changes in online gambling across Europe and with new markets opening to online gambling operators, this question has not been raised before despite different tax rates being applied throughout Europe for land-based and online gambling. Other jurisdictions, not least the UK, will await the outcome with great interest.

Italy

The Italian regulator, AAMS, has accused Betfair of continuing to accept bets from Italian residents on www.betfair.com in violation of its licence agreement, which authorizes the operation of www.betfair.it. Betfair's Italian licence was revoked by AAMS at the end of October, however the company lodged an appeal which allowed it to continue trading until a hearing. At the first hearing on 17 December it was determined that Betfair may continue trading in Italy until a second hearing is held, which is expected to take place in early January.



USA

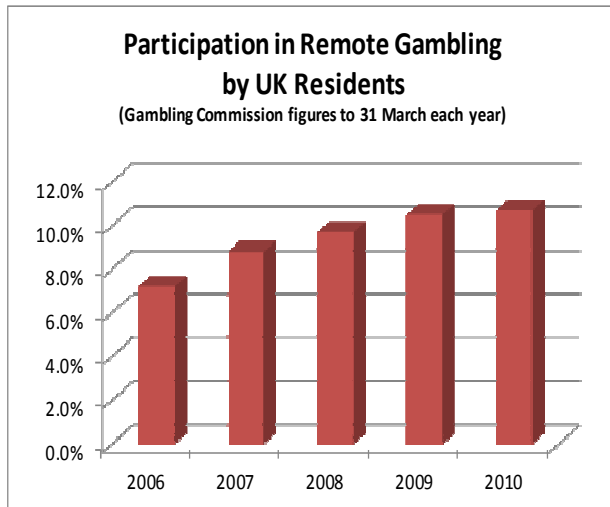
New Jersey to vote on sports betting

In 2011, New Jersey residents will be able to vote on whether or not to legalise sports betting at dedicated gambling venues. State Senator Lesniak estimates that legalising sports betting could increase gross revenues by \$1 billion. Lobbyists have started wooing the voters but there is still a long way and many dollars to go before results will be achieved.

Senator Reid's Bill runs out of time

Legislation proposed by Harry Reid, State Senator for Nevada, which would have legalised online poker, now looks very unlikely to be passed this year. It was thought that the Bill would be attached to other legislation regarding taxation, however this proposal appears to have been abandoned.

UK Statistics



The Gambling Commission has published its annual industry statistics from regulatory returns submitted during the period 1 April 2009 to 31 March 2010.

The proportion of UK residents participating in remote gambling continues to grow year on year (see graph on left), however figures from UK licensed operators show a general decline in the industry, with gross gambling yield for UK remote licensees falling 11% from the previous year with a 21% reduction in the number of active customer accounts. However, the number of operators licensed by the Commission for remote gambling activities has risen significantly since the last reporting period. The majority of these new operators are licensed for society lotteries or pool betting - licences with comparatively low application fees. Of course, with the

majority of UK facing remote operators licensed offshore rather than by the Commission, these figures do not give a true picture of the industry.

In the non-remote sector, gross gaming sales in bingo clubs fell by 5% compared to last year, although this is a much smaller drop than the 12% experienced in the 2008 - 2009 period. The value of bets placed with bookmakers has also fallen - by 11% for off course bets, 25% for on course bets and 21% for pool betting. The casino sector has performed slightly better: although total drop in land based casinos is down by 3% on last year despite an increase in attendances, this can partly be explained by the fact that the number of casinos operating in Great Britain has reduced from 143 to 141. House win remains steady at 15%, but there has been a reduction in the house win on table games and an increase in profit on machines, with machine gaming now accounting for 18% of the gross gambling yield in casinos.

Advertising Standards Authority upholds complaint about Jackpotjoy

The ASA received a complaint about an advert for www.jackpotjoy.com, a site operated under a Gibraltar gambling licence. The operator sent out email marketing which stated that if the recipient signed up they would receive a 100% "Cash Match Welcome Bonus". The complainant deposited £10 and played with it, but had not received a £10 bonus.

The ASA held that these conditions were significant conditions likely to influence to customers' understanding of the offer and should have been stated prominently in the ad. This ruling suggests that, even if the link in the ad had led to the correct terms and conditions for the promotion setting out these wagering conditions, the ad would still have fallen foul of the CAP Code.

The operator responded that the email should have linked to the promotion's terms and conditions which set out wagering conditions associated with the bonus, including that wagers on different games contributed different percentages, ranging from 0 to 100%, to the qualifying spend. Due to an error, the link took customers to the site's generic terms and conditions instead.

The take home message for operators is that if there are significant conditions on a bonus offer which might influence a customer's understanding of how it operates, this must be clearly stated in the advertising material itself or the advert may be held to be misleading. It may not be sufficient to merely include this information in terms and conditions which customers must accept.

Ireland sets betting duty rate for online operators

In a move which looks to have brought the regulation of online gambling in the jurisdiction closer, Ireland has passed a budget which will make betting duty applicable to online operators as well as land based bookmakers. It is proposed that the current rate of 1% will be applicable to all bets placed by Irish residents, regardless of the location of the operator. This move is expected to raise an additional €20 million in betting duty each year from online bets. The provisions are to be included in the Finance Bill, which must still be debated before being passed.

Data Protection and E-Commerce

UK - £100,000 fine issued for data protection breach

The Information Commissioner has used his new powers to fine organisations for data protection breaches, imposing a fine of £100,000 on a local authority and £60,000 on a company.

The local authority was fined because it faxed highly sensitive information intended for a court hearing to a member of the public. The fine issued to the company, however, should make all private operators sound the alarm bells because the circumstances that triggered the fine could happen to anyone.

The company gave an employee a laptop containing personal information of clients (relating to 24,000 people who had used community legal advice centres) which was not encrypted. The laptop was stolen from the employee's home, however, attempts to access the personal information failed. Nevertheless, the Information Commissioner found that a fine of £60,000 was appropriate, because access to personal information could have caused "substantial distress" ... which raises the question: what would the fine have been if data had been accessed? In other words: it is enough that personal data was not always secure – even if no damage has been done.

These first fines are the final wake up call to all organisations - get your act together or face financial consequences of up to half a million pounds for data protection breaches.

USA - court warrant required to obtain emails from ISP providers

We rarely have Data Protection related stories from the USA and the recent court ruling on this subject is therefore a rare but interesting find! The Sixth Circuit Court of Appeal ruled that law enforcement authorities require a court warrant before requesting ISPs to turn over subscribers' emails. The court considered emails to be analogous to letters and phone calls and that ISPs are the online equivalent of post offices or telephone companies.

This decision is important because it is not only the first federal ruling on data protection, but because the Stored Communications Act allows the US government to secretly access emails without a warrant – until now!

Affiliates, bloggers and marketing experts - beware!

The Office of Fair Trading (OFT) has forced a blogging network to label promotional content under consumer protection laws. The bloggers operate various sites offering editorials and reviews on numerous topics, including fashion, lifestyle and music. However, the OFT found that the reviews were not "objective" and were instead "commissioned" and paid for by interested parties.

The OFT considers these practices to be in breach of consumer protection legislation, which protects consumers from unfair practices which would lead them to take a purchasing decision that they would otherwise not have taken. Considering how the majority of affiliates and bloggers in the gambling industry operate, it is time to include another disclaimer and clarification on the websites... soon leaving little room for the advertising itself!

Copycat

In a further attempt to save costs and help the British economy back on its feet, the UK Government decided to simply cut and paste EU Directives onto the UK statute books. This should also eliminate any court cases brought on the basis of incompatibility between EU and UK law and/ or where interpretations of UK law differ from the underlying EU Directives.

Whether this is the right way forward is questionable, bearing in mind that EU Directives normally contain the lowest common denominator. Let's just hope that the UK Government will at least cut and paste the English version of the EU Directives and not the French one, otherwise we may have to parlais Francais maintenant.

Harris Hagan is the only City law firm dedicated exclusively to the provision of legal services to all sectors of the gambling and leisure industry in the UK and internationally.

We offer unparalleled legal experience, knowledge and commercial understanding of the industry. We understand not only the law associated with betting, gaming, licensing and the provision of entertainment facilities, but the business behind it. We aim to provide a full service to the gambling and leisure industry, including specialist regulatory, corporate and commercial advice.

We have advised many of the world's largest gambling and leisure operators. We also advise UK companies in all areas of land-based and online gambling. Our clients include governmental organisations, casinos, hotels, bars, restaurants, event venues, bookmakers, online gambling operators, start up ventures and manufacturers of gambling equipment.

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“True licensing specialists, with in-depth knowledge and the resources to commit to a job”... the firm is regarded as “absolutely the number-one betting and gaming firm.”

Chambers Guide to the Legal Profession

“Leading light’ Harris Hagan remains a ‘trusted’ specialist offering a ‘personal service’.”

The Legal 500



And a Happy New Year.....

