



# Gaming in the UK (England and Wales): overview

## Legislative framework of gambling regulation

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### Overview

#### 1. What legislation applies to gambling?

From the 1960s until 2005, the principal forms of gambling were governed by different pieces of legislation. By the early 1990s, however, the pace of change of a number of fundamental aspects of the gambling industry led to calls for new legislation.

The new legislation was also passed to reflect the shift in attitude towards the gambling industry, from a vice that could not be prevented to an acceptable form of adult entertainment. The UK Government set up the Gambling Review Body (GRB) (under the Chairmanship of economist Professor Sir Alan Budd), which was responsible for considering the state of the gambling industry, its social impact, how the industry might change and what new regulations would be appropriate.

The GRB Report was published in July 2001 with recommendations designed to simplify the regulation of gambling and extend choice for adult gamblers, while seeking to ensure that:

- Gambling remained crime-free and honest.
- Players could know what to expect and be free from exploitation.
- Children and vulnerable persons would be protected.

The report also stressed the need to ensure that any system of regulation should be flexible enough to incorporate technological developments and to enable adjustments to be made to regulations in light of practical experience. Most significantly, it recommended that all gambling regulation should be incorporated into one act of Parliament and that all gambling activities should be regulated by a single regulator, except the National Lottery, which should continue to be separately regulated.

In November 2003, the Government published the first draft of the Gambling Bill incorporating many of the GRB's recommendations. The GRB was reconvened to consider policy on regional casinos, which led to Parliament making a number of significant changes to the Bill, in particular to the proposals relating to casinos.

The Gambling Bill proposed the following four sizes of casino:

- Regional or resort casinos.
- Large casinos.
- Small casinos.
- "Below the minimum size for a licensed casino", to accommodate casinos existing at the date of the passing of the Gambling Act 2005 (2005 Act).

While the Bill also introduced a clause enabling local authorities to resolve not to issue casino premises licences in their own areas, the Government's view was that there should be no statutory limit on the number of casinos, which should be determined by market forces. However, facing determined opposition, both from Parliament and in the press, the Government announced that it



proposed to limit the number of licences for small, large and regional casinos, to eight each. However, due to time pressure and to allow the Bill to be passed, the Government agreed to reduce the number of regional casinos in the first instance from eight to one. The Bill received Royal Assent on 7 April 2005.

Towards the end of 2006, the Casino Advisory Panel (Panel) recommended to the Government 17 locations it considered suitable to test the social impact of the new casinos. The corresponding licensing authorities in these areas would be granted the power to award premises licences for the new casinos. The draft order before Parliament, detailing the Panel's recommendations, was rigorously debated but ultimately defeated. Meanwhile, newly-elected Prime Minister, Gordon Brown, added to the uncertainty when he announced in Parliament in July 2007 that he would look at alternative methods for regeneration to areas earmarked for regional casinos. Subsequently, the new Secretary of State laid a draft order in Parliament in February 2008 seeking approval for 16 local licensing authorities selected by the Panel and further confirmed that there would be no regional casinos.

In two key respects, the GRB Report's recommendations of a new framework for casino gaming in Great Britain were derailed for the foreseeable future. Firstly, there would be only a small number of new casinos, instead of a free market and secondly, there would be no resort-style casinos. In light of these exclusions, a draft order was finally approved by Parliament.

The 2005 Act sets out the following three objectives:

- Preventing gambling from being:
  - a source of crime and/or disorder;
  - associated with crime and/or disorder; or
  - used to support crime.
- Ensuring that gambling is conducted in a fair and open way.
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

These are of fundamental importance to the regulation of licensed gambling, in that the Gambling Commission (Commission) must aim to pursue and, if appropriate, have regard to the objectives when carrying out any functions under the 2005 Act. Licensing authorities must permit the use of premises for gambling, insofar that the authority thinks it reasonably consistent with the objectives.

In July 2011, the Government announced that it was proposing to amend the provisions of the 2005 Act, which allowed offshore remote gambling operators to enjoy an advantageous position over those based and licensed in the UK. Prior to this amendment, the 2005 Act permitted operators based in the European Economic Area, Gibraltar and certain selected "white-listed" jurisdictions (Alderney, the Isle of Man, Antigua, Barbuda and Tasmania) to advertise their services in the UK without holding a UK operating licence or paying UK gaming duty. However, by 2011, the Government acknowledged that this position was not consistent with the trend in much of Europe that required online gambling operators to obtain a local licence.

Following a consultation period with the industry, the Gambling (Advertising and Licensing) Bill (Bill) was issued on 3 December 2012 and proposed a fundamental change to the basis on which remote gambling is regulated, from a point of supply basis to a point of consumption basis.



The Gambling (Licensing and Advertising) Act 2014 (2014 Act) received Royal Assent on 14 May 2014. It was due to be implemented from 1 October 2014 but was delayed until 1 November 2014 following a legal challenge by the Gibraltar Betting and Gaming Association.

Since 1 November 2014, all operators advertising gambling services in the UK and/or transacting with customers physically located in Great Britain, must hold a licence from the Commission.

Since 1 December 2014, all operators (regardless of their location) must pay UK remote gambling duty on all transactions with customers whose normal place of residence is in the UK.

In addition, from 31 March 2015, it became a licence condition that all gambling software used by a Commission licensee must be manufactured, supplied, installed and adapted by the holder of a gambling software operating licence.

## Definitions of gambling

### **2. What is the legal definition of gambling in your jurisdiction and what falls within this definition?**

The Gambling Act 2005 (2005 Act) is divided into the following parts:

- Part 1 interprets key concepts and contains definitions of important terms.
- Part 2 establishes the Gambling Commission's powers and duties.
- Part 3 deals with offences.
- Part 4 addresses the protection of children and young persons.
- Parts 5, 6, 7 and 8 deal with various types of licences.

In addition, a number of other Parts deal with specific types of gaming and other matters, such as advertising. The 2005 Act is also applicable to all types of technologies.

### General definition

In contrast with previous legislation, the 2005 Act defines critical terms, enabling the following questions to be applied to a set of facts:

- Do the facts constitute gambling? If not, the regime of the 2005 Act will not apply.
- If so, which type of gambling applies, such as:
  - casino gaming;
  - equal chance gaming (for example, bingo);
  - betting; or
  - lottery.
- Does the activity involve remote gambling?
- Is any person providing facilities for gambling?

After answering the above questions, it is possible to decide whether a licence is required and if so, the type of operating licence which is relevant.

Gambling is defined as one of the following:

- Gaming.
- Betting.
- Participating in a lottery.



Gaming means playing a game of chance for a prize. A game of chance includes games involving both chance and skill (even where the chance element can be eliminated by superlative skill).

Chess is an example of a pure-skill game, whereas card games and dice games generally offer more scope for the role of chance, given the random deal of cards. Poker gives rise to different approaches in different jurisdictions, but in the UK, the element of chance introduced by the deal of cards, notwithstanding the skill element, means that it will fall within the definition of gaming.

The concept of "playing" includes a sole participant, even where a computer represents the actions of other players.

"Prize" is defined as including money or money's worth and playing for a prize encompasses a chance of winning, whether or not the player risks any loss.

Gaming, which involves playing a game for a prize, does not (in contrast with a lottery) necessarily involve the player making a stake or bet on the game. Social gaming or "free play" can still constitute gaming, if there is a "prize". However, it is generally accepted that the mere opportunity to play a game again does not constitute a prize, as it is not recognised as having any monetary value. "Equal chance gaming" (such as bingo) exists if the game does not involve playing or staking against a bank, and if chances are equally available to all participants.

A person "provides facilities for gambling" if he/she satisfies one of the following:

- Invites others to gamble in accordance with arrangements made by him.
- Provides, operates or administers arrangements for gambling by others.
- Participates in the operation or administration of gambling by others.

To deal with activities that do not fall clearly into one of the above categories, the 2005 Act also provides guidance on cross-category activities.

### **Online gambling**

Online gambling (referred to as "remote gambling" throughout the 2005 Act) applies to people gambling by means of remote communication (such as communication using the internet, the telephone, radio or any other kind of electronic or other technology for facilitating communication).

Following the implementation of the Gambling (Licensing and Advertising) Act 2014, the offence of providing facilities for gambling without a licence now applies to situations where no remote gambling key equipment is located in Great Britain and the person knows or should know that the facilities are being used or are likely to be used in Great Britain.

"Remote gambling equipment" refers to electronic or other equipment used to store information relating to a person's participation in gambling, to present to those participating, a virtual game, virtual race or other virtual event by reference to which gambling is conducted, to determine all or part of a result or to store information relating to the result. The definition is potentially wide enough to cover any electronic or other equipment (such as a computer system, which stores any information relating to a customer's participation).

### **Land-based gambling**

Land-based gambling is not defined separately in UK legislation.

### **Regulatory authorities**



### 3. What are the regulatory or governmental bodies that are responsible for supervising gambling?

The regulators that enforce the Gambling Act 2005 (2005 Act) are the:

- Gambling Commission (Commission), which replaced the Gaming Board for Great Britain that was set up under the Gaming Act 1968 (1968 Act), but only to regulate casinos and bingo clubs, gaming machines and lotteries. In contrast with the Gaming Board, the Commission has a duty to regulate all gaming, betting and lotteries, except spread betting, which is regulated by the Financial Conduct Authority as a financial project.
- Licensing Authorities, which are local authorities operating through Licensing Committees.

The Commission has now issued codes on a number of matters, the most important being its licence conditions and codes of practice (LCCP), which has been heavily amended in recent years following several public consultations. At the time of writing, the July 2016 edition is due to come into effect on 31 October 2016.

The LCCP, which is issued under section 24 of the 2005 Act, regulates the manner in which facilities for gambling are provided. The literal effect of breaching a licence condition is that a licensee is not providing facilities for gambling in accordance with their licence and is therefore committing a criminal offence under section 35 of the 2005 Act. Perhaps more importantly, the licence is at risk.

The Commission's primary functions are to:

- Issue operating licences.
- Issue personal licences.
- Specify general licence conditions for each type of licence and any individual licence conditions which it considers appropriate.
- Issue codes of practice concerning the way in which facilities for gambling are to be provided.
- Regulate licence holders.
- Investigate and prosecute illegal gambling and other offences under the 2005 Act.
- Issue guidance to local authorities on their role.
- Advise the Secretary of State on the incidence of gambling, how it is carried out, its effects and its regulation.

In contrast with its predecessor, the Gaming Board, the Commission has the power to investigate and prosecute offences directly.

The Commission has the important regulatory power to call in licences for review and can initiate investigations in any of the following circumstances:

- To establish whether its conditions are being complied with.
- Where it fears a licensee has been convicted of a relevant criminal offence.
- Where it considers a licensee to be unsuitable to continue holding a licence.
- Generally, where a review is deemed appropriate.

The consequences below may be enforced by the Commission following a review, including:

- Issuing a warning to a licence holder.
- Attaching an additional condition to a licence.
- Removing or amending a condition to a licence.
- Suspending a licence.



- Revoking a licence.
- Imposing a financial penalty following breach of a licence condition.

In addition, the Commission has regulatory powers that can be exercised without carrying out a licence review, including:

- Suspending a licence at the outset.
- Imposing a financial penalty, where the Commission thinks that a condition of a licence has been breached.
- Voiding a bet.
- Deciding that a licence has lapsed if a licensee becomes incapable of carrying on the licensed activities by reason of mental or physical incapacity.
- Revoking a licence for non-payment of an annual fee.

## Gambling products

### **4. What gambling products have been specifically identified by legislation, and what different requirements have been established for each?**

The Gambling Act 2005 (2005 Act) regulates the following gambling products:

- Arcades.
- Bettings.
- Bingo.
- Casinos.
- Gambling software.
- Gaming machines.
- Lotteries (raffles), excluding commercial lotteries.
- Remote (online) gambling.

### **Arcades**

There are three types of amusement arcades:

- Adult gaming centres.
- Licensed family entertainment centres.
- Unlicensed family entertainment centres.

The three different types of amusement arcades can offer specific categories of gaming machine. No one under the age of 18 years can enter an adult gaming centre or the adult-only section of a licensed family entertainment centre.

### **Bingo**

Bingo is "equal chance" gaming. Although there is no legal definition or a standard set of rules governing the game, bingo has developed to a point that the game is broadly similar throughout the UK. The Gambling Commission (Commission) has published guidance on its view of what bingo is and how it differs from other forms of gambling. This advice was developed with the support of key stakeholders in the bingo industry.

### **Betting**

"Betting" is defined as the making of or acceptance of bets on one of the following:



- The outcome of an event.
- The likelihood of anything occurring or not.
- Whether anything is true or not.

There are several sub-categories of betting including:

- Real event betting (that is, fixed odds betting).
- Virtual event betting (based on a random number generator).
- Betting intermediary (peer to peer).
- Pool betting (including fantasy football-type competitions), which is betting made on terms that all or part of the winnings will be determined by reference to the total stakes played by those betting and that the winnings will be divided among the winners or be made something other than money.

The Commission has published various advice notes and position papers on betting intermediaries, betting on lotteries, in-play betting and most recently on eSports.

### Casinos

Casino refers to an arrangement whereby people are given an opportunity to participate in one or more casino games. It applies equally to casinos located physically in buildings in which the games are played (that is, land-based casinos) and to online casinos offering casino games by some form of remote communication. Although, for obvious reasons, only the former will require a premises licence.

Premises licences for land-based casinos can be obtained for both large and small 2005 Act casinos. There were over 140 Gaming Act 1968 casinos in operation when the 2005 Act came into force. This number has remained fairly stable, with openings and closures more or less in balance.

The following specific requirements relating to small and large casinos also apply (*Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007*):

- Small casino:
  - the combined floor area providing facilities for gambling must be at least 500 square metres but not more than 1,500 square metres;
  - the minimum table gaming area must be 500 square metres;
  - the minimum non-gaming area must be 250 square metres;
  - betting is also authorised in small casinos;
  - the gaming machine entitlement is 80, however this is subject to meeting the set gaming table to gaming machine ratios.
- Large casino:
  - the combined floor area providing facilities for gambling must be at least 1,500 square metres but not more than 3,500 square metres;
  - the minimum table gaming area must be 1,000 square metres;
  - the minimum non-gaming area must be 500 square metres;





- betting bingos are also authorised in large casinos;
- the gaming machine entitlement is 150, however this is subject to meeting the set gaming table to gaming machine ratios.

Casino premises licences also allow the licensee to make available any number of games of chance other than casino games, such as equal chance card room games. They also permit licensees to provide automated table games, such as automated roulette (that is, a version of the game played with a wheel controlled electronically rather than with a croupier).

### Gambling software

Section 41 of the 2005 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.

Gambling software:

- Is computer software for use in connection with remote gambling.
- Does not include anything for use solely in connection with a gaming machine.

A person does not supply or install gambling software by reason only of the facts that he makes facilities for remote communication or non-remote communication available to another person, and the facilities are used by the other person to supply or install gambling software.

In June 2014, the Commission published an advice note on what constitutes gambling software, which stated that the Commission's interest is the ultimate control of product development. This is determined through considering a number of factors, including:

- Who is responsible for design and functionality, testing and approving design changes.
- Who owns the IP.
- The terms of the contract.
- Whether the contract is for the purchase of a product or the payment of time and expertise.

### Gaming machines

The definition of a gaming machine is deliberately broad, covering a wide range of gambling activities which can take place on a machine, including betting on virtual events. It is a machine which is designed or adapted for use by individuals to gamble (whether or not it can also be used for other purposes) (*section 235(1), 2005 Act*).

The main gaming provisions are contained in Part 10 of the 2005 Act, which governs:

- The manufacture, supply, maintenance, repair, installation and adaption of a machine, including its software, which are all regulated activities.
- Gaming machines, which are situated in Great Britain, or if activities are conducted in Great Britain in relation to the machines, irrespective of where they are situated. For example, a gaming machine manufactured in Great Britain for export overseas is covered by the provisions or will require a gaming machine technical operating licence. However, these machines need not comply with the gaming machine categorisation regulations under section 236 of the 2005 Act (see below).





Under section 236, gaming machines fall into categories (from A to D) depending on the maximum stake and prize available and are set out in detail in secondary regulations. Category B2 gaming machines, also known as fixed-odds betting terminals (FOBTs), are subject to intense public and political scrutiny due to the significantly higher maximum stake (GB£100), which is higher than other similarly categorised gaming machines. FOBTs provide a variety of casino games and betting shops are entitled to four FOBTs per premises.

## Lottery

Lotteries cannot be run for private or commercial gain and are defined as simple lotteries if all of the following applies:

- Payment is required to participate.
- One or more prizes are allocated to one or more members of a class.
- The allocation of prizes relies wholly on chance.

A complex lottery exists if in addition to the first two points above, prizes are allocated by a series of processes, the first of which relies wholly on chance. The definition therefore includes events which contain an element of skill after the initial process.

There are several types of lotteries but the main types are society lotteries (small and large), private lotteries and the National Lottery (subject to separate legislation).

## Land-based gambling

### Regulation/licensing

#### 5. What is the licensing regime (if any) for land-based gambling?

There are two types of Gambling Commission (Commission) licences:

- Non-remote operating licences for land-based activities, which require an accompanying premises licence.
- Remote operating licences for online activities.

Operators that want to offer remote and non-remote services must hold both operating licences. The provisions contained in the Gambling Act 2005 (2005 Act) apply equally to both services.

The 2005 Act creates the following categories of operating licences:

- Casino operating licence.
- Bingo operating licence.
- General betting operating licence (with various sub-categories).
- Pool betting operating licence.
- Betting intermediary operating licence.
- Gaming machine operating licence (with various sub-categories).
- Gambling software operating licence.
- Lottery operating licence (societies and external lottery managers).

### Operating licences



Applications for operating licences are made to the Commission, who will determine (following extensive investigation and having regard to the licensing objectives) whether the applicant is suitable to carry on the licensed activities.

The Commission publishes on its website its licensing, compliance and enforcement policy statement (at the time of writing, the latest edition was published in March 2015), which applies to all operating licence applications. This statement sets out (in broad terms) the principles which are used to assess any application, such as:

- Identity and ownership.
- Finances.
- Integrity.
- Competence.
- Criminality.

**Eligibility.** Any person (worldwide) can apply for an operating licence, however, the Commission must be satisfied as to the suitability of the location of key gambling equipment. In addition, as part of the application process, the applicant must meet the Commission's suitability requirements.

**Application procedure.** A non-remote operating licence application can be made via the Commission's online application system or using the application form on its website, together with various supporting documents (including detailed policies and procedures).

Timing depends on the complexity of the business and corporate structure. In the authors' experience, applications usually take between two to four months to be determined from the point of submission, but could take up to six months. Land-based casinos are generally considered to be a high impact activity in terms of the Commission's work, which means that applications may attract a high level of scrutiny and interest.

**Duration of licence and cost.** Operating licences are granted in perpetuity, subject to lapse, revocation, surrender or suspension. Application fees and annual fees vary according to the category of licence and gross gambling yield. Commission fees are linked to the burden of regulating a particular activity.

### Premises licence

There are five types of licences to enable premises to be used for:

- A casino.
- A bingo.
- An adult gaming centre for making Category B gaming machines available for use.
- A family entertainment centre, for Category C gaming machines.
- Betting premises.

A premises licence is not required to provide facilities if they are to be used only by those who are either:

- Acting in the course of the business.
- Not on the premises.

Only one premises licence can apply to a particular premises at a time, which limits the type of gambling permitted to the particular type authorised by the licence. The rule is subject to



exceptions, most notably in relation to betting tracks, however, no more than one premises licence can operate in relation to any area of the track.

Different gaming machine entitlements apply to different types of premises licences.

The application is made to the licensing authority of the area that the premises are located in. The applicant must hold, or have applied for, an operating licence from the Commission authorising the type of gambling for which the premises are sought. The applicant must have a right to occupy the premises to which the application relates, which can be a freehold, leasehold or tenancy.

There is no limit on the number of premises licences, with the exception of casino licences. Only 16 premises licences for casinos were made available under the 2005 Act and each licence is subject to a public competition, with the local authority determining which bidder will be awarded the licence.

### Personal licences

Although the operating licence authorises an individual, company, or other form of association to operate a particular type of gambling, those responsible for the management of the business, for compliance and for the control of gambling, will need Commission approval in the form of a personal licence. There are two types of personal licences:

- Personal management licence (PML).
- Personal functional licence (PFL).

Any individual with management responsibility for any of the following five key positions must hold a PML:

- Overall strategy and delivery of gambling operations.
- Financial planning, control and budgeting.
- Marketing and commercial development.
- Regulatory compliance.
- Gambling-related IT provision and security.

A PFL is issued to individuals working in a casino who are involved in gaming or handling cash (for example, croupiers, dealers and cashiers).

PML and PFL holders must take all reasonable steps to ensure that they do not breach any of the licence conditions. In addition, they have various detailed reporting requirements in relation to "key events" (*section 15.2. 1, Licence conditions and codes of practice (LCCP)*), which include:

- New 3% shareholders.
- Investment not by way of subscription of shares.
- Material change in the licensee's banking arrangements.
- Investigation into the licensee's activities.

PML and PFL holders must keep gambling fair and safe, by taking all reasonable steps to ensure their associated licensed operator complies with the 2005 Act, the LCCP and other regulatory obligations.

In the authors' experience, the Commission's policy is to hold PML holders directly responsible for licence breaches. The practical reality is that it is individuals holding PML holders, not companies holding operating licences, who are making decisions. Therefore, they will be held fully accountable



where they make a business decision, or fail to make a business decision (deliberate or inadvertent) that results in any breach.

## **6. What are the limitations or requirements imposed on land-based gambling operators?**

The Gambling Commission (Commission) must specify conditions in respect of:

- All operating licences.
- Operating licences falling within a specified category.
- Individual operating licences.

These conditions will only be lawful if they are necessary to uphold the licensing objectives. The Commission has wide discretion as to how they will regulate operating licences through conditions.

The Licence conditions and codes of practice (LCCP) set out the:

- General conditions to be attached to operating licences.
- General conditions to be attached to personal licences.
- Principal codes of practice relating to social responsibility and other ordinary/general provisions.
- Code of practice attaching to casino premises licences concerning access by children and young persons.

The Commission will also enquire into the suitability of any gaming machine, equipment or software to be used in connection with the licensed activities.

### **Prohibitions**

Society and external lottery manager operating licences are available for non-commercial lotteries. However, operating licences are not available for commercial lotteries, except the National Lottery.

Customers must be aged 16 years to play a lottery and 18 years to play any other form of gambling.

### **Restrictions**

There is no ban on local residents gambling in Great Britain. However, there are strict social responsibility requirements set out in the LCCP in relation to:

- Preventing underage gambling.
- Identifying and managing at-risk and problem gamblers.
- Customer interaction.
- Gambling management tools.
- Self-exclusion (local and national schemes).
- Advertising.

Additionally, detailed requirements apply in relation to all of the following:

- Assessing local risk.
- Anti-money laundering (AML).
- Access to premises.
- Age verification.
- Cash handling.
- Provision of credit.
- Game rules.



- Tipping of casino employees.
- Complaints and disputes.
- Primary gambling activity.
- Being fair and open.
- Society lotteries.
- Marketing.
- Gambling software.
- Technical standards.
- Testing requirements.
- Responsibility for third parties.
- Reporting of suspicious offences.
- Reporting of key events.

### Anti-money laundering legislation

AML is a complex area, which cannot be summarised in this chapter. The UK's AML legislation stems from the international standards set by the Financial Action Task Force (FATF) and European legislation.

Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing brought casino activities within the "regulated sector". The Directive is ten years old and largely pre-dates the explosion of the online gambling industry. The forthcoming Directive 2015/849/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Fourth EU Anti-Money Laundering Directive) alters the requirements and brings all forms of gambling within the regulated sector, which means that the AML requirements are subject to fundamental change. This is not surprising given that the Fourth EU Anti-Money Laundering Directive is based on the international standards set by the FATF. Recently, Her Majesty's Treasury published a consultation document on the transposition of the Fourth EU Anti-Money Laundering Directive, which called on the gambling industry and stakeholders to provide evidence on sectors that should be exempt due to proven low risk.

The Fourth EU Anti-Money Laundering Directive is likely to be applied by the UK in 2017. However, Great Britain voted to leave the EU in June 2016 so it is not known what effect this will have on this application, although it is believed that the Government will transpose the Directive, given that it is based on the international FATF principles.

### Online gambling

#### Regulation/licensing

#### 7. What is the licensing regime (if any) for online gambling?

##### Available licences

See Question 5.

##### Eligibility

See Question 5.

##### Application procedure



See *Question 5*. However, applications for online gambling can only be submitted online via the Gambling Commission's application system. Although the majority of requirements are the same, there are certain nuances that apply due to the differences between land-based and online business models. Online operators must now disclose the revenue of the applicant company and wider group's activities in foreign jurisdictions.

### **Duration of licence and cost**

See *Question 5*, however, different fees apply to remote activities.

## **8. What are the limitations or requirements imposed on online gambling operators?**

### **Prohibitions**

See *Question 6, Prohibitions*.

### **Restrictions**

See *Question 6, Restrictions*.

There are also additional requirements specific to remote gambling (such as relating to gambling tools, customer funds, security audits, display of licensed status and peer to peer gaming).

### **Anti-money laundering legislation**

See *Question 6, Anti-money laundering legislation*.

### **B2B and B2C**

## **9. Is there a distinction between the law applicable between B2B operations and B2C operations in online gambling?**

The Gambling Act 2005 does not specifically distinguish between B2B and B2C businesses. However, it specifies different forms of licences for specific activities. A common misconception is that there are "suppliers" and "operators", however all Gambling Commission licences are "operating licences" (see *Question 5*).

A B2B operator, which provides a white label service or a gambling platform, requires the same operating licence as that required by a B2C operator, as it is providing facilities for gambling.

### **Technical measures**

## **10. What technical measures are in place (if any) to protect consumers from unlicensed operators, such as ISP blocking and payment blocking?**

In 2014, when debating the amendments to the Gambling Act 2005, the Government considered but decided against the introduction of measures such as ISP blocking and payment blocking. There are currently no technical measures to protect consumers from unlicensed operators.

### **Mobile gambling and interactive gambling**

## **11. What differences (if any) are there between the regulation of mobile gambling and interactive gambling on television?**



The Gambling Act 2005 is applicable to all types of technologies.

## Social gaming

### 12. How is social gaming regulated in your jurisdiction?

Unsurprisingly, the Gambling Commission has a keen interest in social gaming because of the element of chance in these games, in particular those that mimic gambling games. An increasing number of games in the UK now incorporate virtual currency that can either be obtained by registering to play or purchasing virtual money using PayPal or a credit card.

The Gambling Act 2005 (2005 Act) defines gaming as "playing a game of chance for a prize". Social gaming sites can offer real money prizes, provided that their games are purely skill-based. Social gaming sites offering poker and casino games avoid attracting regulation by not offering prizes that are reducible to monetary value.

Matters become complicated when social games of chance offer prizes in virtual money. If no real money is paid out to players and winnings have no monetary value, social games will not attract regulation under the 2005 Act because the virtual money does not constitute money's worth. This is on the basis that it is not exchangeable for any goods or services and cannot be traded for anything other than additional play (that is, a "closed loop").

In January 2015, the Gambling Commission published a paper on social gaming that sets out its analysis and assessment work to date. In September 2016, the Commission published a discussion paper on virtual currencies, eSports and social gaming aimed at promoting a discussion within the industry and ensuring that the Commission has a full understanding of developments in these areas to enable it to advise the Government.

The Gambling Commission remains interested in social gaming where the lines are blurred with gambling. However, it is heavily focused on the growth in the market for gambling on eSports. The Gambling Commission is investigating and prosecuting a number of unlicensed eSports operators and recently published a discussion paper inviting interested parties to provide their views and reasoning on a series of topics.

## Gambling debts

### 13. Are gambling debts enforceable in your jurisdiction?

Gambling debts are enforceable under section 335 of the Gambling Act 2005.

## Tax

### 14. What are the applicable tax regimes for land-based and online gambling?

The applicable tax regimes for land-based and online gambling for the tax year 2016-2017 are as follows:

- Bingo duty, percentage of bingo promotion profits: 10%.
- General betting duty:
  - percentage of "net stake receipts" for fixed odds bets, totalisator bets on horse or dog races and bets taken on betting exchanges: 15%;
  - percentage of "net stake receipts" for financial spread bets: 3%; and
  - percentage of "net stake receipts" for all other spread bets: 10%.





- Pool betting duty, percentage of bookmaker's profits from bets that are not at fixed-odds and are not on horse or dog racing: 15%.
- Lottery duty, percentage of the price paid or payable on taking a ticket or chance in a lottery: 12%.
- Machine games duty:
  - percentage of net takings from dutiable machine games with a maximum cost to play not more than GB£0.20 and a maximum cash prize not more than GB£10: 5%;
  - percentage of net takings from dutiable machine games with a maximum cost to play not less than GB£0.21 and not more than GB£5 and a maximum cash prize more than GB£11: 20%; and
  - percentage of net takings from all other dutiable machine games with a maximum cost to play of more than GB£5: 25%.

Gambling at a casino in the UK ('gaming duty') on or after 1 April 2015:

- gross gaming yield – the first GB£2,347,500: 15%;
- gross gaming yield – the next GB£1,618,000: 20%;
- gross gaming yield – the next GB£2,833,500: 30%;
- gross gaming yield – the next GB£5,981,500: 40%;
- gross gaming yield – the remainder: 50%.
- Remote gaming duty, gross gaming revenues on all transactions with customers whose usual place of residence is in the UK: 15%.

The majority of gambling activities are exempt from VAT.

## Advertising

**15. To what extent is the advertising of gambling permitted in your jurisdiction? To the extent that advertising is permitted, how is it regulated?**

Since 1 November 2014, an operator must hold a licence from the Gambling Commission (Commission) to advertise in the UK. However, the Commission has confirmed that advertising-only licences will not be granted.

"Advertising" is defined as doing anything to encourage one or more persons to take advantage (whether directly or through an agent) of facilities for gambling, with a view to any of the following (*section 327, Gambling Act 2005 (2005 Act)*):

- Increasing the use of facilities for gambling.
- Bringing facilities for gambling or information about them to the attention of one or more persons.
- Participating in or facilitating an activity, knowing or believing that it is designed to either encourage one or more persons to take advantage (whether directly or through an agent) of facilities for gambling, or increase the use of facilities for gambling by bringing them or information about them to the attention of one or more persons.

This definition is extremely wide and covers most forms of advertising and marketing, including potentially, online advertising and e-mails to customer databases.

The Secretary of State can pass regulations relating to gambling advertising by controlling the form, content, timing and location of advertisement for gambling, including requirements for specified



words to be included in advertisement. At the time of writing, no Secretary of State has exercised this power since the 2005 Act came into force on 1 September 2007.

### Relevant offences

It is an offence for a person to invite another person under 18 years of age to gamble (*section 46, 2005 Act*). In addition, it is an offence to advertise "unlawful gambling" (*section 330, 2005 Act*). Gambling is "unlawful" if, in order for it to take place as advertised without the commission of an offence under the 2005 Act, it is or may be necessary to rely on a licence or exception under the 2005 Act. Therefore, if the provision of facilities for gambling is an offence (as the appropriate licence is not held), the facilities cannot be advertised in the UK.

The Commission can take enforcement action against those not permitted to advertise and can seek to prosecute.

All advertising must be undertaken in a socially responsible manner and in compliance with the advertising codes of practice and the industry code of practice on advertising (*ordinary code provision 5.1.6, Licence conditions and codes of practice for all licensees (LCCP)*).

The following rules apply to gambling advertising in the UK:

- The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code), which applies to non-broadcast advertising.
- The UK Code of Broadcast Advertising (BCAP Code), which applies to broadcast advertising.
- The Gambling Industry Code for Socially Responsible Advertising (Industry Code), which applies to all gambling advertising in the UK.
- The LCCP.

The CAP Code and BCAP Code are administered by the Advertising Standards Authority (ASA). All advertisements must also be legal, decent, honest and truthful and prepared with a sense of responsibility to consumers and to society. The ASA does not have criminal sanctions at its disposal to enforce the Codes, however, if an advertiser failed to comply with a direction to withdraw an advertisement, which was in breach, this could prompt the Commission to review the operator's licence. Further, the ASA issues a list of non-compliant advertisers to media outlets, so failure to comply with a direction is likely to lead to the operator being unable to advertise in the UK in the future. There have been a raft of ASA adjudications upheld against operators in recent years, including the most complained about advertisement in 2014 from Paddy Power, which offered "money back if he walks" for punters betting on the outcome of the Oscar Pistorius murder trial.

The marketing provisions of the LCCP provide, among others, that licensees should only offer incentive or reward schemes in which the benefit available is proportionate to the type and level of a customer's gambling. In addition, when offering inducements and bonuses, such as free bets or points, the value of the inducement must increase at a rate no greater than the amount spent. Additional restrictions in relation to marketing were introduced in 2015 and 2016 in relation to free bets, digital advertisements and affiliate marketing.

## Developments and reform

### Legal development

**16.** Has the legal status of land-based and online gambling changed significantly in recent years, and if so how?

**Land-based gambling**

There have been no significant changes to land-based gambling in recent years.

**Online gambling**

See *Question 1*, regarding the regulation of online gambling moving from a point of supply to a point of consumption.

**Other**

See *Question 12*.

**Reform**

**17.** What, if any, are the likely short-term and long-term developments/legislative amendments concerning gambling in your jurisdiction? Are there any proposals for reform?

**Land-based gambling**

Responsible gambling and anti-money laundering are areas of high priority to the Gambling Commission (Commission). There have been several high-profile public statements involving voluntary settlements between the Commission and Paddy Power, Rank, Aspers, William Hill, bet365, Coral, Ladbrokes and Grosvenor. The authors consider that these household names were no doubt chosen by the Commission for maximum effect on the basis that:

- If this can happen to these operators, it can happen to any operator.
- They can ensure maximum publicity of their message in the industry.
- In view of their scale, obviously more UK customers were potentially or actually affected.

In the authors' view, the trend of voluntary settlements is likely to continue across both the remote and non-remote sectors.

**Online gambling**

See above, *Land-based gambling*.

**Social gaming**

See *Question 12*.

**The regulatory authorities****Gambling Commission**

**W** [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

**Description.** Official website for the Gambling Commission that regulates all commercial gambling in Great Britain and the National Lottery. The website includes the public register, sanctions register, legislation, sector information, consultation documents, policy statements, advice and guidance notes, discussion papers, application forms, online application system, eServices, quick guides, FAQs, fees calculator, annual reports and industry statistics. The website also includes details in relation to licensing authorities.



## Online resources

### Gambling Commission

W [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

**Description.** Official Gambling Commission website.

Source: [Practical Law](#)

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