Sports Betting and Integrity Agreements

Australia • Great Britain

July 2018

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Contents

Australia.....1

I. Introduction 1

II. National Policy on Match-fixing in Sport 2

III. State and Territory Legislation Related to Integrity in Sports 4

A. New South Wales Provisions Regarding Integrity Agreements 4

B. Victoria Provisions Regarding Agreements with Sports Controlling Bodies 6

Great Britain 8

I. Introduction 8

II. Regulation of Gambling in Great Britain 9

III. Licenses.....9

IV. Offenses 10

V. "Prohibited Territories".....11

VI. Taxing Gambling Revenues 11

VII. Integrity Fees.....12

VIII. Mandated Data Purchase Fees 14

A. British Horseracing 14

B. Football Fixture Lists 15

Australia

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SUMMARY Australia's Interactive Gambling Act 2001 (Cth) allows for the provision of online and telephone sports betting services to customers in Australia, provided that the betting agencies are licensed by an Australian state or territory licensing authority. Each state and territory has its own legislation that regulates sports betting. In terms of match-fixing and integrity in sports, the National Policy on Match-fixing in Sport, signed in 2011, contains provisions encouraging the development of nationally-consistent legislation concerning arrangements between sports controlling bodies and betting agencies. Currently, two Australian states, New South Wales and Victoria, have legislative provisions that refer to such arrangements. The provisions allow betting agencies and sports controlling bodies to reach their own agreements regarding any financial return to the sport based on betting on that particular sport.

I. Introduction

Sports betting in Australia is primarily regulated at the state and territory level. Each jurisdiction has laws, regulations, and licensing authorities that regulate the provision of sports betting services.[1]

At the national level, the Interactive Gambling Act 2001 (Cth)[2] prohibits the provision of certain interactive gambling services to customers in Australia, including "casino-style games, online slot

[1] For references and links to relevant state and territory legislation, see *Racing and Wagering*, ACT GAMBLING AND RACING COMMISSION, https://www.gamblingandracing.act.gov.au/regulation-and-licensing/racing-and-wagering (last updated May 29, 2018), *archived at* https://perma.cc/JQ4Z-QKYB; *Gaming & Wagering Law*, NSW DEPARTMENT OF INDUSTRY, https://www.liquorandgaming.nsw.gov.au/Pages/gaming/law-and-policy/gaming-law.aspx (last updated Mar. 14, 2017), *archived at* https://perma.cc/TCU5-MTAV; *About Gambling and Racing in the NT*, NT.GOV.AU, https://nt.gov.au/industry/gambling/about-gambling-and-racing-in-the-nt (last updated Nov. 28, 2017), *archived at* https://perma.cc/8X69-V68S; *Wagering Licensing*, BUSINESS QUEENSLAND, https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming/gaming/wagering-licensing (last updated Apr. 10, 2017), *archived at* https://perma.cc/MZ84-TEFB; *Gambling Regulation: Regulatory Documents*, SOUTH AUSTRALIA DEPARTMENT OF TREASURY AND FINANCE, https://www.treasury.sa.gov.au/economy/gambling-regulation/regulatory-documents (last visited June 20, 2018), *archived at* https://perma.cc/N77S-C8M7; *Gambling Legislation and Regulations*, VICTORIAN COMMISSION FOR GAMBLING AND LIQUOR REGULATION, https://www.vcglr.vic.gov.au/gambling/wagering-and-sports-betting/about-wagering-and-sports-betting/gambling-legislation-and-regulations (last updated May 30, 2017), *archived at* https://perma.cc/9EX6-YW7D; *Legislation – Gaming*, TASMANIA DEPARTMENT OF TREASURY AND FINANCE, http://www.treasury.tas.gov.au/liquor-and-gaming/legislation-and-data/legislation-gaming (last updated Oct. 30, 2017), *archived at* https://perma.cc/P2E6-G8QY; *Gaming Legislation*, WESTERN AUSTRALIA DEPARTMENT OF RACING, GAMING AND LIQUOR, https://www.rgl.wa.gov.au/legislation/gaming-legislation (last updated Mar. 16, 2015), *archived at* https://perma.cc/4C27-PTQE.

[2] Interactive Gambling Act 2001 (Cth), https://www.legislation.gov.au/Details/C2018C00032, *archived at* https://perma.cc/CJD2-NJ23. For background information regarding the legislation and interactive gambling in

machines and online wagering services that accept in-play bets on sports events."[3] It also requires that "regulated interactive gambling services" only be provided to customers in Australia by entities that have been licensed by an Australian state or territory licensing authority.[4] Such services include "telephone betting services and online wagering services (other than those offering in-play betting)"[5] The Australian Communications and Media Authority maintains a national register of licensed wagering service providers.[6]

In June 2011, federal, state, and territory sports ministers signed the National Policy on Match-fixing in Sport.[7] Under this Policy, "the sports betting industry has agreed to adopt an industry standard for information exchange and information provision requirements with sports, governments and law enforcement agencies."[8] A National Integrity of Sport Unit was established "to provide national oversight, monitoring and coordination of efforts to protect the integrity of sport in Australia from the threats of doping, match-fixing and other forms of corruption."[9]

Individual jurisdictions have enacted provisions related to match-fixing offenses, the role of sports controlling bodies, and integrity agreements. This report provides information on particular provisions that refer to the payment of a fee by betting service providers to sports organizations.

II. National Policy on Match-fixing in Sport

The National Policy contains provisions regarding the development of nationally-consistent legislation that would govern arrangements or agreements between sports and betting agencies, stating as follows:

Australia, see Kim Jackson, *Gambling and Policy Regulation*, Australian Parliamentary Library (last updated Sept. 2001), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/gamblingebrief, *archived at* https://perma.cc/7F6N-RU5J.

[3] *Interactive Gambling Act Reforms*, AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (ACMA), https://www.acma.gov.au/Industry/Internet/Internet-content/Interactive-gambling/interactive-gambling-act-reforms (last updated Feb. 12, 2018), *archived at* https://perma.cc/X28T-S4NC; Interactive Gambling Act 2001 (Cth) s 5 (definition of "prohibited interactive gambling services").

[4] Interactive Gambling Act 2001 (Cth) s 8E.

[5] *Interactive Gambling Act Reforms*, *supra* note 3; Interactive Gambling Act 2001 (Cth) ss 5(3) (listing services that are excluded from the definition of prohibited interactive gambling services) & 8AA–8D (defining different types of gambling services that are not prohibited by the Act).

[6] *Register of Licensed Interactive Wagering Services*, ACMA, https://www.acma.gov.au/theACMA/register-of-licensed-interactive-wagering-services (last updated May 21, 2018), *archived at* https://perma.cc/VX3L-83CM.

[7] National Policy on Match-Fixing in Sport as agreed 10 June 2011, available on the Australian Department of Health website, *at* http://www.health.gov.au/internet/main/publishing.nsf/Content/match-fixing1, *archived at* https://perma.cc/3ZGS-VHKX.

[8] *Sport Betting Industry*, DEPARTMENT OF HEALTH, http://www.health.gov.au/internet/main/publishing.nsf/Content/sports-betting-industry (last updated Feb. 27, 2018), *archived at* https://perma.cc/CQ78-B65C.

[9] *National Integrity of Sport Unit*, DEPARTMENT OF HEALTH, http://www.health.gov.au/internet/main/publishing.nsf/content/national-integrity-of-sport-unit (last updated Aug. 3, 2016), *archived at* https://perma.cc/V4ZD-WKD5.

Arrangements between sports and betting agencies.

3.5 All Australian governments agree to pursue nationally consistent legislative arrangements that provides:

a. a 'Sport Controlling Body' for each sport or competition to be identified and registered by an appropriate regulator, for example, a state or territory gaming commission, and be recognised in each jurisdiction;

b. the Sport Controlling Body to deal with betting agencies, licensed in any state or territory, on behalf of their sport; and

c. the Sport Controlling Body to register all events subject to betting with the relevant regulator.

3.6 All Australian governments also agree that this legislation, or binding agreements made pursuant to legislation, will deal with arrangements between the Sport Controlling Body and betting agencies including:

a. requirements that a sporting organisation must apply to the appropriate regulator for approval as the Sport Controlling Body for a sports betting event;

b. requirements that a betting agency must not offer a betting service on an event unless:

   i. an agreement is in effect between the registered Sport Controlling Body and the betting agency; or

   ii. a determination of the appropriate regulator is in effect for the betting agency to offer a betting service on the event;

c. requirements for betting agencies to obtain agreement from the sporting organisation on all bet types offered on the sport involved, including what level of competition bets may offered on (for example, minor leagues versus premier leagues), with sports having the ability to veto bet types; and

d. ***arrangements for financial return to the sport based on betting on that particular sport.***

3.7 Governments note the approach to implementation of such provisions may vary across jurisdictions depending on existing legislative arrangements.

3.8 All Australian governments agree that provisions under this legislation may cover:

a. definitions of sports betting, sports betting events, sports betting providers, a betting service, sport controlling body and an appropriate regulator;

b. requirements for the sporting organisation to provide the betting agency with information regarding their members (players, staff) and relevant competition/event details;

c. provision for information to be referred to the appropriate regulator or law enforcement agency in the event of an incident;

d. facilitation of international information sharing where appropriate (eg in trans-Tasman sporting competitions);

e. approval of events and competitions of any kind for sports betting purposes, and of bet types relating to those events and competitions, by an appropriate regulator (with the exception of horse, harness or greyhound racing);

f. provision for the appropriate regulator to have the right to seek information it thinks fit from betting agencies and the relevant sporting organisation to assess sports betting applications;

g. provision for the appropriate regulator to have the right to impose any conditions it thinks fit to provide approval of an event at the time of giving the approval or at any later time;

h. approvals that will be controlled by the appropriate regulator including approval conditions, variation and revocation of approvals, application process, determination of

applications and duration and surrender of approvals, costs of investigating applications, and mechanisms to manage objections, disputes and tribunals;
i. the range of matters the appropriate regulator will consider when assessing events for sports betting eg integrity risks, the sport organisation's capacity to administer and enforce rules or codes of conduct to ensure the integrity of the event or competition;
j. specification of reporting and publication requirements of the appropriate regulator to government, the public and other agencies as required;
k. ***provision that the Sport Controlling Body may make an agreement with a betting agency for the betting agency to offer a betting service on the event and under the agreement the parties will:***

i. provide for the sharing of information between a sport controlling body and a betting agency for the purposes of protecting and supporting integrity in sport and sport betting; and

ii. ***state whether or not a fee is payable by the betting agency to the sport controlling body in respect of betting on the sports betting event and if a fee is payable, what the fee is or how it is calculated.***

l. a betting agency must not accept, offer to accept, or invite a person to place, a bet; or facilitate the placing of a bet on a contingency that is the subject of a prohibition.[10]

III. State and Territory Legislation Related to Integrity in Sports

Following the signing of the National Policy, New South Wales (NSW) was the first state to pass legislation establishing specific match-fixing offenses in 2012.[11] Several other jurisdictions subsequently passed similar legislation during 2013.[12]

A. New South Wales Provisions Regarding Integrity Agreements

In 2014, the NSW parliament passed further legislation related to integrity in sports and the regulation of sports betting, with the amendments coming into effect in late 2015.[13] These reforms "regulate the interaction between sporting organisations and betting service providers, provide a

[10] National Policy on Match-fixing in Sport, *supra* note 7, §§ 3.5–3.8 (emphasis added).

[11] Crimes Act 1900 (NSW) pt 4ACA ("Cheating at gambling"), https://www.legislation.nsw.gov.au/#/view/act/1900/40/whole, *archived at* https://perma.cc/X5SZ-C7WL. The relevant amendments were made by the Crimes Amendment (Cheating at Gambling) Act 2012 (NSW), https://www.legislation.nsw.gov.au/#/view/act/2012/64/whole, *archived at* https://perma.cc/CD3U-W75V. *See also* Tyler Fox, *Match-fixing: The Australian Legislative Response*, FLAGPOST (Australian Parliamentary Library, Mar. 13, 2013), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2013/March/Match-fixing_the_Australian_legislative_response, *archived at* https://perma.cc/6W7J-MDQT.

[12] Criminal Code (Cheating at Gambling) Amendment Act 2013 (ACT); Criminal Code Amendment (Cheating at Gambling) Act 2013 (NT); Criminal Law Consolidation (Cheating at Gambling) Amendment Act 2013 (SA); Crimes Amendment (Integrity in Sports) Act 2013 (Vic).

[13] Racing Administration Amendment (Sports Betting National Operational Model) Act 2014 (NSW) sch 1, https://www.legislation.nsw.gov.au/#/view/act/2014/25/whole, *archived at* https://perma.cc/U9MC-VDT2. *See also* Press Release, George Souris & Gabrielle Upton, New Legislation to Target Match-Fixing in Sport (Mar. 19, 2014), https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2014/new-legislation-to-target-match-fixing.aspx, *archived at* https://perma.cc/XR7R-RHDB.

framework for the establishment of integrity agreements between sports controlling bodies and betting service providers, and outline fundamental requirements for betting on sporting events."[14]

Under the current provisions in the Betting and Racing Act 1998 (NSW) (previously the Racing Administration Act 1998 (NSW)), the relevant minister may, by order published in the state government gazette, prescribe "an event or class of event" as a "declared betting event" and prescribe the types of bets that are permitted to be made on the event.[15] Such an order must only be made pursuant to an application by a licensed bookmaker or licensee under the Totalizer Act 1997 (NSW).[16] If there is a sports controlling authority for the relevant event, the minister may only make an order prescribing an event as a sports betting event or permitting a new type of bet on such an event if

> (2) . . .
> (a) an integrity agreement that meets the requirements of this section is in place between the sports controlling body and the bookmaker or licensee who applied for the order (the applicant), and
> (b) the applicant has consulted the sports controlling body in respect of the making of the application and the sports controlling body does not oppose the making of the order.
> (3) An integrity agreement referred to in this section must:
> (a) set out the measures that will be used to prevent, investigate and assist in the prosecution of any match fixing or other corrupt behaviour related to betting on the sporting event, and
> (b) provide for funding to go to the sports controlling body for the purposes of implementing some or all of those measures (unless the sports controlling body does not want any such funding), and
> (c) provide for the sharing of information between the sports controlling body and the applicant, and
> (d) provide for a consultation process that ensures that the applicant will, if the sports controlling body is the sports controlling body for a particular sporting event, consult with the sports controlling body before making any application under section 18 (4) in respect of the sporting event.[17]

According to the NSW Office of Sport, the 2015 reforms

> prohibit any betting service provider from offering a betting service (in NSW or elsewhere) in relation to a NSW sporting event unless that betting service provider is licensed in an Australian jurisdiction.

[14] *Match-fixing, Corruption, Gambling*, NSW OFFICE OF SPORT, https://sport.nsw.gov.au/sectordevelopment/matchfixing (last visited June 19, 2018), *archived at* https://perma.cc/M4RG-S3Y5.

[15] Betting and Racing Act 1998 (NSW) s 18(1) & (2), https://www.legislation.nsw.gov.au/#/view/act/1998/114/whole, *archived at* https://perma.cc/YG93-4RUG.

[16] *Id.* s 18(4); Totalizer Act 1997 (NSW), https://www.legislation.nsw.gov.au/#/view/act/1997/45/whole, *archived at* https://perma.cc/3VGG-DY24.

[17] Betting and Racing Act 1998 (NSW) s 18A(2) & (3).

> In addition, if there is a prescribed sports controlling body for the sporting event the licensed betting service provider must not offer betting services unless there is an integrity agreement meeting the requirements of the legislation in place between the sports controlling body and the licensed betting-service provider.
>
> The essential requirements of an integrity agreement include the following:
> 1. an outline of the measures used to prevent, investigate and assist in the prosecution of any match fixing or corrupt behaviour;
> 2. provision of financial return to the sport;
> 3. information sharing arrangements; and
> 4. a consultation process for applications for new sporting events and bet types.
>
> Details of the integrity agreement, including financial arrangements, are determined not by Government but by the parties to the agreement. While the Act contains measures that actively bring the parties to the negotiating table, the outcome of the negotiations is left to the parties themselves. It is considered that the parties themselves are in the best position to reach agreement on these commercial matters, at arms length from Government.
>
> It is expected that arrangements for the provision of financial return to sports from betting service providers will assist in meeting the integrity-related costs incurred by sports controlling bodies.[18]

B. Victoria Provisions Regarding Agreements with Sports Controlling Bodies

Under the Gambling Regulation Act 2003 (Vic),[19] the Victorian Commission for Gambling and Liquor Regulation may approve a particular event or class of events for betting purposes, and approve a betting competition on that event or class.[20] One of the considerations for doing so is "whether the event or class is administered by an organisation that is capable of administering and enforcing rules or codes of conduct designed to ensure the integrity of the event or class."[21]

The Commission is also tasked with approving applications by organizations to be designated as the sports controlling authority for a sports betting event.[22] The Act prohibits a sports betting provider from offering betting services on a sports betting event unless there is either an agreement in effect between the provider and the sports controlling body, or the Commission has made a

[18] *Match-fixing, Corruption, Gambling*, *supra* note 14.

[19] Gambling Regulation Act 2003 (Vic) pt 5, http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/BAAAD7E3F381972ECA2581FE000001DC/$FILE/03-114aa073%20authorised.pdf, *archived at* https://perma.cc/Y2ZH-PVAK.

[20] *Id.* s 4.5.6. *See also Approved Betting Events*, VICTORIAN COMMISSION FOR GAMBLING AND LIQUOR REGULATION, https://www.vcglr.vic.gov.au/gambling/wagering-and-sports-betting/about-wagering-and-sports-betting/approved-betting-events (last updated May 17, 2018), *archived at* https://perma.cc/DWS6-TUVS.

[21] *Id.* s 4.5.8(1)(b). *See also Sports Controlling Bodies*, VICTORIAN COMMISSION FOR GAMBLING AND LIQUOR REGULATION, https://www.vcglr.vic.gov.au/gambling/wagering-and-sports-betting/sports-controlling-bodies (last updated May 17, 2018), *archived at* https://perma.cc/S6KT-TMRN.

[22] Gambling Regulation Act 2003 (Vic) s 4.5.12.

determination to allow the provider to offer the service.[23] The provision regarding such agreements states as follows:

> **Agreement of sports controlling body**
> (1) A sports controlling body for a sports betting event may make an agreement with a sports betting provider for the sports betting provider to offer a betting service on the event.
> (2) An agreement must—
> (a) provide for the sharing of information between the parties for the purposes of protecting and supporting integrity in sports and sports betting; and
> (b) state—
> (i) whether or not a fee is payable by the sports betting provider to the sports controlling body in respect of betting on the sports betting event; and
> (ii) if a fee is payable, what the fee is or how it is calculated.
> (3) An agreement may contain any other matters the parties consider appropriate.
> (4) An agreement takes effect, and may be terminated, in accordance with its terms.[24]

[23] *Id.* s 4.5.22.

[24] *Id.* s 4.5.23.

Great Britain

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SUMMARY Gambling in Great Britain is permitted and regulated by the Gambling Act 2005, which significantly liberalized the gambling industry. The operation of this Act is overseen by the Gambling Commission. Internet gambling operations fall within the purview of the Act if one piece of equipment related to online gambling is located within Great Britain. Great Britain also imposes taxes on a number of gambling activities, provides for integrity fees in horseracing, and protects the intellectual property of football leagues, although the latter has faced a lengthy ongoing legal battle.

I. Introduction

The link between gambling and sports has been in existence for centuries and grew rapidly during the twentieth century, exploding at the turn of the twenty-first century with the advent of online gambling combined "with the globalisation of live sports broadcasting, leading to a radical shift of business from high-street betting shops to online platforms that enable betting on sports events from remote locations 24 hours a day."[1]

Gambling in Great Britain is a "mature and highly competitive market that has been liberalised for many years."[2] The industry generated over £14 billion (approximately US$19 billion) in revenue and employed over 100,000 people between October 2016 and September 2017.[3] Over £4.9 billion (approximately US$6.5 billion) of this revenue was generated from the remote betting sector, which has a 35% market share of the gambling industry.[4]

[1] ADAM LEWIS QC & JONATHAN TAYLOR, SPORT: LAW AND PRACTICE ¶¶ B2.3-4 (3d ed. 2014).

[2] European Commission, State Aid SA.46216 (2017/N) – United Kingdom Horserace Betting Levy, C (2017) 2478 (Apr. 21, 2017) ¶ 2.1(7), http://ec.europa.eu/competition/state_aid/cases/267768/267768_1901680_142_2.pdf, *archived at* https://perma.cc/FD8T-QUZW.

[3] *Industry Statistics*, GAMBLING COMMISSION, http://www.gamblingcommission.gov.uk/news-action-and-statistics/Statistics-and-research/Statistics/Industry-statistics.aspx (last visited June 25, 2018), *archived at* https://perma.cc/84SM-AZU4.

[4] *Id.*

II. Regulation of Gambling in Great Britain

Gambling is permitted throughout Great Britain; however, its operation and the ability of gambling companies to advertise is regulated under the Gambling Act 2005,[5] the Gambling (Licensing and Advertising) Act 2014,[6] and the National Lottery etc. Act 1993.[7]

The Gambling Act 2005 "significantly liberalized gambling laws," permitting online gambling and allowing gambling companies to run advertisements.[8] The 2005 Act defines "gambling" as gaming, betting, or participating in a lottery[9] and provides the Gambling Commission (the regulator of gambling in Great Britain along with local authorities)[10] with the authority to issue and oversee gambling licenses and ensure compliance with the 2005 Act.[11] In that capacity the Gambling Commission has the power to investigate suspected breaches of the Act, impose fines, revoke licenses, and initiate prosecutions under the Gambling Act. The Gambling Commission must regulate gambling in the public interest while ensuring its statutory duties are fulfilled.

III. Licenses

Facilities that provide onsite or online gambling in Great Britain are required to obtain a license for the specific purpose of the gambling activities provided from the Gambling Commission.[12] The type of license differs according to the type of gambling the licensee wishes to operate. In order to be granted a license, the following licensing objectives provided for in the Act must be met:

> (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
> (b) ensuring that gambling is conducted in a fair and open way, and
> (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.[13]

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[5] Gambling Act 2005, c. 19, https://www.legislation.gov.uk/ukpga/2005/19, *archived at* https://perma.cc/3CR8-HQ32.

[6] Gambling (Licensing and Advertising) Act 2014, c. 17, https://www.legislation.gov.uk/ukpga/2014/17, *archived at* https://perma.cc/K2VD-DLG8.

[7] National Lottery etc. Act 1993, c. 39, https://www.legislation.gov.uk/ukpga/1993/39, *archived at* https://perma.cc/F6UQ-5DXL.

[8] Christopher Bunn et al., *Shirt Sponsorship by Gambling Companies in the English and Scottish Premier Leagues: Global Reach and Public Health Concerns*, 19 SOCCER & SOCIETY at 1 (2018) (accessed by subscription).

[9] Gambling Act 2005, c. 19, § 3.

[10] Gambling Act 2005, c. 19, §§ 20-32.

[11] GAMBLING COMMISSION, ANNUAL REPORT AND ACCOUNTS 2016-17, 2017, at 7, *available at* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/633577/Gambling_Commission_annual_report_and_accounts_2016-2017.pdf, *archived at* https://perma.cc/4NWC-R8QJ.

[12] *Id.* § 65.

[13] *Id.* § 1.

Legal scholars have noted that "[it] is clear that the three licensing objectives express the primary purpose which it is intended the Gambling Act 2005 should achieve."[14]

Internet gambling, commonly referred to as online gambling, is permitted in Great Britain and is referenced in the Gambling Act 2005 under the catch-all term "remote gambling," which encompasses gambling using the telephone, television, radio, or "any other kind of electronic or other technology for facilitating communication."[15]

The Gambling Commission has published a number of standard license conditions that apply to various types of gambling[16] and, pursuant to the Gambling Act 2005, has made social responsibility an explicit condition of all licenses.

IV. Offenses

The ability to gamble online twenty-four hours a day led to an increase in the number of gamblers and drove bookmakers to develop new betting products, which

> prompted the reported infiltration of organized crime into sports betting, attracted both by money-laundering opportunities and by the opportunity to guarantee substantial returns through fixing. And as a result, in the last decade of the 20th century and the first decade of the 21st, the most popular sports for betting (cricket, horseracing, tennis and football) have suffered a long series of corruption scandals.[17]

The government considered these matters during a review that resulted in the Gambling Act 2005, opting to continue a noninterventionist approach regarding sports regulation and allow the governing bodies of sports to continue to regulate themselves.[18] While the noninterventionist approach was adopted, the 2005 Act includes a variety offenses that apply to gambling. It is an offense to provide facilities for gambling without the appropriate licenses or approvals, or facilities for gambling that do not fall within an exception to the Act. This is punishable by up to fifty-one weeks imprisonment and/or a fine.[19] This offense extends to those who provide facilities for online gambling, if the individuals providing facilities for gambling have at least one piece of remote gambling equipment located in Great Britain. If they do not, then the offense cannot apply to them, even if the gambling service is provided to people in Great Britain.[20] Conversely, individuals that have one piece of equipment in Great Britain that is used for the purpose of

[14] SMITH AND MONKCOM: THE LAW OF GAMBLING ¶ 1.14 (Gerald Gouriet QC & Jeremy Phillips eds., 4th ed. 2017).

[15] Gambling Act 2005, c. 19, § 4.

[16] Gambling Commission, License Conditions and Codes of Practice (Jan. 2018, effective Apr. 4, 2018), http://www.gamblingcommission.gov.uk/PDF/LCCP/Licence-conditions-and-codes-of-practice-April-2018.pdf, *archived at* https://perma.cc/FBD5-XWGP.

[17] LEWIS & TAYLOR, *supra* note 1, ¶ B2.4.

[18] Gambling Act 2005, c. 19, part 3. *See also id.* ¶ A1.12.

[19] Gambling Act 2005, c. 19, § 33.

[20] *Id.* § 36.

facilitating online gambling fall within the scope of the Act, even if the remote gambling is only offered to people outside of Great Britain.

Gambling software is also licensed under the 2005 Act. A license is required for businesses that "manufacture, supply, install or adapt . . . computer software for remote gambling."[21] Failing to obtain the appropriate license is punishable with up to fifty-one weeks imprisonment and/or a fine.

V. "Prohibited Territories"

The Secretary of State has the authority to "blacklist" certain countries or designate them as "prohibited territories" at his discretion. The result of this blacklisting is that it becomes an offense for a person using any remote gambling equipment in Great Britain to invite or enable a person in a blacklisted territory to participate in remote gambling.[22] The Secretary of State designates the country or place as a "prohibited territory" by order. The Explanatory Notes to the Gambling Act 2005 describes the designation process as follows:

> The Secretary of State's decision whether or not to exercise this power could depend on matters such as: the development of the global gambling market; the laws which other countries establish to permit, constrain or prohibit the use of remote gambling; the practical measures employed by those countries to secure compliance with such laws; and the extent to which it is possible to reach international agreements about the cross-border use of the internet for gambling.[23]

VI. Taxing Gambling Revenues

The taxation of gambling profits in Great Britain is complex and varies according to the different types of gambling. For example, seven different duty regimes apply to gambling:

- General Betting Duty applies to bets made with bookmakers, betting exchanges, and the Tote (soon to be replaced by Britbet), and is currently 15% of net stakes receipts.
- Pool Betting Duty applies to football pools and fantasy football competitions and is currently 15% of net pool betting receipts.[24]
- Gaming Duty applies to casino games played on licensed premises and is a banded charging structure of between 15% and 50% of a casino's gross gaming yield.[25]

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[21] *Id.* § 41.

[22] *Id.* § 44.

[23] Gambling Act 2005, c. 19, Explanatory Notes, ¶ 171, https://www.legislation.gov.uk/ukpga/2005/19/notes, *archived at* https://perma.cc/5B6N-YP38.

[24] *Guidance: General Betting Duty, Pool Betting Duty and Remote Gaming Duty*, HM REVENUE & CUSTOMS, https://www.gov.uk/guidance/general-betting-duty-pool-betting-duty-and-remote-gaming-duty (last updated April 25, 2017), *archived at* https://perma.cc/8SHF-MK6X.

[25] *Guidance Gaming Duty*, HM REVENUE & CUSTOMS (Aug. 14, 2014), https://www.gov.uk/guidance/gaming-duty#returns-and-payments, *archived at* https://perma.cc/6NH2-V3HM.

- Amusement Machine License Duty applies to amusement and gaming machines, and is a license-based duty with the amount of duty dependent on the type of machine, maximum stake/prize, and duration of the license, varying from 5% to 25% of net takings.[26]
- Bingo Duty applies to commercial bingo and is currently 10% of bingo promotion profits.[27]
- Lottery Duty is paid by the National Lottery at 12%.[28]
- Remote Gaming duty applies to gambling via remote communications including the Internet, and is currently set at 15% of net receipts.[29]

VII. Integrity Fees

The government of Great Britain recently proposed introducing a levy on betting across all sports, but the proposal was not realized[30] and, with one exception, the laws of Great Britain do not appear to provide for integrity fees to be payable to the majority of sporting leagues for bets made on their events. The one exception is horseracing, which has received a levy on the profits of bets made in bookmakers across the UK since it was introduced in 1961,[31] in order to "offset the decline in race day revenue (gate receipts) following the legalisation of bookmakers' off course operations, which had meant that people wishing to place a bet on a horserace no longer needed to attend it. The Levy ensured that some proceeds from off-course operations were returned to racing."[32]

In the wake of the legalization of online gambling, the levy received by the horse racing industry dropped by almost half, from £99.3 million (approximately US$131.2 million) in 2005–6 to £54.5 million (approximately US$72 million) in 2015–16,[33] and led to "an unfair two-tier system whereby a bookmaker physically based in Great Britain must pay the Levy, whereas bookmakers

[26] *Machine Games Duty*, GOV.UK, https://www.gov.uk/machine-game-duty/how-much-you-pay (last visited June 27, 2018), *archived at* https://perma.cc/DT6A-7FXU.

[27] *Guidance: Bingo Duty*, HM REVENUE & CUSTOMS (Sept. 11, 2014), https://www.gov.uk/guidance/bingo-duty#calculating-bingo-duty, *archived at* https://perma.cc/3WA5-V5ZQ.

[28] *Guidance: Lottery Duty*, HM REVENUE & CUSTOMS (Mar. 13, 2013), https://www.gov.uk/guidance/lottery-duty, *archived at* https://perma.cc/4XV7-MXJD.

[29] *Guidance: General Betting Duty, Pool Betting Duty and Remote Gaming Duty*, *supra* note 24.

[30] *Sport Betting Levy Amongst 'Innovative' Labour Sport Plans*, BBC NEWS (July 24, 2014), https://www.bbc.com/news/uk-28457108, *archived at* https://perma.cc/3C48-CV68.

[31] Murad Ahmed, *Betting Tax Change Set to Boost UK Horseracing Industry*, FINANCIAL TIMES (London) (Jan. 13, 2017) (by subscription).

[32] Department for Culture Media & Sport, Extending the Horserace Betting Levy: A Consultation on Implementation ¶ 2.2 (June 2014), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/323973/Levy_Extension_consultation.pdf, *archived at* https://perma.cc/KA39-CEDF.

[33] Greg Wood, *Government Announces Long-Awaited Levy Reform Boost for Racing*, THE GUARDIAN (London) (Jan 13, 2017), https://www.theguardian.com/sport/2017/jan/14/government-levy-reform-boost-horse-racing, *archived at* https://perma.cc/9A9B-QWTN.

who are based offshore do not, in otherwise identical circumstances."[34] A voluntary arrangement was attempted, but was unsuccessful.[35] As a result, the law[36] was recently reformed to apply the levy to bets on horseracing placed with all gambling operators, including online operators, across the UK.[37] The levy is 10% of a gambling operator's gross profits (the gross gambling yield, which are stakes, minus winnings paid out)[38] over £500,000 (approximately US$660,000),[39] and is currently collected and distributed by the Horserace Betting Levy Board in accordance with its general objectives and annual business plan.[40] Starting in April 2019 the Racing Authority will manage the distribution of this levy, being "tasked with implementing the policy and strategy for racing's central funding, ensuring funds are distributed fairly and transparently. It will also devise ways to grow funding, and consult with the betting industry and other stakeholders on key matters relating to the growth of racing."[41] The funding will be used for "(1) the improvement of breeds of horses; (2) the advancement of encouragement of veterinary science or veterinary education[; and] (3) the improvement of horse racing."[42]

As the levy is considered to be state aid, approval for this change had to be sought from the European Commission, which it provided in April 2017.[43]

While there are currently no integrity fees for other sports, the governing bodies of major sports receive substantial amounts of money from gambling companies in the form of sponsorships.[44] For example, during the 2016–17 season, 50% of teams in the English Premier League carried

[34] The Horserace Betting Levy Regulations 2017, Explanatory Memorandum (Draft), ¶ 7.2, https://www.legislation.gov.uk/ukdsi/2017/9780111155530/pdfs/ukdsiem_9780111155530_en.pdf, *archived at* https://perma.cc/4A7N-BCM6.

[35] *Id.* ¶ 7.4.

[36] Betting, Gaming and Lotteries Act 1963, c. 2, https://www.legislation.gov.uk/ukpga/1963/2, *archived at* https://perma.cc/G7W7-KBAY.

[37] The Horserace Betting Levy Regulations 2017, SI 2017/589, https://www.legislation.gov.uk/uksi/2017/589/made, *archived at* https://perma.cc/C3DL-8TRW, made under the Gambling (Licensing and Advertising) Act 2014, c. 17, https://www.legislation.gov.uk/ukpga/2014/17, *archived at* https://perma.cc/YE6S-RTVD.

[38] *Government Boost for Horseracing in Betting Levy Reform*, DEPARTMENT FOR DIGITAL, CULTURE, MEDIA & SPORT (Jan. 14, 2017), https://www.gov.uk/government/news/government-boost-for-horseracing-in-betting-levy-reform, *archived at* https://perma.cc/6B66-SDJX.

[39] Betting, Gaming and Lotteries Act 1963, c. 2, § 27.

[40] *Business Plan*, HORSERACE BETTING LEVY BOARD, https://www.hblb.org.uk/page/27 (last visited June 27, 2018), *archived at* https://perma.cc/EV97-RNYN.

[41] *UK Racing Agrees Structure for New Levy Distribution Body*, GAMING INTELLIGENCE (June 12, 2018), http://www.gamingintelligence.com/people/47804-uk-racing-agrees-structure-for-new-levy-distribution-body, *archived at* https://perma.cc/Z4XL-HAHY.

[42] European Commission, *supra* note 2, ¶ 2.3(25).

[43] *Id.* ¶ 7.

[44] David Purdum, *Premier League Supports MLB, NBA's Sports Betting Vision*, ESPN (Apr. 20, 2018), http://www.espn.com/chalk/story/_/id/23246364/chalk-premier-league-supports-mlb-nba-sports-betting-vision, *archived at* https://perma.cc/4DFZ-R7C2.

gambling sponsorships on their shirts,[45] resulting in £47.3 million (approximately US$63 million) in shirt sponsorships by gambling companies.[46]

VIII. Mandated Data Purchase Fees

Written works and databases in the UK are protected under both domestic copyright laws and the EC Database Directive, which creates a property right in the database itself and enables the creator to bring a claim against anyone who extracts or reutilizes all, or a substantial part, of the database without consent.[47] There have been a number of cases involving databases compiled by the horseracing industry and football leagues that have weakened the rights of these industries over the data.

A. British Horseracing

In 2004, the European Court of Justice heard a case involving the governing body for horseracing in Britain and a leading bookmaker. The British Horseracing Board (BHB, currently known as the British Horseracing Authority) had compiled a vast quantity of data relating to horseracing that cost approximately £4 million (approximately US$5.31 million) annually to compile and maintain.[48] William Hill Ltd., a bookmaker, was permitted to use information from the database in the course of its betting business, but had posted the information on its website without permission. The BHB argued that its database was protected under article 7 of the Database Directive, as it had made

> qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.[49]

The BHB further argued that William Hill's use of information from the database on its website infringed BHB's database rights, as William Hill was extracting and reutilizing a substantial part

[45] Bunn et al, *supra* note 8, at 3.

[46] Rob Davies, *UK Gambling Industry Now Takes £14bn a Year From Punters – Report*, GUARDIAN (London) (Aug. 31, 2017), https://www.theguardian.com/society/2017/aug/31/uk-gambling-industry-takes-14bn-year-punters, *archived at* https://perma.cc/3U8D-6KX2.

[47] EU Directive 96/9, incorporated into national law by the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, http://www.legislation.gov.uk/uksi/1997/3032/made, *archived at* https://perma.cc/T2T9-K4CF.

[48] Case C-203/02, British Horseracing Board Ltd. v William Hill Ltd., 2004 E.C.R. I - 10461 ¶ 15, http://curia.europa.eu/juris/showPdf.jsf;jsessionid=9ea7d0f130dad4637d4cf24749d9ac4a858820532cad.e34KaxiLc3eQc40LaxqMbN4Pb3mOe0?text=&docid=49633&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=215483, *archived at* https://perma.cc/HC64-3Q8W.

[49] Directive 96/9/EC on the Legal Protection of Databases art. 7, 1996 O.J. (L 77) 20, https://eur-lex.europa.eu/lexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML, *archived at* https://perma.cc/53LK-4LZL.

of the BHB database.[50] In November 2004, the European Court of Justice ruled that the BHB's database did not qualify for protection under the Database Directive:[51]

> In essence … it is the investment in the gathering and verification of data for a database that qualifies the database for protection under the Directive, not the creation and verification of that data in the first place. As a result, if (as in the case of the BHB database and the football fixture lists) the obtaining or verification of data is done at the same time as the creation of the data, such that the investment made is the same for both, then the resulting database does not qualify for protection under the Database Directive. In other words, the substantial investment involved in the obtaining, verification and presentation of the information by those bodies does not in itself give them the right to prevent unauthorised use of the information by third parties.[52]

The result of the case has provided that

> the author of a database of sports data may be able to benefit from the *sui generis* database right created by the Database Directive, but only if he can demonstrate that he has made a substantial investment of the type that qualifies for protection under the Directive. Investment in the creation of data (eg deciding when events should be played) does not count; instead, there must be investment in the collecting/collating, verifying and/or presenting of that data in a database. If such investment is shown, a database right arises that protects the database from an unauthorized person extracting or re-utilising all or a substantial qualitative or quantitative terms, but focuses in both cases on the investment made by the database right owner in the creation of the database and the prejudice caused to that investment by the act of extracting or re-utilising that part.[53]

B. Football Fixture Lists

Football fixture lists have faced similar challenges. As a result of a case heard in 1959,[54] the football fixture list is protected by copyright law, and Football DataCo manages these rights on behalf of the Premier League, Football League, Scottish Premier League, and Scottish Football League, granting licenses to third parties to allow them to reproduce fixtures from these leagues.[55] These rights in the fixture lists have brought the football leagues millions of dollars from betting

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[50] Case C-203/02, British Horseracing Board Ltd. v William Hill Ltd. 2004 E.C.R. I – 10461 ¶ 20.

[51] *Id.*: Case C-444/02, Fixtures Marketing Ltd. v. Organismos Prognostikon Agonon Podosfairou AE (OPAP), 2004 E.C.R. I-10590. http://curia.europa.eu/juris/showPdf.jsf?text=&docid=49635&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=229014, *archived at* https://perma.cc/TCT9-9HSH; Case C-46/02, Fixtures Marketing Ltd. v. Oy Veikkaus Ab, 2004 E.C.R. I - 10396, http://curia.europa.eu/juris/showPdf.jsf?text=&docid=49636&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=232195 *archived at* https://perma.cc/MT3M-DDHV; Case C-338/02, Fixtures Marketing Ltd. v. Svenska Spel AB, 2004 E.C.J. I – 10532, http://curia.europa.eu/juris/showPdf.jsf?text=&docid=49634&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=231733, *archived at* https://perma.cc/M3SC-4JWF.

[52] LEWIS & TAYLOR, *supra* note 1, ¶ I 1.92.

[53] *Id.* ¶ I 1.95.

[54] Football League Ltd. v. Littlewoods Pools Ltd. [1959] Ch 637.

[55] Bill Wilson, *Football Match Fixture List Copyright Claim Rejected*, BBC NEWS (Mar. 1, 2012), https://www.bbc.com/news/business-17218968, *archived at* https://perma.cc/N2UW-3YQW.

operators and newspapers, who pay to use them, providing "much needed revenue at all levels of the professional game."[56]

The licensing of this data has not been without controversy, and has resulted in a long running series of court cases to clarify, protect, and enforce the rights of the football league in the fixture lists. In a case heard in 2012 the Court of Justice of the European Union held[57] that neither copyright nor database rights existed in the football fixture lists, as the

> football fixture list cannot be protected by copyright when its compilation is dictated by rules or constraints which leave no room for creative freedom[.] The fact that the compilation of the list required significant labour and skill on the part of its creator does not justify, in itself, it being protected by copyright.[58]

The case returned to the English Court of Appeal, which determined that database rights existed in the information gathered by match watchers, and that bookmakers were infringing this right when they reported certain aspects of the data.[59] This judgment effectively "granted [DataCo] intellectual property rights on the statistics inside its database."[60]

[56] *Id*.

[57] Case C-604/10, Football Dataco Ltd. et al. v. Yahoo! UK Ltd. et al. 2012 ECLI C:2012:115, http://curia.europa.eu/juris/document/document.jsf?text=&docid=119904&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=166095, *archived at* https://perma.cc/A3WK-QDRJ.

[58] Press Release, Court of Justice of the European Union, Judgment in Case C-604/10 Football Dataco and Others v. Yahoo! UK Ltd. and Others, No. 16/12 (Mar. 1, 2012), http://europa.eu/rapid/press-release_CJE-12-16_en.htm, *archived at* https://perma.cc/ZKR7-PBCS.

[59] Football Dataco Ltd. et al. v. Sportradar et al. [2013] EWCA Civ 27, http://www.bailii.org/ew/cases/EWCA/Civ/2013/27.html, *archived at* https://perma.cc/9GJW-WMHD.

[60] Purdum, *supra* note 44.