



White List Part 2 – Good news for some, bad for others

The small group of islands 240 km off the south east coast of Australia and the last stop before the Antarctic 2000 km away, Tasmania, has been the sole beneficiary of the latest instalment of the white list. At the same time, the major gambling licensing centres of Kahnawake and Antigua, with hundreds of existing licensed operators, have had their applications turned down.

What this means is that from 31 January 2008 it will be legal for gambling operators located in Tasmania to advertise their remote gambling services in the UK but it will continue to be illegal for those located in Kahnawake or Antigua to do so.

The white list in context

Since the implementation in the UK of the Gambling Act 2005, the legality of advertising gambling in or to the UK is determined by the application of the new criminal offence of "advertising foreign gambling". In other words, if the gambling you advertise is not foreign then it is legal advertising. If it is foreign then you commit an offence.

Foreign gambling is defined as:

- Non-remote gambling (e.g. land based casinos) which is to take place in a non-European Economic Area ("EEA") State; and
- Remote gambling (e.g. internet casino, poker, bingo & betting sites) where none of the arrangements are subject to the law about gambling of an EEA State (whether by being regulated, exempted, prohibited or otherwise).

The EEA consists of the 27 countries in the European Union together with Norway, Liechtenstein and Iceland. Gibraltar, despite being a non-EEA place is already in the fortunate position of being exempted from the prohibition on advertising foreign gambling as the 2005 Act treats it as if it were an EEA state. Malta is by far the most popular licensing jurisdiction in the EEA.

Even if a place is not in the EEA, the Secretary of State of Culture, Media and Sport can make regulations listing other specified countries or places that he considers should be treated as if they were EEA States because they comply with the criteria for white listing published in January 2007. Advertising of gambling taking place in these special "white listed" places will not involve the offence of advertising foreign gambling.

To meet the criteria for white listing, a jurisdiction must show that it has a robust regulatory environment similar to the UK, or one that meets the same objectives as in the UK including how they will meet the licensing objectives, technical standards, enforcement, EU Regulations, money laundering and fair tax principles.

The first white list regulation was issued in August 2007 and it consisted only of Alderney and the Isle of Man. The fate of others hung in the balance.

As things stand, gambling operators located in the following places can advertise gambling legally in or to the UK:

- Malta and any other EEA state;
- Gibraltar;
- Alderney;
- Isle of Man;

- Tasmania (after 31 January 2008).

It is therefore illegal for gambling operators located in any other place to advertise gambling in or to the UK including:

- Antigua;
- Kahnawake;
- Curacao;
- Costa Rica;
- Belize.

Does UK law apply to a gambling website outside the UK? The 2005 Act makes special provision about the application of the law to advertising that is delivered remotely i.e. by means of the internet, telephone, TV, radio or other electronic or other technology for facilitating communication.

If, say, a website advertises remote gambling that is taking place on a server located in a place that is neither, in the EEA, or on the white list, then the advertising website may well be illegal under UK law if the advertising involves:

- Providing information, by whatever means (and whether or not using remote communication), intended to come to the attention of persons in the UK,
- Sending a communication intended to come to the attention of persons in the UK; and
- Making data available with a view to its being accessed by or, such that it is likely to be accessed by persons in the UK, or
- Making data available in circumstances such that it is likely to be accessed by persons in the UK.

Therefore, any gambling website, anywhere in the world, that is directing its online (remote) advertising to people in the UK will be committing the criminal offence of advertising foreign gambling if it is not in the EEA or white list places listed above. Whether the UK government takes enforcement action against all or any such websites is another matter. The most likely targets will be those that have some presence or undertook some of the offending activities in the UK.

Advertising gambling is a very widely defined concept under the 2005 Act and a person advertises gambling if:

- He does anything to encourage persons to take advantage (whether directly or through an agent) of facilities for gambling,
- With a view to increasing use of facilities for gambling, he brings them or information about them to the attention of one or more persons, or
- He participates in or facilitates an activity knowing or believing that it is designed to –
 - Encourage persons to take advantage (whether directly or through an agent) of facilities for gambling, or
 - Increase the use of facilities for gambling by bringing them or information about them to the attention of persons.

Bringing gambling to a person's attention with a view to increasing the use of such facilities includes displaying a name in connection with an event or product (including brand sharing and sponsorship) and, either, the gambling is the sole or main activity undertaken under that name or, the manner or context in which the name is displayed is designed to draw attention to the fact that gambling is provided under that name.

By way of example, operating an affiliate website with banner advertising, sponsored links, information about odds and games on different casino or betting sites would all be activities that would fall under the above

definitions of advertising gambling.

In December the Gambling Commission published a guidance note stating that it considered the offering of a prize in a poker tournament (or other gaming) outside the UK was committing the offence of advertising foreign gambling if the tournament was not taking place in the EEA or a white listed jurisdiction.

Codes of practice

Advertisements to the UK market also have to comply with the codes of practice of which there are three:

- The Committee of Advertising Practice ("CAP") issues the non-broadcast Advertising Code
- The Broadcast Committee of Advertising Practice ("BCAP") issues the broadcast Advertising Code
- Gambling Industry Code for Socially Responsible Advertising

The CAP and BCAP Codes are intended to ensure that marketing communications for gambling are socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited by advertising. A copy of the Rules is available on the CAP and BCAP website at www.cap.org.uk

The Industry Code sets out the following general principles in relation to gambling adverts:

- They should be socially responsible and comply with the CAP and BCAP rules;
- They must be legal and not misleading;
- Care must be taken not to exploit children and other vulnerable persons in relation to gambling activity; and
- Advertisements should not be specifically and intentionally targeted towards people under the age of 18 through the selection of media, style of presentation, content or context in which they appear.

In terms of specific requirements, there are three key things implemented by the Industry Code as follows:

- All non-broadcast gambling advertising should contain a link to www.gambleaware.co.uk in order that customers can be educated about socially responsible gambling and given information where they might get help for problem gambling. Although not obligatory, it is recommended that gambling operators also include the words preceding the link, "for more information and advice visit"
- With the exception of bingo, new gambling products must not be advertised on television before the 9pm watershed. However this restriction does not apply to the advertising of sports betting in relation to televised sports events.
- Gambling operators shall not allow their logos or other promotional material to appear on any commercial merchandising which is designed for use by children e.g. football shirts.

The advertising codes will apply to any business that wishes to advertise to or in the UK market whether or not they require a licence in the UK.

The future for Tasmania licensing

Consider this, Tasmania stands alone as the only place geographically outside the continent of Europe whose gambling operators are legally permitted to advertise in the UK. In comparable terms it is much closer to South East Asia, with its gambling market of almost unlimited potential, than to Europe. Access to the UK market and the stamp of approval of the UK government on its licensing regime, will do no harm at all to Tasmania's prospects of attracting major companies to its shores particularly those that wish to look to the Far East as well as traditional markets in Europe.

On the flip side, with the US market closed off, failure to get on the white list is not good news. The EEA and white listed jurisdictions now have a clear competitive advantage in marketing terms. Whenever it is published part 3 of the white list will be very interesting, particularly what happens with Curacao's application.

Contact

For further advice, please contact:

Peter Wilson

E: peter.wilson@bllaw.co.uk

T: +44 (0) 207 814 6850

This publication is not a substitute for detailed advice on specific transactions and problems and should not be taken as providing legal advice on any of the topics discussed. If your contact details are incorrect or you would prefer not to receive legal updates from Blake Laphorn Tarlo Lyons in the future, please email Jina Patel on jina.patel@bllaw.co.uk or phone her on +44 (0) 207 814 5449.