

# LEGISLATIVE & INDUSTRY UPDATE

<b>Committee name</b>	Licensing Committee
<b>Officer reporting</b>	Beejal Soni - Legal Services
<b>Papers with report</b>	None
<b>Ward</b>	All

## HEADLINES

This report provides a caselaw update, the Gambling Commission's Strategy for 2018-2021 and information on action by the Gambling Commission to address on-line advertising which targets children.

## RECOMMENDATIONS:

**That the Licensing Committee note the report.**

## SUPPORTING INFORMATION

### 1. Caselaw Update:

- a. *Scotch Whisky Association and others v The Lord Advocate and another (Scotland)*[2017] UKSC76

The Alcohol (Minimum Pricing) (Scotland) Act was passed in May 2012 by the Scottish Parliament. It prohibits the sale of alcohol below a minimum price, calculated on the basis of the drink's alcoholic content. The Scottish ministers proposed a minimum pricing unit of 50p, subject to consultation and an up-to-date business and regulatory impact assessment.

The Scotch Whisky Association, along with other European wine and spirits trade bodies, began a legal challenge against the minimum alcohol pricing in 2012. Their arguments were based on:

- The lawfulness of the legislation; and
- Whether or not minimum pricing was disproportionate under European Union Law. Scottish Ministers agreed not to bring the legislation into force or make any order setting a minimum price until determination of the legal challenge.

The Outer House of the Court of Session rejected the arguments in May 2013. However, the Inner House, which is Scotland's highest civil court, referred the case to the Court of Justice of the European Union (referred to as "CJEU") on appeal after finding that it "raised questions of European law". The CJEU ruled in 2015 that the policy was incompatible with EU law "if less restrictive tax measures can be introduced", but left this final test to the Scottish courts.

The Inner House backed the planned policy in its ruling of October 2016. The Scotch Whisky Association appealed the matter to the Supreme Court. By this stage, all parties had agreed that minimum alcohol pricing would affect the market and EU trade in alcohol. The issue for the Supreme Court was whether there was justification for the market interference or whether less restrictive measures such as excise or tax could provide the same results.

The Supreme Court said that it was "ready to accept" that a general increase in excise duties or VAT across narrowly defined bands of alcoholic strength was permitted by EU law as an alternative. However, tax increases would not be as effective at targeting the health hazards of cheap alcohol in particular, as intended by the policy.

*"Taxation would impose an unintended and unacceptable burden on sectors of the drinking population, whose drinking habits and health do not represent a significant problem in societal terms in the same way as the drinking habits and health of in particular the deprived, whose use and abuse of cheap alcohol the Scottish parliament and government wish to target,"* said Lord Mance, giving the judgment of the court. *"In contrast, minimum alcohol pricing will much better target the really problematic drinking to which the government's objectives were always directed."*

The Judge also pointed out that minimum alcohol pricing was easier to understand and simpler to enforce.

The Judge cited new research by the University of Sheffield, published in April 2016, which indicated that tax increases by as much as 36% in some cases would be needed to deliver the same beneficial impacts as a 50p minimum alcohol pricing.

*"As to the general advantages and values of minimum pricing for health in relation to the benefits of free EU trade and competition, the Scottish Parliament and Government have as a matter of general policy decided to put very great weight on combating alcohol-related mortality and hospitalisation and other forms of alcohol-related harm. That was a judgement which was for them to make, and their right to make it militates strongly against intrusive review by a domestic court,"* he said.

The Court acknowledged that the minimum pricing policy was an "experimental" one. However, this was catered for by the review and 'sunset' clause provisions which confirmed that the legislation would be withdrawn 6 years after the Act came into force unless Holyrood passed a renewal bill supporting its continuation.

It has since been confirmed that minimum pricing for alcohol will be introduced in Scotland on 01 May 2018.

The full text of the decision can be accessed at:  
<http://www.bailii.org/uk/cases/UKSC/2017/76.html>

## **2. Industry Update:**

- a. Gambling Commission Strategy: 2018-2021
- b. Measures to Tackle Gambling Advertising that Appeals to Children

### **a. Gambling Commission Strategy 2018-2021**

The Gambling Commission has published its new strategy which sets out the Gambling Commission's focus and commitment in five priority areas: protecting the interests of consumers; preventing harm to consumers and the public; raising standards in the gambling market; optimising returns to good causes from lotteries; and improving the way the Commission regulates gambling activity.

The Gambling Commission outlined a range of actions it said it would take in pursuit of the five priorities, including measures to address the current "imbalance" in the relationship between gambling operators and consumers. It said it would seek to give consumers "more power and control" over the way they can manage their gambling, and would look to "make sure that operators provide easy access to reliable information, tools and services which consumers can use to inform and control their gambling at every stage of the customer journey".

*"We want consumers to have confidence that when they gamble, they are doing so with a business licensed by the Commission, which significantly reduces the risk that their gambling is connected to crime or rigged against them. We act against illegal operators because the level of potential harm to consumers and society is significant. But markets move quickly and new business models, products and opportunities emerge, as we have seen with e-sports and skins betting. We see it as our role to advise government and alert the public if we see risks with new and evolving gambling or gambling style products,"* it said.

The Commission said it expects gambling operators to work together to address problem gambling and that it would also *"regulate and take precautionary action where necessary to reduce gambling-related harm"*.

Operators that *"do not attempt to understand the risks of gambling or fail to put in place effective mitigations, are deliberately or negligently noncompliant and who do not take account of lessons learned will face penalties"*, it said.

"We will use the full range of our enforcement powers, and develop our use of sanctions, to ensure these are well targeted and provide credible deterrence," the Commission said.

The Gambling Commission Strategy: 2018-2021 can be accessed at:  
<http://www.gamblingcommission.gov.uk/PDF/Strategy-2018-2021.pdf>

### **b. Measures to Tackle Gambling Advertising that Appeals to Children**

The publication of the Gambling Commission Strategy was followed by publication of an updated Gambling Industry Code for Socially Responsible Advertising and correspondence to gaming operators regarding advertising that targets children.

In 2005 the Industry Code for Responsible Advertising introduced a 9pm television limit/watershed for all gambling product advertising except for that related to bingo and sports betting surrounding televised sports events. Subsequent changes included a prohibition on sponsoring operators' logos appearing on any children's merchandise. The latest changes include:

- A requirement to have socially responsible gambling messages at the end of all television and radio adverts.
- The removal from pre-watershed television advertising of sign-up offers that are targeted at new customers.
- A condition that pre-watershed television advertising cannot make reference to other gambling products that would not normally qualify for pre-9.00pm exemption.
- Improved prominence to be given to gambleaware.co.uk in all print and broadcast adverts.
- Reference to gambleaware.co.uk will now have to be included in all television programmes sponsorship undertaken by operators.
- A requirement that Gambling operators must now carry the required social responsibility and age requirement specifications on consumer-facing marketing content on their YouTube channels. Operators must also use the YouTube or Twitter age-screening function when marketing to consumers to prevent under-18s accessing inappropriate gambling marketing material on YouTube and Twitter.

The Code also reiterates that the Gambling Commission has “made it clear” that gambling operators will also be held responsible “for any marketing carried out on their behalf by affiliates”.

Subsequently on 20<sup>th</sup> October 2017 the Gambling Commission, Advertising Standards Authority (ASA), the Committee of Advertising Practice, and the Remote Gambling Association issued a joint letter to gambling operators following reports in the media that they said "highlighted a number of freely accessible ads on gambling operator websites, which feature images that are likely to appeal particularly to under 18s".

The correspondence said that adverts featuring "particular colours, cartoon and comic book images, animals, child- and youth-orientated references and names of games such as 'Piggy Payout', 'Fluffy Favourites', 'Pirate Princess' and 'Jack and the Beanstalk' are likely, alone or in combination, to enhance appeal to under 18s".

The correspondence said that such adverts and images were "unacceptable". They raised particular concern about "freely accessible ads for play-for-free and play-for-money games", and said their warning also applied to "all graphics and images displayed on a website or in third party media".

*"Gambling operators are required by the UK advertising codes and the conditions of their Gambling Commission licence to advertise responsibly with particular regard to the protection of Under 18s and others who are vulnerable to being harmed or exploited by gambling advertising," it said.*

Operators were urged to apply caution in cases where they are unsure whether their adverts would appeal to children.

The Gambling Industry Code for Socially Responsible Advertising can be downloaded at:  
<https://www.rga.eu.com/wp-content/uploads/Gambling-Industry-Code-for-Socially-Responsible-Advertising-3rd-Edition-October-2017.pdf>

The joint letter issued on 20<sup>th</sup> October 2017 can be viewed at:  
<http://www.gamblingcommission.gov.uk/PDF/Ltr-from-ASA-CAP-CG-RGA-final.pdf>

### **Implications on related Council policies**

None at this stage

### **How this report benefits Hillingdon residents**

National regulation of the gambling industry will additionally protect gambling consumers who are residents of Hillingdon.

### **Financial Implications**

None at this stage

### **Legal Implications**

Legal comments have been incorporated within this report.

### **BACKGROUND PAPERS**

None