

THE GAMBLING LAW
REVIEW

SEVENTH EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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REVIEW

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PREFACE

Luck always seems to be against the man who depends upon it.

Ukrainian proverb

A few days ago I took the Tube from my home in London to visit the ExCel centre in Canary Wharf to go to the International Casino Exhibition. It seemed like a long time since I had been to the ICE. In truth, the tone of the conference was somewhat subdued compared with the razzle-dazzle of previous years. Some of the larger land-based games providers had stayed away – an indication perhaps that the casino industry is still in its recovery phase and not yet ready for new investment. But there were few masks to be seen on the tube train, or among the delegates. People were shaking hands again. Although our economy has not returned to normal, and the bill is yet to be paid, it is important also to remember how far we have come: the ExCel centre had been a temporary Nightingale hospital from April 2020 to April 2021, with a capacity of 4,000 beds for covid patients (a precaution that proved fortunately unnecessary). There is no doubting times have changed very quickly – both for the better and the worse: in the Preface to the last edition of this work, I commented that Ukraine was one of the few countries that had undergone significant changes in its gambling law during the course of the previous 12 months. That seems now to be a poignantly irrelevant observation. But however terrible the situation in Ukraine has become, my task is to look elsewhere, and introduce a work on the past year in gambling law, and the predictions for the next.

Last April, I tried to identify some of the key themes that might emerge in a post-pandemic world in order to assess what our ‘new normal’ for leisure and entertainment was going to look like. At that time, it appeared that the pandemic was already coming to its close and that we might very soon enjoy an easing of restrictions. I did not realise that we were only about half way through the process with another full year of lockdowns and restrictions still to come (to say nothing of a further programme of booster vaccines). So it is perhaps only now, in April 2022, that we are able to start perceiving how a world that has to shrug at the continued presence of covid-19 might look.

One of the first points that I raised was that, in the years of the pandemic, Western society had refocused attention on domestic homes, and had made an important social transition to home being a place of work as well as normal domestic life. I venture to say that when seen in terms of an impact on the overall population, that change has probably been the single largest social change so far this century. I am certainly still working mostly from my home and, like millions of others, enjoying a different perspective on what it is to be at work, including differing pressures, changing patterns of social interaction and the extra time that used to be spent on a (usually unpleasant) commute. The average commute to work across the UK is approximately 40 minutes each way (with London having a far longer average

74 minutes each way), and so reducing or eliminating travel to the workplace has probably increased the time available for work or leisure by as much 5 to 10 per cent across large parts of the services economy, as well as reducing that aspect of the cost of living.

Since the winding back of restrictions at the beginning of 2022, we have seen a sharp increase in workplace attendance, but a very large number of businesses have now adopted a 'hybrid model', and employees are increasingly asking for that to become a permanent feature of working patterns. Consequently, from Tuesday to Thursday, life resembles its pre-pandemic rhythm. But Mondays and Fridays have a different feel. Since January, those who operate restaurants and bars have seen a dramatic increase in the normal patterns of attendance, but there have been significant changes that require adaptation. I do not think that I predicted that the enthusiasm for home-working would stratify society by age. Those in their 20s and early 30s heavily favour a full-time return to work, while those over the age of 55 tend to want to work from home permanently. That reflects not only a desire for training (and perhaps also the lack of space available for work in smaller homes) but also more deeply that work is actually a social space – with many singletons looking for friendship and entertainment as much as for professional experience.

I also predicted that the substantial shift from urban living to a disaggregated workforce would be permanent. I think now that this was a hasty prediction and, in any event, it is far too early to tell whether this will happen. The first point is that although there are many renters or flexible workers who can make the move from cities to the countryside (or vice versa), there are plenty of others who are tied by more long-term commitments such as children's schooling to stay put. The other factor is that cities are places not just for work, but concentrations for leisure activities – and the public has shown a very strong desire to get back to enjoying itself in theatres, concert halls, bars and casinos. So while many have reassessed that a life nearer to the countryside is more healthy and cost-effective, any exodus has been nuanced. It seems likely that we will only see the true level of change in three to five years. Let us not forget also that working patterns are not necessarily confined by national boundaries. Several governments have been quick to recognise the advantages of attracting generally affluent desk-based workers to populate sunnier and cheaper living destinations – with countries such as Italy, Spain and Portugal all developing 'digital nomad' visa schemes to allow workers to work for up to a year abroad without becoming liable to the (full) tax implications of residence abroad.

All these complex changes leave a significant question mark over the planning uses of parts of our urban centres. Although there has been a significant return to work, and offices and shops are returning to their pre-pandemic levels of use, there are clearly some long-term shifts in the way that urban space is needed, and that process will continue as retail and office space is reused either for residential projects or entertainment space. Restaurant and entertainment attendance has rebounded – though still not to pre-pandemic levels, and there are a lot of changes to the labour market in those industries that will take time to be solved.

Meanwhile, the rise of the home as a centre of personal entertainment continues unabated. The 5G network and fast broadband continues to level the playing field across the developed world as consumers demand the ability for the whole family to stream entertainment and work from home at the same time. In the UK, a recent survey (namely Bazaarvoice 2021), 55 per cent of UK consumers said that they would prefer to shop digitally rather than in store. At the same time, the same survey gives insights into how our shopping methodology has changed, with more than 75 per cent of US online shoppers saying that they 'always' read reviews before making a purchase. These new 'networks of trust', whether

expressed by influencers, reviewers or affiliate schemes have become some of the most important drivers of customer behaviour. We have seen a rapidly growing sophistication in controlling the authenticity of reviews, social media messages and the news itself. Another change is the move from social media from being a place merely for messaging to a direct place for purchase – with one in three of those surveyed having purchased an item through social media for the first time in the last 12 months. To be clear, these were technological and social trends that were not specifically linked to the pandemic, but they have been accelerated and then cemented in our habits by the necessity of lockdown and the subsequent longevity of our confinement. And, let us not forget, they are also vastly more convenient for us, while allowing retailers and service providers to understand their customer base at a level of detail impossible a decade ago.

What does this mean for land-based gambling? As with shopping generally, we have seen certain types of gambling product transfer substantially from a land-based to an online model. Lotteries and sports betting are both areas of focus, since (apart from track-side betting) the convenience of online betting and lottery tickets is not counterbalanced by any real ‘thrill’ from physical attendance at the licensed premises. However, the more socially focused forms of gambling – casino and bingo to give two examples, are predicted to rebound strongly, though in the case of some casinos, we have yet to see the full return of tourism to pre-pandemic levels.

Speaking of tourism: 2022 seems likely to be the first time that many of us get to have a holiday in a long while – and we can all see that the skies are criss-crossed with vapour trails in a way that we have not seen since 2019. That will provide a very important boost for many countries that rely on summer holidays as an important part of their income. But the future looks somewhat more challenging for a large-scale return to business travel. There will of course be a large increase. But it is harder to justify a marketing budget with business-class flights having managed two years of videoconferences.

Last year, I tried to predict the way that the economic shock of the pandemic would impact on our leisure spending. I think I was probably wrong (twice!). In the first place, the rebound of the world’s economies has been somewhat stronger than many imagined possible – but the combination of money to spend and scarce resources has led to inflationary pressures that have been much worse than predicted – and have been further compounded by uncertainty over energy supply. If there is any good to come out of the current war in Ukraine, it may be that the world will have an even more acute incentive to turn away from excessive reliance on resources that are controlled by a single axis of political power.

What does this mean for leisure spend in the Western world in 2022? It will divide society in unfortunate ways. Many who experienced a long period of economic uncertainty, will have those stresses compounded by a period of sharp price rises. Others, as usual, will have had money to invest in rising markets, and will be feeling as though they have enjoyed ‘a good lockdown’.

Turning to this year’s edition, developments in gambling law and practice have been somewhat muted. As a case in point, the UK’s own government review of the Gambling Act has been postponed twice. The main exception to this slower tempo has been the US market, which continues to grow and expand legally and economically, and upon which much attention has naturally been focused.

I wish to thank my contributors for their usual careful and detailed analysis of the gambling laws of their individual jurisdictions. I hope that next year’s guide will cover still

more. Let us hope that next year we can each report that some of the troubles that have plagued our society in recent times will be closer to resolution, and we can turn our attention more squarely to the regulation of entertainment.

Carl Rohsler

Memery Crystal

London

April 2022

NORWAY

Brede A Haglund and Alexander Mollan

I OVERVIEW

i Definitions

Norwegian law does not differentiate between online gambling and their land-based counterparts, nor between different types of gambling. The Norwegian Lottery Act Section 1 first paragraph a) utilises the umbrella term ‘Lottery’ to cover gambling activities (e.g., casino-styled games, wagering or sports betting or lotteries), that require consideration and may provide winnings as a result of a draw, guess, chance or any other procedure that is partly or wholly determined by a random event (i.e., the presence of total or partial chance).

Norwegian law interprets the condition of ‘consideration’ broadly, in that the provision of private emails or use of a telephone with payment beyond the normal rate will be treated as consideration.

The condition of ‘winnings’ encompasses money, objects or other tangible assets with economic value. In principle, anything of value could be considered winnings within the meaning of the Lottery Act. It follows from case law that items of negligible value (e.g., simple promotional items and symbols of participation, such as mugs, cups, diplomas, posters and t-shirts) fall outside the concept of winnings.

If the outcome of the activity is beyond the control of the individual, the activity will fulfil the condition of having a total or partial chance. This condition is always met where the winner is selected by draw or guess, such as in traditional lotteries. If the activity consists of several parts, only one part must contain an element of randomness in order for the condition of total or partial chance to be fulfilled. This includes activities where the chance of winning depends on both skill and randomness. It does not matter if the random element is present before or after the part of the activity where participants compete in knowledge or skill.

Pure skill gaming does not have the element of chance; therefore, it is not treated as a lottery under Norwegian law. For instance, chess is not considered gambling under Norwegian law, even though it includes a minor element of chance that could affect the outcome (white starting).

Norwegian law does not distinguish between betting on the results of a draw as opposed to entering it. Betting on the results of a lottery or otherwise partaking in gambling activities (licensed or not) is permitted for persons over the age of 18.

1 Brede A Haglund is a partner and Alexander Mollan is a senior lawyer at Brækhus Advokatfirma DA.

ii Gambling policy

As a general rule, Norwegian gambling legislation prohibits the provision, marketing or distribution of any form of lottery that does not have a licence from the Norwegian Gaming and Foundation Authority in accordance with the Norwegian Lottery Act Section 6 first paragraph or the Gaming Scheme Act Section 2. This licence is generally only attainable where the organisation has a humanitarian or socially beneficial purpose.²

The Norwegian gambling monopoly and the acts upon which it depends are based on the notion that 'lotteries [and other gambling activities] should be held in safe forms under public control aimed at preventing negative social impacts of lotteries while facilitating lotteries and gaming as a good source of income for sports, culture, humanitarian and socially beneficial causes'.³

iii State control and private enterprise

While any organisation may apply for a licence, licences to operate commercial gambling activities are not granted as the state-owned companies Norsk Tipping (gaming) and Norsk Rikstoto (totalisator betting) holds the exclusive rights to provide commercial gambling services in Norway by virtue of the Norwegian gambling monopoly. Norsk tipping is the sole legal provider of, *inter alia*, commercial casino-style games, igaming, wagering and sports betting, while Norsk Rikstoto offers horse race betting.

Licences to hold lotteries, land-based poker tournaments and bingo games may be granted to local, regional or nationwide organisations who have a humanitarian or socially beneficial purpose within the area in which the lottery is held.

iv Territorial issues

Gambling is regulated on a national level.

v Offshore gambling

Norwegians can legally gamble on foreign-based websites hosted by foreign-based gambling operators without violating Norwegian law, regardless of the legality of the gambling services being offered.

Foreign-based operators may also tacitly offer their services to Norwegian consumers if they hold a licence in EU Member State or European Economic Area member state. The Norwegian Gaming and Foundation Authority may pierce the veil if it suspects that a Norwegian operator with a predominantly Norwegian customer base locates its operations abroad in order to circumvent Norwegian law or where foreign-based operators aligns and facilitate their business in such a way to provide its services towards customers in Norway, for example, by providing gaming services and customer support in the Norwegian language, having Norwegian spokespersons, marketing their services in Norwegian media or websites, facilitating payments to and from customers in Norway and allocating any surplus of the gambling operator to Norwegian organisations.

While a foreign-based operator might legally offer its services to Norwegian consumers, the Norwegian Gaming and Foundation Authority may still seek to hinder its business by

2 See the Lottery Act Sections 5 and 6.

3 See the Lottery Act Section 1a.

enacting resolutions prohibiting Norwegian-based financial institutions and payment service providers from facilitating gambling-related payments between gambling operators (or their payment providers) and their customers.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

Gambling within Norway is governed by three acts encompassing gaming schemes related to sporting events and other competitions,⁴ lotteries⁵ and horse racing and appurtenant betting activities.⁶ These acts govern the prohibition and licensing requirements concerning gambling offerings.

ii The regulator

The Norwegian Gaming and Foundation Authority (the Authority) regulates and supervises gambling in Norway.

iii Remote and land-based gambling

As a general rule, the provision, marketing or distribution of any form of unlicensed gambling activity that has not been authorised by the Authority in accordance with Section 6, Paragraph 1 of the Lottery Act or Section 2 of the Gaming Scheme Act is prohibited. Norwegian law does not differentiate between land-based and online gambling.

iv Land-based gambling

Land-based casinos are prohibited under Norwegian law.

v Remote gambling

As a general rule, the provision, marketing or distribution of any form of unlicensed gambling activity that has not been authorised by the Authority in accordance with Section 6, Paragraph 1 of the Lottery Act or Section 2 of the Gaming Scheme Act is prohibited.

vi Ancillary matters

Manufacturers or suppliers of gambling-related equipment are not subject to specific requirements under Norwegian gambling law.

There are no licences for individuals, although they may be subject to requirements under the various authorisation regimes. For example, applicants for licences may be required to submit:

- a* a police certificate of good conduct of the organisation's chair of the board, the proprietor or other participants;
- b* financial statements, annual reports and an auditor's report; and
- c* articles of association.

4 The Gaming Scheme Act of 28 August 1992 No. 103.

5 The Lottery Act of 24 February 1995 No. 11.

6 The Totalisator Act of 1 January 1927 No. 3.

Licences may be revoked if the licence holder has breached the terms of the licence or Norwegian law. Licences may also be revoked where a gambling device used in the gambling activity does not perform satisfactorily or where the holder has breached public order or otherwise facilitated the creation of an environment harmful to children and adolescents.

vii Financial payment mechanisms

There are no specific restrictions on certain types of payment mechanism for gambling.

III THE LICENSING PROCESS

i Application and renewal

Private organisations may apply for authorisation to provide private lotteries, bingo and poker games under certain conditions. Lottery and bingo licenses are valid for one year. The Authority may also grant three-year licences to operate an annual, land-based, for-profit and national poker championship, with up to five regional qualification tournaments. Licences are required for both the operator of the gambling service, as well as the proprietor of any fixed location offering the service.

Licences are only granted to local, regional or nationwide organisations or foundations that are registered with the Norwegian Central Coordinating Register for Legal Entities (NCCRLE) and that have a humanitarian or socially beneficial purpose.

Pre-drawn or post-drawn lotteries are exempt from the requirement of a licence, provided that the organisation: (1) has an annual turnover that does not exceed 200,000 kroner; (2) has a humanitarian or socially beneficial purpose; (3) gives 14 days' prior notice to the Authority before the sale of lottery tickets; and (4) does not utilise a commercial third party to organise the Lottery.⁷

In order to apply for a gambling licence, an application is filed using the applicable form provided by the Authority. The Regulation on Bingo and the Regulation on the Lottery Act Sections 5, 6, 7a and 8 imposes the following conditions for prospective licence applicants, as set out below.

Regarding lotteries:

- a* operators may not use more than 15 per cent of their turnover on marketing;
- b* the value of the main prize cannot exceed 2 million kroner; and
- c* the combined value of all prizes must amount to at least 25 per cent of the lottery's allowed turnover.

Regarding poker:

- a* the value of the main prize cannot exceed 2 million kroner;
- b* the maximum number of participants is 5,000;
- c* all participants must be over 18 years of age; and
- d* the licence holder must receive a minimum of 5 per cent of the tournament's turnover. The licence holder may recuperate costs incurred in arranging the tournament, with a limit of 10 per cent of the turnover.

⁷ See the Norwegian Lottery Act Sections 7 and 5, second paragraph, the Regulation on the Norwegian Gaming and Foundation Authority and the Lottery Registry Section 5-1, first paragraph and 4.

Regarding bingo:

- a* the annual turnover cannot exceed 700,000 kroner; and
- b* the licence holder must receive a minimum of 15 per cent of the profits (of which 30 per cent is from electronic bingo and pre-drawn bingo games).

Certain licences are only granted by public application, namely:

- a* post-drawn or pre-drawn lotteries where the licence holder has a humanitarian or socially beneficial purpose and provided that the annual turnover does not exceed 1 billion kroner and the licence holder receives a minimum of 20 per cent of the turnover. Only five such authorisations may be valid at the same time. No new licences are expected to be granted until 2025;
- b* lotteries drawn by a commercial organisation, provided that the annual turnover does not exceed 3 billion kroner and the licence holder receives a minimum of 50 per cent of the turnover; and
- c* land-based tournament poker (see the conditions above).

Application fees range between 1,250 kroner and 20,300 kroner. If the application is successful, yearly licensing fees apply.

Individuals are not entitled to licences, although they may be subject to requirements under the various authorisation regimes. Applicants may be required to submit:

- a* a police certificate of good conduct of the organisation's chair of the board, the proprietor or other participants;
- b* financial statements, annual reports and an auditor's report; and
- c* articles of association.

After submitting an application, the Authority will issue a non-binding preliminary evaluation, with a final decision to be expected within six and 12 months.

Certain gambling services are exempt from both the requirement of a licence, as well as the requirement of having a humanitarian or socially beneficial purpose, as follows:

- a* lotteries that are not accessible by the general public;
- b* private poker games held in private homes with 10 participants who must all be over 18 years of age and belong to the same social circle. These games must not have an organised or professional character, and the entry fee cannot exceed 1,000 kroner per person; and
- c* bazaars, provided that:
 - the proceeds go to a specific purpose;
 - the activity is concluded in one day;
 - lottery tickets are not sold beforehand;
 - no prize exceeds 1,000 kroner;
 - the price of each lottery ticket does not exceed 5 kroner;
 - the maximum value of a single prize does not exceed 8,000 kroner and the maximum value of all prizes does not exceed 40,000 kroner;
 - all prizes are drawn at the same time and with the participants in attendance; and
 - the organiser has not engaged the help of an intermediary against payment.

ii Sanctions for non-compliance

Negligent or wilful violations of the prohibition in the Lottery Act Section 6 and the Gaming Scheme Act Section 2 on the provision, marketing or distribution (including facilitation of payments) of any form of non-licensed gambling is punishable by fines and, in severe instances, imprisonment up to one year.⁸ Serious violations are punishable by imprisonment for up to three years.⁹ Violations of the prohibition against pyramid schemes will always be considered serious.

ISPs that merely permits access may not be held liable under the e-Commerce Act Section 16-18, which provides an exemption of liability for information society service providers that transmit information as a 'mere conduit' over an electronic communications network or otherwise cache or host this information.

It is legal for Norwegians to utilise non-licensed gambling services.

IV WRONGDOING

Any entity applying for a gambling licence must submit a police certificate of good conduct of the organisation's chair of the board, the proprietor or other participants.

Licences may be revoked if the licence holder has breached the terms of the licence or Norwegian law.

Money laundering measures are supervised by the Norwegian Financial Supervisory Authority.

V TAXATION

Winnings from gambling that exceed 10,000 kroner may be considered incidental prizes, which are taxable at a rate of 27 per cent under Section 5-50(1) of the Taxation Act.

For professional gamblers, winnings may be considered income through self-employment. These gamblers will be taxed as a tradesperson and can deduct costs incurred through this activity. Norwegian tax law does not differentiate between winnings from foreign and Norwegian-based operators.

For lotteries held for the benefit of a humanitarian or socially beneficial aim (e.g., those provided by Norsk Tipping and Norsk Rikstoto), winnings are exempt from taxation. The exemption also applies to winnings from gambling operators based in other European Economic Area countries, provided that their gambling services are subject to public oversight and control and otherwise comparable to the gambling activities or lotteries that are legally available in Norway.

VI ADVERTISING AND MARKETING

The Norwegian prohibition of unlicensed gambling applies not just to the provision of the gambling activity itself, but also to appurtenant services such as advertising and marketing. As such, the advertising or marketing of unlicensed gambling activities carries

⁸ See the Lottery Act Section 17 first paragraph.

⁹ See the Lottery Act Section 17 first paragraph.

the same liability exposure under Norwegian law as the provision of gambling itself. See Section I.v for the distinction between tacitly providing gambling services and the targeting of Norwegian gamblers.

VII THE YEAR IN REVIEW

Norwegian law prohibits unlicensed gambling-related advertising. Prior to 1 January 2021, this prohibition did not apply to broadcast overseas advertising, which fell under the scope of the Audiovisual Media Services Directive as incorporated into Norwegian law. This advertising was considered legal regardless of the laws of the country to which the broadcaster broadcasts, provided that the broadcasting is conducted in accordance with the laws of the broadcaster's country of origin.

In order to close this loophole, the Norwegian parliament passed a proposal on 12 May 2020 to amend the Broadcasting Act by introducing a new Section 4-7, giving the Norwegian Media Authority the power to issue orders to prevent or impede access to advertising in television or audiovisual ordering services that contravene Section 2 of the Gaming Scheme Act, Section 11 of the Lottery Act or regulations issued pursuant to the Totalisator Act. The changes entered into force on 1 January 2021.

VIII OUTLOOK

In the autumn of 2020, the Norwegian government conducted a public consultation phase of a new Gaming Scheme Act. The proposed act is set to unify the existing Lottery Act, Gaming Scheme Act and Totalisator Act. A hearing was concluded on 29 September 2020, and the Act was passed by the Norwegian parliament on 1 March 2022. The Act is due for process by the King in Council, which will issue a formal resolution declaring the Act to be law. This step is a formality, though it will determine when the Act enters into force. When it enters into force, the new Gambling Scheme Act will harden the regulatory landscape for non-licensed gambling operators and appurtenant service providers by way of introducing administrative fines, increasing the investigatory powers of the Gaming and Foundation Authority and expanding the scope of gambling and appurtenant activities covered.

In an effort to impede access to non-licensed gambling websites, the Norwegian government proposed an amendment to the new Gambling Scheme Act and held a consultation phase that concluded on 2 November 2021. At the time of writing, the Ministry of Culture is evaluating the feedback from the consultation phase and adjusting the proposal that will be delivered to the parliament for deliberation. If enacted, the amendment will grant the Norwegian Gaming and Foundation Authority the power to order ISPs to implement DNS-blocking of non-licensed websites that offer gambling services targeting the Norwegian market.

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Brede has assisted Norwegian players and investors in the international gambling and entertainment market since 2008. His practice ranges from assisting clients with matters pertaining to national and international corporate and tax law to the establishment of professional gaming entities abroad and other M&A-related activity.

Brede regularly advises on end-of-year tax reporting for several of the most prominent Norwegian professional poker players, including inbound and exit tax issues. He is also the author of *Taxation of Poker*, a yearly guide published by the Norwegian Poker Association.

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