

Virtual currencies, eSports and social gaming – discussion paper

August 2016

1 Executive summary

- 1.1** Providing facilities for gambling without a licence, or an exemption applying, is a criminal offence. Gambling is defined as betting, gaming or participating in a lottery. Those definitions distinguish the activities which need to be licensed and other activities which, although they combine expenditure and the influence of chance, do not need to be licensed.
- 1.2** There are many ways in which individuals and organisations can provide facilities for gambling, or take part in gambling. This paper sets out the Gambling Commission's current thinking and approach to distinguishing between activities that need to be licensed and activities that do not.
- 1.3** This paper briefly explains the legal framework governing remote gambling in the UK and sets out the Commission's thinking on:
- virtual currencies and 'in-game' items, which can be used to gamble
 - gambling on eSports
 - social gaming.
- 1.4** The Commission is focussing on virtual currencies, eSports and social gaming products, in particular, as they create issues for regulation and player protection for a number of reasons, because:
- the lines between some social gaming products and gambling are blurring
 - technological developments and the expansion of digital or virtual currencies mean that operators of some social gaming products may be offering facilities for gambling
 - the growth in the market for gambling on eSports raises new issues.
- 1.5** Taking action against those offering facilities for gambling without a licence has always been a priority for the Commission. Taking action against anyone offering facilities for gambling to children and young people is a particularly high priority.
- 1.6** By exploring how existing statutory definitions may apply to new innovations, our aim is to help businesses avoid providing facilities for gambling without a licence. Our starting point is to explain how the Commission distinguishes between activities that it considers must be licensed and activities that do not need to be licensed.
- 1.7** The paper is also intended to promote a discussion with interested parties, including operators, lawyers and regulators, about some other emerging issues which create issues for regulation and player protection.

2 What is gambling?

2.1 The fundamental concept in the Gambling Act 2005 (the Act) is the concept of providing facilities for gambling. Offering facilities for gambling without a licence, or an exemption applying, is a criminal offence.

2.2 Gambling is defined as betting, gaming or participating in a lottery. That definition distinguishes activities which need to be licensed and other activities which do not.

Betting

2.3 Betting is defined, in section 9 of the Act, as making or accepting a bet on: the outcome of any race, competition or other event or process; the likelihood of anything occurring or not occurring; or whether anything is or is not true. A transaction may still be a bet despite the fact that the race, competition or event has already taken place and one party to the transaction knows the outcome.

2.4 There are several different ways in which facilities for betting can be offered:

- fixed odds betting
- pool betting
- acting as a betting intermediary
- spread betting¹.

2.5 Fixed odds betting takes place when the customer places a fixed stake and the amount they can win is calculated by reference to the odds offered by the other party to the bet. For example a £10 bet at odds of 2/1 would return £30 (£20 of winnings and the £10 stake) if successful; if unsuccessful the customer would lose their £10 stake.

2.6 Pool betting is defined in section 11 of the Act. Pool betting differs from fixed odds betting as all or part of the winnings are determined by reference to the aggregate of stakes paid into the pool or agreed to be paid or divided among the winners, or the winnings are something other than money. The football pools would be an example of pool betting.

2.7 Some prize competitions will also fall within the definition of betting if they satisfy specified conditions. One of the conditions is a requirement to pay to enter. An example of a prize competition that would fall within the definition of betting would be certain "fantasy football" style competitions depending on how they are structured. In contrast a prize crossword competition will not fall within the definition of betting where the elements of prediction and wagering are not both present.

2.8 A betting intermediary is defined in section 13 of the Act as a person who provides a service designed to facilitate the making or acceptance of bets between others. A betting intermediary is not a party to a bet; instead they introduce the parties to the bet and typically hold their stakes before paying the winner after deducting a commission. An example of a betting intermediary would be a betting exchange.

Gaming

2.9 Gaming is defined in section 6 of the Act as playing a game of chance for a prize.

2.10 Game of chance is defined as including a game that:

- involves both an element of chance and an element of skill
- involves an element of chance that can be eliminated by superlative skill
- is presented as involving an element of chance.

2.11 Sports are excluded from the definition of a game of chance.

¹ Spread betting is regulated by the Financial Conduct Authority; section 10 Gambling Act 2005. A spread bet is a certain type of bet on the future performance of, for example, a financial market, including indices, shares, currencies and commodities. The customer agrees with the operator that each will pay to the other a specified sum per point (the stake) in respect of movements in a nominated index linked to the market or other event (which can include sporting events).

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- 2.12** A person plays a game of chance if he participates in a game of chance whether or not there are other participants in the game, and whether or not a computer generates images or data taken to represent the actions of other participants in the game.
- 2.13** Importantly, a person plays a game of chance for a prize if he plays the game and thereby acquires a chance of winning a prize, whether or not he risks losing anything at the game. A prize, in relation to gaming, means money or money's worth and includes both a prize provided by a person organising gaming and winnings of money staked.
- 2.14** The definition of gaming means that players do not need to stake anything before offering facilities for gaming will need to be licensed. We discuss the implications of this and our views on what amounts to money or money's worth in more detail later in this paper.

Lottery

- 2.15** Lottery is defined in section 14 of the Act.
- 2.16** An arrangement is a simple lottery if persons are required to pay in order to participate in the arrangement, if in the course of the arrangement one or more prizes are allocated to one or more members of a class and if the prizes are allocated by a process which relies wholly on chance.
- 2.17** An arrangement is a complex lottery if persons are required to pay in order to participate in the arrangement, if in the course of the arrangement one or more prizes are allocated to one or more members of a class, if the prizes are allocated by a series of processes and if the first of those processes relies wholly on chance.
- 2.18** Prize, in relation to lotteries, is defined as including any money, articles or services, whether or not described as a prize and whether or not consisting wholly or partly of any money paid, or articles or services provided, by the members of the class among whom the prize is allocated.
- 2.19** Genuine prize competitions would not be considered a lottery and would not be prohibited. A process which requires persons to exercise skill or judgment or to display knowledge is not to be treated as relying wholly on chance if the requirement can reasonably be expected to: prevent a significant proportion of persons who wish to participate in the arrangement from doing so; or prevent a significant proportion of persons who participate in the arrangement of which the process forms part from receiving a prize.

Categorising activities

- 2.20** Distinguishing between activities which need to be licensed and other activities which, although they combine expenditure and the influence of chance, do not need to be licensed, requires the careful assessment of the specific activity being offered.
- 2.21** In order to assist in the categorisation of activities which need to be licensed we have developed some flowcharts to aid decision making. The flowcharts appear at Appendix 1 and are offered for illustrative purposes only. They are not intended to replace the need for legal advice.

3 Gambling with virtual currencies and ‘in-game’ items

Digital currencies

- 3.1** Digital currencies², such as Bitcoin, have been a feature of remote gambling for some time. In 2015 we addressed some misconceptions about digital currencies and whether their use constitutes real money gambling, and again in our Crime LCCP Consultation³. In that document we reiterated that digital currencies are ‘money or money’s worth’ under the Act, and therefore their use in gambling does constitute real money gambling.
- 3.2** Although not the primary focus of this paper, it is important to specify that any operator wishing to accept digital currency as a means of payment (either directly or through a payment processor which accepts digital currencies) must satisfy themselves and the Commission that they can meet their obligations for anti-money laundering and for social responsibility.
- 3.3** In spite of some recent press coverage, our view about digital currencies remains unchanged and recent changes to our requirements simply reinforced that position. Any operator wishing to offer gambling facilities to consumers in Great Britain, including use of digital currencies for real money gambling, must hold an operating licence. We have made clear in the recent changes that we require our licensees to conduct an effective assessment of the risk of their business being used for money laundering, including new methods of payments by customers (such as digital currencies).

Skins

- 3.4** We are also paying close attention to the growing popularity of other forms of virtual currencies or ‘in-game’ items, which can be won, traded, sold or used as virtual currency to gamble with and converted into money or money’s worth. These include digital commodities (such as ‘skins’) which can be won or purchased within the confines of computer games and can then be used as a form of virtual currency on a growing number of gambling websites.
- 3.5** We recognise that the term ‘skin’ can mean different things in different games. In the context of this paper we are referring to in-game items that provide aesthetic upgrades to a player’s game play where those in-game items can also be traded as commodities on a marketplace within a platform operated by the game’s developer or distributor. In some cases, the inventory of the player’s account can be connected to websites where the user can use the ‘skins’ they have bought or won to bet or stake in casino style games. These types of ‘skins’ have a monetary value derived from the current market price and can be converted into money.
- 3.6** 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.

² Sometimes referred to as Cryptocurrencies or Virtual Currencies

³ www.gamblingcommission.gov.uk/pdf/Consultations/LCCP-crime-review-consultation-September-2015.pdf

4 eSports

- 4.1 eSports are not new but in recent years their popularity has continued to grow strongly. It is difficult to define eSports but for the purposes of this paper we use the term to describe the playing of computer games which can range from play by two individuals (including 'match-ups' - see below) to playing in professional competitions.
- 4.2 Popular eSports include [real-time strategy](#), [fighting](#), [first-person shooter](#) (FPS), and [multiplayer online battle arena](#) (MOBA). Tournaments such as [The International](#), the [League of Legends World Championship](#), the [Battle.net World Championship Series](#), the [Evolution Championship Series](#), and the [Intel Extreme Masters](#), provide live broadcasts of the competition, and prize [money](#) and [salaries](#) to competitors. In 2015, eSports were estimated to have an audience of 160 million and total prize funds exceeding \$71 million⁴.

Offering bets on eSports

- 4.3 eSports present some particular challenges and risks for gambling regulation. In 2015 a number of established British operators began taking bets on eSports and some specialist operators also entered the market. In terms of overall market share, betting on eSports currently accounts for a very small proportion of the British gambling market, but it is growing.
- 4.4 At present, betting operators offer a relatively limited range of betting on eSports. Bets are offered on who will win a match between two opponents, although increasingly in-play bets are being made and more diverse products are being provided. To date most operators appear to be limiting the scale of the markets, although turnover is still significant given these markets are relatively new.
- 4.5 In the Commission's view, the regulation of betting on eSports is no different from any other event upon which bets can be placed. As we see it, betting on eSports presents risks that need to be managed in a similar way to other forms of betting and gaming, including the risk of cheating and match fixing and the risk that people will gamble excessively. We expect operators offering markets on eSports to manage the risks, including the risk that children and young people may try to bet on such events given the popularity of eSports with children and young people.

Offering facilities for players to bet on themselves

- 4.6 We have also seen the emergence of websites and companies offering facilities for eSport players to play against one another (match ups) and win money or prizes. Some of those websites offer eSports match ups which allow participants to bet on themselves to win.
- 4.7 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.
- 4.8 We can see, however, that drawing a clear distinction between arrangements that would in our view amount to acting as a betting intermediary and payment to participate in genuine competitive tournaments is not easy. In reaching a view on the question of whether a person is acting as a betting intermediary we would look at a number of factors, including the number of people involved in the competition (the more people participating in the contest tending towards tournament rather than match up).

⁴ Global Growth of Esports Report – Newzoo Games Market Research

- 4.9 We are keen to hear what further factors respondents believe the Commission should take into account to ensure a balance is struck between the need to mitigate any risk to the licensing objectives, whilst avoiding capturing activities for which additional regulation is disproportionate.

Are participants playing a game for a prize, as defined in the Gambling Act 2005?

- 4.10 We are also looking into the circumstances in which a player who is playing a game or eSport for a prize may be using facilities for gambling. This is relevant to the question of whether an activity requires a licence because many eSports contain elements of chance, even if the eventual outcome is largely determined by skill.
- 4.11 We are aware that the outcome of a number of eSport 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.
- 4.12 Many eSports appear to fall within the definitions of gaming. For example, we are aware of card based games, where players can win prizes, which appear to have similar game mechanics to poker (such as an RNG to determine which cards are dealt to a player) and do not require a stake. In our view such games fall within the definition of gaming that would be illegal without a licence.

5 Social gaming

- 5.1 The social gaming market continues to grow. We have always been clear that our interest is focussed predominantly on gambling-style games (that look and feel like traditional gambling), which may need a licence depending on whether players are staking money or if there is a prize of money or money's worth.
- 5.2 Activities that are not treated as gambling include social gaming which in the wider sense refers to the spectrum of games that people play over the internet, often via mobile phones, and which are built on social networks. Some of these games are 'social' in the sense they often involve interactions with other players.
- 5.3 As the social gaming industry has developed we have considered whether there are aspects of social gaming that pose risks to the public and, if there are, whether adequate protections are already in place. In January 2015 we published a paper titled 'Social Gaming'⁵. The paper described our area of interest in relation to social gaming focussed on those games that looked like gambling (e.g. free to play electronic roulette) but did not have key characteristics that made them gambling (i.e. stakes or money's worth prizes).
- 5.4 We concluded that there was no compelling reason at that time to impose additional gambling regulation on the social gaming sector given that it was and remains subject to extensive consumer protection legislation. We have continued to monitor the issue of social gaming and emerging evidence from a variety of sources, working in partnership with the industry and other regulators. It should also be noted that computer games are also subject to extensive consumer protection legislation.
- 5.5 In paragraph 2.3 of our 'Social Gaming' paper we said:
"[to] date, it has been accepted that winning additional spins/credits/tokens/chips (that can be acquired by the payment of real money) does not amount to a prize of money or money's worth, which would make it licensable gambling".

⁵ www.gamblingcommission.gov.uk/pdf/Social-gaming---January-2015.pdf

- 5.6** In general terms we remain of the view that winning additional spins or credits or tokens, even if they can be acquired by the payment of real money, will not in and of itself make an activity licensable. If, however, we discover that items are being traded or are tradeable or are being used as a de facto virtual currency then our view would be different. Operators offering games which use virtual items as a form of digital currencies in order to gamble will, in our view, need a licence.
- 5.7** We have also started to see different types of social games with some offering 'loyalty points' that can be used in ways that could make them a lottery with money's worth prizes. We consider that such games will also need a licence if we discover that loyalty points are being traded or are tradeable or are being used as a de facto virtual currency.

6 Our approach to dealing with operators who are offering unlicensed facilities for gambling

- 6.1** Our approach to dealing with operators who are offering facilities for gambling using virtual currencies, skins or other in game items, is similar to the approach we adopt when dealing with any unlicensed operator. Taking action against anyone offering facilities for gambling to children and young people is a particularly high priority for us.
- 6.2** 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.
- 6.3** Taking action against those offering facilities for gambling without a licence has always been a priority for the Commission, given the need to protect consumers from being exploited by unlicensed operators and the wider risks to the licensing objectives posed by unlicensed operators. Taking action against anyone offering facilities for gambling to children and young people is an even higher priority for the Commission.
- 6.4** To date the Commission has written to more than 100 unlicensed online gambling websites informing them that they should cease offering facilities for gambling to British customers. A significant number of those websites were offering facilities for remote gambling of the kinds described above.
- 6.5** The vast majority of those we have written to ceased offering facilities for gambling when they received our letter. A smaller number were the subject of payment blocking by payment providers and the remainder are the subject of ongoing enforcement activity.

7 Questions and next steps

- 7.1** There is a range of options open to the Commission to ensure that the licensing objectives are upheld. The options range from issuing guidance to instigating criminal proceedings if people offer facilities for gambling without a licence or an exemption applying.
- 7.2** It should also be noted that the Secretary of State has powers to specify by means of regulation how a particular activity is or is not to be treated for the purposes of the Act – for example by specifying that an activity should be treated as a game of chance or a sport or a lottery⁶. Although to date these powers have not been invoked, people should not assume that they will not be used in the future and there may be circumstances where the Commission advises the Secretary of State to use those powers.

⁶ Section 6 of the Act.

7.3 Ensuring the Commission has a full understanding of developments in these areas is key to enable us to adopt or advise Government on a model of effective and proportionate regulation. How we proceed is therefore likely to be of interest to consumers, academics, other regulators and a number of licensed and unlicensed stakeholders operating or planning to operate in these sectors. We are therefore inviting interested parties to provide us with their views and reasoning on the topics covered in this paper.

7.4 To assist in the construction of responses we have provided some questions below, but we would invite respondents to add any relevant points the Commission should consider when finalising its position in relation to the following:

- i. In relation to virtual currencies or 'in-game' items, which can be used to gamble:
 - a. What, if any, additional risks do you think they create in terms of:
 - i. Problem gambling-type risks (people spending too much time and money)?
 - ii. Transitional risks (increased participation in real money gambling, especially in relation to young people)?
 - iii. Consumer protection-type risks (for example, people falling victim to scams)?
 - b. How effective do you think the existing controls are in managing any additional risks?
 - c. What else could or should be done about any additional risks posed?
- ii. In relation to betting on eSports, and participation in them for prizes:
 - a. What, if any, additional risks do you think they create in terms of:
 - i. Problem gambling-type risks (people spending too much time and money)?
 - ii. Transitional risks (increased participation in real money gambling, especially in relation to young people)?
 - iii. Consumer protection-type risks (for example, people falling victim to scams)?
 - b. How effective do you think the existing controls are in managing any additional risks?
 - c. What else could or should be done about any additional risks posed?
- iii. In relation to social gaming:
 - a. Do you think the Commission's position in respect of social gaming, as set out in our January 2015 paper, remains appropriate in response to the risks posed and/or industry developments since publication?
 - b. How effective do you think the existing controls are in managing the risks identified in that paper?
 - c. Do you agree with the Commission's preliminary view 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?
 - d. What else could or should be done?

7.5 Please respond in writing to: GCdiscussionpaper@gamblingcommission.gov.uk by 30 September 2016.

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- 7.6** In addition to considering written responses, we will we also look for suitable opportunities during the Autumn for direct engagement with those with an interest in these areas prior to issuing a position paper before the end of the year.
- 7.7** In the meantime, we continue to work closely with a number of external stakeholders including the Department for Culture, Media and Sport (DCMS) and third parties such as payment providers, ISPs, Trade Associations and eSports companies. This allows us to monitor interim developments, ensure that product innovation and growth is socially responsible, and current gambling regulations and consumer protections are applied appropriately.

Gambling Commission August 2016

Keeping gambling fair and safe for all

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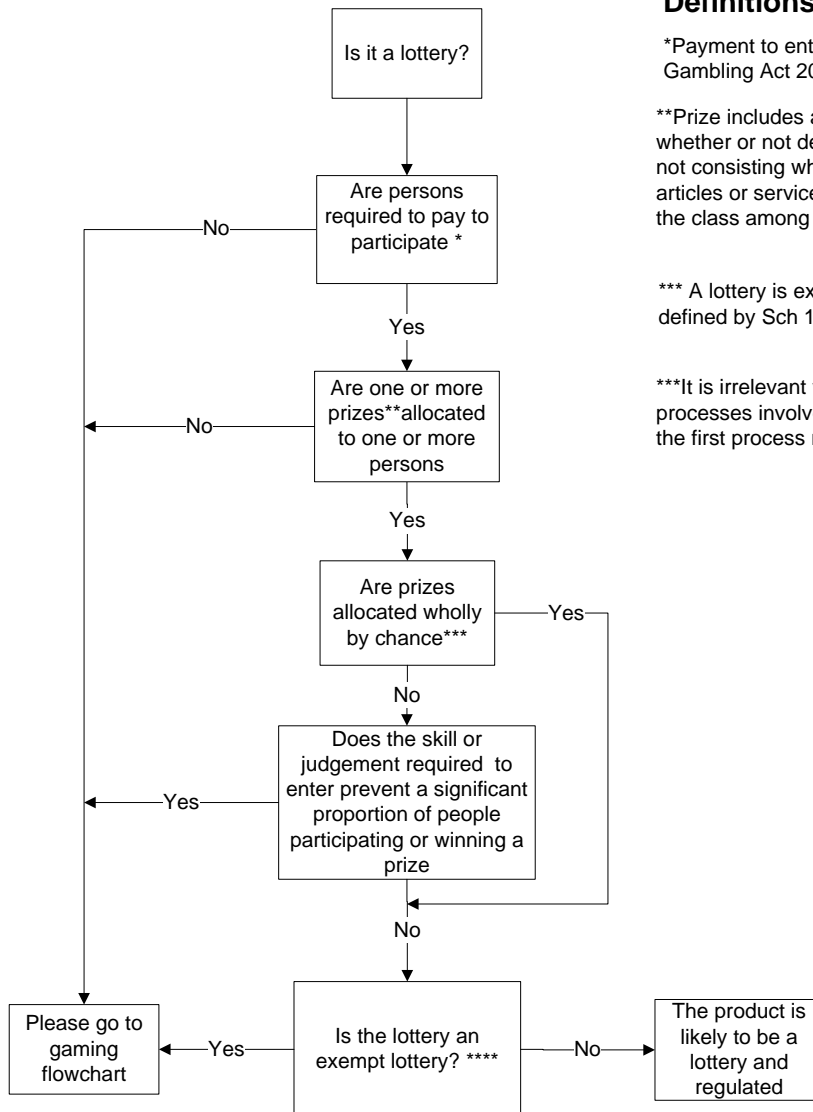
Is it regulated?

These flowcharts have been designed to allow operators who provide novel remote gambling products to determine whether they may require an operating licence to provide a particular product to customers in Great Britain.

The Gambling Act 2005 prescribes three broad types of gambling Gaming, Betting and Lotteries. There is a degree of overlap in their definitions and you are reminded that if any of the flow charts indicate you require an operating licence then further advice should be obtained.

The flowcharts in no way replace legal advice and are a merely offer first line guidance.

Lotteries



Definitions

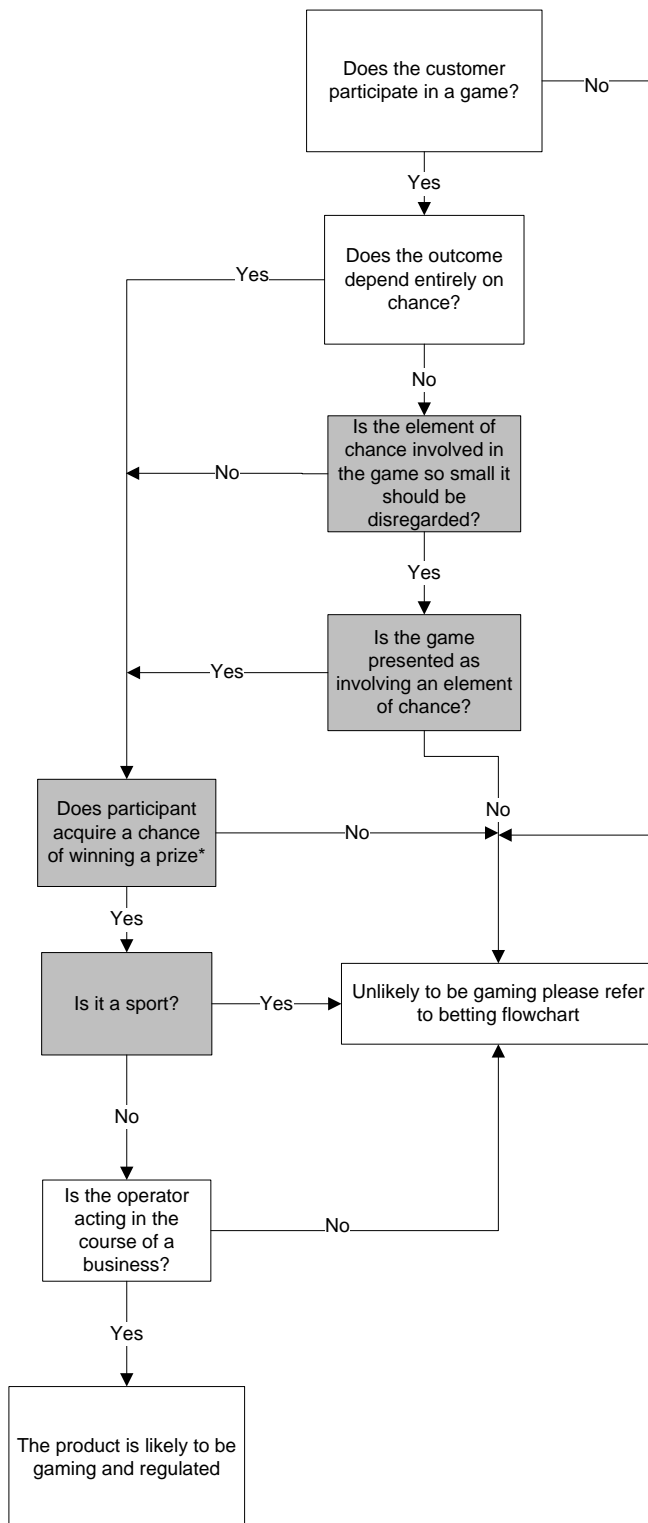
*Payment to enter is defined by Sch2 of the Gambling Act 2005

**Prize includes any money, articles or services, whether or not described as a prize and whether or not consisting wholly or partly of money paid, or articles or services provided, by the members of the class among whom the prize is allocated.

*** A lottery is exempt if it is incidental lottery as defined by Sch 11 of the Gambling Act 2005.

***It is irrelevant whether there are a number of processes involved in allocating a prize as long as the first process relies wholly on chance.

Gaming



Definitions

*A gaming prize is money or moneys worth and includes a prize provided by the person organising the gaming or the winning of staked money.

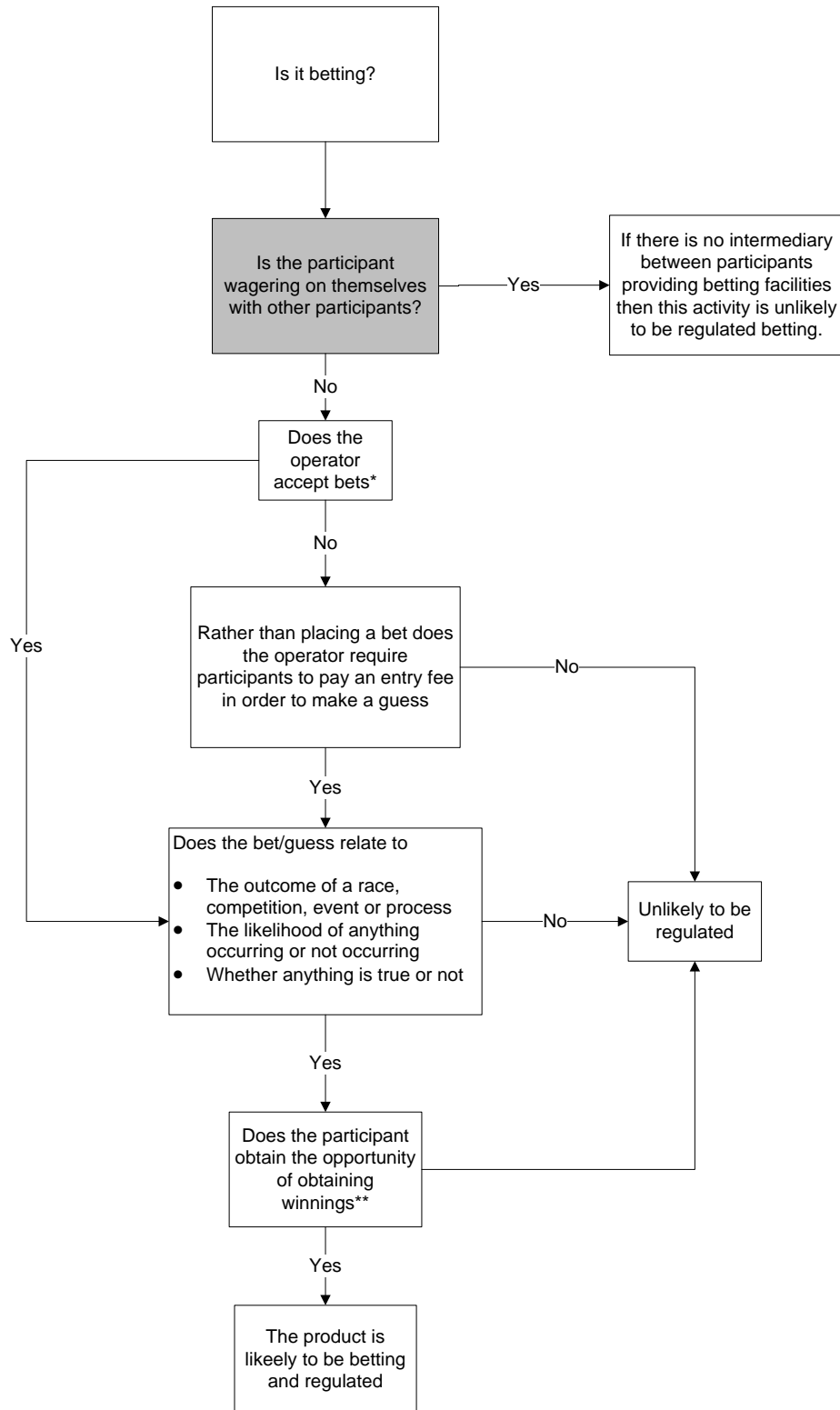
The Commission interprets 'Money's worth' very broadly meaning simply something which has a financial value to the player.

In considering whether prizes are money's worth operators should look widely at the uses their prizes/winnings can be used:

- Can they be converted to money via third parties
- Are they tradeable with others to obtain goods or services
- as virtual currencies to pay for goods or services

If so it is likely that your prizes/winnings you are offering are money's worth.

Betting



Definitions

* The Commission views a bet as a participant hazarding money or money's worth (stake) on an event which has a doubtful outcome to allow the oppurtunity of obtaining winnings.

**Winnings means anything won, whether or not money or moneys worth. Money's worth is considered by the Commission to be broad and to include, but not necessarily be limited to, anything convertible to or tradable for money.