

GAMBLING ACT 2005

EXPLANATORY NOTES

TERRITORIAL EXTENT

Territorial limits – vessels and aircraft

Schedule 15: Private gaming and betting

Part 16: Advertising

801. **Part 16** makes provision relating to the advertising and promotion of gambling.

Section 327: Meaning of “advertising”

802. This section sets out what it means to advertise gambling for the purposes of the Act. The definition is very broad and covers anything which is done to encourage people to take advantage of facilities for gambling (*subsection (1)(a)*). It also covers bringing information about gambling facilities to people’s attention with a view to increasing the use of those facilities (*subsection (1)(b)*). As well as covering the activities of those who act with the specific intention of encouraging the use of facilities for gambling as described in *subsection (1)(a) and (b)*, the definition also provides for the advertising of gambling to include those who participate in or facilitate such activities. Advertising includes entering into arrangements such as sponsorship or brand-sharing agreements.

Section 328: Regulations

803. This section gives the Secretary of State power to make regulations controlling the form, content, timing and location of advertisements for gambling, including requirements for specified words to be included in advertisements. A specific duty is imposed on the Secretary of State to have regard to the need to protect children and other vulnerable persons from being harmed or exploited by gambling. This reflects the licensing objectives of the Act concerning the protection of children and vulnerable people. Regulations under this section will apply to advertising by both “remote” means (such as email or television) and “non-remote” means (such as a poster on a hoarding or a magazine page). Specific provision about this is made in subsequent sections in this Part.

804. It is an offence under this section to contravene a requirement of the regulations and any person guilty of an offence shall be liable on summary conviction to imprisonment for a term not exceeding 51 weeks (6 months for Scotland), a fine not exceeding level 5 on the standard scale, or both. An offence committed under this section shall be treated as a continuing offence which means that an offence shall be committed on each day during any period that the regulations are contravened.

Section 329: Broadcasting

805. There are restrictions on the extent to which regulations controlling the form, content, timing and location of gambling advertisements, under this Part, may make provision about broadcast advertising. In particular, *subsection (1)* of this section prohibits the

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regulations under section 328 from making provision about advertising by means of television or radio services to which section 319 of the [Communications Act 2003 \(c.21\)](#) applies. This is broadly a reference to those broadcast television and radio services which are subject to regulation by the Office of Communications (“OFCOM”) under Part 3 of that Act. Section 319 imposes a duty on OFCOM to set, and from time to time to review and revise, standards for the content of programmes to be included in television and radio services.

806. *Subsection (2)* requires OFCOM to set, review and revise standards for the advertising of gambling under section 319 of the Communications Act 2003. The standards must reflect the provisions of regulations controlling the form, content, timing and location of advertising of gambling made under this Part. OFCOM must also consult the Commission before setting or revising the standards.
807. *Subsection (4)* ensures that all broadcast television and radio services of the BBC do not fall within the scope of regulations controlling the form, content, timing and location of advertising of gambling made under this Part. This includes the BBC World Service which is not to any extent a service to which section 319 of the Communications Act 2003 applies.

Section 330: Unlawful gambling

808. This section makes it an offence to advertise unlawful gambling. For these purposes, advertised gambling is unlawful if it requires a licence, notice, permit, registration or exception under this Act (“a licence etc.”), in order for the gambling to take place without an offence under the Act being committed, and arrangements for the licence etc. have not been made at the time of advertising, or the exception does not apply to the arrangements. Take, for example, facilities for casino gaming which require operating, personal and premises licences to be obtained in order that the gaming can be provided without an offence being committed. Unless the necessary licences have been obtained at the time of advertising, any advertising of the gambling will constitute an offence under this section. The offence covers advertising of unlawful gambling whether the advertising takes place by remote or non-remote means, and sections 332 and 333 make specific provision about this.
809. The offence does not apply to lotteries. Part 11 of the Act contains separate provisions relating to the advertising of unlawful lotteries.
810. A person who commits the offence by doing anything to encourage people to gamble, or bringing facilities for gambling or information about them to the attention of others with a view to increasing their use, will have a defence if they can show that they reasonably believed the gambling to be lawful. People who commit the offence by participating in or facilitating such an activity will only commit the offence if they know or ought to have known the gambling to be unlawful.
811. There is also an exemption from this offence for peoples who advertise gambling because they merely deliver, transmit, broadcast or make data available in the course of business, without having any editorial control over the nature or content of the material.
812. A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding 51 weeks for England and Wales (6 months for Scotland), a fine not exceeding level 5 on the standard scale, or both. An offence committed under this section shall be treated as a continuing offence which means that an offence shall be committed on each day during any period that the advertisement is displayed or made accessible.

Section 331: Foreign gambling

813. This section makes it an offence to advertise non-EEA (or “foreign”) gambling. Foreign gambling is gambling which either physically takes place in a non-EEA state (e.g.

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a casino in Australia), or gambling by remote means which is not regulated by the gambling law of any EEA state (the interpretation section in Part 18 defines “EEA state”). For the purposes of this section, Gibraltar is treated as if it is an EEA state, which will allow gambling operators based in Gibraltar to advertise their services in the United Kingdom. The offence covers advertising of gambling whether the advertising takes place by remote or non-remote means, and sections 332 and 333 make specific provision about this. This section extends to Northern Ireland.

814. The offence does not apply to lotteries. Part 11 of the Act contains separate provisions relating to the advertising of foreign lotteries.
815. It will be open to the Secretary of State, however, to make regulations specifying countries or places which are to be treated as though they were EEA states for the purposes of this section. The effect of this will be to put any advertising of gambling taking place in that country or place outside the scope of the offence.
816. The maximum penalty upon conviction for an offence under this section is a term of imprisonment of 51 weeks in England and Wales (6 months in Scotland and Northern Ireland), together with a fine up to level 5 on the standard scale.

Section 332: Territorial application: non-remote advertising

817. This section clarifies the application of Part 16 where the advertising is by non-remote means, for example a poster on a hoarding.
818. Where the advertising is by non-remote means:
- regulations controlling the form, content, timing and location of advertising under this Part; and
 - the offence of advertising unlawful gambling under this Part;
- will only apply where the advertising takes place wholly or partly in Great Britain; and:
- the offence of advertising foreign gambling under this Part,
- will only apply where the advertising takes place wholly or partly in the United Kingdom.

Section 333: Territorial application: remote advertising

819. This section clarifies the application of these provisions where the advertising is by remote means, for example by email or television broadcast.
820. For remote advertising of gambling to fall within the scope of Part 16 it has to satisfy three tests. In the case of section 331 (the remote advertising of foreign gambling), it is only the first of the three tests which has to be satisfied. Furthermore, in the case of foreign gambling, the references to Great Britain in the first test should be read as references to the United Kingdom, because section 331 extends to Northern Ireland.
821. The first test is broadly that the advertising must be targeted at people in Great Britain. In particular the advertising must involve:
- providing information intended to come to the attention of a person in Great Britain;
 - sending a communication intended to come to the attention of a person in Great Britain;
 - or making data available with a view to its being accessed by a person in Great Britain or in circumstances where that is likely to happen.
822. The second test applies in the case of advertising that is either broadcast by television or constitutes an information society service within the meaning of Directive 98/34/EC (on electronic commerce). Information society service means “any service normally

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provided for remuneration, at a distance, by means of electronic equipment for the processing ... and storage of data, and at the individual request of a recipient of a service”.

823. Where the advertising is broadcast by television the provisions of Part 16 will only apply if the broadcaster is either under the jurisdiction of the United Kingdom for the purposes of Directive [89/552/EEC](#) (Television Without Frontiers) or is not under the jurisdiction of an EEA state for the purposes of that Directive. The purpose of this particular test is to ensure that the provisions do not apply to advertising where the broadcaster is properly regulated by another EEA State.
824. Where the advertising constitutes an information society service, the provisions of Part 16 only apply where the service provider:
- is established in the United Kingdom for the purposes of Directive [2000/31/EC](#),
 - is established in a non-EEA state for those purposes, or
 - has been notified that the conditions for derogation in Article 3(2) of that Directive have been satisfied in relation to the service provider.
825. Directive [2000/31/EC](#) is concerned with contributing to the proper functioning of the Internal Market by ensuring the free movement of information society services between Member States. In broad terms the Directive establishes that a provider of information society services is to be regulated by the State in which it is established. Therefore, in general, where advertising constitutes an information society service, the provisions of Part 16 only apply where the provider is either established in the United Kingdom or outside the EEA. Article 3(4) of the Directive enables Member States to derogate from this general rule where the provider of an information society service not established in its country presents a serious and grave risk in respect of public policy matters such as the protection of consumers. The possibility to derogate under Article 3(4) of the Directive is also reflected in the section.
826. The third test is that the gambling itself takes place in Great Britain where it is non-remote gambling; or, where it is remote gambling, that at least one piece of remote gambling equipment is situated in Great Britain.