

Remote gambling in Jersey: When do you need a licence?

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Background

In recent years, Jersey has seen a steady expansion in the remote gambling sector. Gambling in Jersey is regulated by modern and well-drafted legislation comprising the Gambling (Jersey) Law 2012 (the **Law**), the Gambling (Ancillary Services Miscellaneous Provisions) (Jersey) Regulations 2012 and the Gambling (Charitable and Membership Gambling Services) (Jersey) 2012, such legislation broadly requires that providers of gambling services in Jersey be licenced by the Jersey Gambling Commission (**JGC**). Below we have set out a brief summary as to when the Law will impose an obligation on a remote gambling service provider to apply to the JGC for a licence the application process if a licence is required, and certain advertising matters.

Definition of Gambling Services

Article 2 of the Law defines a gambling service as a service that:

- is provided by a person to another person; and
- consists wholly or mainly of:
 - gambling with that other person, in accordance with arrangements made by the person providing the service; or
 - facilitating gambling by that other person.

A person facilitates gambling by another person if the person:

- provides, operates or administers arrangements for that other person's gambling; or
- participates in the operation or administration of that other person's gambling.

Article 7 clarifies that, for the purposes of the law:

- A commercial gambling service is a service that:
 - is provided by way of business; and
 - is provided to a person who gambles otherwise than by way of business,
- a commercial operator is a person who:
 - provides a commercial gambling service; or
 - holds himself, herself or itself out as providing or as offering to provide such a service,

- a customer is a person:
 - who gambles otherwise than by way of business; and
 - to whom a commercial gambling service is provided in relation to that gambling.

Commercial gambling is defined as being where at least one of the persons who gambles does so as a customer of a commercial operator.

Article 3 of the Law deals with types of gambling caught by the Law, and lists (amongst others):

- forms of gambling such as betting, gaming and lotteries, and combinations and subdivisions of those (or of other forms), such as pool betting, spread betting, games of mixed chance and skill, or games of equal or unequal chance; and
- the means by which gambling is conducted, such as through remote or electronic communication, by telephone, through gaming machines or amusements with prizes, with cards, dice or other equipment, or with payment by credit card.

Prohibition of unlicensed provision of commercial gambling services

Article 8(1) of the Law provides that, unless a person holds for the time being a licence granted under the Law that person must not:

- provide a commercial gambling service in or from within Jersey;
- hold himself, herself or itself out as providing a commercial gambling service in or from within Jersey;
- being a body incorporated in Jersey, provide a commercial gambling service in any part of the world; or
- being a body incorporated in Jersey, hold himself, herself or itself out as providing a commercial gambling service in any part of the world.

If a person wishes to carry out any of the activities listed under Article 8 they would be required to apply to the Commission for a licence to do so.

Meaning of "in or from within Jersey"

Article 8 of the Gambling (Ancillary Services Miscellaneous Provisions) (Jersey) Regulations 2012 makes it clear that, to the extent a business would not otherwise be treated as being conducted "in or from within Jersey", the provision of a gambling service is to be treated as such if in Jersey there is any equipment, other than software, that:

- is operated:
 - by the person providing the gambling services; or
 - on behalf of that person, by a person other than a customer of that persons; and
- controls, wholly or partly:
 - the outcome of the gambling in relation to which the gambling service is provided; or

- the operation of a website or television channel, through which such a customer may gamble by means of electronic communication.

Our regulatory team can advise clients whether their proposed activities fall within the scope of Jersey's gambling laws, and if so assist with making the necessary application.

Guidance from the Commission

Article 9 of the Law places an obligation on the Commission to publish a statement setting out the Commission's policy as to the circumstances in which, and the types of gambling for which, it will generally grant or refuse an application for a licence.

The Commission has published guidance on remote gambling licences that states that to obtain a licence to operate remote gambling from Jersey a provider must either be (i) incorporated in the island; or (ii) genuinely operate gambling from a server based on the island.

Application Process

If a licence is required the applicant will need to complete various forms and submit them to the JGC covering areas such as:

- details of the applicant (covering basic information on the applicant such as name, address, company number and the primary function of the business (including a brief description if its primary focus will not be gambling));
- details of officers and senior management;
- corporate details, including details of the corporate group and shareholders with 5% or more beneficial interest, or shareholders with a shareholding of 20% or more if the applicant is a public listed company;
- details of any regulatory licences held by the applicant's business or group; and
- details of the applicant's auditors.

Police background checks will also be required for key individuals, which is likely to include directors, shareholders (if individuals holding more than a 5% beneficial interest in the business) and senior managers and officials.

Once the completed application forms and accompanying documents are received the JSG will then assess the application and identify if any further information is required. During the application process the JGC may visit the applicant's premises as well as the gambling regulator in its home jurisdiction. The JGC are likely to interview compliance and management personnel as part of their due diligence process.

Once a licence is granted the JGC may continue to inspect the applicant's premises on an ongoing basis, which may involve testing any games that are being offered. Any changes to hardware or software being used must be notified to the JGC and may be checked during an inspection.

Advertising

As noted above, Article 8(1) of the Law prohibits a person from holding themselves out as providing a commercial gambling service in Jersey. "Holding out" under Jersey law includes marketing or advertising that is conducted physically in Jersey

and/or is targeted at Jersey residents.

Article 29 of the Law prohibits any advertisement that could contravene Article 8 (i.e. in this instance that would be construed as "holding out" for the purposes of that Article) and imposes criminal sanctions for breaching this Article of imprisonment of up to 2 years and/or a fine.

Article 29(7) states that a gambling advertisement issued outside Jersey is to be treated as issued in Jersey if it is directed to persons in Jersey or made available to them otherwise than:

- in a newspaper, journal, magazine or other publication published and circulating principally outside Jersey;
- in a sound or television broadcast transmitted principally for reception outside Jersey; or
- through a website not principally intended for use by persons in Jersey.

If you have any further questions on this topic, please get in touch.