

JERSEY GAMBLING COMMISSION



Policy Statement for the Conduct and Regulation of Hosting Providers for Gambling Firms in Jersey

**Published September 2013
Revised 2019 and 2022
Amended February 2025**

Introduction

This document sets out the Commission's policy for the regulation by Permit of Hosting Service Providers 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).

In publishing this Policy, the Commission sets out the circumstances it will generally grant or refuse an application for a **Hosting Service Providers Permit**.

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 the Regulations 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 Hosting Service Providers 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 (the Regulation). 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 means a business which contracts directly with a customer and for profit. Ancillary Services are those firms that 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 or 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)

Regulation 3 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 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.

Hosting Service Providers Permit

What do we mean by Physical Hosting Services? The Regulation defines this particular service in the following way:

- It provides premises in Jersey that are designed or adapted to wholly or mainly house electronic equipment, and
- It enables electronic communication between that equipment and persons or other equipment not present on the premises.

Although Regulation 3 includes Physical Hosting Services as a service that may require a Permit, not all data centres / hosting providers are captured. Paragraph 6 of Regulation 3 defines those business activities that would trigger the requirement of a Permit, namely:

- The datacentre / hosting provider advertises or promotes its services to be used for gambling or for the provision of a gambling service,
- The datacentre / hosting provider knows a client or potential client intends to use these services for the provision of a gambling service, or
- The datacentre / hosting provider becomes aware or should reasonably be aware that a client is using the service for gambling purposes.

To recap, and for the exclusion of doubt, Permits are only required by those companies directly or indirectly (a static web page) advertising or promoting services to the gambling sector, or have potential clients requiring hosting for their gambling business or are informed or find out that a current client is actually offering or plans to offer gambling services.

Policy: General Requirements

Applications

All Permits are subject to an application process. Certain conditions apply to the grant of a 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 Jersey into disrepute.

Applying for a Permit

Applications must be made on forms provided by the Commission. These forms may 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.

Withdrawing an Application

It remains the right of the applicant to withdraw an 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.

Applying for the right Permit?

In examining the application the Commission must consider whether the Permit applied for is the correct form of approval required or whether the applicant would require another type of approval.

Grant of a Permit

It should be noted that the Commission is not compelled to award a Permit just because someone has applied for one. An applicant must provide the Commission with details of the company structure and the directors, controllers, owners and beneficiaries of the business. A Hosting Service is a specialist activity and any applicant must be in a position to undertake any hosting activities it promotes. A company must not apply for a Permit if it is not in the possession of the actual infrastructure, meaning a datacentre. Competence, qualifications and on-going training are also matters to prove in relation to this specialist area.

Therefore, the Commission may only grant a Permit if it has examined and is satisfied of the applicant's:

- 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.

Sufficient Connection Test

As mentioned above, the Commission may only grant a Permit to an applicant that has datacentres in Jersey.

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.

Convictions

Remembering that one of the Commission's key licensing principles is to keep gambling crime free, this necessarily extends to all applicants for Permits. The Commission must take into account any convictions of the applicant or applicant company, and this includes convictions outside of Jersey. 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 2018, 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 similar offence, under the law of a country or territory outside of Jersey.

Applying for a New Permit

A Permit lasts for 5 years and if a Hosting Service Provider applies for a new Permit before the expiry of the current one, the Commission may not necessarily require the

same degree of information to pursue the new application. The Commission will examine what information it already holds and consider whether the known applicant has a good compliance record and if there has been no material or significant change to the corporate structure of company since the last application process.

Compliance History of Permit Holders

The compliance history of the Permit holder will always be reviewed when considering any application for a new Permit. These matters are prescribed in the Law and are as follows:

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, a code of practice or direction given to the person at any time.

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) on the applicant;
- 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 or any gambling promotion it has managed has been revoked under Article 38, or
- the applicant has been served with a final notice of a civil financial penalty under Article 39.

Grounds for refusal or revocation of a Permit

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

- the applicant has held a Permit previously and proved to be incompetent or negligent or dishonest;
- the Permit holder fails to pay fees;
- 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;
- the Permit holder has breached such conditions of a Permit without taking remedial action required and set out in notices from the Commission;
- on application the person is found not to be bona fide or indeed would require another form of approval;
- the Permit holder requests it;
- Jersey's reputation is imperilled;
- if the Commission has issued a direction under Art.16(4).

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.

Article 43: Notification of decisions

The Commission must notify the applicant or Permit holder (where applicable) of:

- the decision to grant a Permit and the conditions applied to that Permit,
- 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.

Surrender of Permit

If a licensee wishes to surrender their permit, they must notify the Commission in writing. The Commission will request sufficient information to satisfy itself that the activity is being wound up in an orderly manner and that customers are not disadvantaged. The Commission will not revoke a permit until it is satisfied with the information provided.

The surrender of a permit does not relieve the former permit holder of any penalties or other obligations due to the Commission.

Permit Conditions

The Gambling (Jersey) Law 2012 contains a set of mandatory conditions, which must be applied to all Permits. However, Regulation 4 allows variation of these conditions to fit a Permit scheme, primarily because the conditions under the Law are tailored to fit commercial gambling companies and not necessarily ancillary services. Therefore, the Commission has some discretion in selecting those defined conditions to match business models which otherwise, if applied as a whole, would be a burden to the service industry. Conversely, the Commission will apply certain supplementary conditions on a Permit for the specific governance of business types; however most of these specific conditions fall under defined reporting requirements.

PLEASE NOTE: Holders of a Hosting Service Providers Permit must satisfy themselves that they have the necessary systems in place to comply with applicable licence conditions.

Hosting Service Providers Permit: Specific Conditions

Condition: The holder of a Permit must notify the Commission of the name of each holder of a remote gambling operator's licence intending to conduct remote gambling from the specified premises.

Condition: The holder of a Permit shall not allow the conduct of remote gambling from the specified premises unless the remote gambling is conducted by a person who holds a remote gambling operator's licence issued by the Commission.

Condition: The Permit holder must notify the Commission if they suspect that gambling conducted by the holder of a remote gambling operator's licence is in contravention of the specified conditions of the gambling licence.

Condition: The Permit holder must have a reasonable understanding of remote gambling and understand all conditions specified on a remote gambling operator's licence.

Condition: It is incumbent on the Permit holder to report any events or action, or indeed failure to take action, by the remote gambling operator to the regulator. The Permit holder should question whether any event, action or the failure to take remedial action would negatively impact on the perceived probity and integrity of the online operator. The Permit holder should set reasonable criteria to examine the actions of a remote gambling operator.

Condition: In cases where a Permit holder hosts business continuity (disaster recovery) facilities for a remote gambling operator, a duty exists to inform the Commission of any activation of these back-up systems. While a duty is placed on any remote gambling licensee to inform the Commission of full gambling activation in Jersey because of a disaster in the home jurisdiction; a hosting provider must also have systems in place to alert them to any increased traffic that would reasonably indicate that the continuity provisions are actually being used for live gambling operations.

Condition: Where the Permit holder has a contractual agreement with a remote gambling operator to provide business continuity (disaster recovery) facilities and this contingency measure is exercised:

- It is a condition of the Permit that the holder establishes and maintains, during any period in which remote gambling is conducted from the specified premises, a system for monitoring the scale (e.g. number of sites) and duration of that gambling;
- It is a condition to provide the Commission with reports on information obtained by the operation of that system within each 28 day period that the premises is used for the conduct of remote gambling.

Mandatory Conditions Premises

It is a condition of every Hosting Service Providers Permit that physical hosting services are only housed in those premises specified on the Permit and that these premises have been inspected and found to be acceptable to the Commission. A hosting provider may house electronic equipment in more than one premises and this would not require another Permit. However, all premises must be acceptable to the Commission.

Advertising

It is understood that in promoting itself a Hosting Service Provider is not promoting any gambling it offers by way of business. However, any commercial promotional material directed at and specifically designed to attract gambling firms must comply with the Commission's Advertising Policy. **NB: Advertising must not be directed at**

children or young people. (See: [Policy Statement for Advertising Commercial or Charitable Gambling \(jgc.ie\)](#))

Compliance with Other Legislation

It is a condition of every Permit that the service must comply with the Data Protection (Jersey) Law 2018 and anti-money laundering and counter terrorism legislation. If a Permit holder suspects that money laundering, drug trafficking, or terrorist financing, is being facilitated by remote gambling from the premises they must, in the first instance, report any suspicions to the Jersey Financial Intelligence Unit (JFIU). The JFIU may elect to share this information with the Commission. The Permit holder will be subject to tipping off provisions and must only deal with the JFIU on any matter falling under anti-money laundering and counter terrorism legislation.

Supervisory & Enforcement Conditions

Specialist Roles

It is a condition of every Permit that the promoter must not allow an individual to perform a function, engage in employment or hold a position, if the holder knows or can reasonably be expected to know that such performance, engagement or holding is in contravention of a direction referenced under 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.

Right of Entry and Inspection

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

Routine Examination

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 or licenced operator for the conduct of the gambling [restrictions set out below];
- allow officers or agents of the Commission, while on the premises [restrictions set out below]:
 - 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.

Restrictions: Right of Entry & Examination

The right of entry and inspection is limited to the hosting of or provision of gambling equipment and all related records, documentation and information stored and retained in whatever media format in relation to those remote gambling clients.

Reporting Conditions

Mandatory Conditions – Change of Control and Membership

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.

It is a condition of the Permit that the holder must inform the Commission of the incidence of material change, such as a change of ownership at 5% 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.

Reporting Relevant Information to the Commission

The holder of a Permit must provide the Commission with any information in his or her possession if they know or have reasonable cause to believe that the information is relevant to the exercise of the Commission's functions under the Law in relation to the licensee.

The Permit holder should apply an objective test to information of material significance and consider whether a failure to disclose this information would likely result in the Commission being misled on any matter in relation to the exercise of its regulatory functions.

Limitation on the use of information

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.

General Reporting Condition

It is a condition of all Licences and 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 which the Commission might ordinarily expect to be made aware of.

Supplementary Condition:

Current address

It is a condition that the Permit holder provides and maintains a current address at which it 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.

Defining the service

A condition on the Permit will define what ancillary services are provided and under what authority.

Also refer to section headed: **Specific Conditions.**

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 or Permit 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.

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.

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