

eSports and the UK Gambling Commission – First Impressions

European eSports lawyers [Isabel Davies](#), [Pete Lewin](#) and [Jas Purewal](#) from [Purewal & Partners](#) break down the UK Gambling Commission's recent discussion paper on eSports gambling and give their first impressions on what this could mean for the eSports industry.

The UK Gambling Commission has become the first gambling regulator in the world to release an [in-depth report and discussion paper](#) on the current status of eSports gambling. 'Skins' gambling, stake-to-play betting and tournaments involving RNG-heavy games are amongst the topics discussed in its 11th August 2016 paper, which outlines if and how these are likely to be regulated under UK gambling laws. This paper signifies an important development for anyone operating in the UK/EU eSports and video games industries, whether or not they are directly involved in gambling services.

OUR QUICK SUMMARY:

- 1) Skins sites operating in or providing services to the UK are likely to require a UK gambling licence.
- 2) Betting on eSports matches with real money, like traditional sports betting, should be regulated.
- 3) Platforms offering "bet on yourself" functionality may be considered 'betting intermediaries' in certain (currently undefined) circumstances, which would require UK gambling licences.
- 4) Prize tournaments that feature RNG-heavy eSports titles may constitute regulated 'gambling events' meaning organisers may require a UK gambling license. This could potentially have significant wider video game development implications in the future.
- 5) The Gambling Commission intends to prioritise protection of children / young people.
- 6) The Gambling Commission has invited comments with a response deadline of 30th September 2016
- 7) While this paper only directly applies to gambling services being offered to UK residents, what happens in the UK is likely to be influential in other territories (as has historically been the case in similar developments in mobile/social gaming and free to play games regulation).
- 8) Fundamentally, the report if implemented is likely to steer the very nascent UK/EU eSports gambling market towards regulation through the UK's licence system and may well provoke consolidation, but seems relatively unlikely to kill the market as such.
- 9) While much of the discussion paper reflects existing trends and likely interpretations of gambling legislation which we have predicted for some time, which is to be welcomed, in our view it is important not to draw too simple or quick an analogy between sports and eSports, including in relation to gambling: undoubtedly they have much in common, but they have as many differences too. Above all, there is as of yet no meaningful empirical data on the extent to which problem gambling or integrity matters are actually an issue in eSports. Nonetheless, the Gambling Commission is signalling its willingness to be involved in these matters and if appropriate to extend UK gambling regulation over them.

1) Virtual Skins

“Where “skins” are traded or are tradeable and can therefore act as a de facto virtual currency and facilities for gambling with those items are being offered, we consider that a licence is required” (paragraph 3.6).

The Gambling Commission spent some time discussing ‘skins’ (skins being in-game items that typically provides aesthetic upgrades; the term is most closely associated with *Counter Strike: Global Offensive*, one of the top eSports titles, but is probably extendable to any virtual item transacted within an eSports title). This is on the basis that such skins may have monetary value due to their ability to be bought and sold for real money via online marketplaces. The Gambling Commission indicated that skins gambling providers would require UK gambling licenses.

Until fairly recently a wide variety of skins gambling websites were available to UK residents and were operating in a legal grey area, partly on the basis that there was no guidance on whether or not skins or similar items equated to a money equivalent (although there is an equally big question regarding the extent to which they are legally permitted by the game and distributor T&Cs). The Gambling Commission’s stance in its paper seems likely to resolve a fair amount of this uncertainty by making such sites regulated under UK gambling law.

One important factor which the Gambling Commission does not consider in any detail is that most virtual items are only convertible into real money via third party, often illegal, marketplaces that typically breach the terms and conditions of the underlying game (and may infringe their IP). This is certainly the case for *Counter Strike: Global Offensive* skins. Whether or not these should nonetheless constitute a cash equivalent in the UK for gambling purposes is ultimately up to the Gambling Commission and/or the courts, but in our view there is a real issue here and taking too direct/simplistic an analysis regarding *how* skins/virtual items are traded before applying gambling law could have significant negative consequences for the wider eSports and games industries.

How might this affect the eSports industry?

- Skin betting/gambling sites: For those CS:GO skin sites that are still in operation following a recent [crackdown](#) from Valve, skin sites offering facilities to UK citizens seem likely to require UK licences in the future. Given the cost, complexity and time required for such licences, it may be that UK-based sites shut down and non-UK sites geoblock the UK to try to navigate UK regulation. However, as noted above there are larger industry-wide questions which could have a much larger impact.
- Publishers/Third Parties: The Gambling Commission has stated that if it detects unlicensed gambling is occurring it will reach out to the operator itself, which could potentially involve the publisher as a facilitator of the gambling services.
- eSports Teams: If the number of skins sites decreases (although that is too early to tell), this may indirectly affect teams (especially UK teams) sponsored by or partnered with skins sites.

2) eSports Match/Event Betting

“eSports present some particular challenges and risks for gambling regulation.” (paragraph 4.3)
“. . . the regulation of betting on eSports is no different from any other event upon which bets can be placed.” (paragraph 4.5).

While the Gambling Commission noted that eSports events present new challenges from a regulatory point of view, it concluded that betting on eSports matches with real money is no different from betting money on any other event and would therefore constitute regulated gambling. As a result, both traditional and eSports-specific operators have to appropriately manage risks such as cheating, match fixing and underage or excessive gambling, in addition to holding the appropriate gambling licenses.

Even prior to this paper it was relatively clear that real money betting on eSports events likely constituted regulated gambling, so this development is unsurprising (but still a useful confirmation). However, in our

view it remains to be seen how serious an issue this is likely in practice to become, given the lack of any reliable empirical data or studies regarding the extent to which these issues occur in eSports. There is of course some value in drawing analogies to 'traditional' sports gambling to signpost where eSports gambling should develop, but as in any sports/eSports legal/regulatory discussions the similarities between the two only go so far.

How might this affect the eSports industry?

- Operators: Unlicensed real money eSports gambling operators will likely need UK licenses.
- Integrity solutions: There will likely be greater focus on integrity solutions going forward, which signals an opportunity for integrity solution providers from the mainstream sports industry (if they can adapt sufficiently to eSports).
- Professional players and teams: Indirectly, players/teams may find themselves under greater scrutiny from UK operators regarding integrity matters.

3) Bet On Yourself / Stake-To-Play

"Given the definition of a betting intermediary, our preliminary view is that a person who is offering facilities for match ups, by introducing participants who bet against each other about who will win, is providing a service designed to facilitate the making or accepting of bets between others. If that is the case then the person offering those facilities may be acting as a betting intermediary and would need a licence." (paragraph 4.7).

One of the more recent forms of betting to gain eSports popularity is that of a player betting on himself/herself in an eSports match. The Gambling Commission states that where a gambling operator is facilitating this form of betting between players, that operator will likely be considered a 'betting intermediary' and therefore require appropriate gambling licenses. Exactly how the Gambling Commission will distinguish between 'betting intermediaries' on the one hand and pay-to-enter "*genuine competitive tournaments*" (which appear to be unregulated) on the other remains unclear. At this stage it outlines that one important factor is the number of people involved in each event; the more people, the more likely the event is to be an unregulated competitive tournament. The Gambling Commission has called upon stakeholders to suggest further factors that should be considered here.

How might this affect the eSports industry?

- Bet On Yourself / Stake-To-Play sites: The majority of websites offering these services are still in their early stages of development, but depending on future Gambling Commission guidance they may need UK gambling licences.
- Tournament Organisers: Tournament organisers in the UK which require a participation entry fee may need to structure and pass tests to avoid unintentional classification as 'betting intermediaries'.

4) eSports Tournaments and RNG

"We are aware that the outcome of a number of eSports contests will be influenced by events that are determined by a random number generator (RNG). This raises the question of whether participating in eSports games for a prize could fall within the definition of gaming in the Act. Many eSports appear to fall within the definition of gaming." (paragraph 4.11-4.12)

The games and eSports industries have traditionally argued (generally successfully) that the playing of video games is a skill game (which is generally not regulated), not a chance game (which generally is). The Gambling Commission has indicated that where eSports tournaments are being competed in for a prize, these tournaments could fall under the definition of regulated 'gaming' if the title being played has a sufficient level of RNG/chance, thereby requiring tournament organisers to obtain the appropriate licences.

At this point, the Gambling Commission has not specified which eSports titles are considered to have 'enough RNG', which could be a difficult task and one that should be approached with care considering most, if not all, video games contain at least some level of RNG. In the paper a connection is drawn between poker and certain "*card based games*" which involve an element of RNG when the cards are dealt to a player (an indirect reference to the fast growing 'card collecting games' or 'CCG' genre of eSports titles, headed by *Hearthstone*).

This is one of the more unexpected announcements from the Gambling Commission's paper since most of the general industry discussion to date has focused on third parties betting on an eSports event, rather than the competitors of the event itself or indeed the underlying game mechanics.

How might this affect the eSports industry?

- Tournament Organisers: Tournament organisers may be required to obtain a licence if they are running a prize tournament for eSports titles which are considered to have requisite levels of RNG. This may deter organisers from running tournaments for these eSports titles in the UK.
- Game Developers: If in the future gambling authorities beyond the UK make similar rulings based on the RNG levels in a game, it may deter developers from putting these elements in their games with very complex and difficult potential consequences for the video games and eSports industries.
- Professional players / teams: Indirectly, this may affect players or teams who may face greater difficulty in competing in the UK (or the number of tournaments is limited due to the need for organisers to have a licence).

5) Dealing with Unauthorised Operators?

"If we suspect unlicensed gambling is taking place, we tell the operator to stop providing facilities for gambling until and unless they are properly licensed. We also warn them and any third parties involved, such as payment providers or those carrying marketing, of the risk of further action. As part of that work we also make contact with platform operators to seek their assistance in preventing unlicensed gambling." (paragraph 6.2)

At first instance, it appears that the Commission is willing to give businesses which require licences under the (eventual) proposed new rules the opportunity to obtain the necessary licenses instead of taking immediate enforcement action. The Gambling Commission also notes that it will be engaging third parties linked with eSports betting and gambling in order to prevent unlicensed gambling. It is unclear what this means. Speculatively, it could involve contact with ecosystem stakeholders such as payment providers and broadcasters and/or potentially involving other regulators, although we stress this is speculative.

The Gambling Commission has also pointed out that it considers anyone offering facilities for gambling to children and young people a particularly high priority. Generally, protection of minors has not had so much attention in eSports, beyond reliance on existing age rating systems and, in some cases, age-gates and beyond.

WHAT HAPPENS NEXT?

The Gambling Commission is seeking views on its discussion paper (which also includes other issues like virtual currencies and social gaming, which we have not focused on in this note) with a deadline of 30th September 2016. This call for views, and the Gambling Commission's approach generally of seeking information and evidence before publishing its final proposals, is to be welcomed and in many ways reflect the position it took regarding gambling services on social network and mobile games in 2014/2015.

At the same time, it remains to be seen just how significant an issue the Gambling Commission feels eSports gambling presents in the future. As it highlighted at the start of its paper, it is acutely aware that providing facilities for gambling without the appropriate licenses is a criminal offence and the Gambling Commission has a range of powers available to it. While as far as we are aware, no prosecutions have

been made against video game or eSports business to date, this is by no means certain to remain the case in the future.

WHAT SHOULD YOU DO NOW?

- Review the Gambling Commission's full paper [here](#).
- Consider a submission to the Gambling Commission if appropriate, potentially via a participating industry association (such as Ukie) if applicable.
- Review whether your existing arrangements, or those of your partners, could potentially fall under the Gambling Commission's proposals.

HOW DO I FIND OUT MORE?

Please contact **Pete Lewin** (peter@purewalandpartners.com / @LegalGamerUK), **Isabel Davies** (isabel@purewalandpartners.com / @IsabelDavies_) or **Jas Purewal** (jas@purewalandpartners.com / @gamerlaw). Needless to say, please do not rely on this note as legal advice and always take advice specific to your facts and circumstances.