

Gambling Act review

What we want from the Government's review
into the Gambling Act

Briefing

November 2020

Background

In October 2019, the Children’s Commissioner’s Office published a report, Gaming the system, which shone a light on the range of ways in which children spend money in online games.

Our research found that some children are spending significant amounts of money trying to win items through loot boxes, with little chance of reward, and that they sometimes felt that their spending was out of control.

The Children’s Commissioner was pleased to see concerns around the monetisation of online gaming echoed in the Conservative Party’s 2019 election manifesto, which stated that the Gambling Act “is increasingly becoming an analogue law in a digital age”. This was met with a pledge to review the Act, “with a particular focus on tackling issues around loot boxes and credit card misuse”.

Starting from the viewpoint that rules which apply offline should also apply online, the Children’s Commissioner is calling for loot boxes to be regulated as gambling. This will require a new legal definition of a prize so that it has a broader meaning than money or money’s worth.

What is a loot box?



Call of Duty: Reserve crate



FIFA: Player packs

Loot boxes are virtual treasure chests or packs found in many online games.

The contents are unknown until the chest or pack is opened. Depending on the game, the player may secure an item with cosmetic value, e.g. a new outfit. Or they may gain an item which gives them an advantage within the game and helps them progress (e.g. a specific weapon or a star sports player). However, they might open the box and find nothing that’s useful to them at all.

Players normally pay to open loot boxes using in-game currency. In-game currency can be earned through playing the game, but this is often a very slow process. Many games offer players a shortcut by enabling them to spend real world money on purchasing in-game currency, which can then be used to open loot boxes.

Are loot boxes just digital equivalents of Panini football stickers?

Panini stickers are collectable, physical stickers which are bought in packs. Each sticker has a different player and when buying a pack it is unknown which players the pack contains.

There are indeed some similarities between loot boxes and Panini stickers – including the element of chance and the prospect of being disappointed by receiving items which are of little to no value.

However, there is a lot more friction involved in buying Panini stickers than loot boxes: if purchased offline it involves a child or their parent walking to a shop to make the purchase, and if purchased online it involves waiting for the stickers to arrive in the post.



In contrast, loot boxes are opened online in a matter of seconds. If the items are revealed to be worthless, a new box can immediately be opened. This is made attractive to players by the aesthetics of the game, e.g. bright lights which make the opening of the box or pack exciting. The fact that children watch other people opening packs or crates on YouTube indicates the power of these nudge techniques.

What did our research find?

The overwhelming majority (93 percent) of children in the UK play video games, but little research has been done into their experiences. Working with Revealing Reality, the Children's Commissioner's Office spoke to children aged 10 to 16 about five different online games to find out more about the benefits and risks of gaming from their perspective.

Children told us that gaming allows them to socialise with their friends, learn new skills, and above all, have fun. In this way, online gaming extends normal play into the digital landscape.

However, when children spend money in the game, gaming starts to look less like play and more like gambling.

The amount children spend in-game varies. In some cases, the amount of money children report spending on games has increased annually, with some spending over £300 in one year. Peer pressure from friends and online strangers, as well as influence from famous gaming YouTubers, are all factors that children say lead to them feeling pressured to spend money on in-game purchases. This in-game spending is in addition to the cost of purchasing the console game in the first place, which can be significant.

In some cases, this spending was done in order to receive a collection of unknown rewards, so-called loot boxes. The most obvious example of this is FIFA player packs, which some children acknowledged as being similar to gambling.



It's like gambling- you could lose your money and not get anyone good, or get someone really good.

- **Tim, 16** (FIFA player)



Game design can encourage spending. In games such as FIFA, children can either improve by investing significant time to build up their squad or spend money in the hope of quickly advancing their position. With new editions of FIFA being released every year, children feel as though there is an expectation and pressure to buy new players, spend money and build up their team as quickly as possible.



It takes a long time to get somewhere so you just do that [open player packs].

- **Tim, 16** (FIFA player)



The lack of guaranteed reward from these purchases can leave some children feeling as though they have wasted their money. The potential to receive a good reward means that children also feel that they are not in control of their spending, and sometimes try to 'chase losses'. In general, children do not have effective strategies to manage their online spend.



I never get anything out of it [buying packs] but I still do it.

- **Lee, 14** (FIFA player)



You feel like it's a waste of money... and then you open more.

- **Nick, 16** (FIFA player)

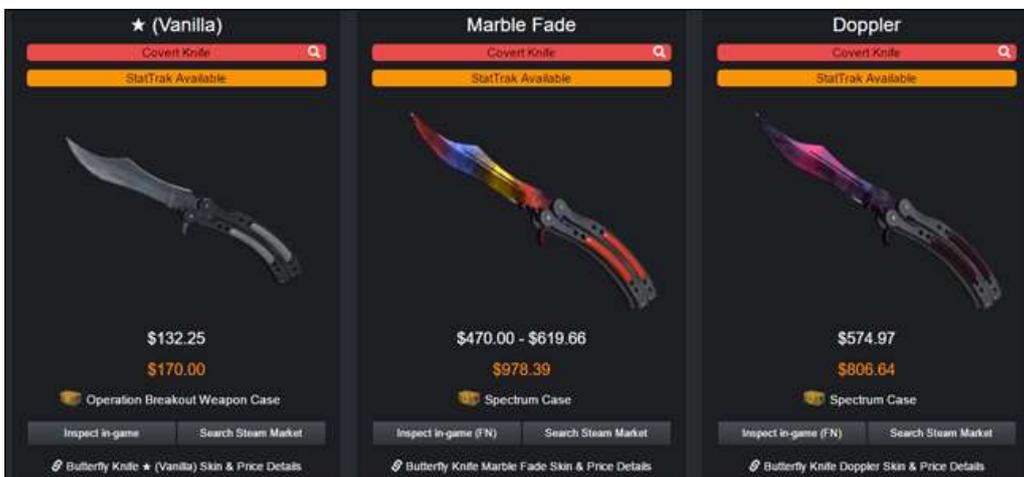


What needs to happen?

The Gambling Act 2005, if properly enforced, would already offer some protection to children

Under the Gambling Act 2005, gambling means playing a game of chance for a prize, with a prize being defined as money or money's worth. It is argued that since the contents of loot boxes cannot officially be exchanged for cash, they do not count as "money's worth" and therefore they do not fall under the current definition of gambling.

However, this argument ignores the fact that items won through loot boxes can be bought or sold on illegal third party trading sites, and that this "risks drawing elements within games themselves into gambling definitions".¹ The Gambling Commission have stated that "where there are readily accessible opportunities to cash in or exchange those awarded in-game items for money or money's worth those elements of the game are likely to be considered licensable gambling activities."²



The Gambling Commission have also been clear that even though third party trading sites are not created by the games developers themselves and may be unintended, the fact that they exist is a "by-product of the manner in which games have been developed", according to the Gambling Commission.³ In other words, games publishers could develop the games in such a way to prevent items from being people from being able to extract items on to a third party site.

But enforcing the current Act is not enough – it must be updated to ensure that loot boxes can be regulated as gambling

Even if there were no third party trading sites, and virtual items won through loot boxes could not be sold for real money, our evidence suggests that children would still be prepared to spend enormous sums for a shot of winning the items. Doing well in a game that all of their friends are playing brings a child status and bragging rights. Not having the latest outfit or "skin" can lead to children being bullied. Children are prepared to spend enormous sums at a mere shot of securing the items that they need to progress within

¹ <https://www.gamblingcommission.gov.uk/PDF/Virtual-currencies-eSports-and-social-casino-gaming.pdf>

² <https://www.gamblingcommission.gov.uk/PDF/Virtual-currencies-eSports-and-social-casino-gaming.pdf>

³ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/immersive-and-addictive-technologies/written/94963.pdf>

a game or to achieve a certain look.

This is significant because in the Gambling Act 2005, a prize is defined narrowly as “money or money’s worth”. This definition of a prize fails to capture the fact that within the gaming world, an item can have immense real life value, even if it has no *monetary* value – particularly for children.

It is the view of the Children’s Commissioner that the definition of a prize found in section 6 of the Gambling Act is inadequate for the modern digital age, in which virtual items can have immense value and motivate children (and others) to part with significant sums to have a mere chance of securing them. That the items cannot be exchanged for hard cash does not change the fact that the activity is gambling. The definition of a prize needs to be changed to reflect this, via new primary legislation.

The review must also anticipate new ways in which gaming can be monetised

Loot boxes are just one way in which online games have been monetised. Given the speed of digital innovation and the commercial incentive on games companies, legislators must bear in mind that games companies may quickly find new ways of monetising their services in an attempt to bypass gambling laws. For this reason it would be wrong for the review to focus exclusively on loot boxes – it must also ensure that any new legislation is future-proofed and flexible to respond to the changing nature of online games.

How much are loot boxes worth to games developers?

In 2018, **£700 million** was spent on loot boxes in mobile, PC and console games in the UK. In 2017 FIFA’s maker, EA, said it was making more than \$800 million (£560 million) a year from such transactions across all of its Ultimate Team game franchises.

In 2018 Juniper Research predicted that total spend on loot boxes and skins gambling (another gambling-like activity of online games) will reach **\$50 billion by 2022**, up from under \$30 billion in 2018.

In 2018, £700 million was spent on loot boxes in mobile, PC and console games in the UK



What else should the review of the Gambling Act consider?

The review must also consider how any changes to gambling legislation will interact with and support new measures to regulate online platforms, including online games.

The Age Appropriate Design Code

The Age Appropriate Design Code has been developed by the ICO to set out how companies will be expected to protect the privacy and safety of children online. It is comprised of 15 standards of “age appropriate design”, requiring platforms to set privacy settings to high by default and to state their terms and conditions in language that children can understand.

The Code also requires that nudge techniques are not used to lead or encourage children to provide unnecessary personal data or to turn off privacy protections. Companies are encouraged to consider nudging to promote health and wellbeing. While these measures are targeted at protecting children’s privacy, they may also assist children in making positive choices about their spending in online games – e.g. by being encouraged to take regular breaks.

The review of the Gambling Act could consider how nudges shape children’s approach to spending online and offer similar protections – e.g. not allowing a child to make a purchase until a certain amount of time has passed after their previous purchase.

The Code has entered a four month standstill period with the EU, after which it will be laid by the Culture Secretary “as soon as is reasonably practicable”.

Online harms proposals

The Government will soon bring forward legislation to make online companies, including games companies, responsible for the content on their platforms through a new statutory duty of care.

The White Paper published in April 2019 proposes which harms would be in scope of the legislation. The Children’s Commissioner’s Office has noted that there is no mention of financial harm and believes that this should be brought in scope, to reflect the risks associated with in-game spending and gambling.

The White Paper also states that platforms will be held to account if they do not enforce their terms and conditions. This is relevant to the trading of virtual items, as games platforms often state that the use of third party trading sites is not allowed but have not done enough to prevent their use.

Age verification

A key challenge in protecting children online has been that it is difficult to determine who are children and who are adults. Children frequently lie about their date of birth in order to gain access to platforms they should not be using, and platforms have done very little to address this.

The Age Appropriate Design Code will require companies to take a risk-based and proportionate approach to determining the age of individuals online (or apply all of the protections to all users). Age verification will also be a key component of forthcoming online harms legislation. This represents a valuable opportunity to create a differentiated experience for children online, as long as expectations of online platforms remain high.

The Gambling Act review should consider how age verification can be used to shape children’s

experiences of online gaming and ensure that they do not have access to gambling products.

Summary: What the review needs to do

- Regulate loot boxes as gambling. This will require a new legal definition of a prize so that it has a broader meaning than money or money's worth.
- Look wider than loot boxes. Gaming companies could find new ways to incorporate gambling-style products into games. A new Gambling Act must be future-proofed and flexible so that these are in scope.
- Consider how new legislation will reinforce and support new measures to regulate online platforms, particularly with regard to age verification.

Contact: Simone Vibert, Senior Policy and Public Affairs Analyst,
simone.vibert@childrenscommissioner.gov.uk

Read our full report and watch our video here:
<https://www.childrenscommissioner.gov.uk/publication/gaming-the-system/>

Children's COMMISSIONER

Children's Commissioner for England
Sanctuary Buildings
20 Great Smith Street
London
SW1P 3BT

Tel: 020 7783 8330
Email: info.request@childrenscommissioner.gov.uk
Visit: www.childrenscommissioner.gov.uk
Twitter: @ChildrensComm