

Is a product remote betting or remote gaming?

October 2009

1 Introduction

- 1.1** The Gambling Commission (the Commission) has received a number of enquiries from the gambling industry about which products can be offered online under a remote general betting operating licence and which require a remote casino operating licence.
- 1.2** The purpose of this advice note is to provide a clearer distinction between betting and gaming by setting out for the gambling industry the test that the Commission will apply when considering whether a product is:
- a betting product which requires a remote general betting licence, whether for real events or virtual events or
 - a gaming product which requires a remote casino licence.
- 1.3** As of 1 August 2009 the remote general betting operating licence has been split so that there are now separate operating licences for the provision of facilities for betting on real events and for betting on virtual events:
- A remote general betting (real events) operating licence authorises the provision of facilities for betting on the outcome of real races, competitions or other events or processes other than a game of chance.
 - A remote general betting (virtual events) operating licence authorises the provision of facilities for betting on the outcome of virtual races, competitions or other events or processes other than a game of chance. Neither licence authorises the provision of facilities for gaming.
 - The remote casino operating licence continues to exist.
- 1.4** The remote sector is innovative and there have been signs that some remote betting licensees are offering products that appear to be (or have the characteristics of) gaming products.
- 1.5** Remote betting products will generally involve placing a bet on the outcome of a race, competition or other event or process. This will often involve a future real sporting event (whereas gaming excludes sports) and no participation beyond the placing of a bet, unlike gaming which involves the playing of a game and thus, to varying degrees, participation in the game by players. Other products will involve virtual (computer generated) events. It is with these that this advice note is concerned.
- 1.6** The Commission considers it important that operators are appropriately licensed for the products they offer and is mindful that there are additional regulatory requirements on those holding a casino operating licence compared to those holding a general betting operating licence (whether for real or virtual events). For example, the Money Laundering Regulations 2007 apply to casino operators but not to betting operators. However all gambling operators are required to comply with the requirement of the Proceeds of Crime Act 2002 (POCA) and the Commission has published advice on its website to assist gambling operators to comply with their responsibilities under POCA.

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- 1.7 This advice note is not concerned with whether a product may fall outside of betting or gaming ie products that are lotteries.

2 Is a product betting or gaming?

- 2.1 The Commission has considered what factors are relevant, in the context of computer generated events, in order to distinguish between betting and gaming, or to determine whether what is being bet on is the outcome of a game of chance as opposed to some other event or process. But of course only the courts can provide a definitive view on the legal position. The Secretary of State also has power, by regulations under section 6(6) of the Gambling Act 2005 (the Act) to provide that a specific activity, or an activity carried on in specified circumstances, is or is not to be treated as a game, a game of chance or a sport. To date the Secretary of State has not exercised these powers.
- 2.2 In determining whether a remote gambling product involves gaming, or whether the outcome on which bets are placed is the outcome of a game of chance the Commission intends to adopt the following **two stage test**:

Test 1:

Is the product a virtual version of a known casino game, a derivative of one or designed to resemble one?

If the answer is **yes** then the Commission considers that the product is gaming and a remote casino operating licence is required.

If the answer to **Test 1** is **no** then **Test 2** becomes relevant.

Test 2:

Does the product meet the following criteria?

- Is it a virtual game which is not a sport?
- Do the customers participate in or bet on the outcome of the game?
- Is there an element of chance involved? Is the outcome determined by anything other than skill? The Act provides that a game which involves both an element of chance and an element of skill is a game of chance.
- Is there a prize? A prize can be in the form of money or money's worth.

If the answer to **all** of these four questions is **yes** then the Commission considers that the product is gaming or betting on a game of chance and a remote casino operating licence is required.

- 2.3 It is possible for a particular transaction to satisfy both the definition of betting in section 9 of the Act and the definition of gaming in section 6 of the Act. An obvious example is staking on a number at roulette in a casino. The Act provides (in section 16) for how such a transaction is to be regulated. If the transaction is pool betting within the meaning of section 12 of the Act then it falls to be regulated as betting; otherwise it falls to be regulated as gaming.
- 2.4 Consistent with the approach taken in section 16 of the Act, where a remote gambling product appears to have characteristics of gaming or betting on a game of chance the Commission's starting position will be that the activity requires a remote casino licence.
- 2.5 An operator may require more than one category of operating licence depending on the products they offer. For example some operators offer betting on real and virtual events

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as well as casino games and will require a remote casino licence; remote general betting (real events) licence; and remote general betting (virtual events) licence.

- 2.6** The Commission will continue to monitor licensees as part of compliance to ensure they are appropriately licensed. Where operators require an additional or different licence the Commission will expect operators to take steps to regularise their position and either (1) apply for the appropriate licence or (2) remove products that are not authorised by their existing licence.
- 2.7** Operators can obtain information about how to apply for a licence from our website at www.gamblingcommission.gov.uk.

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Keeping gambling fair and safe for all

For further information or to register your interest in the Commission please visit our website at:

www.gamblingcommission.gov.uk

Copies of this document are available in alternative formats on request.

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