

## What is gambling software?

Advice, June 2014

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### 1 Introduction/background

- 1.1 The Gambling Commission (the Commission) recently published *Licence conditions and codes of practice* (consolidated version) May 2014 ([LCCP](#)) which made a number of improvements to the previous version of the LCCP. One such provision<sup>1</sup> requires licensed remote gambling operators to source their gambling software from Commission licensed gambling software businesses. During the consultation period and during a subsequent workshop held with the industry in January 2014 the industry sought further guidance on the application of this provision to explain what constitutes gambling software and the activities which require a gambling software licence to be held.
- 1.2 The Commission's intention is to ensure a smooth transition of those operators currently legally targeting the British market from overseas to the point of consumption licensing which will be implemented under the Gambling (Licensing and Advertising) Act 2014. On this basis, the Commission has announced that the requirement for licensed remote gambling operators to source their gambling software from Commission licensed gambling software businesses will not come into force until **31 March 2015**<sup>2</sup>.
- 1.3 This note is intended to help businesses consider whether they need a gambling software licence and furthermore, if they do, whether they also require any other form of Commission licence by virtue of their role in the provision of facilities for gambling. It may also be used to assist remote operators to assess whether their suppliers require a gambling software operating licence. It builds on and replaces previous information published by the Commission in the form of frequently asked questions. This document does not provide a definitive legal view, nor can this note cover each and every possible scenario that may arise. If in doubt businesses should seek their own legal advice.

### 2 Definition of gambling software

- 2.1 Gambling software is defined in the Gambling Act 2005<sup>3</sup> (the Act) as "computer software for use in connection with remote gambling", but does not include anything for use solely in connection with a gaming machine.
- 2.2 The Commission does not consider that software which is used by non-gambling businesses as well as gambling businesses, such as general infrastructure or business applications, to be gambling software. For example we do not intend to license companies that supply or install general Microsoft, Oracle or Apple applications.

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<sup>1</sup> Licence condition 2.2.1, set out in paragraph 3.3 of this document.

<sup>2</sup> Licence condition 2.2.1.

<sup>3</sup> Section 41(2) of the Act

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This exclusion does not extend to cover the products *produced* using non-gambling business applications, such as Microsoft Visual Studio. For example, the resultant software produced from these tools would be considered gambling software if it meets the definition explained herein.

**2.3** Subject to the exception set out in paragraph 2.2 above, the Commission considers any software which is designed for use in connection with remote gambling (including online gambling), that is intended to be used or is used by a gambling operator in the provision of facilities for gambling, to be gambling software. This includes any gambling specific application, such as software used in:

- virtual event web pages
- virtual event control
- bet capture/matching
- settlement
- random number generation
- gambling records<sup>4</sup>, showing detailed results of games.

**2.4** In the Commission's view, the purpose of gambling software licensing is to ensure that those manufacturing software which can impact on the fairness of remote gambling do so in a regulated environment. At its core this generally means the software that accepts and records gambling transactions, determines the result, calculates and allocates any wins to the customer's account. It would not include software developed more generally for associated activities such as performance analytics, affiliate and CRM management.

## 3 Relevant statutory provisions

**3.1** There are two relevant provisions when considering who needs a gambling software operating licence, one set out in the Act the other in LCCP (consolidated) May 2014.

**3.2** Section 41(1) of the Act states that 'a person commits an offence if in the course of a business he manufactures, supplies, installs or adapts gambling software unless he acts in accordance with an operating licence'. This provision has been in place since the Act came into force in September 2007.

**3.3** Licence condition 2.2.1 (LC2.2.1) 'gambling software' which comes into force on 31 March 2015 states that:

**"All remote casino, bingo and betting licences other than ancillary licences and remote betting intermediary (trading room only) licences**

All gambling software used by the licensee must have been manufactured by the holder of a gambling software operating licence. All such gambling software must also be supplied to the Licensee by a holder of a gambling software operating licence. Such software must only be installed or adapted by the holder of such a licence."

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<sup>4</sup> This includes gambling software used in the facilities for gambling, eg software using player records as a basis for awarding bonuses in a gambling session.

## 4 When is a licence required?

- 4.1 Whether a licence is needed comes down to what constitutes the activities of **manufacture, supply, installation** and **adaptation** of gambling software (as described above). Performance of any one of these functions will require a company to hold a gambling software licence. There will be businesses that conduct all or a number of those activities and in complex and extended supply chains businesses that may undertake one or more of those activities.

### Supplying gambling software

- 4.2 The Commission does not expect to require a business to hold a gambling software licence if the extent of its involvement in the supply chain is that it purchases or otherwise acquires gambling software from a person and sells or otherwise supplies it to a third party without any involvement itself in its manufacture, adaptation or installation.
- 4.3 The exception is that the final supplier to a Commission licensed operator will require a gambling software licence as set out in condition LC2.2.1, even if they actually perform no development/manufacturing, adaptation or installation activity. The Commission considers a licence to be required by such an entity simply by virtue of it entering into a supply contract with a Commission licensed operator.
- 4.4 However, there are circumstances where the final 'supplier' is a company (IP holding company) whose only function is to hold the intellectual property rights subsisting in software developed by another company in its wider group (ie it has no tangible assets and does not adapt or install software). Such a group's software development company (developer) which manufactures the software product may supply the product to the IP holding company through an intra-group arrangement, the IP holding company then selling or licensing the software to a Commission licensed operator. In such circumstances, where the developer and the IP holding company are under common ownership, management and control, the Commission may consider it appropriate to issue the developer with an 'umbrella' licence covering supply through the agency of the IP holding company subject to the arrangement meeting the Commission's [information note on 'umbrella' licensing](#).
- 4.5 In circumstances where an umbrella licence is not appropriate both the developer and IP holding company will require their own gambling software licence.

### Installing gambling software

- 4.6 The Commission considers that any person that installs gambling software on the system of a Commission licensed operator must do so in reliance on a gambling software licence issued by the Commission.
- 4.7 If you already hold, or intend to apply for, a remote gambling operating licence with the Commission (eg remote casino licence) but also want to install software updates or otherwise manufacture, supply or adapt gambling software that is used in your own gambling business, you will require a gambling software licence but may in certain circumstances apply for a supplementary or ['linked' gambling](#) software licence.

### Manufacturing and adapting gambling software

- 4.8 The activities of manufacturing and adapting are similar and relatively straight forward in that both activities involve developing gambling software to produce a finalised (or almost finalised) product. However this activity is also one of the more complex areas as multiple parties may be involved in the overall development project, each developing a piece of gambling software that, in aggregate, create the ultimate gambling product.

There may be various contractual arrangements in place to facilitate manufacture of such software and that govern the various relationships between the parties.

- 4.9** In such complex cases the Commission, when considering which parties require a gambling software licence, is interested in where the ultimate control of the development of the product sits. At a high-level the Commission understands that not all circumstances in which a third party is contracted to assist with software development are the same. Ultimately, we will be looking to determine whether the contract between the parties in essence involves purchase of a product or merely payment for time and expertise.
- 4.10** In circumstances where a business is purchasing a product and the overall control, design and development of the product sits with the third party (the development company) then the development company needs a gambling software licence.
- 4.11** This is in contrast to circumstances where a business (company Y) is purchasing time and/or skills and company Y retains control over the design and content of the product and the contracted third party is working to specific parameters, then company Y requires the gambling software licence and the contracted third party does not.
- 4.12** The Commission when determining where control sits (and therefore who needs a licence) will want to understand:
- Which company is responsible for the design and functionality of the software?
  - Which company is responsible for approving design changes?
  - Which company is responsible for the functionality and acceptance testing?
  - Which company is responsible for the quality assurance/regulatory compliance testing of the product?
  - Which company retains the IP for the product<sup>5</sup>
  - What the contract says in terms of responsibilities and liabilities?
- 4.13** Where the third party is only providing part of a game, such as artwork, under the control and design specifications of Company Y, then this indicates Company Y is in control and is the entity to hold a gambling software licence whereas the third party does not.
- 4.14** We would expect information about the respective indicators will be contained within a commercial contract. Operators are recommended to review their existing contracts to ensure this is the case and, where this is not the case, should consider how they would satisfy the Commission in the absence of such contract terms.

## **5 Do gambling software businesses require additional remote operating licences?**

- 5.1** A gambling software licence only authorises the manufacture, supply, installation and adaptation of gambling software. It does not permit the provision of facilities for gambling and therefore any business that provides facilities for gambling (even if they hold a gambling software licence) will need a relevant remote operating licence: a casino, bingo, general betting, pool betting, betting intermediary or lottery licence. For example a business that holds a gambling software licence but also hosts a poker network or a games platform will also require a remote casino operating licence as it is responsible for the fairness of the gambling.

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<sup>5</sup> IP that relates to the functionality of the game and does not include branding (eg superhero characters) that may be subject to their own IP.

## 6 Technical standards

- 6.1** All gambling software (eg that which runs a slots game or sports betting service) must meet the Commission's remote gambling and software technical standards if it is made available to customers, for example via an online casino or sports betting service in reliance on a Gambling Commission operating licence. Any such gambling software must be tested in accordance with the testing strategy<sup>6</sup> prior to the game being made available to customers.
- 6.2** However, if the gambling software (eg for a slots game) is only ever supplied to operators licensed only in other jurisdictions it does not need to comply with the Commission's remote gambling and software technical standards.

Gambling Commission June 2014

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Ref number ADV 15/01

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<sup>6</sup> Please refer to Annex A of the Testing strategy for compliance with remote gambling and software technical standards (version containing updates for transitional licensees June 2014).