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Liability

Court in *Hadley Design v Westminster LBC* considers the meaning of 'written standard terms'

In the case of *Hadley Design Associates Ltd v Westminster London Borough Council*, the High Court considered the meaning of 'written standard terms of business' to determine whether the Unfair Contract Terms Act ("UCTA") would apply to a termination clause.

Facts

Hadley was employed by Westminster LBC to carry out consultancy works. Following various letters and meetings, attempts to formalise the contract were made by the Council. The finalised contract incorporated the conditions of engagement for building surveying services published by the Royal Institution of Chartered Surveyors (the "RICS conditions"). The Council sought to terminate the contract by operating the one-month notice clause contained in the RICS conditions.

Hadley brought proceedings, contending that:

- (i) The RICS termination clause was caught by UCTA and so could not be applied.
- (ii) Alternatively, the Council had wrongfully terminated the contract, and had relied on the events at meetings and discussions which gave rise to a collateral contract that prevented the Council from terminating the contract without good cause.

Decision and reasoning

• Applicability UCTA

The issue in question was whether section 3 of UCTA could be relied upon by the Council. The section applies "*as between contracting parties where one of them deals on the other's written standard terms of business*". Against that party, the other cannot by reference to any contract term claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of him.

The court clarified the meaning of the term 'written standard terms of business' for the purposes of UCTA as follows:

Gambling

Government publishes a draft Gambling Bill

Labelling

European Commission adopts a proposed regulation on food nutrition and labelling

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WHO adopts historic tobacco control pact

“there should exist a stock of written, no doubt usually printed, contract conditions that was simply drawn on as a matter of routine and intended to be adopted or imposed without consideration or negotiation specific to the individual case in which they were to be used”.

The court held that it was not enough for a party to establish terms of business which it prefers to adopt, but that the relevant terms should exist in written form prior to the possibility of the making of the relevant agreement arising, and they should be intended to be adopted more or less automatically in all transactions of a particular type without any significant opportunity for negotiation.

Agreeing with the judgement in the case of *St. Albans City and District Council v. International Computers Ltd*, the court concluded that in a case in which a contracting party has “*written standard terms of business*”, it is a question of fact whether the relevant contract between the parties was on the terms of those “written standard terms of business”.

On the evidence, the court held that the parties did not deal on the Council’s “*written standard terms*” and, accordingly, UCTA was not applicable.

The court also commented that it is doubtful whether UCTA could apply to the termination of a contract in accordance with a contractual right. This was because it was difficult to see how the issue of what was the duration of the performance of a contractual obligation could be determined other than by reference to contractual terms as to duration.

- **Collateral contract**

The court also held that there was no collateral contract that limited the circumstances in which the contract might be terminated by the Council, nor had any of the representations, which Hadley argued had that effect, been established.

The court concluded that where a term is sought to be implied into a contract, the general proposition is that a term cannot be implied which contradicts an express term. It held that it would be “*contrary to principle*” to imply terms that inhibited the operation of a clear term of the contract providing for termination. Accordingly, the Council was not precluded from terminating the contract by a collateral contract, estoppel or an implied term.

Therefore, the claim by Hadley failed and the action was dismissed.

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For the [transcript](#)

Incorporation of Terms

Decisions in two recent cases focus on the steps which are required for effective incorporation into a contract of standard terms

In the recent cases of **Mirant Asia-Pacific Construction (Hong Kong) Ltd and another v Ove Arup & Partners International Ltd and another** and **Howard Hunt (City) Ltd v Avenues Introductions Ltd**, the courts considered the issue of incorporation into a contract of a party’s standard terms.

Mirant Asia-Pacific Construction (Hong Kong) Ltd and another v Ove Arup & Partners International Ltd and another

Facts

Following a claim by Mirant, Ove Arup argued that the agreement between the parties included certain industry standard terms, which provided a time limit on liability and a cap on recoverable damages. The defendant contended that these terms were agreed in principle, so there was no need for them to be specifically agreed to again when the agreement was later formalised. An argument arose as to the incorporation of the industry standard terms, the defendant claiming that even if the agreement did not include the standard terms, the claimant had worked to the “*spirit of the agreement*”.

Decision and reasoning

The court held that the contract did not incorporate the standard terms. Even if the claimants were proven to have been working generally to the spirit of the unsigned contract, this was not sufficient to amount to assent to terms which substantially curtailed the claimant’s rights. In order for the standard terms to apply, this should have been specifically agreed.

The court set out the basic propositions in respect of formation of contract:

- The **test for determining whether or not the parties have reached an agreement** is to ask whether an offer made by one party has been accepted by another. In deciding this issue the court normally applies an **objective test**.
- The **court will look at the entire course of negotiations** to see whether or not there has been an unqualified acceptance of the offer.
- An offer may be accepted by conduct, but only if the **offeree clearly acted with the intention of accepting the offer**.
- Even if the parties have agreed terms in the proposed contract, they may **intend that the contract shall not become binding until some further condition has been fulfilled**.
- A **letter of intent may create a binding contract** if that was the intention of the parties.
- Where an agreement is exclusively in writing, **evidence of the parties’ negotiations or of their subjective intentions is not admissible** as an aid to construction of the written document, nor is the evidence of subsequent conduct admissible in these circumstances.
- **Evidence of subsequent conduct is admissible** to show that the terms of a contract have been varied or to found an estoppel.
- The **court interprets a written agreement by placing itself in the same “factual matrix”** as that of the parties.
- Where the documents were not intended to constitute an exclusive record of the parties’ agreement, **the court in determining the terms and meaning of the agreement may have regard to the language of the documents, the way in which they were operated and the evidence of the parties as to how they were understood**.

Howard Hunt (City) Ltd v Avenues Introductions Ltd

Facts

The claimant printing company asked the defendant to provide a quote for certain work. The defendant claimed it did not receive the quote in written form. The claimant drew up what it described as a ‘*service level agreement*’ which had the claimant’s standard terms and conditions on the back. The document was not in fact an agreement but a proposal as to how future work was to be undertaken. The defendant alleged it had not seen the terms on the back. A final agreement was subsequently concluded in which no reference was made to the claimant’s standard terms. An issue arose as to whether the claimant’s standard terms had formed part of the contract, including clauses excluding and/or limiting the claimant’s liability. The claimant argued that the terms had been incorporated by notice.

Decision and reasoning

The court held that the claimant’s terms and conditions had not been incorporated into the contract. The court applied settled principles (as discussed in the *Mirant* case above) and had regard to the facts in deciding that the claimant’s conduct had not been reasonably sufficient to give the defendant notice that its standard terms were incorporated as terms of the final contract.

This followed, in particular, from the fact that there had been no mention of the terms in the final agreement or beforehand, and that the terms excluding liability were such that it was unlikely as a matter of commercial reality that the defendant would have been willing to enter into a contract if it had incorporated the standard terms. Furthermore, the terms had not been incorporated by another method.

Contract Formation

Court in *Confetti Records v Warner* considers the meaning of the words ‘subject to contract’

In the recent High Court decision of *Confetti Records (a firm) and others v Warner Music UK Ltd (trading as East West Records)*, the court considered whether an agreement made ‘subject to contract’ was binding on the parties.

Facts

The first claimant was a small record label specialising in UK Garage music. It purchased a track entitled “*Burnin*” by the Anthill Mob from the third claimant. Due to the popularity of the track on release, the first claimant received a request from the defendant for permission to include it on a compilation album produced by a group called The Heartless Crew.

The first claimant agreed to license the track to the defendant for an advance fee of £1,500. The terms of the agreement were set out in a ‘deal memo’ sent by the defendant to the first claimant which contained the words “*subject to contract*”. The deal memo was signed and returned to the defendant. An invoice for £1,500 was sent to the defendant by the second claimant (a management company which funded the first claimant), together with a recording of the original version of the track. No subsequent written agreement was entered into.

The first claimant wrote to the defendant stating that if the invoice was not paid by a certain date, the licence would be revoked. Payment was not made by that date, and subsequently the first claimant notified the defendant that the track was to be excluded from the proposed album. The defendant later asserted that it had not received the notice specifying that the licence would be withdrawn and that the track had already been included on the album, 30,000 copies of which had been manufactured.

The issues for determination included:

- whether there was a binding contract; or
- whether the sending of the track and the invoice for an advance payment constituted an offer which the defendant accepted by its conduct in making use of the track; and
- whether the claimants were estopped from denying the grant of a licence.

Decision and Reasoning

The court dismissed the claim and held that the words 'subject to contract' had a definite legal meaning and in this case were relied on to prevent contracts from coming into existence. The court conceded that the settled meaning of the words 'subject to contract' might be displaced by a very strong and exceptional case, but concluded that the circumstances of the instant case were not so strong and exceptional as to displace the conventional meaning of this phrase. Accordingly, on a true construction of the deal memo, no binding contract was created by its signing.

The court held that the sending of a track, together with an invoice, was an offer capable of acceptance which occurred by the first defendant's conduct in using the track. By the time that the first claimant contacted the defendant, the defendant had incurred the expense of producing the album, and it was then too late for the claimant to revoke the offer. Accordingly, a contract came into existence. Moreover, in all the circumstances, the grounds for estoppel were met. It followed that the inclusion of the track on the album was not an actionable infringement of copyright.

In respect of the third claimant's claim under the Act, the 'street' meaning of the disputed words had not been established, and accordingly, the prejudice alleged could not be inferred. It was made clear that any distortion, mutilation or other modification of, or other derogatory action in relation to the music must be prejudicial to the author's honour or reputation.

Comment

The words 'subject to contract' in a document will ordinarily prevent that document being held to be a legally enforceable agreement. Courts have held that a very strong and exceptional case must be made out for the clear prima facie meaning of these words to be displaced.

The case is a helpful reminder to those negotiating commercial agreements that if they do not intend such documents to contain legally enforceable obligations, they should include clear and unambiguous wording such as 'subject to the preparation and approval of a formal contract'.

More

For the [transcript](#)

Agency; Distribution; Jurisdiction

Court in *ACI Worldwide v NOS* distinguishes between the terms ‘agency’ and ‘distributorship’ and considers the issues of jurisdiction and governing law

In the recent case of *ACI Worldwide (EMEA) Ltd v. National Organisation Systems Technical & Trading Co Ltd*, the High Court held that where a contract contains an express jurisdiction or governing law clause, it will be unwilling to accept an argument that by inference from the parties’ behaviour the express clause does not apply.

The court also considered the meaning of the terms ‘agent’ and ‘distributor’, and the important distinguishing characteristics between them.

Facts

The parties entered into a distribution agreement under which the defendant agreed to distribute in Greece the claimant’s products. The agreement contained an express jurisdiction and governing law clause in favour of the English courts and English law. The clause provided that the agreement could be terminated by either party, should the other commit a remedial breach which it fails to remedy to the other’s satisfaction within 30 days of written notice to that effect. It also set out practical steps to be carried out in the event of such a termination.

Following a series of problems between the parties, ACI issued a notice to National Organisational Systems (“NOS”) claiming that there had been a breach of the agreement. Having received no response from NOS within the 30-day time limit, it terminated the agreement. ACI applied for summary judgment, seeking declarations, inter alia, that the agreement had been terminated, that it was subject to English law, and that NOS was obliged to carry out post termination various steps provided in the agreement.

NOS conceded that the agreement had come to an end, but claimed that a new contract subject to Greek law was to be inferred from the parties’ conduct. NOS further claimed that any judgment on the original agreement would not be recognised by the Greek courts since certain elements were repugnant to Greek law on the basis that the defendant had not been given the reasonable notice of termination as was required to be given to ‘commercial agents’ under the Commercial Agents Regulations.

Decision and Reasoning

The court found in favour of ACI.

- *Distinction between agent and distributor*

The court also considered the entitlement of the claimant to reasonable notice afforded by Regulation 15 of the Commercial Agents Regulations 1993. In doing so, the court referred to the leading agency text *Bowstead & Reynolds on Agency*, clarifying that the directive and regulations were not intended to cover distributors:

“while the label ‘agent’ may sometimes be attached to a distributor, there is an important distinguishing characteristic in that distributors purchase goods for resale and take a financial risk”.

The court highlighted that NOS had the necessary characteristics of a distributorship, being:

- it was required to take financial risk under the agreement;
- NOS was not given continuing authority to negotiate the sale or purchase of goods on behalf of ACI;
- there was nothing to suggest that NOS could conclude the sale or purchase of goods on behalf of and in the name of ACI.

- **Governing law**

On the Governing law issue, it held that a suggestion that the existing contractual relations came to an end and that a new contract governed by Greek law is to be inferred from the parties' conduct was "*fanciful*". Accordingly, the assertion that the choice of law and exclusive jurisdiction clause had been superseded "*by stealth*" was rejected by the Court. Given that the agreement was expressed to be governed by English law, the court concluded that the fact that certain aspects of it might be repugnant to Greek law (because no Greek court would recognise an English judgment for enforcement purposes) was "*beside the point*".

More

For the [transcript](#)

Employee Monitoring

UK Information Commissioner publishes the Monitoring Section of the Employment Practices Data Protection Code

The **Information Commissioner** has published the long awaited **Part 3 of the Employment Practices Data Protection Code** ("Code"). Part 3 of the Code covers the monitoring of employees in the workplace. Although the **Data Protection Act 1998** (the "Act") does not prevent an employer from monitoring workers, such monitoring must be done in a way which is consistent with the Act.

The Code provides clear and practical guidance for employers on how to monitor workers and comply with the Act. The Code introduces the concept of "impact assessment" and contains good practice recommendations in seven key areas.

Impact Assessment

"Impact Assessment" describes the process of deciding whether any adverse impact of monitoring on individuals is justified by the benefits to the employer and others. Employers who can justify monitoring on the basis of an impact assessment will not generally need the consent of individual workers in order to carry out monitoring activities.

An impact assessment involves:

- Identifying clearly the **purpose(s)** behind the monitoring arrangement and the benefits it is likely to deliver.
- Identifying any likely **adverse impact** of the monitoring arrangement.

- Considering **alternatives** to monitoring or different ways in which it might be carried out.
- Taking into account the **obligations** that arise from monitoring.
- Judging whether monitoring is **justified**.

The Code recognises that, in the context of sensitive personal data, the obligations in the Act must still be complied with i.e. one of the justifications set out in Schedule 3 of the Act for processing of sensitive personal data would have to be met before monitoring of sensitive personal data may take place. Unless the employer is prepared to monitor employees only on the basis of their explicit consent to the practice (which might be impracticable and arguably would not be freely given in the context of employment), the justifications under Schedule 3 are limited. However, there are restricted justifications

Good Practice Recommendations

The Code also contains good practice recommendations covering the following areas:

- Managing data protection.
- The general approach to monitoring.
- Monitoring electronic communications.
- Video and audio monitoring.
- Covert monitoring.
- In-vehicle monitoring.
- Monitoring through information from third parties.

Breach of the Code

The Code is not legally binding although breach of the Code may indicate an infringement of the Act itself, and the Information Commissioner is likely to highlight failures to comply with the Code in any actions taken against data controllers for non-compliance with the Act.

More

For the [Code](#) and [accompanying guidance for small businesses](#)

Privacy

Pressure for new privacy law increases

In the latest privacy case brought by a celebrity, Radio One DJ Sara Cox has won substantial damages from The People newspaper in an out-of-court settlement.

Details

The tabloid had published unauthorised nude photographs of Cox, while she was honeymooning in the Seychelles. Following a complaint to the [Press Complaints Commission](#) (“PCC”), Cox was persuaded to accept an apology from the paper, but felt this was inadequate compensation given the extent of the intrusion. Cox

sued on the basis of Article 8 of the European Convention on Human Rights (ECHR, as enacted in the Human Rights Act 1998) and was successful in receiving £50,000 and costs from The People in settlement.

A new right of privacy?

While some commentators have heralded this as a firm victory against prying journalists, it is clear that the relationship between the right to private and family life (Article 8 ECHR) and the right to freedom of expression (Article 10 ECHR) remains volatile.

In light of this and other high-profile disputes, notably between model Naomi Campbell and the Daily Mirror, and Catherine Zeta-Jones and Hello! Magazine, MPs have called for tougher regulation of the press with regard to invasions of privacy. In particular there has been a concern that judges will seize upon such cases to introduce a privacy law by the back door.

Select Committee Report

The House of Commons Culture, Media and Sport Committee published their report on the topic on June 16th. The cross-party Committee recommended that self-regulation of the press continue, but with important additional safeguards, such as compensation payments and an appeals process against decisions of the PCC.

Their firm conclusion was that the Government should “bring forward legislative proposals to clarify the protection that individuals can expect from unwarranted intrusion”.

However, the Government has stated clearly that it has no proposals for a new privacy law. Many of the recommendations have also been opposed by the PCC, who favour continued self-regulation and believe a privacy law will discriminate against those who cannot afford to take court action.

Consumer Protection

European Commission releases ‘proposed Directive’ to outlaw unfair commercial practices across the EU

Responses to the [EU Consumer Protection Green Paper](#), which considers ways of harmonising consumer protection rules across the EU, demonstrate support for a [framework directive](#) which would provide a basis for EU-wide codes of conduct in commercial practice.

On the basis of these responses, the European Commission has now adopted a [draft directive](#), which is designed to outlaw unfair commercial practices and, it is hoped, create a ‘level playing field’ across the EU for business and consumers.

Overview of the Directive

The proposed directive will ban advertising, marketing and other commercial practices which are unfairly used by businesses in their dealings with consumers. It is intended to establish a single set of common rules and creates two, general

determinants of whether a practice is unfair: where the practice is contrary to the requirements of professional diligence; and where the practice materially distorts consumer's behaviour.

Misleading and aggressive commercial practices

- *Misleading practices*

The draft directive prohibits misleading practices. A commercial practice will be considered 'misleading' if it causes (or is likely to cause) the average consumer to take a transactional decision that he would not have taken otherwise, because it deceives him (or is likely to deceive him) in relation to the characteristics, price, or other aspects of the product/transaction.

The Directive lists some specific types of misleading practices that would be banned in all circumstances. These include:

- establishing, operating or promoting a pyramid scheme;
- claiming to be a signatory of a code of conduct when the trader is not;
- 'bait advertising' (advertising a product as a special offer without actually having it in stock, or having only a token stock of the product).

The draft directive also stipulates that businesses must not mislead by omission. This includes omitting 'material' information which the average consumer needs in order to make an informed transactional decision, where this information would not be apparent from the context. 'Material' information is defined in the directive as including: the main characteristics of the product; the price inclusive of taxes and, where appropriate, delivery charges; and the existence of a 'right or withdrawal' where one exists.

- *Aggressive practices*

The draft directive also bans aggressive Practices. A commercial practice will be considered 'aggressive' if, in its factual context, taking into account all its features and circumstances, by harassment, coercion or undue influence, it significantly impairs (or is likely to significantly impair) the average consumer's freedom of choice or conduct with regard to the product, and thereby causes him (or is likely to cause him) to take a transactional decision that he would not have taken otherwise.

The Directive also lists some specific types of aggressive practices that would be banned in all circumstances. These include:

- Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote means;
- advertising to children in a way which implies that their acceptance by their peers is dependant on their parents buying them a particular product;
- conducting prolonged and/or repeated personal visits to the consumer's home ignoring the consumer's request to leave;
- demanding payment for products supplied by the trader, but which were not solicited by the consumer ('inertia selling').

The draft directive incorporates the current provisions of the Misleading Advertising Directive and applies them to other commercial practices, including those which take place after sale.

More

For the [draft directive](#)

Consumer Safety

European Commission looks closely at the safety of services for consumers

Following a wide consultation with Member States on the safety of consumer services, the European Commission has produced a **report** identifying “*the needs, possibilities and priorities for Community action on the safety of services*” for consumers.

In the report the Commission noted that, unlike product safety, there is currently neither a general Community regulatory framework nor sector-specific legislation (except for transport services) concerning the safety of services. Furthermore, there is no uniform approach relating to the safety of services in Member States. All Member States have adopted policies, legislation and administrative measures concerning safety, but the approaches vary significantly from country to country.

Options for Community action

The Commission identified four options for Community action on service safety for consumers:

- **Action to collect data on services related accidents and injuries.**
The consultation showed broad support for this action provided that it is organised in a cost-effective manner.
- **The development and promotion of non-regulatory measures,** such as best practices for service providers or professional categories and European voluntary standards. These would contribute to enhance service safety for consumers through better information on the safety levels that they can expect and would result in improved practices by service providers. The consultation, however, raised concerns about the lack of enforcement powers for this type of ‘soft law’.
- **The establishment at EU level of a scheme of certification of safety management systems** considering common criteria against which compliance can be certified by an accredited certification organisation. The response from the consultation showed that certification would not be a great incentive to businesses since safety issues are not effective competitive tools in the same way as, for example, environmental certification is.
- **Harmonisation measures** such as the introduction of legally binding safety requirements for service providers, as well as the obligatory establishment of monitoring and market surveillance activities by public authorities.

Priority sectors

The Commission noted that when designing Community policy it will be essential to concentrate on priority consumer services in order to gain experience and to

ensure that action is focused. With this in mind the Commission identified the following sectors as priority sectors (criteria included the type and seriousness of potential risk and the cross border dimension):

- Services related to tourism (for example, mass accommodation such as hotels, camping and caravanning).
- Sports and leisure services (for example, amusement parks, swimming pools, skiing).

Proposals

The Commission proposes to introduce a legislative framework to establish procedures aimed at ensuring a systematic and consistent collection and assessment of data and information on service related accidents and injuries. The priority sectors will be the focus of these procedures.

The legislative framework will also establish procedures for administrative co-operation between Member States authorities in order to exchange information on policy and regulatory developments and the results achieved. As a result of the improved system of data collection in this area, the Commission will be in a better position to assess the need for more far-reaching Community legislation in the area of service safety for consumers.

Comment

In light of the findings by the Commission that there is a substantial lack of data and information on the risks and safety aspects of services, a legislative framework setting out specific safety related rules and obligations for businesses providing services to consumers is not imminent. A legislative framework to establish procedures aimed at ensuring a systematic and consistent collection and assessment of data and information on service related accidents and injuries does, however, look imminent. Additional rules may be implemented under this framework in the future.

More

For the [report](#)

Waiver and Amendment

Court in *Msas Global Logistics v Power Packaging Inc* clarifies that a contractual waiver need not be in writing

In the case of *Msas Global Logistics v Power Packaging Inc*, the High Court considered the situation where a contract required a variation of its terms to be in writing, and held that such a requirement does not extend to a waiver.

Facts

The case concerned a contract which called for the claimant to pay the defendant, by a certain completion date, a specified sum. It was established that the wording of the relevant term made time of the essence for payment. The claimant failed to make payment by the completion date, but contended that by way of discussions on the day completion was due to take place, the parties had agreed that payment would take place in accordance with an agreed undertaking.

The defendant subsequently communicated its view that since the claimant had failed to make the requisite payment on the completion date, the defendant would not complete. The claimant brought an action for specific performance of the agreement, arguing that the defendant had waived the requirement for the money to be paid by the completion date. The defendant argued that since the contract provided: “*no variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each party to this Agreement but no variation will require the consent of any Group Member*”, any such waiver had to be in writing.

Decision and reasoning

The court held that even with such an express provision, a waiver was not required to be in writing. It agreed with the claimants that there was a waiver, as the contract provided that payment was to be on the completion date, “*unless the Vendor and the Purchaser shall agree otherwise*”. Since the clause did not require such “*agreement*” to be in writing, the alleged agreement for an extension of the payment period was deemed to be a valid waiver.

The court summarised the requirements for a “*waiver by estoppel*” (as opposed to “*waiver by election*”) to be effective:

- the relevant promise or representation must be clear and unequivocal;
- the test is objective - what was actually in the mind of the promisor or representor is not determinative, as the focus is on the likely effect of the words or conduct in question.

Therefore, there is no requirement of an express statement of waiver where, on an objective appraisal of the evidence, taking into account all statements (or silence) and conduct in the context, there was an unequivocal representation.

Given that a waiver may be made orally, and that it does not have to be contained in an express statement, the court held that, taking all the circumstances into account, there was a valid waiver by the claimant.

Although the claimant was still required to make payment of the sums due under the contract, the time requirement for this obligation was suspended. Accordingly, specific performance, requiring the defendant to complete, was ordered.

Gambling

Government publishes a draft Gambling Bill

In its report entitled [Modernising Britain’s Gambling Laws](#), the Department for Culture, Media and Sport has published the first set of clauses for the draft Gambling Bill.

Aims of the draft clauses

The report has been produced to update gambling legislation which, as a result of changes in society and in technology, is considered to be out of date and no longer appropriate.

The draft clauses aim to relax outdated restrictions and give gamblers increased choice, while balancing this with a greater emphasis on social responsibility and protection for the vulnerable.

The key principles behind the proposed bill are as follows:

- to create a crime free gambling industry that can meet the challenges of the technological age;
- regulation through a new Gambling Commission;
- to create an industry offering more choice for punters; and
- to afford greater protection for children and the vulnerable.

In addition, the existing Gaming Board for Great Britain will be replaced by the Gambling Commission, which will have wider functions, greater flexibility to act and stronger enforcement powers than the current body.

What next?

The draft Gambling Act will be published in full later in the year and will include the new licensing regimes for each sector of the industry. It will then be scrutinised by a joint committee of both Houses of Parliament.

More

For the [Gambling Bill](#)

Labelling

European Commission adopts a proposed regulation on food nutrition and labelling

On 16 July 2003, the European Commission adopted a **proposed regulation** which is intended lay down strict guidance on permitted food nutrition and health claims.

What will the proposed regulation do?

The aim of the regulation is to ensure consumers receive accurate and meaningful information regarding the nutritional value of food. The Commission also intends that food producers will be able to use serious and scientifically substantiated claims as a marketing tool, "*without being drowned by the many unsubstantiated and inaccurate claims that exist on the market*".

To achieve this, the proposed regulation is intended to ensure that all claims on food products will be accurate, honest, and helpful to the consumer. The Commission aims to harmonise the rules surrounding food nutrition and health claims, which will protect consumers while also promoting fairness and competition within the food industry.

Who will be affected?

The proposed regulation is intended to prevent producers making vague claims (such as "*promotes well-being and relieves stress*"). Recommendations by health professionals, and novel claims (such as "*whole wheat for added energy and vitality*"), will have to be substantiated by scientific evaluation and will require pre-approval. Well established claims (such as those referring to the benefits of calcium) will be permitted, as they are not considered novel.

Claims such as “*low fat*” and “*sugar free*” are also covered by the proposed regulation, which provides guidelines as to the meaning of such terms (for example, “*low fat*” products should contain no more than 3g fat per 100g).

When can we expect the Regulation?

It is expected that the proposed regulation will be in force before the end of 2005.

More

For the [proposed regulation](#)

Tobacco Control

WHO adopts historic tobacco control pact

All 192 members of the World Health Organisation (“WHO”) have now approved the adoption of the [Framework Convention on Tobacco Control](#) (“the Convention”).

The aim of the Convention is to protect present and future generations from the consequences of tobacco consumption and exposure to tobacco smoke, by providing a framework for tobacco control measures. The framework is to be implemented by WHO members (“Members”) at international, national and regional level.

The Convention deals with a wide range of tobacco control-related matters which include the following:

Labelling requirements

At least 30 percent - but ideally 50 percent or more - of the principal display areas on tobacco product packaging are required to be taken up by clear health warnings in the form of text, pictures or a combination of the two. Packaging and labelling requirements also prohibit misleading language which gives a false impression that the product is less harmful than others, such as the words ‘light’, ‘mild’ or ‘low tar’.

Advertising

Members are required to move towards a comprehensive ban within five years of the Convention entering into force. Countries which cannot implement a comprehensive ban on tobacco advertising, promotion and sponsorship due to limits of their constitutions or constitutional principles, are required to do so within the limits of such constitutions or constitutional principles.

Taxes

The text formally recognises that tax and price measures are an important way of reducing tobacco consumption, in particular among young people. The text requires Members to consider public health objectives when implementing tax and price policies on tobacco products.

Liability

Members are encouraged to consider taking legislative action, where necessary, to deal with criminal and civil liability, including compensation where appropriate.

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Financing

Members are required to provide financial support for their national tobacco control programmes. In addition, the text encourages the use and promotion of existing development funding for tobacco control.

Illicit trade

The Convention recognises that the elimination of smuggling, illicit manufacturing and counterfeiting of tobacco products are essential components of tobacco control. Members are required to take appropriate measures in this regard.

Other Features

The Convention also requires countries to promote treatment programmes to help people stop smoking, to prevent them from starting, to prohibit sales of tobacco products to minors, and to limit public exposure to second-hand smoke.

Binding Obligations

The level of commitment imposed upon Members varies greatly according to the issue at stake (for example, a strict deadline is required for the adoption of effective measures regarding the packaging and labelling of tobacco products, whereas there is no more than a mere general invitation to implement tax and price policies).

The Convention will become binding on those who have ratified it, 90 days after it has been ratified by 40 countries.

More

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