



THE FOURTH NATIONAL LOTTERY LICENCE COMPETITION

SECTION 6 LICENSING GUIDANCE NOTE

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THE FOURTH NATIONAL LOTTERY LICENCE COMPETITION SECTION 6 LICENSING GUIDANCE NOTE

Overview

Section 6 of the National Lottery etc. Act 1993 (as amended) (the Act) defines the general framework under which the Gambling Commission (the Commission) “*may by licence authorise a person to promote lotteries as part of the National Lottery*”. Under this framework, the Commission may grant multiple Section 6 Licences covering different Games; these are distinct from the single Section 5 Licence to run the National Lottery, which will be granted subsequent to the Competition to the Incoming Licensee under Section 5 of the Act.

The Commission’s approach to Section 6 Game licensing for the Fourth Licence Term is consistent with its more outcomes-focused regulatory approach.¹ The Commission intends to simplify the process for granting Section 6 Licences for Games, with this approach balanced by requiring the Licensee to demonstrate that the portfolio and its delivery satisfy requirements under the Section 5 Licence and Section 6 Licences.

Key elements of the Commission’s intended approach include:

- Reviewing Game proposals submitted by Applicants during the Competition to identify potential areas of contention and providing feedback to Applicants. The purpose of this is to mitigate the risk that the Incoming

Licensee proposes, and bases their Business Plan around, a portfolio of Games that cannot be fully licensed.

- Streamlining the approval process for new Section 6 Licences, or for variations to Section 6 Licences during the Fourth Licence Term, so that a reduced set of information will be required in applications compared to the current process. Subject to positive Licensee performance, and compliance with the Section 5 Licence and Section 6 Licences, the Commission may consider opportunities to further streamline this approvals process, for example by requiring less information to be provided.
- Adjusting the design and content of Section 6 Licences to streamline requirements and make these more outcomes-focused where appropriate.

The Commission’s intention is to provide potential Applicants for the Section 5 Licence with a degree of confidence at ITA stage about how Section 6 Game licensing will work, recognising that the final scope, form and content of Section 6 Licences are likely to depend on the Incoming Licensee’s proposed Game portfolio.² For the avoidance of doubt, Section 6 licensing will take place after the Section 5 Licence has been awarded.

The remainder of this document provides background information for Applicants and sets out the Commission’s approach in more detail.

¹ See volume 1 of the Regulatory Handbook, issued with the ITA.

² As part of the Incoming Licensee’s Distribution and Portfolio Strategy.

Background

- 1 Section 6 of the Act defines the general framework under which the Commission “*may by licence authorise a person to promote lotteries as part of the National Lottery*”. Every National Lottery Game must be covered by a Section 6 Licence, and the Commission may grant a “class licence” which covers multiple Games of a certain type.
- 2 Section 6 Licences are distinct from the single Section 5 Licence to run the National Lottery, which will be granted to the Incoming Licensee under Section 5 of the Act. For the avoidance of doubt, in promoting any Games under Section 6 Licences, the holder of the Section 5 Licence must continue to comply with relevant obligations under the Section 5 Licence (for example, in relation to protecting Participants’ interests), as well as with Section 6 Licence terms.
- 3 The Act specifies that any Section 6 Licence can only be granted following an application in writing, containing such information as the Commission deems necessary.
- 4 When deciding whether to approve such Games, the Commission must consider each application against its Statutory Duties and the National Lottery statutory and regulatory framework.³ In addition to the Act, the Commission will have regard to the definition of a “lottery” in the Gambling Act 2005⁴, Directions⁵ from the Secretary of State (Directions) for the Department for Digital, Culture, Media and Sport (DCMS) and any applicable regulations, including the National Lottery Regulations 1994⁶ (Regulations).
- 5 For example, the Directions require, among other things, that the Commission does not allow any Games which:
 - Encourage persons to participate excessively (Direction 2);
 - Exceed certain thresholds for the frequency of Draws (Directions 3 and 4); or
 - Require Participants to pay unreasonably high prices (Direction 6).
- 6 Each Section 6 Licence is subject to an annual licence fee, the amount of which varies by licence type.⁷

Current approach to issuing Section 6 Licences

- 7 As noted previously, every Game must be covered by a Section 6 Licence. A Section 6 Class Licence can cover multiple Games of the same type. Any Game that is not covered by the terms of a Section 6 Class Licence must have a separate Section 6 Individual Licence. All Section 6 Licences held by the Current Operator are available on the Gambling Commission website and are summarised below.
- 8 The Current Operator holds two Section 6 Class Licences, covering Scratchcards and Interactive Instant Win Games (IIWGs) respectively. Each Section 6 Class Licence sets certain parameters and restrictions under which multiple Games may be promoted. For example, each Section 6 Class Licence defines a range of price points and Prize Payout Percentages with which all Games under that Section 6 Licence must comply. Additional Section 6 Individual Licences for Scratchcards and IIWGs can be, and have been, granted for Games that fall outside of these parameters and restrictions.
- 9 The Current Operator holds six Section 6 Individual Licences for Draw-based Games.⁸ Each of these specifies detailed design elements and mechanics, such as the ticket price, frequency of Draws, and structure of Prizes and odds of winning. There is currently no Section 6 Class Licence for Draw-based Games.
- 10 Any proposal for a new Section 6 Individual Licence, or a change to an existing Section 6 Individual Licence, is subject to the Commission’s approval. However, new Games can be launched, or existing Games changed, without going through the full approvals process if these are covered by the terms of a Section 6 Class Licence, enabling the Licensee to be more responsive to changes in demand. Under a Section 6 Class Licence, new Game launches remain subject to prior notification requirements and compliance with the terms of the relevant Game Procedures template (approved from time to time by the Commission).⁹
- 11 Contextual information on previous Game proposals made by the Current Operator can be found in Annex 2 of this document.

³ See <https://www.gamblingcommission.gov.uk/for-the-public/National-Lottery/National-Lottery-statutory-framework.aspx>.

⁴ Sections 14 and 15 are relevant here.

⁵ See <https://www.legislation.gov.uk/ukpga/2005/19/contents>.

⁶ See <https://www.gamblingcommission.gov.uk/PDF/NL-licences/National-Lottery-Directions.pdf>.

⁷ See <https://www.legislation.gov.uk/uksi/1994/189/made> and <https://www.legislation.gov.uk/uksi/2007/2307/made>.

⁸ See <http://www.legislation.gov.uk/uksi/2010/17/made>.

⁹ Lotto, EuroMillions, Thunderball, Lotto HotPicks, Euromillions HotPicks and Set For Life.

⁹ See, for example, condition 3 (Game Procedures) and condition 8 (Launch of a Licensed Lottery) in the Scratchcard class Licence (September 2019, Issue 3, Version 1).

The Commission’s approach to issuing Section 6 Licences for the Fourth Licence Term

Review of proposed Game portfolios and grant of Section 6 Licences

12 As part of the Competition, the Commission aims to mitigate the risk that the Incoming Licensee proposes and bases their Business Plan around a portfolio of Games that cannot be fully licensed, especially when the Commission considers those Section 6 Licence applications during the Implementation Period, or new distribution channels that do not meet the requirements of the Commission’s Statutory Duties or the regulatory framework (including the Regulations). To achieve this, there will be a process during the Competition to provide

feedback to Applicants on their proposed Game portfolios and distribution channels.

13 Following the Competition, it will be necessary to ensure that Section 6 Licences are in place for the Games that the Incoming Licensee intends to make available at the Start of the Fourth Licence, and beyond.

14 The Game assessment and feedback process and Section 6 licensing steps – through the Competition, the Implementation Period and the Fourth Licence Term – are summarised in Figure 1 and explained in more detail below. Please note that the complete timeline for the Competition is set out in the ITA. Figure 1 primarily focuses on the components relevant to Game approvals and Section 6 licensing.

Figure 1: Game assessment, feedback and application process for Section 6 Licences prior to, and during, the Fourth Licence Term

Phase One		Phase Two	Implementation Period	Fourth Licence Term
Step 1	Step 2	Step 3	Step 4	Step 5
<p>Applicants submit high-level proposals for new Games and Game features (including new distribution channels).</p> <p>Initial review by the Commission, including identification of any key elements that raise concerns. The Commission provides considered and impartial feedback to Applicants without prejudice.</p>	<p>Applicants submit their proposed Game portfolios as part of their Business Plan submissions for Phase One Applications, taking account of Step 1 feedback from the Commission where appropriate.</p> <p>Phase One feedback by the Commission, including review of the proposed Game portfolios in their entirety, as well as considering Applicants’ broader Business Plans.</p>	<p>Applicants submit their proposed Game portfolios as part of their Business Plan submissions for Phase Two Applications, taking account of Step 2 feedback from the Commission where appropriate.</p> <p>Evaluation by the Commission, including full assessment of proposed Game portfolios. The Commission selects the Preferred Applicant and awards the Section 5 Licence to the Incoming Licensee.</p>	<p>The Incoming Licensee formally applies for the Section 6 Licences required for Start Date Committed Games and First Year Committed Games.</p> <p>Subject to the Section 6 Licence applications received being consistent with the Commission’s Statutory Duties and the regulatory framework, the Commission provisionally approves these and prepares the Section 6 Licences ahead of issuing.</p>	<p>Approved Section 6 Licences are granted for Committed Games at the outset of the Fourth Licence Term.</p> <p>Subsequent Section 6 Licences are granted for any other approved Games for which the Licensee applies.</p>

Step 1 – Submission of high-level proposals for new Games by Applicants, and initial review by the Commission

15 As part of the Phase One Application process before submission of ITA responses (as described in section 5 of the ITA), all Applicants will be given an opportunity to provide a description of any proposals for new Games or Game features on which they would like feedback before they submit their Phase One Applications.¹⁰ Here, Applicants will be able to test new Game concepts and propose variations to key parameters in existing Games.¹¹

16 Applicants will also have the opportunity to submit ideas for new distribution channels within these Game

proposals as part of the Step 1 process, and receive feedback from the Commission. Applicants should note that distribution channels will not be approved as part of the Section 6 licensing process, nor will there be a separate approvals process for distribution channels, but Applicants will have the opportunity to test new ideas for distribution channels at Step 1. Distribution channels will be required to comply with the requirements of the Conditions 9 and 10 of the Section 5 Licence (see Proposed Form of Fourth Licence).

17 Proposals to provide Games which are part of the Current Operator’s portfolio, and which are promoted through existing distribution channels, should not – without material changes – be included in Step 1 since

¹⁰ Note that Step 1 participation is not mandatory but is encouraged. Game proposals submitted in Step 1 does not bind Applicants to propose these Games as part of their Business Plans in Phase One or Phase Two Applications.

¹¹ However, the Commission will not consider multiple entries of a similar Game proposal where variation between entries involves small changes to Game parameters.

they are unlikely to raise new licensing questions, or concerns in relation to the Commission's Statutory Duties or the regulatory framework.

18 The Commission will carry out an initial review of these Game proposals and will identify any elements that may create risks which could mean that the relevant application for a Section 6 Licence¹², when made, would not be approved by the Commission. The Commission will also assess whether any distribution channels would be non-compliant with the Commission's Statutory Duties or the regulatory framework (e.g. the Act, the Regulations, etc.). The following points summarise the scope and purpose of the Commission's review:

- To review new Games and Game features (including new distribution channels) only – the Commission will not review Game proposals that are the same, or very similar, to those already currently licensed under Section 6 Licences granted to the Current Operator.
- To provide feedback on any Games or Game features (including distribution channels) that could raise concerns in relation to Participant protection, propriety, branding and reputational factors.
- To provide feedback on any Games or Game features (including distribution channels) which would not comply with the statutory framework, including the Act, the Gambling Act, the Directions and the Regulations.
- Not to provide feedback on how each Game proposal interacts with other Game proposals as part of an Applicant's submission.
- Not to provide feedback on the commercial value or appeal of proposed Games (i.e. whether the Commission believes the proposed Game portfolios will raise sufficient revenues for Good Causes).

19 The assessment process will follow a structured framework that ensures a robust and consistent assessment of Game proposals, as well as anonymity of Applicants where necessary.

20 The Commission's feedback may highlight, as appropriate, where further evidence, safeguards or changes could help to address any specific risks or ambiguities. This feedback will have no legal standing, it will not constitute a decision or formal assessment by the Commission and Applicants will not be able to place any reliance on it; it is only intended to help Applicants refine

their Distribution and Portfolio Strategies. Commission feedback will be without prejudice; it will not influence, and it is not a substitute for, the Commission's assessment of Business Plans submitted as part of Phase One and Phase Two Applications.

21 Written feedback will be provided consistently on a Game-by-Game basis to each Applicant individually and confidentially, but where any broader themes emerge which are not commercially sensitive, these will be communicated to all Applicants.

22 To participate in the *Step 1* process, Applicants must submit their proposals using a standardised Microsoft Excel template issued alongside the ITA (the Applicant Game Feedback Request Form); for the avoidance of doubt, Applicants can only provide proposals captured within the issued template and must follow the instructions provided in the template cover sheet.¹³ Applicants will be able to submit their Game proposals between the 23rd November and 11th December 2020, and the Commission will aim to return written feedback to Applicants as quickly as possible. The Commission expects to complete the feedback process by 22nd January 2021.

Step 2 – Submission of Phase One Applications by Applicants, and review by the Commission

23 Applicants will have the opportunity to address the feedback raised by the Commission's initial review (see *Step 1*) within their Distribution and Portfolio Strategies (particularly their proposed Game portfolios) for Phase One Applications.

24 At the Phase One feedback stage, the Commission will review Applicants' proposed Game portfolios as a whole against its Statutory Duties, and the regulatory framework. This will include considering how each Game proposal interacts with the Applicant's proposed Game portfolio and its wider Business Plan, including its approach in areas such as Participant Protection, and the commercial viability of the Applicant's proposed Game portfolio to deliver the proposed Good Causes Contribution against the Credibility and Deliverability Business Plan Criteria set out in the ITA.

25 The review in *Step 2* may result in additional feedback being provided to Applicants on their proposed Game portfolios as part of the process of providing feedback on Phase One Applications, based on the above

¹² Distribution channels are not expected to be part of the Section 6 licensing process – see paragraph 37. They are included as part of Game proposals in *Step 1* only, so that Applicants have the opportunity to receive feedback on new distribution channels early on in the Competition.

¹³ One of the key instructions in the cover sheet is that the Commission will not provide feedback on existing Games that already have Section 6 Licences unless material changes are proposed to these Games, or their distribution channels. Further guidance on how to submit Game proposals can also be found in the cover sheet.

considerations and taking into account any additional information, evidence or safeguards provided by Applicants in response to *Step 1* feedback. Games that raise material concerns for the Commission, and could be considered as non-compliant with the Commission's Statutory Duties or the regulatory framework (e.g. the Directions, the Regulations, etc.), will be highlighted at this stage.

- 26 This feedback will have no legal standing, it will not constitute a decision or formal assessment by the Commission and Applicants will not be able to place any reliance on it; it is only intended to help Applicants refine their Distribution and Portfolio Strategies included in their Phase Two Application.

Step 3 – Submission of Phase Two Applications by Applicants, and assessment by the Commission

- 27 In Phase Two, Applicants will have the opportunity to respond to feedback on their proposed Game portfolios as part of their Distribution and Portfolio Strategy (and wider Business Plan) within their Phase One Applications, enabling Applicants to refine and finalise their Phase Two Applications.
- 28 As part of developing Phase Two Applications, Applicants should note that proposed Games (alongside broader proposed Business Plans), must adhere to the Commission's Statutory Duties, and to the regulatory framework (particularly the Directions and Regulations – see the *Directions and National Lottery Regulations* section below). Game proposals that do not comply with the above will be removed from Evaluation by the Commission (i.e. the forecasted revenues of these Games will not be included), but the costs associated with these Games from the Applicant's Business Plan will not be removed.
- 29 Note that, whilst evaluation of a Game at Phase Two indicates that the Commission has not, on a provisional view, identified any reasons why that Game could not be licensed under a Section 6 Licence, the Incoming Licensee must still apply for a Section 6 Licence – as described in *Step 5* below – for that Game to be promoted during the Fourth Licence Term.
- 30 Once Phase Two Applications are submitted, the Commission will undertake Evaluation. Subsequent to this, the Preferred Applicant will be selected, and the Incoming Licensee will be awarded the Section 5 Licence to run the Fourth National Lottery.

Step 4 – Application for Section 6 Licences by the Incoming Licensee for the Section 5 Licence, and approval of Games by the Commission

- 31 During the Implementation Period, the Incoming Licensee will need to submit formal applications for the Section 6 Licences required at the start of the Fourth Licence Term (its Start Date Committed Games), as well as any applications required in relation to other Games set for launch before the start of the second Licence Year (its First Year Committed Games), consistent with the Game plan set out in its Phase Two Application.¹⁴
- 32 For the avoidance of doubt, the Incoming Licensee will need to apply for Section 6 Licences covering any existing Games promoted by the Current Operator that the Incoming Licensee intends to retain as part of its portfolio of Games or modify.¹⁵
- 33 During this transition into the Fourth Licence (as well as during the Fourth Licence Term itself), all Section 6 Licence applications for new and existing Games will be subject to the streamlined approvals process, as discussed further below.

Step 5 – Grant of Section 6 Licences during the Fourth Licence Term

- 34 The Commission will assess each Section 6 Licence application in line with its Statutory Duties and the regulatory framework, and will seek to grant approvals or communicate any issues to the Incoming Licensee through the streamlined approvals process. For Games which are approved during the Implementation Period and due to be made available at the start of the Fourth Licence Term, the relevant Section 6 Licences will be ready so as to be granted on the Start Date. Further applications for new or amended Section 6 Licences may be made throughout the Fourth Licence Term.
- 35 It should be noted that the Licensee will be required to launch Start Date Committed Games and First Year Committed Games in accordance with Condition 26 of the Proposed Form of Fourth Licence. For any other proposed Games in the Licensee's Application, the Commission will have regard to whether or not these Game proposals have been implemented when assessing the Licensee's compliance with Fourth Licence requirements, such as Condition 11.1.¹⁶
- 36 For the avoidance of doubt, the regulatory framework stipulates that the Incoming Licensee will not legally be

¹⁴ The timetable for Section 6 Licence applications for Committed Games will be determined in line with the framework set out in the Form of Enabling Agreement.

¹⁵ Matters concerning the handover of the operation of existing Games from

the Current Operator to the Incoming Licensee are expected to be agreed as part of the framework set out in the Form of Cooperation Agreement.

¹⁶ See section 6 of the Regulatory Handbook (Monitoring Performance Framework context) for more information.

able to market any Games until the relevant Section 6 Licences are granted and come into effect. The Current Operator will be able to continue to promote and advertise its licensed Games until the end of the Third Licence.

- 37 Applicants should note that distribution channels will not be approved as part of the Section 6 licensing process, nor will there be a separate approvals process for distribution channels. Distribution channels will be required to comply with the requirements of the Conditions 9 and 10 of the Section 5 Licence. Applicants should refer to the Proposed Form of Fourth Licence which sets out the relevant requirements in full.

Directions and National Lottery Regulations

- 38 The Directions and Regulations provide a valuable framework to protect Participants, and to ensure that the National Lottery is run in accordance with the Commission's Statutory Duties.
- 39 The Secretary of State has discretion to issue Directions at any time to the Commission. New Directions or substantive changes to existing Directions are infrequent and are not expected during the Competition, though Applicants should note that the Government has committed to review the Gambling Act 2005 and has consulted on possible changes to the minimum age for playing National Lottery games. If the Commission becomes aware that the Secretary of State intends to issue new Directions during the Competition, the Commission will inform Applicants of this to the extent it is able to do so, particularly if this is likely to affect Business Plan proposals.
- 40 The Act and any relevant regulations, particularly the National Lottery Regulations 1994, can only be changed or issued through the parliamentary process, so changes are extremely unlikely during the Competition, with the possible exception of a change in the minimum age (see paragraph above).
- 41 The Commission strongly encourages Applicants only to propose Games which comply fully with the current Directions and Regulations. If, during Phase One, the Commission is made aware of Game proposals which are at risk of not complying with the Directions or Regulations, this will be communicated to Applicants in line with the feedback process described in *Step 1* above. Applicants should note that during Evaluation, Game proposals that do not comply with the Commission's Statutory Duties or with the regulatory

framework (particularly the Directions and Regulations), will not be included in Evaluation by the Commission (as outlined above in *Step 3*).

- 42 Note that this guidance note addresses the question of changes to Directions and Regulations only during the Competition, and not during the Implementation Period nor during the Fourth Licence Term where there may be greater possibility of changes, including where this may facilitate innovation outside of the current Directions or Regulations, if it becomes appropriate.

Streamlined approvals process for Section 6 Licences

- 43 The Commission's approach to Section 6 Game licensing for the Fourth Licence Term (including during the Implementation Period) will be fully consistent with, and meet the requirements of, its Statutory Duties. When assessing proposals for new or varied Section 6 Licences, the Commission will consider factors such as the latest available evidence and trends, the specifics of the Games in question and the wider portfolio, and the Licensee's approach in relevant areas, such as protecting Participant interests.
- 44 Within its statutory remit, the Commission aims to streamline the Section 6 Licence approvals process relative to the current process, to enable innovation and speedier Game development and time to market.
- 45 The Commission will apply a common framework regardless of whether the Licensee applies for a new Section 6 Individual Licence, a new Section 6 Class Licence, or a variation to an existing Section 6 Individual Licence or Section 6 Class Licence. The process will be flexible to allow fast-tracked approvals for relatively low-risk proposals, while higher risk proposals will be scrutinised in more detail. The Commission can at any stage seek more information if it is not satisfied that any proposal meets all applicable statutory and regulatory requirements.
- 46 To mitigate for any unintended effects of this streamlined process, the Commission will require an assurance statement from the Licensee's Board confirming that the proposals set out in the application for the relevant Section 6 Licence will meet applicable statutory and regulatory requirements, and explaining how this has been established.
- 47 The approach the Commission expects to take is summarised in Table 1, illustrating how this has been streamlined relative to the current approach.

Table 1: Summary of Section 6 Licence approval process for the Fourth Licence Term

	Process for the Fourth Licence Term	Current process
<p>Information required in order to reach decision</p> <p>Green: new item Red: no longer required</p>	<ul style="list-style-type: none"> • Game design specifics (e.g. visual design, mechanics, price, Prize type and structure) • Participant protection information / analysis • Risk and contingency plans (including any risks to the Commission's Statutory Duties) <p>Assurance statement¹⁷ from the Licensee's Board, confirming that the proposals set out in the application for the relevant Section 6 Licence will meet applicable statutory and regulatory requirements, including the outcomes referred to in Condition 1 of the Proposed Form of Fourth Licence, and explaining how this has been established.</p> <p>(Additional information may be requested if, based on the above information, the Commission has concerns that the proposals may entail material risks to its statutory duties)</p>	<ul style="list-style-type: none"> • Game design specifics (e.g. visual design, mechanics, price, Prize type and structure) • Participant protection information / analysis • Business case, financial models and forecast including sales, Good Causes Contribution and return on investment • Public-facing materials (e.g. media and communications plan, Game Procedures) • Marketing investment proposal (if applicable) • Risk and contingency plans (including any risks to the Commission's Statutory Duties) • Post-implementation review plan • Post-launch KPIs
<p>Use of information by Gambling Commission</p>	<p>Review of the reduced list of information and materials above.</p> <p>Where there is any risk to the Commission's Statutory Duties or the regulatory framework, the Commission will approve only if the Licensee proposes safeguards and demonstrates that these are sufficient to mitigate the risks.</p> <p>The process will not consider public-facing materials. The Licensee will remain responsible for ensuring that these comply with relevant Section 5 obligations, for example in relation to Participant information (Condition 8) and branding (Condition 13).</p>	<p>Review of the more extensive list of information and materials above.</p> <p>This includes close scrutiny of financial projections for Good Causes Contribution and public-facing materials which will not form part of the streamlined approach during the Fourth Licence Term.</p>
<p>Timeframes for Gambling Commission decisions</p>	<p>Expected to be significantly shorter than at present. Exact timeframes may depend on the degree of risk identified in the proposal, on the Licensee's performance overall, and on the timely provision of satisfactory information and evidence as summarised above.</p>	<p>Up to nine months typically, depending on the degree of risk identified in the proposal, including in relation to particularly novel or contentious elements.</p>

¹⁷ This is an Ad Hoc Assurance Statement as per Condition 23.19 of the Proposed Form of Fourth Licence.

- 48 The approvals process may change during the Fourth Licence Term. For example, the Commission will consider opportunities to further streamline the process where the Licensee displays a positive track record of performance and compliance with both the Section 5 Licence and Section 6 Licences in general. Equally, in the event of concerns about Licensee performance, the Commission may increase the degree of scrutiny over the Licensee's proposals, which may include requiring more information related to any of the Commission's statutory duties. This added scrutiny would be intended to be a temporary measure, subject to performance returning to an appropriate level.
- 49 Note that in the event of an application for an independent Section 6 Licence (i.e. for a Game to be promoted by someone other than the Section 5 Licensee), there are likely to be additional requirements in the licensing process (see also paragraph 60 below).

Use of Section 6 Individual Licences and Section 6 Class Licences

- 50 The Commission expects to continue using both Section 6 Individual Licences and Section 6 Class Licences during the Fourth Licence Term¹⁸. The appropriate licence type may vary on a case-by-case basis and in accordance with the following principles:
- Section 6 Class Licences will be intended to cover Games which share a substantial number of common features, and which do not involve new elements which may create risk in relation to the Commission's Statutory Duties. Any approved Games that are unique at the time of their launch are more likely to be subject to individual Licences, but this would not exclude the possibility that such Games are subsumed into Section 6 Class Licences (by modifying the terms of those particular Section 6 Class Licences) at a later stage.
 - The scope of Section 6 Class Licences may vary over time, potentially being expanded if new Game features are shown to not have detrimental effects (e.g. the IIWG Section 6 Class Licence variation in October 2015 to embed additional £3 and £5 Games), or being restricted if there is new evidence of harm (e.g. the removal of the £10 price point from the Scratchcard Section 6 Class Licence, in September 2019, in response to new evidence related to problem gambling).¹⁹

- 51 If included in the Licensee's proposed Game portfolio, it is expected that Scratchcards and IIWGs would continue to each have a Section 6 Class Licence, without precluding the use of Section 6 Individual Licences for Games that fall outside the scope of these Section 6 Class Licences (for example, because the price point lies above the range allowed under the Section 6 Class Licence for that particular type of Game).
- 52 Section 6 Individual Licences are expected to be required for EuroMillions (as long as this Game continues to be offered) and the marquee Draw-based Game that meets the requirement of Condition 11.2 of the Proposed Form of Fourth Licence. This requirement reflects the unique characteristics of EuroMillions – as a multi-jurisdictional Game – and the strategic importance of the marquee Game, respectively. Beyond this, the Commission will consider the use of Section 6 Individual Licences and/or a Section 6 Class Licence on a case-by-case basis for any other Draw-based Games that the Licensee proposes to offer, or any other Games or Game types that may be developed over time.

Content of Section 6 Licences

- 53 For the Fourth Licence Term, the Commission intends to grant Section 6 Licences that are less prescriptive and more outcomes-focused than the Section 6 Licences held by the Current Operator. Notwithstanding this, the exact form and content of each Section 6 Licence may vary on a case-by-case basis; for example, any Games or Game types that are particularly new might be subject to more prescriptive licence conditions, until the Commission is satisfied that relaxing these conditions will not pose a significant risk to its Statutory Duties.
- 54 In order to illustrate what this approach will mean in practice, the Annexes to this document contain indicative heads of terms for a Draw-based Game Section 6 Individual Licence (Annex 3) and for a Scratchcard Section 6 Class Licence (Annex 4). The less prescriptive, more outcomes-focused approach is most evident in relation to Section 6 Class Licences, whereas for Section 6 Individual Licences the Commission expects specific rules to remain, reflecting the particular characteristics of each applicable Game.
- 55 In summary, some of the key areas of change that the Commission is exploring are the following. At this stage, these are indicative and subject to further analysis.

¹⁸ The Incoming Licensee will have the opportunity to decide what type of Section 6 Licence it wants to apply for each Game, but this will be an iterative process requiring discussion with the Commission (i.e. during the Implementation Period for Start Date Committed Games, and always before the granting of a particular Section 6 Licence in general). Applicants are free

to propose the types of Section 6 Licences they will require for their proposed Games portfolio as early as in the Phase One Applications stage.

¹⁹ For the avoidance of doubt, this is not a definitive position and remains subject to change, depending on factors such as any changes to Game mechanics or safeguards which address the relevant risks.

Class and individual Licences

- General Participant information: Prescriptive requirements will not be imposed in relation to the information that should be presented to Participants, such as information presented on tickets, or Game Procedures. The Licensee will be responsible for providing appropriate information in compliance with its Section 5 Licence obligations, including under Condition 8.8 in relation to the provision of information about Games.²⁰
- Code of Practice on Game Design: The Commission expects to retain some requirements relating to the visual design of Games with which all Section 6 Licences will be required to comply. The Commission is exploring the potential for this to specify outcomes-focused requirements. As an illustration, an indicative requirement could be to avoid the use of any imagery, subject matter or themes that may reasonably be expected to cause offence or otherwise harm Participants' interests or the National Lottery Brand, in contrast to current Section 6 class Licences which list a number of specific subject matters, references, visual representations and themes that are not permitted.
- Avoiding duplication of Section 5 requirements: As part of streamlining Section 6 Licences, the Commission will avoid any duplication of requirements that already apply under the Section 5 Licence where this is possible and appropriate. There will be a single, general condition specifying that any breach of a Section 5 Licence condition which relates to the running of a Game or Games under a Section 6 Licence shall also be considered a breach of that Section 6 Licence.²¹

Class Licences only

- Launch of new Games under a Section 6 Class Licence: The Commission will streamline the detailed requirements for notifications and confirmations that currently apply when a new Game is launched under the Scratchcard Section 6 Class Licence – including confirmation that charity and trade mark searches have been completed, printing instructions have been produced, and reports have verified that there is adequate security against counterfeiting. Instead, the Commission will only require a notification of launches

prior to new Games being made available under a class Licence.

- Code of Practice for Top Prize Management (applies to Scratchcards only): Provisions for Top Prize management are likely to be retained, but the Commission will seek to streamline these in order to move towards more outcomes-focused requirements (as an illustration, an indicative requirement could be for the Licensee to do everything it can – with a provision for this to be included in the Section 6 Class Licence – to ensure that Participants' purchase decisions are not driven by mistaken beliefs about the availability of Top Prizes, rather than retaining prescriptive requirements covering the withdrawal of Games when Top Prizes are won).

56 Some of the **key areas where change is not anticipated** are the following:

- Withdrawal of a Licensed Lottery: The Commission will retain the ability to instruct the Licensee to withdraw any Game, at its sole discretion, if it deems it to carry significant risk of harm to its Statutory Duties or, more broadly, to be non-compliant with any Section 5 or Section 6 obligation(s).
- Price per Ticket/Play: Section 6 Licences will continue to specify a price range in Section 6 Class Licences and a specific price per ticket in Section 6 Individual Licences.
- Prize Payout Percentage: Section 6 Licences will continue to specify a Prize Payout Percentage range in Section 6 Class Licences and a specific Price Payout Percentage in Section 6 Individual Licences.

57 While the Commission expects that Section 6 Class Licences will continue to define ranges of allowable price points and Prize Payout Percentages, it is possible that the actual ranges themselves may change over time, where this is consistent with fulfilling the Commission's Statutory Duties.

58 Applicants are therefore free to submit proposed Game portfolios that include Games with price points and Prize Payout Percentages that deviate from the price points and Prize Payout Percentages which apply under the Section 6 Licences granted to the Current Operator. Such proposals can be made as early as *Step 1* of the

²⁰ Note that, at the start of the Fourth Licence Term, the Commission would expect the Licensee to maintain a high degree of continuity with regard to information provided to Participants about existing Games that are still made available. Any wholesale one-off changes to information available to Participants (for example, the location where information is presented or can be found) are unlikely to be in Participants' interests and could risk causing

harm. Going forward, the Licensee would have discretion to make changes that are consistent with protecting Participants' interests and other relevant obligations.

²¹ Note that this would only apply to Section 6 Game Licences that are granted to, and held by, the Section 5 Licensee (see paragraph 60 on independent Section 6 Licences).

Game assessment and application process (see Figure 1) and will be considered on their merits, based on the Commission's Statutory Duties and regulatory requirements. Consistent with its overall approach to assessing Section 6 proposals, the Commission may consider factors such as the latest available evidence and trends, the specifics of the Games in question and the wider portfolio, and the Applicant's proposed approach in relevant areas of its Application, such as its approach to protecting Participant interests.

59 Annex 5 summarises the Prize Payout Percentages and price points for the Current Operator's portfolio.²²

60 The Act also provides for the possibility that Section 6 Licences could be granted to entities other than the Section 5 Licensee, subject to the Licensee's agreement.²³ In this event, the approach to Section 6 Licences would be consistent with this document. However, as described in paragraph 49 above, additional information may be required. Also, this type of Section 6 Licence may need to include additional or different conditions, including to reflect relevant requirements covered separately in the Section 5 Licence.

²² Accurate at the time of writing (3rd September 2020).

²³ As per 1(3)(b) of the National Lottery etc. Act 1993 (as amended): "The lottery must be promoted or proposed to be promoted – (a) by the person

licensed to run the National Lottery under Section 5, or (b) in pursuance of an agreement that has been made between that person and the lottery's promoter or proposed promoter".

Annex 1: Glossary of terms used in this guidance note

This glossary provides definitions of some key terms related to Section 6 Game licensing, as used in this guidance note. Further definitions of terms used throughout the ITA and supporting documents are available in the ITA Glossary and within the Proposed Form of Fourth Licence.

In this guidance note:

- **Code of Practice on Game Design** means a code currently embedded in the Scratchcard and IIWG class Licences. The code covers various aspects of Game design including Game names and subject matter.
- **Code of Practice on Top Prize Management** means a code referred to in the Third Licence and the Section 6 Scratchcard Class Licence granted to the Current Operator. The Code covers the process which applies to the communication of Scratchcard Top Prize information to Participants (including all forms of advertising).
- **Game Procedures** means the procedures to which any particular Game may be subject. These are currently referred to within Section 6 Licences and published by the Current Operator.
- **Initial Print Run** means the number of Scratchcard tickets available at the launch of a Scratchcard Game.
- **Prize Payout Percentage** means the total value of Prizes expressed as a percentage of the total face value of the corresponding Game.
- **Promotional Draw** means a Lotto-related promotion with a specific funding arrangement.
- **Proposed Game portfolio** means the selection of Games proposed to be made available by an Applicant as part of its Application, within the Distribution and Portfolio Strategy.
- **Rapid Reorder** means a further print run of Scratchcard Lottery tickets after an Initial Print Run.
- **Section 5 Licence** means a Licence issued under Section 5 of the National Lottery etc. Act 1993 (as amended) to authorise the running of the National Lottery. The Proposed Form of Fourth Licence sets out the Conditions expected to be included in the Section 5 Licence.
- **Section 6 Licence** means a Licence issued under Section 6 of the National Lottery etc. Act 1993 (as amended) to authorise the promotion of one or more Games.
- **Section 6 Class Licence** means a Section 6 Licence that covers a class of Games, such as Scratchcards.
- **Section 6 Individual Licence** means a Section 6 Licence that covers one Game only.
- **Scratchcard** means a Scratchcard Lottery, as defined in the Proposed Form of Fourth Licence; a Game which does not involve utilisation of any technology or other system used to determine the result of a Draw other than for activation or validation and in which a particular ticket is capable of being determined, immediately following its purchase, as a winning ticket and/or as conferring a right to participation in a future event.
- **Scratchcard Top Prize** means the highest Prize or Prizes that may be won in a Scratchcard Game.

Annex 2: Contextual information on previous Game proposals

This annex provides examples of previous Game proposals made by the Current Operator. It covers proposals that involved novel or contentious elements, such as price points, visual designs or Game mechanics. It is not an exhaustive list of all previous Game proposals.

For each Game proposal, the tables below provide a summary of:

- What was being proposed;
- Which elements of the proposal were considered novel or contentious, and why;
- The key factors considered as part of the Commission's assessment of the proposal; and
- The outcome of that assessment.

It is important to note that this information is only provided for context. Previous assessments and outcomes do not provide precedent for future assessments and outcomes. Any Game proposal made by an Applicant during the Competition will be considered on its own merit and taking into account all relevant factors. Such factors may include evidence submitted by the Applicant specifically in relation to the proposal, as well as the Applicant's wider approach and business plan (for example in relation to Participant protection), any Section 5 Licence conditions that may be impacted by the proposal, and any relevant market or regulatory trends.

£20 Scratchcard (Sep 2016)

Description of proposal	A new Scratchcard to be priced at £20.
Novel or contentious elements	The proposed price point was higher than any Scratchcard previously offered by the National Lottery. At the time, the highest price point for Scratchcards was £10.
Factors considered	<p>The proposed price point entailed potential risks under the Statutory Duty to protect Participant interests and in relation to Directions related to unreasonably high pricing and excessive play.</p> <p>The proposed price point also entailed potential risks in terms of propriety and reputation of the National Lottery, given the wider market and regulatory environment at the time, including the fixed-odds betting terminals (FOBT) review which was being conducted and which ultimately resulted in a reduction of the maximum FOBT price point.</p>
Outcome	The proposal was not approved because, based on the evidence available, the above risks were considered to be material and not consistent with the Commission's Statutory Duties and obligations under the Directions.

£10 Scratchcard (Sep 2018)

Description of proposal	A new £10 Scratchcard with a large number of prizes available up to a maximum of £1,000. Structurally, this was similar to the existing 'Full of £500s' game. ²⁴
Novel or contentious elements	<p>The £10 price point was relatively novel – although a £10 Scratchcard had previously been approved and embedded into the class Licence, this new proposal was distinct and would have required a standalone Section 6 Licence.</p> <p>The flat prize structure, with a large number of jackpots available, was uncommon. Although a similar game existed ('Full of £500s'), this was the first proposal to apply such a prize structure at a higher £10 price point.</p> <p>The Scratchcard would have involved manufactured near wins/near misses – that is, a higher-than-chance frequency of outcomes coming close to a winning outcome.</p>
Factors considered	<p>The combination of the above elements entailed potential risks for the Statutory Duty to protect Participant interests and the obligations related to excessive play under the Directions.</p> <p>As with the £20 Scratchcard example above, these elements also entailed potential risks in terms of propriety and reputation of the National Lottery, given the wider market and regulatory environment at the time, including the fixed-odds betting terminals (FOBT) review which was being conducted and which ultimately resulted in a reduction of the maximum FOBT price point.</p>
Outcome	The proposal was not approved because, based on the evidence available, the above risks were considered to be material and not consistent with the Commission's Statutory Duties.

Battleships IIWG (Jun 2013)

Description of proposal	A new 'Battleships'-themed interactive instant win game.
Novel or contentious elements	The theme, imagery and sounds used in the game were potentially contentious. Note that the current Code of Practice on the Design of Interactive Instant Win Games ²⁵ includes requirements such as games not being designed with "weapons being used to depicting violent activity" and not being "of particular appeal to children and young persons".
Factors considered	The assessment focused on whether the themes, imagery and sounds would entail risks under the Commission's Statutory Duties (which may involve, among other things, ensuring that the Licensee does not use subject matter that could offend Participants, for example) and in relation to the Directions related to underage play.
Outcome	The proposal was approved because, based on the evidence available, the above risks were not considered to be material and the proposal was consistent with the Commission's Statutory Duties and obligations under the Directions. The game was considered to appeal primarily to older Participants and the themes, imagery and sounds used were not expected to harm Participants' interests.

²⁴ See <https://www.national-lottery.co.uk/c/files/scratchcards/fullof500s2019.pdf~3>

²⁵ The Code of Practice on the Design of Interactive Instant Win Games is found in the current Section 6 class IIWGs Licence, Schedule 4.

Plants vs Zombies IIWG (Feb 2015)

Description of proposal	A new 'Plants vs Zombies'-themed interactive instant win game. Plants vs Zombies is a video game published by PopCap Games.
Novel or contentious elements	Similar to the Battleships example above, the theme, imagery and sounds used in the game were potentially contentious. Note that the current Code of Practice on the Design of Interactive Instant Win Games includes requirements such as games not being designed with “weapons being used to depicting violent activity” and not being “of particular appeal to children and young persons”.
Factors considered	<p>The assessment focused on whether the themes, imagery and sounds would entail risks under the Commission’s Statutory Duties (which may involve, among other things, ensuring that the Licensee does not use subject matter that could offend Participants, for example) and in relation to the Directions related to underage play.</p> <p>The assessment also considered whether the association with the videogame was appropriate for the National Lottery brand.</p>
Outcome	The proposal was approved because, based on the evidence available, the above risks were not considered to be material and the proposal was consistent with the Commission’s Statutory Duties and obligations under the Directions. The nature and form of the imagery used was not considered to pose material risks to Participants’ interests, while the association with the videogame was expected to facilitate a wide commercial appeal, without material risks of appealing to underage players particularly.

Set For Life (Mar 2019)

Description of proposal	A new draw-based game with annuity-based prizes and a top prize of £10k per month for 30 years.
Novel or contentious elements	<p>This was the first proposal for an annuity-based draw-based game in the National Lottery portfolio. All other draw-based games at the time offered only cash lump-sum top prizes.</p> <p>The nature of the game meant that it involved contractual arrangements with a third-party annuity provider, who would have access to Participant funds and data.</p>
Factors considered	<p>The assessment considered the role of the third-party intermediary and whether this provided sufficient protection for Participant funds and data, under the Commission’s Statutory Duties of Participant protection and propriety.</p> <p>With regard to protection of Participant funds and to the ability to pay prizes, the assessment also considered specific game mechanics such as prize caps and a promotional draw.</p>

Set For Life (Mar 2019)	
Outcome	<p>The proposal was approved because, based on the evidence available, the new annuity-based format did not pose material risks to the Commission's Statutory Duties, taking into account the contractual arrangements with the third-party annuity provider.</p> <p>The decision to approve was made following some changes to the initial proposal, including the requirement for the introduction of a cap on fixed lower tier prizes and the withdrawal of a promotional draw, which were considered necessary in order to provide confidence that appropriate prizes could be paid to winners.</p> <p>Subsequent to the launch of the game, the promotional draw element (Super Chance Draw) was revisited and eventually approved, as a result of sufficient assurance being provided.</p>

Lotto price increase (Oct 2013)	
Description of proposal	An increase to the price of a Lotto play, from £1 to £2.
Novel or contentious elements	The proposed higher price point was the first price increase for the Lotto game since the inception of the National Lottery in 1994. Given the importance of Lotto, as the National Lottery's flagship game and a key contributor to returns to good causes, the change was considered novel and contentious.
Factors considered	<p>The assessment considered the expected commercial impact of the change and the implications for returns to good causes. This included implications for the number of Participants, frequency of play, extent of cross-play and differentiation between Lotto and EuroMillions.</p> <p>Given the wide Participant base of Lotto, the proposed higher price point entailed potential risks under the Statutory Duty to protect Participant interests and in relation to the Directions related to unreasonably high pricing.</p> <p>The proposed price increase also entailed potential risks in terms of propriety and reputation of the National Lottery.</p>
Outcome	<p>The proposal was approved because, based on the evidence available, it was considered an appropriate initiative to strengthen Lotto sales without undue risks for the Commission's Statutory Duties and obligations under the Directions.</p> <p>The decision took into account, among other things, research indicating that a large majority of the existing Participant base would carry on playing Lotto regularly.</p>

Lotto matrix change (Oct 2015)

Description of proposal	Matrix changes to Lotto, consisting of an increase to the number of balls from 49 to 59 and a top prize jackpot increase.
Novel or contentious elements	This was the first matrix change for Lotto game since the inception of the National Lottery in 1994. Given the importance of Lotto, as the National Lottery's flagship game and a key contributor to returns to good causes, the change was considered novel and contentious.
Factors considered	<p>As with the Lotto price increase example above, the assessment considered the expected commercial impact of the change and the implications for returns to good causes. This included considering the possibility that longer odds and higher prizes could reduce differentiation with EuroMillions, and that the impact of the game might be diminished after the jackpot cap is hit.</p> <p>The assessment also considered evidence on Participant sentiment towards this change, under the Statutory Duty to protect Participant interests, and on the implications for the longer-term health of the National Lottery brand and reputation.</p>
Outcome	The proposal was approved because, based on the evidence available, it was considered an appropriate initiative to strengthen Lotto sales without undue risks for the Commission's Statutory Duties and obligations under the Directions.

Monopoly Second Chance Scratchcard (May 2015)

Description of proposal	A new Scratchcard with a second chance draw. Participants who did not win any prize from the Scratchcard had the ability to register for a second chance online draw, with the possibility of winning £100k.
Novel or contentious elements	<p>The proposal was designed to comply with the definition of a complex Lottery under the Gambling Act 2005. It would have been the first complex lottery in the National Lottery portfolio.</p> <p>The second chance component involved moving retail Participants to the digital channel, which was a novel and potentially contentious element.</p>
Factors considered	The assessment considered potential implications under the Statutory Duty to protect Participant interests, including whether the transition from retail to digital channels might result in material harm to Participant interests.
Outcome	The proposal was approved because the assessment did not identify material risks to the Commission's Statutory Duties and obligations under the Directions.

Football Game (Jul 2012)

<p>Description of proposal</p>	<p>A new game which would have functioned as follows:</p> <ul style="list-style-type: none"> • A Participant predicts the scores in five pre-selected Premier League football matches. On entry, she also receives a unique and automatically generated raffle number. • Shortly before the football matches in question, a raffle is drawn. The Participant whose raffle number is drawn wins a prize, but her score predictions are not included for consideration at the next stage of the game. • Once the outcomes of the football matches are known, remaining Participants are eligible to win prizes depending on the accuracy of their predictions.
<p>Novel or contentious elements</p>	<p>The proposal was designed to comply with the definition of a complex Lottery under the Gambling Act 2005. It would have been the first complex lottery in the National Lottery portfolio.</p> <p>The skill-based element of football score predictions was also novel in the context of the National Lottery, and contentious given its similarity to sports betting.</p>
<p>Factors considered</p>	<p>The assessment considered the legality of the game, with regard to meeting the definition of a lottery under the Gambling Act 2005 and any wider legal implications.</p> <p>From the perspectives of propriety and protection of Participant interests, the assessment considered whether the game was appropriate for the National Lottery and whether it could materially harm Participants' interests. This involved the consideration of risks for excessive and underage play, including the possibility of strong appeal to underage (predominantly male) audiences and of Participants becoming more likely to engage with other forms of gambling that may have a higher incidence of harm.</p>
<p>Outcome</p>	<p>The proposal was not carried forward by the Current Operator.</p> <p>The assessment had indicated that, based on the evidence available, approving the proposal was expected to be consistent with the Commission's Statutory Duties and obligations under Directions, and with the definition of a lottery under the Gambling Act 2005.</p> <p>However, DCMS had raised concerns about the proposal, including due to its similarity to sports betting. The DCMS Secretary of State has the ability to make changes to the statutory and regulatory framework (for example, changes to Directions or Regulations) which could rule certain games out of scope for the National Lottery.</p> <p>The decision not to carry forward the proposal may have been influenced by various factors, including the above, as well as issues related to the intellectual property rights that would be required to implement the game.</p>

Annex 3: Indicative heads of terms for a Draw-based Game Licence

Using the current Lotto Draw-based Game Section 6 Individual Licence as an example for comparison, the table below outlines the indicative approach for the Fourth Licence Term.

The points below are provisional and subject to further review.

Current Section 6 Licence (Lotto)		Indicative approach for the Fourth Licence
Licence area	Summary	
Schedule 0: Interpretation	Sets out definitions of terms used in the Licence.	To be retained.
Schedule 1: Description of the Licenced Lotteries	Briefly describes the Game covered by this Licence, including the name, Draw matrix, price, requirements for the geographic area for sales, and requirements for distribution channels.	To be retained but will not include any requirements related to distribution channels (over and above the requirements already specified in the Section 5 Licence).
Schedule 2: Conditions relating to the sale of Tickets, Plays and Subscriptions		
Sale of Tickets	Requires that the Licensee does not sell the Game under this Licence outside the Permitted Territory without the Commission's prior consent, and defines when a Ticket shall be treated as sold outside the Permitted Territory.	To be retained. Will include requirement that Participants must be physically located in the UK or Isle of Man at the time of purchase (and residents of the UK or Isle of Man if playing online).
Sale of Plays	Defines when a successful sale of Play on the interactive platform has occurred.	Not expected to be retained, as it would be expected to be covered as necessary in information provided to Participants (e.g. Game Procedures).
Withdrawal of the sale of Plays	Provides that the Commission may require, and the Licensee must comply with, the withdrawal of sales on the interactive platform.	To be retained. To provide clarity, this may be broadened to also include the Gambling Commission's right to require withdrawal across all distribution channels (not only on the interactive platform).
Suspension of the Section 5 Licence	Requires that the Licensee does not promote any Game under this Licence in the event of suspension, unless with the Commission's prior consent.	The need for this Licence condition, or a similar condition, will be reviewed as part of Licence drafting.
Public Announcements	Provides that the Commission may require the Licensee to make a public announcement under specific circumstances.	The need for this Licence condition, or a similar condition, will be reviewed as part of Licence drafting.
Privacy	Requires the Licensee to protect winner anonymity.	Not expected to be retained. This area may be covered sufficiently by the Section 5 Licence, under Condition 8.14 on Prize winner identity.
Promotional Draws	Requires the Licensee to notify the Commission when they intend to use the excess Prize Reserve Fund to run Promotional Draws.	The need for this Licence condition, or a similar condition, will be reviewed as part of Licence drafting.
Prize Reserve support for Base Draws	Allows the Licensee to use the excess Prize Reserve Fund to top up the jackpot value of a specific type of draw.	The need for this Licence condition, or a similar condition, will be reviewed as part of Licence drafting.
Jackpot rollover thresholds	Specifies how many times a jackpot can roll over and what the Licensee must do if that threshold has been breached.	The need for this Licence condition, or a similar condition, will be reviewed as part of Licence drafting.

Variable Prize Payout	Specifies the Prize Payout Percentage, and the percentage allocation of sales to the excess Prize Reserve Fund.	The Licence will continue to specify a Prize Payout Percentage. The need to specify allocation to a Prize Reserve Fund will be reviewed as part of Licence drafting.
Prize Capping	Apportions the amount that should be paid out in Prizes if a specific Prize threshold is breached.	The need for this Licence condition, or a similar condition, will be reviewed as part of Licence drafting.
Draw Frequency	Specifies when Draws should take place.	To be retained.
Draw Procedures	Requires that all Draws are conducted in accordance with Draw procedures.	Not expected to be retained. The Licensee will be responsible for ensuring that any relevant procedures are followed in order to meet its obligations under the Section 5 Licence, including in relation to protecting Participants' interests (Condition 8) and operations to be Fit for Purpose (Condition 17).
Excessive Participation in Constituent Lotteries	Provides that the Commission may require, and the Licensee must comply with, the withdrawal of all sales of the Game under this Licence if the Commission thinks that its promotion results in excessive play.	Not expected to be retained. Sufficiently covered by the indicative "Withdrawal of the sale of Plays" condition covered above, as well as under Condition 8.4 on not encouraging excessive play in the Section 5 Licence.
General	Links Section 5 and Section 6 Licences.	The Commission will retain a similar condition, including to stipulate that any breach of a Section 5 Licence condition which relates to the running of a Game or Games under this Section 6 Licence shall also be considered a breach of this Section 6 Licence.
Schedule 3A: Lotto Retail Game Procedures	Provides a link to retail Game Procedures available on the National Lottery website.	To be retained.
Schedule 3B: Lotto Online Game Procedures	Provides a link to online Game Procedures available on the National Lottery website.	To be retained.
Schedule 4: Must Be Won Draw jackpot Prize distribution scenarios where there is no Match 6 jackpot winner	Specifies the allocation of Prizes by Prize tier when the rollover threshold has been breached.	The need for this Licence condition, or a similar condition, will be reviewed as part of Licence drafting.

Annex 4: Indicative heads of terms for a Scratchcards Class Licence

Using the current Scratchcards Section 6 Class Licence as an example for comparison, the table below outlines the indicative approach for the Fourth Licence Term.

The points below are provisional and subject to further review.

Current Section 6 Licence (Scratchcards)		Indicative approach for the Fourth Licence
Licence area	Summary	
Schedule 1: Interpretation	Sets out definitions of terms used in the Licence.	To be retained.
Schedule 2: Description of the Licensed Lotteries	Briefly describes the class of Games covered by this Licence, including the name, requirements for the geographic area for sales, and requirements for distribution channels.	To be retained. Will include requirement that Participants must be residents of the UK or Isle of Man, and physically located in the UK or Isle of Man at the time of purchase. Will not include any requirements related to distribution channels (over and above the requirements already specified in the Section 5 Licence).
Schedule 3: Conditions		
Legality	Requires that Games should operate lawfully.	Not expected to be retained. This area may be covered under the Section 5 Licence, under Condition 4.1 on legal requirements.
Game Procedures	Requires that published Game Procedures must contain certain information and must comply with the terms of the relevant template approved from time to time by the Gambling Commission.	Not expected to be retained. It is anticipated that the Licensee will be subject to outcomes-focused requirements to provide appropriate information to Participants.
Code of Practice on the Design of Scratchcard Games	Requires the Licensee to comply with the Code of Practice on the Design of Scratchcard Games.	To be retained, though the Code itself is anticipated to be streamlined by specifying mainly outcomes-focused requirements (see schedule 4 below).
Player information	Requires specific information to be clearly available on the front and back of each Ticket.	Not expected to be retained. It is anticipated that the Licensee will be subject to outcomes-focused requirements to provide appropriate information to Participants.
Price per Scratchcard Ticket	Requires that Tickets prices are within a specified range and that no more than 80% of Scratchcards available should be priced higher than £1.	The Commission will retain a price range, which is consistent with the Directions requiring the Commission to ensure that the pricing of Games is not unreasonably high. However, the specific range of price points remains subject to change depending on Game features, safeguards, and evidence of risk of harm. The Commission will not retain the requirement that no more than 80% of Scratchcards available should be priced higher than £1. Instead, it will be up to the Licensee to ensure that portfolio pricing complies with outcomes-focused requirements, including relating to the portfolio being widely appealing and accessible (see Section 5 Licence Condition 11.1) and to not encourage excessive play (Condition 8.4).

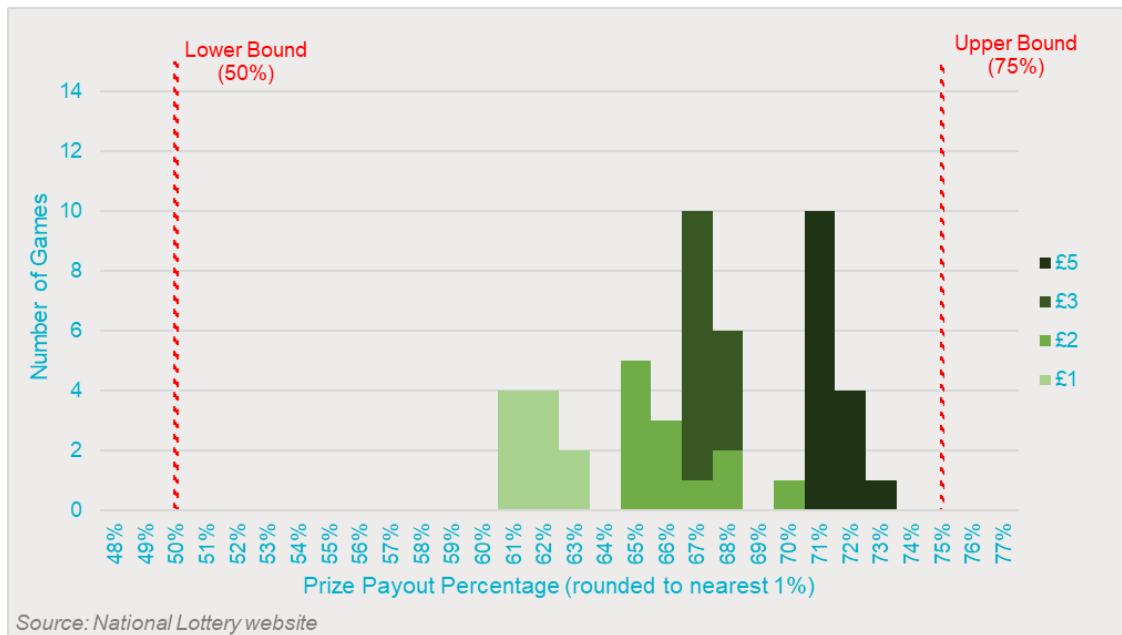
Rights reserved to the Commission	Provides that the Commission can make amendments to the Code of Practice on the Design of Scratchcard Games.	To be retained.
Launch of a Licensed Lottery	Requires the Licensee to inform the Commission prior to the launch of any new Game and provide a range of confirmations and supporting evidence (e.g. in relation to trademark searches and printing instructions).	Will be streamlined such that the Commission only requires prior notification of launch, but not the additional confirmations and evidence. It will be up to the Licensee to follow appropriate steps that allow it to comply with its obligations.
Rapid Reorder of a Licensed Lottery	Requires the Licensee to follow certain steps prior to a further print run of Tickets in a particular Game that is on sale.	Will be streamlined to reduce requirements about the process to be followed, with greater emphasis on the Licensee to determine appropriate steps that allow it to comply with its obligations.
Distribution of Licensed Lotteries	Requires that distribution of Tickets is continuous.	Not expected to be retained. It will be Licensee's responsibility to make appropriate distribution arrangements that help satisfy relevant outcomes-focused obligations. See for example Section 5 Licence Conditions 9 (ensuring access to the National Lottery), 10 (distributing National Lottery products in an appropriate way) and 11 (having an appealing but safe portfolio of Games).
Scratchcard Game Closure	Requires the Licensee to close a Game after a certain amount of time, or at the expiry of this Licence.	The need for this Licence condition, or a similar condition, will be reviewed as part of Licence drafting.
Privacy	Requires the Licensee to protect winner anonymity.	Not expected to be retained. This area may be covered sufficiently by the Section 5 Licence, under Condition 8.14 on Prize winner confidentiality.
Withdrawal of a Licensed Lottery	Provides that the Commission may require, and the Licensee must comply with, the withdrawal of an existing Game, termination of the launch of any new Game or cancellation of a Rapid Reorder.	To be retained.
Public announcements	Provides that the Commission may require the Licensee to make a public announcement under specific circumstances.	The need for this Licence condition, or a similar condition, will be reviewed as part of Licence drafting.
Suspension of the Section 5 Licence	Requires that the Licensee does not promote any Game under this Licence in the event of suspension of the Section 5 Licence, unless with the Commission's prior consent.	The need for this Licence condition, or a similar condition, will be reviewed as part of Licence drafting.
General	Links Section 5 and Section 6 Licences.	The Commission will retain a similar condition, including to stipulate that any breach of a Section 5 Licence condition which relates to the running of a Game or Games under this Section 6 Licence shall also be considered a breach of this Section 6 Licence.
Schedule 4: Code of Practice on the Design of Scratchcard Games		
Accessibility	Requires that Games must follow best practice on Participant comprehension and clarity of design.	It is anticipated that outcomes-focused requirements relating to Participant protection and design will apply.
Excessive play	Requires that the Licensee must not encourage excessive play habits.	(As an illustration, an indicative requirement could

Scratchcard Game Names and subject matter	Defines a number of specific rules on the design of Games, including in relation to images and subject matter used.	be to avoid the use of any imagery, subject matter or themes that may reasonably be expected to cause offence or otherwise harm Participants' interests or the National Lottery Brand).
Gaming and betting themes	Defines a list of specific themes and imagery that the Licensee can and cannot use.	
Underage play	Requires the Licensee to ensure that Games do not suggest that they can be played by, and do not appeal to, people who are under the legal age limit.	To be retained. (The specific range of Prize Payout Percentages remains subject to change in light of any changes to circumstances or new evidence over time. However, at present the Commission does not anticipate any particular change).
Schedule 5: Prize Structure Parameters	Requires that the Price Payout Percentage of every Game under this class Licence must be within a specified range.	
Schedule 6: Licensed Lotteries	Defines a set of common features for Games to be promoted under this Licence.	
Online: Code of Practice on Top Prize Management	Requires that Scratchcards do not remain on sale after top Prizes have been claimed, unless the Game in question meets certain criteria, including the combined value of Top Prizes being less than £121,000.	To be retained. The Commission will seek to streamline the provisions of this code in order to move towards more outcomes-focused requirements (as an illustration, an indicative requirement could be for the Licensee to do everything it can to ensure that Participants' purchase decisions are not driven by mistaken beliefs about the availability of Top Prizes).

Annex 5: Summary of Prize Payout Percentages and price points

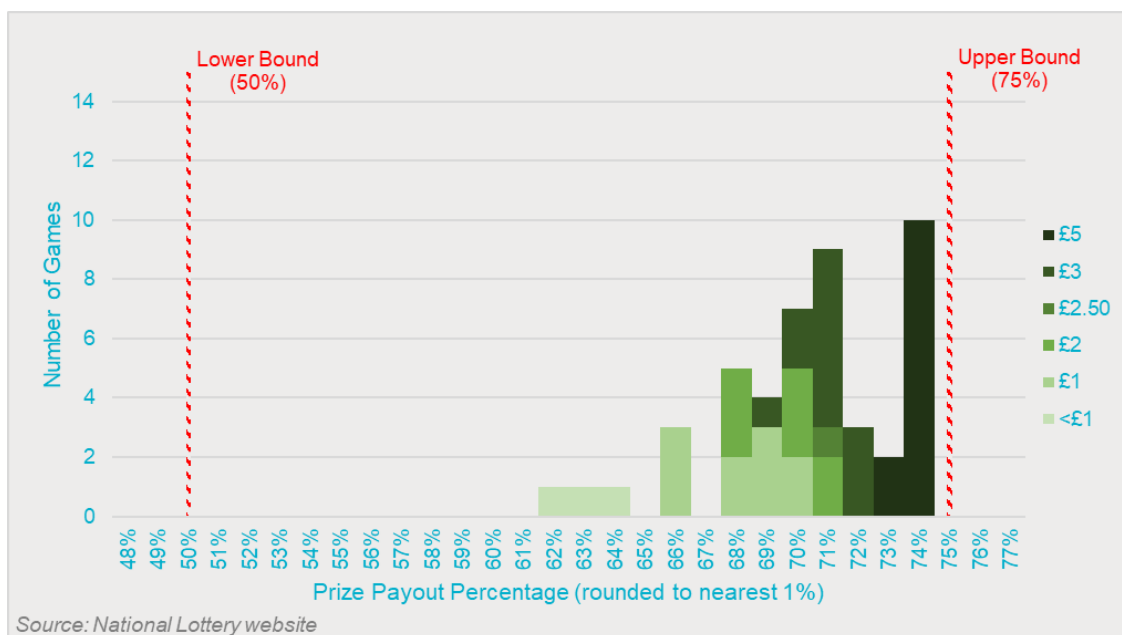
To illustrate how the Current Operator operates within the 50-75% Prize Payout Percentage range under the two class Licences, Figures 2 and 3 below show the Current Operator's Prize Payout Percentage for every Scratchcard (priced between £1 and £5) and IIWG (priced between £0.25 and £5) currently available²⁶ on the National Lottery website.

Figure 2: Prize Payout Percentages for all Scratchcards by price point



Source: National Lottery website

Figure 3: Prize Payout Percentages for all IIWGs by price point



Source: National Lottery website

²⁶ Accurate at the time of writing (3rd September 2020).

Likewise, Table 2 below shows the Current Operator's Prize Payout Percentage for every Draw-based Game currently available²⁷ on the National Lottery website.

Table 2: Prices and Prize Payout Percentages for all Draw-based Games

Licence	Game	Price	Average Prize Payout Percentage
Lotto	Lotto	£2.00	50.00%
Lotto HotPicks	Lotto HotPicks Pick 1	£1.00	61.02%
	Lotto HotPicks Pick 2	£1.00	52.60%
	Lotto HotPicks Pick 3	£1.00	49.22%
	Lotto HotPicks Pick 4	£1.00	42.85%
	Lotto HotPicks Pick 5	£1.00	41.95%
EuroMillions	EuroMillions	£1.74	50.00%
	UK Millionaire Maker raffle	£0.76	30.00%
EuroMillions HotPicks	EuroMillions HotPicks Pick 1	£1.50	66.67%
	EuroMillions HotPicks Pick 2	£1.50	54.42%
	EuroMillions HotPicks Pick 3	£1.50	51.02%
	EuroMillions HotPicks Pick 4	£1.50	43.28%
	EuroMillions HotPicks Pick 5	£1.50	30.87%
Thunderball	Thunderball	£1.00	52.00%
Set For Life	Set For Life	£1.50	54.40%

Source: National Lottery website

²⁷ Accurate at the time of writing (3rd September 2020).