

## **ADVERTISING BY REMOTE GAMING OPERATORS**

### **The application of section 42(1)(c) of the Gaming Act 1968 to the remote gaming industry**

#### **Joint Guidance by the Department for Culture, Media and Sport and the Gambling Commission**

#### **Introduction**

1. The Government and Gambling Commission are concerned that many of the advertisements for overseas remote gaming sites currently being issued in Great Britain are illegal under the Gaming Act 1968. Therefore, the Government will be working with the Gambling Commission to refer cases to the Crown Prosecution Service (CPS) where they consider such advertisements are in breach of the Gaming Act 1968.
2. This note sets out the joint view of the Department for Culture, Media and Sport and the Gambling Commission on the application of the Gaming Act 1968 in respect of advertisements for remote gaming (N.B. this guidance does not apply to advertisements for remote betting, which has a separate legal regime). It is intended to provide guidance to advertisers, publishers and remote gaming operators on the types of advertisements that the Government and Commission will consider passing to the CPS on the basis that they are in breach of the 1968 Act. However, it will be for the Courts to interpret the relevant provisions of the Act and to decide whether a particular advertisement is in breach of those provisions.
3. The Gambling Act 2005 will introduce a new regulatory regime for all forms of gambling in Great Britain, including remote gaming. The 2005 Act combines increased freedoms for gambling operators with a robust new national regulator, the Gambling Commission, which will have extensive powers of investigation and prosecution. The Gambling Commission will be driven by the Act's three licensing objectives:
  - To ensure that gambling is carried out in a fair and transparent manner;
  - To ensure that gambling is not a source of crime;
  - To protect children and vulnerable people from exploitation or harm from gambling.

4. The Government does not believe that it is appropriate or safe to introduce new freedoms into the gambling market without the new protections that the Gambling Act 2005 will provide.
5. Therefore, until the 2005 Act comes fully into force, which is intended to be in September 2007, the existing gambling legislation will continue to have effect. This includes the Gaming Act 1968, and its provisions with regards to the advertising of gaming in Great Britain.

### **The Gaming Act 1968 and Advertising**

6. One of the main purposes of the Gaming Act 1968 was to prevent the artificial stimulation of demand for gaming. The underlying spirit of the Act was to restrict gaming, which is reflected by the stringent controls that currently exist under the Act. The restrictive provisions relating to advertising under section 42 of the Act also reflect this approach.
7. Section 42 of the Gaming Act 1968 places restrictions on advertising relating to gaming. The provisions of section 42(1)(a) and (b) only apply in relation to advertisements for gaming that takes place on premises in Great Britain, which includes all British licensed casinos. This includes both informing the public that the gaming is taking place and inviting them to participate.
8. The provisions of section 42(1)(c) only apply to advertisements that “invite” the public to subscribe money or money’s worth for the purposes of gaming, but such advertisements apply to gaming overseas, as well as gaming in Great Britain. There is no prohibition on advertisements which “inform” the public of gaming facilities overseas, as long as those advertisements do not invite such persons to gamble. For example, an overseas leisure destination may make potential visitors aware that casinos are available at that destination, but not otherwise invite them to gamble. This is consistent with the underlying principle of the Act that gaming should be tolerated but not encouraged.
9. The freedom for overseas gaming operators to carry out limited advertising in Great Britain was not much used before the advent of the internet. However, the common use of remote communication technologies has led to a significant increase in the number of overseas operators now seeking to provide gaming products via those technologies, including the internet, mobile telephones and interactive TV. This in turn has led to a dramatic increase in advertising by those overseas operators seeking to access a British market.
10. When the Gaming Act was passed in 1968, Parliament could not have forecast the development of remote technologies, but the Government

considers that the wording which it chose to use in section 42(1)(c) is apt to cover these new gaming operations.

11. The Government considers that it is legal for overseas remote gaming operators to advertise their services in Great Britain, and for those advertisements to be placed in newspapers, magazines, billboards, or on the sides of buses and taxis and on tube trains, all of which we have seen over the last few years. However, the Government considers that section 42(1)(c) does place restrictions on the content of those adverts.

### **Section 42(1)(c) of the Gaming Act 1968**

12. "42(1) ...no person shall issue, or cause to be issued, any advertisement...
13. (c) 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."
14. This section prohibits any form of advertising which invites the public (in Great Britain) to pay money for use in gaming or to apply for information about doing so. This includes the advertising of both remote and non-remote gaming and extends to gaming overseas, as well as that in Great Britain. It therefore has specific application to the advertising of remote gaming to the British public, wherever that gaming is based and/or licensed.
15. There is no requirement for the person subscribing the money to take part in the gaming themselves. An advert, for example, that invited a person to subscribe money so that another person could participate in gaming on his or her behalf would also be caught by the provisions of this section.

### **"Inviting"**

16. In practical terms, it is essential to understand what the law means by "inviting" in this context, in order to understand what restrictions this section places on the content of advertising.
17. As stated in 1.1 above the underlying spirit of the Gaming Act 1968 is restrictive, and based on the principle that gaming should not be encouraged.
18. The Government and Gambling Commission therefore maintain that the concept of "inviting" the public extends to any inducement or enticement or encouragement to act in a certain way. **Therefore, in the Government and Commission's view, to offer someone a**

**bonus or benefit for taking part in gaming or submitting money for use in gaming is a form of invitation.**

19. Below are some examples of advertisements (this is by no means an exhaustive list) that, in the view of the Government and the Gambling Commission, would fall foul of the prohibition on either inviting, inducing or encouraging a person to subscribe any money or money's worth to be used in gaming, or applying for such information.

20. **inviting the public to subscribe any money or money's worth to be used in gaming:**

- "Play poker everyday"
- "Play poker here"
- "Try your luck in our casino"
- "Test your nerve with poker"
- "Step up and play our £100,000 thriller"
- "Play on-line anytime"

21. **inducing/enticing/encouraging the public to subscribe any money or money's worth to be used in gaming:**

- "We will match your first deposit"
- "Join today and get a bonus"
- "Referral bonus for every friend you introduce to the party"
- "Bonus on every deposit"
- "£150 free for all new players"
- "Over £500 free in monthly promotions for every player"
- "Win and double your money"
- "Free entry"
- "Guaranteed cash prizes everyday"
- "Win big cash prizes"
- "Win a trip for two to Las Vegas"

22. **The Government and Gambling Commission consider that use of these or similar statements is in breach of the 1968 Act, and their use in an advertisement issued in Great Britain will render the issuer liable to prosecution. We therefore strongly advise advertisers, publishers and operators to adopt a cautious approach.**

### **Factual Information**

23. Section 42(1)(c) places no restriction on overseas remote gaming operators advertising purely factual information. For example, an advertisement which contained only the name and address (e.g. website) of the gaming operator would not be in breach of the Act. **The issuer of an advertisement containing purely factual information in relation to overseas remote gaming does not commit an offence under the 1968 Act.**

24. However, it is the view of the Government and the Gambling Commission, that factual statements are often used to encourage people to gamble. Below, are some examples which the Government and Commission consider to be factual information, but, in some cases, could also be construed as encouraging persons to gamble. We would therefore urge advertisers, publishers and operators to be aware of this potential overlap.

**25. Factual information / encouraging the public to subscribe any money or money's worth to be used in gaming:**

- “Free million pound poker tournament”
- “5 new poker games”
- “Daily jackpots”
- “Million pound guaranteed tournaments every month”
- “Best selection of slots”
- “Top payout £1,000 per spin”
- “Weekly tournaments”
- “Progressive jackpots”
- “Poker games to suit everybody”
- “Up to 100,000 players on-line”
- “More prizes – bigger jackpots”

## Liability

### Advertising by Remote Means

26. The term “advertisement” in section 42 of the 1968 Act includes every form of advertising whether in publication or by 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).

27. There is no specific reference to advertising through the internet, as this was clearly not contemplated at the time the Act was passed. However the Government considers that the principle explained in the case of *Victor Chandler International Limited v Customs and Excise Comrs*<sup>1</sup> would apply. The Court stated that “ongoing” statutory provisions are “always speaking” and so should be construed in a way that continuously updates their wording to allow for changes since the Act was initially framed. Therefore, the Government and the Commission consider that the definition of advertising under the 1968 Act should be construed in the light of new forms of communication, together with the intention of Parliament at the time to restrict such advertising. Accordingly, it is the Government’s view that any material that is classified as an advertisement and is displayed on the internet is caught by the provisions of the 1968 Act.

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<sup>1</sup> [2000] 2 All England Law Reports at 315.

28. Remote advertisements, including websites, pop-ups, banners, hyperlinks, text messages and emails, are therefore clearly advertisements within the ordinary meaning of the term and issuers must therefore conform to the prohibition on inviting the public to subscribe money or money's worth to be used in gaming, or to apply for such information, as set out above.

29. The Government and the Gambling Commission do not consider that an internet service provider (ISP) issues or causes to be issued an advertisement simply by providing internet access.

### **Jurisdiction**

30. The penal provisions of the Gaming Act 1968 apply only to people who breach section 42 whilst in Great Britain. Therefore the offence under section 42(1)(c) only applies to a person who issued or caused to be issued a prohibited advert whilst in Great Britain.

31. This means that the offence clearly applies to British based publishers, advertising companies and owners or marketers of advertising space and marketing companies that advertise by remote means.

32. The offence does not apply to issuers of advertisements outside Great Britain. However, if an instruction to issue a prohibited advert is linked back to a person in Great Britain, then that person, having caused the advert to be issued, may be liable for prosecution.

### **Penalties**

33. Any person who breaches the restrictions set out above is liable to prosecution. Offenders could face up to £5,000 fines and/or up to 2 years in prison.

34. Under section 42(6) of the 1968 Act an offence is committed each day that the advertisement appears.

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