



# **Policy Statement for the Conduct and Regulation of Gambling Software Designers in Jersey**

## **Introduction**

This document sets out the Commission's policy for the regulation by Permit of Gambling Software Designers in Jersey, the relevant permissions, responsibilities and appropriate enforcement. It is published in accordance with Article 9 of the Gambling (Jersey) Law 2012 (the Law) and will come into force on 1<sup>st</sup> January 2013. In publishing this policy, the Commission sets out the circumstances it will generally grant or refuse an application for a Permit.

The Commission will award Permits to those services prescribed by Regulation 3 (4) (b) and (c), Gambling (Ancillary Services and Miscellaneous Provisions) (Jersey) Regulations 2012 which, for the benefit of defining Permit types is categorised as a Gambling Software Designers Permit.

In accordance with Regulation 5, Gambling (Ancillary Services and Miscellaneous Provisions) (Jersey) Regulations 2012 this Policy adapts certain conditions for the application, refusal and governance of Gambling Software Designers.

## **Guiding Principles**

The guiding principles are set out in the Gambling Commission (Jersey) Law 2010 and are as follows:

- gambling should be regulated in accordance with generally accepted international standards to prevent fraud and money laundering, and should not be permitted to be a source of crime;
- gambling should be verifiably fair to consumers of those services;
- gambling should always be conducted responsibly and with safeguards necessary to protect children and vulnerable people.

In exercising its functions under that Law and the Gambling Law, the Commission must always have regard to these principles. The Commission will, therefore, only permit gambling or services to commercial gambling operators (of any kind falling under Gambling (Ancillary Services and Miscellaneous Provisions) (Jersey) Regulations 2012) if it considers it reasonably consistent with pursuit of the guiding principles.

This statement will be reviewed by the Commission from time to time and revised after consultation with relevant persons and organisations as appropriate.

### **Statutory Functions**

The Commission's functions with regard to Gambling Software Designers comprise three key areas: applying permits, compliance and enforcement. In particular, the Commission has a duty to:

- determine applications for permits, specify the conditions to be contained in such permits, and determine applications for variation or renewal;
- assess compliance with the Law and with any permit condition, code of practice or other provision included by virtue of the Law, and request information from Permit Holders as necessary;
- take regulatory action against any Permit Holder failing to comply with the conditions stated in this document, or in relation to offences under the Law.

## Context

### What are Ancillary Services?

Ancillary Services are those types of businesses defined by the Gambling (Ancillary Services and Miscellaneous Provisions) (Jersey) Regulations 2012.

This Regulation captures those commercial businesses that offer or wish to offer services to commercial gambling operators. This business relationship is generally known as a Business-to-Business service or B2B. Commercial gambling is defined in the Gambling Law as a business which contracts directly with a customer and for profit. Ancillary Services, by regulation, capture those firms, which perform certain services for a gambling operator or the operation of another person's commercial gambling, but do not directly offer gambling services *to* or contract *with* the public in the form of a customer/punter relationship.

- Article 23(1) of the Law covers any "gambling service" that is provided by way of business but is not a "commercial" service, because it is not provided to any "customer" (which means someone who gambles otherwise than by way of business). Under the definition of a "gambling service" in Article 2(1)(ii) of the Law, the ancillary service is only caught if it consists wholly or mainly of either gambling directly with the commercial provider or facilitating that provider's commercial gambling.
- "Facilitating" the other company's gambling is defined as providing, operating or administering arrangements for, or participating in the operation/administration of the commercial provider's gambling. This has been expanded under Regulation 2 (using Article 23(2)(a) of the Law) so that the targeted service only needs to be "related to gambling" in some way.

### Commission Policy on Ancillary Services (Article 9, Gambling (Jersey) Law 2012)

The Regulation identifies those commercial undertakings that provide services to gambling operators (both remote and terrestrial) and allows these services to be provided in or from Jersey under a Permit. In accordance with the new Gambling Law, the Commission must publish those types of Relevant Services requiring a Permit to operate in or from within the Island. Therefore a Permit is required for the following relevant services:

- **Machine Suppliers** (installers, suppliers of gambling- specific electronic equipment)
- **Importation, sale or hire of gambling software**
- **Software Designers** (designing gambling software)
- **Platform Providers** (including management of an operators gambling content)
- **Manufacturers** (including hardware; gambling-specific electronic equipment)
- **Physical Hosting Service** (data centres)
- **Head Quartering** (arrangements subject to specific conditions)

### Business Areas that do not require a Permit

A distinction is made between those types of ancillary services particular to the operation of gambling and those other services, such as accounting or legal advice for example, required by the business world as a whole and which would not (necessarily) require a permit to conduct such a service. Other obvious cases that would not be caught by this Regulation are the internet cafés where a customer happens to use a gambling site, the shop that sells or rents ordinary computer equipment which is then used for gambling, the landlord of shop premises whose current tenant happens to be a bookmaker's office.

### Software Designers

A software designer requires a Permit from the Commission even if the gambling games it creates are not released within Jersey for the public to play, but sold or licensed externally. The fact they are gambling games designed in the Island catches upon a Gambling Law ethos to protect the Island's reputation and integrity. It is therefore proportionate to allow gambling games to be created in the Island by Permit and ensure they comply with the

Commission's licensing principles and any pertinent published standards exacting fairness and transparency from all gambling offerings.

Under *Regulation 3(4)* a relevant service requires a permit if it is an "electronic equipment service". That is a service (provided in or from within Jersey to anyone in Jersey or overseas) consisting of the design, manufacture, import, sale or hire of gambling software, gaming machines, remote gambling hardware or other gambling-specific electronic equipment. This Policy therefore applies to the design and sale of gambling software under a Permit type headed Software Designers.

### **Applications**

Certain conditions apply to the grant of Permit and remain conditions after it has been granted. In considering the application for any Permit the Commission must ensure that in granting it there is no contravention of the Guiding Principles (as outlined above).

It is therefore for the applicant to satisfy the Commission that they are fit and proper persons to hold a Permit and that business is conducted in such a manner as would not bring the Island into disrepute.

### **Applying for a Permit (Article 11)**

Applications must be made on forms provided by the Commission. These forms require the applicant to supply supporting information to enable the Commission to consider whether the applicant meets the criteria for the award of a Permit.

### **Request for further information**

The Commission may at its own discretion request further information or documentation from the applicant in determining whether to grant a permit. It should be noted that the Commission may also by written notice require the applicant to provide a report by an auditor or accountant, or other expert or qualified person.

### **Change of circumstances during the application process**

A duty is placed on the applicant to inform the Commission in writing of any change pertinent to an application. For instance if the company structure has changed or a director of the business is subject to criminal or civil proceedings arising after the application was made, any intervening circumstances would understandably alter the veracity of the original statements made to the Commission by the applicant. Once the applicant is aware of any material change it must inform the Commission as soon as reasonably possible and before the Permit is issued; failure to do so may result in the revocation of that Permit on the grounds of providing false or misleading information.

[Art. 11(5)]

It remains the right of the applicant to withdraw the application at any time before it is granted or refused. The applicant must supply a written notice to the Commission stating the intention to withdraw the application. [11 (6)]

### **Grant of a Permit (Article 12)**

An applicant must provide the Commission with details of the company structure and the directors, controllers and beneficiaries of the business. It should be noted that the Commission is not compelled to award a Permit just because someone has applied for one. Gambling Software Design is a specialist activity and any applicant must be in a position to prove competence including knowledge and training in this specialist area.

The Commission may only grant a Permit if it has examined and is satisfied of the applicants:

- integrity,
- competence,
- financial standing,
- structure and organisation.

The applicant may then be considered a fit and proper person to facilitate gambling under the Permit.

The Commission is also bound to determine whether the grant of the Permit to a business will not be harmful to the reputation and integrity of Jersey in gambling matters along with commercial and financial matters.

[Art. 12(1)(d)]

### **Testing**

The Commission also reserves the right to approve and appoint an independent person to test each item of equipment that will be used or supplied by a Gambling Software Designer in relation to another persons gambling to ascertain and confirm the gambling equipment complies with the guiding principles and is in compliance with any subsequent (future) relevant code of practice.

[Art. 12(1)(g)]

### **Matters the Commission must take into account**

Without limiting the matters that the Commission may take into account in determining whether to grant a Permit to an applicant, the Commission must take into account the following matters:

- the financial standing, including the financial stability and the adequacy of the capital base of the applicant;
- if the applicant (including any principal person in relation to the applicant) provides ancillary services in a country or territory outside Jersey:
  - the extent to which the laws of that country or territory are adequate to regulate that applicant or person, in a manner that ensures that the reputation and integrity of Jersey would not be harmed by the grant of a Permit.
- whether the applicant has at any time been subject to adverse findings, in either the provision of gambling services or gambling related services by a law enforcement agency situated in a country or territory outside Jersey.
- whether the applicant has at any time (whether or not in relation to the application) in any case where information was required under Gambling (Jersey) Law 2012:
  - failed to provide any information, or
  - provided to the Commission information which was untrue or misleading in any material particular.

[Art. 12(3)]

### **Compliance History of Permit Holders**

The compliance history of a business will be reviewed when considering any application for a new Permit towards the conclusion of the 5-year life cycle of Permits. These matters are prescribed in the Law and are as follows:

In reaching a decision on whether to grant a Permit the Commission must make certain that the applicant business has sufficient connection with Jersey to enable it to take effective enforcement action against the business if so required.

[Art. 12(1)(e)]

In examining the application the Commission must consider whether the business structure and its activities correspond to the Permit regime or would more properly require another type of approval including a gambling licence (e.g. the business is actually directly facilitating gambling to the public).

[Art. 12 (1)(f)]

The Commission must consider whether the applicant has at any time failed, in any material respect, to comply with a condition on a current or previous Permit held by the applicant, a code of practice or direction given to the person at any time.

[Art. 12 (3)(f)]

The Commission must consider whether:

- at any time a direction has been given on the basis of any default by the applicant;
- an injunction has been issued under Article 36(2) to the applicant;
- or an order has been made under Article 36(4) on the basis of any contravention by the applicant,
- the applicant has been the subject of an order for intervention under Article 37,
- a Permit held by the applicant has been revoked under Article 38, or
- the applicant has been served with a final notice of a civil financial penalty under Article 39.

[Art. 12 (g)] [

### **Convictions**

Remembering that one of the Commission's key licensing principles is to keep gambling crime free, this necessarily extends to all the businesses it approves including the applicants for Permits. The Commission must take into account any convictions, and this includes transgressions of the business or any person employed by or associated with the applicant business. Convictions include:

- an offence under this Gambling (Jersey) Law 2012, Gambling (Ancillary Services and Miscellaneous Provisions)(Jersey) Regulations 2012 or the Gambling Commission (Jersey) Law 2010,
- an offence under the anti-money laundering and counter-terrorism legislation;
- an offence under the Data Protection (Jersey) Law 2005, the Supply of Goods and Services (Jersey) Law 2009 or the Distance Selling (Jersey) Law 2007;
- an offence of perjury or conspiracy to pervert the course of justice, or any other offence involving fraud or other dishonesty,
- any offence, under the law of a country or territory outside Jersey.

[Art. 12(3)(h)]

### **Adequate Systems**

The applicant must make an undertaking that the software it supplies or sells is both adequate for the purposes for which it is hired or bought and provide any proof of testing carried out on this equipment. This is to ensure the applicant's software facilitates gambling in accordance with the guiding principles and in compliance with any relevant code of practice.

[Art. 12(3)(i)]

### **Applying for a New Permit**

If an application is received for a Permit before the expiry of another Permit for the same activity from the same firm, the Commission may not necessarily insist on repeating a full due diligence investigation if that firm has a proven compliance record. In considering the application for a new Permit, the Commission must consider whether it holds any relevant information previously obtained by it in connection with the expiring Permit; and it may rely on that information unless it has any reason to believe that the information may not still be current. [Art. 12(5)]

### **Permit Conditions**

#### **Mandatory Conditions (Article 16: general)**

It is a condition that the Permit Holder complies with published advice on the advertising of gambling in general.

#### **Mandatory Conditions – Right of Entry and Inspection**

It is a condition of the Permit that the Permit Holder must co-operate with the Commission to enable it to carry out reasonable routine examinations, including occasional examinations without advance notice.

[Art. 17(1)]

In connection with any routine examination, it is a condition that the Permit Holder must:

- supply to the Commission information in a format and at times specified by the Commission;
- provide answers to questions asked by the Commission;
- allow officers or agents of the Commission to enter any premises occupied or used by the Permit Holder for the conduct of ancillary service or for any related activity (e.g. warehouse, workshop, depot, offices);
- allow officers or agents of the Commission, while on the premises:
  - to search the premises,
  - to examine equipment on the premises,
  - to take possession of any information or documents on the premises or accessible (electronically or otherwise) from the premises,
  - to take, in relation to any such equipment, information or documents, any other steps that may appear to be necessary to preserve them or prevent interference with them,
  - to require any person present on the premises to provide an explanation of such equipment, information or documents, if the person appears to be in possession of relevant information,
  - to take copies of, or extracts from such documents.

[Art. 17 (2)]

### **Mandatory Conditions – Change of ownership, share holding, directors**

It is a condition of the Permit that the Holder must at the request of the Commission, at any reasonable time and whether or not in connection with a routine examination, provide the Commission with the information that the Commission may reasonably require in relation to the control, by its owners, executive officers and directors, of any body corporate constituting the Permit Holder, or of any holding body or subsidiary of the Permit Holder. [Art.17 (3)(b)]

It is a condition of the Permit that the Holder must inform the Commission of the incidence of material change.

It is a condition of the Permit that the Holder informs the Commission of an ownership change at 10% or above. The Permit Holder must also inform the Commission of the addition or removal of directors for any reason including any appointments, dismissals, resignations or deaths. [Art. 17(4) & (5) in relation to Art. 12 (5)]

### **Mandatory Conditions – Duty to Provide information**

It is a Condition that the Permit Holder must inform the Commission of any adverse information in respect of the following incidents:

- If the Permit Holder has any reasonable cause to believe the information is relevant to the Commission's functions under the Law or Regulations in relation to the Permit Holder and that by withholding this information it is likely to result in the Commission being misled as to the Permit Holders activities.

[Art. 17 (6)]

- Unless in cases where the information provided is found to be false [Art. 34], it should be noted that any Statement made by the Permit Holder under this condition may not be used by the prosecution in evidence against the Permit Holder in any criminal proceedings. However, nothing prevents the Commission from using this statement for the purpose of pursuing its functions including the imposition of a civil financial penalty

[Art. 39].

### **Supplementary Conditions (Compulsory Matters)**

A condition on the Permit will define what ancillary services are provided under its authority. [Art.20(1)(a)]

## Social Responsibility

Social Responsibility is a core licensing consideration for the Commission and this extends to Gambling Software Designers. It is a condition that games soft should contain social responsibility information where appropriate.

[Art. 20 (1) (d)]

## Staff Vetting

Not all staff require CRB clearance checks, but this is desirable (Art. 20 (e)). Staff records should be retained and include any certification, qualification or training of those persons in relation to the business (Art.21 (d)). Staff also require to be trained in the awareness of the conditions, the regulations empowering the Permit regime and the Law (where relevant).

[Art. 21 (e)].

It is a condition of every Permit that the Permit Holder must not allow an individual to perform a function, engage in employment or hold a position, if the Permit Holder knows or can reasonably be expected to know that such performance, engagement or holding is in contravention of a direction that makes a requirement referred to in Article 35(2)(c). Namely, require any individual to:

- not perform a specified function (or any function at all) or,
- not engage in specified employment (or any employment at all) or
- not hold a specified position (or any position at all) in the business of,

a specified Permit or any Permit Holder.

[Art.16(4)]

## Records, Accounts and Annual Statements

It is a condition that the Permit Holder provides and maintains a current address at which the Permit Holder agrees to accept service of any documents under the Law, and which is to be taken to be that person's proper address for the purpose of Article 7 of the Interpretation (Jersey) Law 1954.

[Art. 21 (g)]

It is a condition that Permit Holders submit to the Commission the following records:

- Information on the Software supplied and to whom (**Timing of Notification:** On application for a Permit.)
- Certification & Testing:
  - Full development life-cycle documentation, from inception to deployment
  - Testing methodology overview (white box/black box), which one they use and when
  - What unit testing software they use, is any, documentation created from and for the testing
  - Code review, how, and when its done.
  - What is the primary software used for development c#, c++, php, flash, etc.
  - Any external libraries (APIs) used within the game development e.g. RNGs, security modules, auditing modules, COM, DOM, etc.
  - Provide documentation/explanation of development, testing, staging and deployment environments and their segregations
  - Provide documentation for change control procedures
  - Provide documentation for game patch management
  - Provide documentation for game routine maintenance
- Arrangements: hire or sale, rent or profit share (**Timing of Notification:** On application for a Permit; within 14 days of a formal request and/or 28 days before annual renewal of Permit)

- Copies of statements, accounts and returns whether audited or not (but so marked) (**Timing of Notification:** On application for a Permit; within 14 days of a formal request and/or 28 days before annual renewal of Permit)

### **General Condition**

It is a condition of all licences & permits that the holder should inform the Commission of any occurrence, incident or event that impacts upon their suitability to hold a licence or permit or which the Commission might ordinarily expect to be made aware of.

### **Grounds for refusal or revocation of a Permit**

In line with the matters the Commission *must* consider when assessing an application, the following matters – which are not exhaustive - may compel the Commission to revoke or refuse an application for a Permit:

- the applicant has held a Permit previously and proved to be incompetent or negligent or dishonest [Art. 38 (3)(b)];
- the Permit Holder fails to pay fees [Art.38 (c)];
- the Permit Holder or applicant produced misleading and inaccurate information when applying for a Permit or subsequently under the reporting conditions applied to a Permit [Art. 38 (3)(d)(ii)];
- the Permit Holder has breached such conditions of a permit without taking remedial action required and set out in notices from the Commission [Art. 38 (3)(a)];
- on application the person is found not to be bona fide or indeed would require a commercial gambling licence [Art. 38 (3)(e)];
- the permit holder requests it [Art. 38 (2)(a)];
- Jersey's reputation is imperilled [Art. 38 (3)(f)];
- supplying untested gambling products,
- if the Commission has issued a direction under Art.16(4) to the supplier (refer to Staffing heading).

The Commission must articulate reasons for refusing and revoking a permit in line with Article 43 (notification of decisions) and the right of appeal must be applied under **Article 45. [Reg. 4 (1)(j) & Art. 38]**

### **Article 43: Notification of decisions**

In respect of permits the Commission must notify the applicant or holder of a permit (where applicable) of:

- the decision to grant a permit and the conditions applied to that permit (duties clarified by a statement/policy produced under Article 9),
- the decision to refuse a permit and the reasons leading to this decision,
- any remedial action required by the applicant to obtain a permit,
- the revocation of a permit and the grounds for that revocation,
- the effective date of any of these notifications.

**NB: A Permit holder has the right to appeal any enforcement decision pursued by the Commission.**

### **Applying principles to functions**

The regulator expects to apply the following principles in exercising its functions under the Law. These principles have been formulated with a view to ensuring that the Commission regulates in a transparent, accountable, proportionate, consistent and focused manner.

### **Regulating gambling in the public interest**

The Commission will regulate in the public interest, having regard to, and in pursuit of, the guiding principles in the Law. In doing so the Commission will work with the Ancillary sector and other stakeholders and will ensure that it takes into account:

- the need to protect the public;
- the need to maintain public confidence in the sector and the Commission;
- the importance of declaring and upholding proper standards of conduct; and
- competence of Permit Holders.

### **Reviewing regulatory approach**

The Commission will keep its regulatory approach under review, and will make changes to that approach when appropriate (for example, to reflect experience or new developments or guidance under Article 5 of the Gambling Commission (Jersey) Law 2010).

### **Consultation**

The Commission will consult on changes to its regulatory approach where it is appropriate to do so.

### **Decision making processes**

The Commission will ensure that regulatory decisions are properly reasoned and evidence-based and undertaken in a timely manner.

### **Confirming licensing and regulatory decisions**

The Commission will provide written notification of regulatory decisions, including:

- a clear explanation of the reasons on which the decision is based (in a level of detail proportionate to its impact); and
- details of any appeal mechanism(s).

### **The opportunity to make representations**

The Commission will provide an opportunity for applicants to make representations to it in appropriate circumstances.

### **Minimum burden test**

The Commission will ensure that its regulatory approach imposes the minimum burden necessary to promote the guiding principles. The Commission must take into account the regulatory impact on different types and sizes of applicant and licence holder and ensure, without compromising key principles, it does not unduly hinder the activity.

### **Provision of information**

The Commission will endeavour to keep the sector fully informed of the requirements of the regulatory regime and provide general information, advice and guidance, both on request and on its own initiative, with a view to aiding compliance.

### **Complaints**

The Commission will treat all complaints seriously and will address them in accordance with its complaints procedure.

### **Adopting a risk-based approach**

The Commission will adopt a risk-based approach to regulation to ensure that its resources are concentrated where they are needed and can be most effective.

### **Proportionality**

The Commission will generally use the least intrusive regulatory tool to achieve compliance and will ensure that any action is proportionate to the importance of the matters to which it relates, having regard to any risk assessment.

**Publication of regulatory action**

The Commission will publish details of any regulatory action taken, except where it considers that this may have a disproportionately damaging effect.

**Gambling should be verifiably fair to consumers of those services.**

The Commission will ensure that the permits it issues, together with the conditions it imposes and the codes of practice it publishes, set appropriate standards of conduct for Permit Holders, in connection with any permitted activity.

In the event of non-compliance, the Commission will ensure that conditions are imposed that deter future non-compliance on the part of the Permit Holder.

**Gambling should always be conducted responsibly and with safeguards necessary to protect children and vulnerable people**

Where applicable to Permit type the relevant gambling service should not present gambling in such a way that access by children and young persons is generally promoted.