

Fourth National Lottery Licence: Regulatory Handbook

DRAFT

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Overview

This document (Regulatory Handbook)¹ sits within our wider Regulatory Model and contains four volumes:

- Volume one: **Regulatory Approach**
- Volume two: **Monitoring Performance Framework**
- Volume three: **Assurance and Regulatory Reporting Requirements**
- Volume four: **Enforcement Policy**

A summary of the content included within each volume of the Regulatory Handbook is available in section 2 below.

This document should be read in conjunction with the Fourth Licence and capitalised terms not defined in this document are defined in either the Fourth Licence, the Enabling Agreement or the Cooperation Agreement.

We have updated this document based on feedback received in respect of the Draft Invitation to Apply (ITA). The content of the Monitoring Performance Framework (volume two) and Assurance and Regulatory Reporting Requirements (volume three) will depend, to an extent, on the Licensee's Business Plan. The process for updating the Regulatory Handbook is described in section 2 below.

This document will evolve in light of experience of the Fourth Licence and depending on Licensee performance (see more detail in section 2). In accordance with Condition 24.9 of the Fourth Licence, we will consult with the Licensee for a period of at least 20 Business Days before making any changes to this Regulatory Handbook.

In the event of any conflict between this Regulatory Handbook and the Fourth Licence, the Fourth Licence will prevail.

¹ This combined document replaces the four separate draft regulatory documents, which were released with the draft ITA on the 2nd December 2019.

1. Introduction

- 1.1 We (the Gambling Commission) regulate the National Lottery within a legislative framework, including Directions and Regulations made by the Secretary of State for the Department for Digital, Culture Media and Sport (DCMS), and our public law duties. Through our regulation we deliver our statutory objectives (see box below).

Our statutory duties as per Section 4 of the National Lottery etc. Act 1993 (as amended)² (the Act) are to:

- ensure that the National Lottery is run, and every lottery that forms a part of it is promoted, is run with all due propriety;
- ensure that the interests of every Participant in the Lottery are protected; and
- subject to these two duties, to do our best to secure that the net proceeds of the National Lottery are as great as possible.

- 1.2 In practice, there are different ways in which we can achieve our statutory duties and deliver Secretary of State Directions and Regulations in the context of the Fourth Licence. Through our Regulatory Handbook, we inform stakeholders of our intended regulatory approach for the Fourth Licence. In exercising our functions with respect to the National Lottery, and in the context of the statutory framework, we are required to comply with the principles of public law (which include requirements as to rationality, due process and reasonableness).
- 1.3 The next section provides a background and overview of the different components within our Regulatory Model, including the four volumes within this Regulatory Handbook. It also outlines our approach to any changes to this Regulatory Handbook during the Fourth Licence. The rest of this document is then split by the four separate volumes.

² <http://www.legislation.gov.uk/ukpga/1993/39/contents>

2. Background

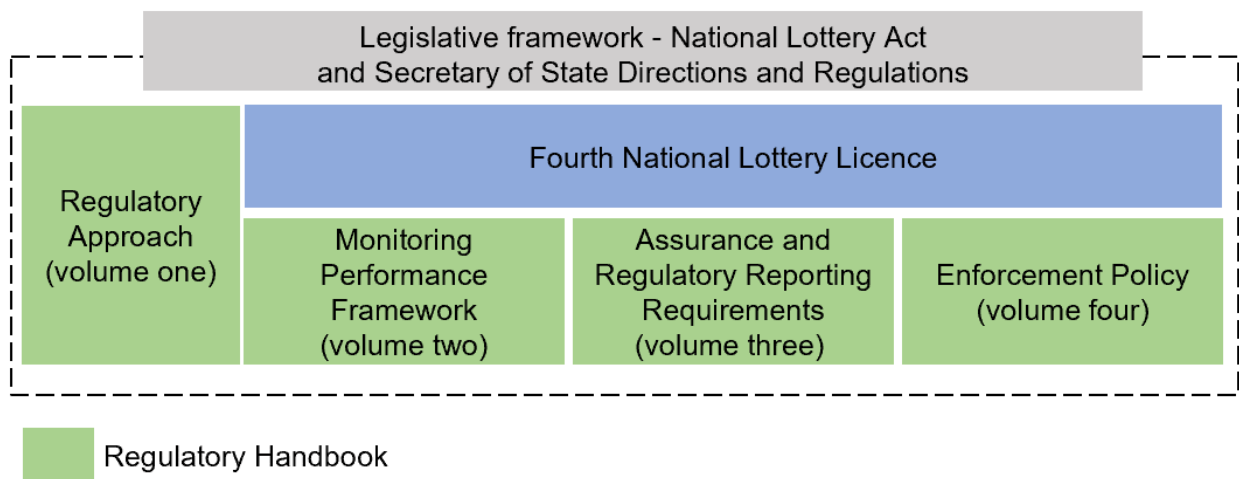
2.1 In this section we provide:

- an overview of our Regulatory Model; and
- the process for updating this document.

An overview of our Fourth Licence Regulatory Model

2.2 We show the key components of our Regulatory Model in Figure 1 below. Our Regulatory Model sits within a legislative framework and is intended to secure our statutory duties. This document provides supporting guidance to stakeholders, split across four volumes.

Figure 1: Overview of our Fourth Licence Regulatory Model



2.3 The legislative framework includes the Act, which specifies our statutory duties and provides enforcement powers. This is complemented by Secretary of State Directions and Regulations³.

2.4 Under the Fourth Licence, the Licensee is granted the authority to operate the National Lottery. We grant a single Licence under Section 5 of the Act to authorise the running of the National Lottery and, separately, Licences under Section 6 of the Act to authorise the promotion of National Lottery Games.

2.5 The other elements of the Regulatory Model, as covered in this Handbook, are closely interrelated. In summary:

- Volume one: Regulatory Approach explains, in high level terms, key features of the more outcomes-focused regulatory approach we will adopt for the Fourth Licence. It provides the context for the changes in our approach from the Third Licence and enhances the ability of stakeholders to better understand how our regulatory decisions and assessments will be made in a range of circumstances.

³ <http://www.gamblingcommission.gov.uk/PDF/NL-licences/National-Lottery-Directions.pdf> and <https://www.legislation.gov.uk/uksi/1994/189/made>.

- Volume two: Monitoring Performance Framework provides guidance for certain Fourth Licence conditions where we consider such guidance will support the delivery of our statutory duties. Our guidance includes aspects of compliance, alongside further detailed information around the Licensee Exit Plan and potential adjustments under the Incentive Mechanism.
- Volume three: Assurance and Regulatory Reporting Requirements provides guidance that we expect the Licensee to demonstrate it has appropriate risk management processes in place to protect the delivery of the outcomes in the Fourth Licence. Our reporting requirements set out where we require timely access to key data needed to regulate the National Lottery effectively. We will use Licensee assurance and reporting information to monitor compliance risk.
- Volume four: Enforcement Policy sets out our approach to enforcement and explains how we will use our powers in an appropriate and proportionate manner. It details the enforcement measures available and the factors we are likely to consider when deciding on regulatory action.

The process for updating this document

- 2.6** Before the start of the Fourth Licence, we will engage with the Incoming Licensee (as defined in the Enabling Agreement) and update our Regulatory Handbook as necessary, for example where elements of the Regulatory Handbook are dependent on the Licensee's business plan.
- 2.7** Going forward, we expect to update our Regulatory Handbook during the Fourth Licence itself, for example to provide further guidance in relation to any emerging or novel issues, in light of experience of the Fourth Licence, or in response to Licensee performance.
- 2.8** We expect the extent and frequency of any updates to vary by volume. For example, we expect our Regulatory Approach (volume one) and Enforcement Policy (volume four) to provide a largely fixed reference point that endures throughout the Fourth Licence. In contrast we expect to update the Monitoring Performance Framework (volume two) and Assurance and Regulatory Reporting Requirements (volume three) on a more regular basis. We will only make changes where we consider these appropriate and proportionate, given our statutory duties and other obligations.
- 2.9** If we propose to vary our Regulatory Handbook we will, as set out in Condition 24.9 of the Fourth Licence, consult with the Licensee for a period of at least 20 Business Days before issuing an updated document.

Volume one: Regulatory Approach

3. Regulatory Approach context

- 3.1** This volume explains, in high level terms, key features of the outcomes-focused regulatory approach we will adopt for the Fourth Licence. It provides the context for the changes in our approach from the Third Licence and enhances the ability of stakeholders to better understand how our regulatory decisions and assessments will be made in a range of circumstances. We provide an overview of how this volume interacts with the other volumes of this Regulatory Handbook and our wider Regulatory Model as described in section 2 of this document.
- 3.2** This volume further articulates and explains our Regulatory Model. It also provides a reference point – for the Licensee, other stakeholders, and for us – as to how we intend to approach future regulatory issues. Aside from the Regulatory Handbook, we will continue to review and publish any further information and guidance we consider appropriate during the Fourth Licence.
- 3.3** The rest of volume one is structured as follows:
- section 4 summarises the key areas which influenced the development of our regulatory approach; and
 - section 5 describes and illustrates the four key features of our approach: making our Regulatory Model more outcomes-focused; better aligning incentives between the Licensee and Good Causes; providing greater flexibility for the Licensee; and increasing Licensee ownership of its performance.

4. Our development of the Fourth Licence approach

- 4.1 In developing our Fourth Licence regulatory approach we reviewed lessons learned from previous National Lottery regulation as well as reviewing guidance from Government on regulatory best practice.
- 4.2 The Cabinet Office led one of the most comprehensive reviews of regulatory practice since the Hampton Report in 2005. The resulting report in 2017, [Regulatory Futures Review](#), recommends that where possible regulators adopt an outcomes-focused approach (see box below).

Regulatory Futures Review. Government setting high-level principles: outcome-based regulation, Cabinet Office, January 2017. See extracts:

“In principle, good public policy prefers a focus on outcomes to a focus on outputs, processes or inputs. Outcome-based regulation can be flexible to technological and market changes including reduced barriers to new entrants - important in fast changing industries, where implementation of detailed regulations can have the effect of suppressing innovation. It can also reduce the resources required by the regulator for inspections/investigations which were confirmed by the Review information collection exercise to be the most significant area of current regulator activity” (P.29)

“We recommend that regulators should move as far as practicable towards an outcome-based approach, with appropriate safeguards to ensure that new and small firms do not suffer as a result. Regulators should also consider how such a change should affect the nature of their engagement with regulated companies”. (P.32)

- 4.3 The National Audit Office (NAO) also focuses on the importance of having an outcomes-focused approach embedded in UK regulatory best practice⁴. In 2019, it published a review of regulation across different sectors⁵ focusing on the impact of an outcomes-focused regulatory approach.
- 4.4 We also reviewed lessons learned from our Third Licence National Lottery regulation experience and investigations from the NAO and Public Accounts Committee (PAC)^{6, 7}. These lessons focused on aligning Licensee profits with Good Causes and highlighted the need to increase Licensee accountability.
- 4.5 We developed our Fourth Licence approach in the context of our corporate strategy (2018 – 2021)⁸. Our aims are to be a risk-based, evidence-led and outcomes-focused regulator.
- 4.6 To reflect the changing environment in which the Licensee operates, the Fourth Licence takes account of that fact that the Licensee may often procure goods and services through Lottery Subcontracts rather than owning and maintaining Lottery Assets, including Lottery IP, outright. This is reflected, among other things, in our approach to a successful Exit from the Fourth Licence, where we expect that

⁴ [Performance measurement by regulators](#), NAO 2016.

⁵ [Regulating to protect consumers: Utilities, communications and financial services markets](#), NAO 2019.

⁶ [Investigation: National Lottery funding for good causes](#), NAO 2017.

⁷ [The future of the National Lottery](#), PAC 2018.

⁸ <http://www.gamblingcommission.gov.uk/PDF/Strategy-2018-2021.pdf>

access to many Lottery Assets, including IP, will be transferred through the novation of Lottery Subcontracts rather than through the transfer of Lottery Assets.

- 4.7** After reviewing all the evidence and potential benefits we therefore developed a more outcomes-focused regulatory approach for the Fourth Licence. We explain and illustrate this further in section 5.

5. Key features of our regulatory approach

- 5.1** Through our more outcomes-focused approach we will create the freedom for more Licensee flexibility, where appropriate, while improving accountability in terms of delivering positive outcomes more broadly. We recognise the National Lottery operates in a dynamic environment and the ability to innovate on an ongoing basis is likely to be key to it remaining relevant and being able to prosper over time, for the benefit of Good Causes and Participants.
- 5.2** In line with this, our approach consists of four key elements:
- making our Fourth Licence approach more outcomes-focused;
 - better aligning incentives between the Licensee and Good Causes;
 - providing greater flexibility for the Licensee; and
 - increasing Licensee ownership over its performance.
- 5.3** We describe each of these elements further and provide some illustrations of how they have affected, and/or might affect, our regulatory actions.

Making our Fourth Licence approach more outcomes-focused

- 5.4** Being a more outcomes-focused regulator has implications across our Regulatory Model, including the design of the conditions of the Fourth Licence. It also affects the approach we take to monitoring performance and any associated enforcement in relation to those conditions.
- 5.5** We have explored and tested the scope for and likely benefits of defining Fourth Licence conditions in ways that are less restrictive in terms of how a desired outcome is achieved. We have adopted this approach in areas where risks of more flexibility can be managed and/or mitigated effectively. This approach has two key benefits:
- it allows the Licensee flexibility (something that is conducive to innovation); and
 - it offers greater future-proofing from a regulatory perspective in a context where highly specific requirements may fail to provide for effective protection over time in dynamic environments (for example because they may become out of date in important respects).
- 5.6** This does not mean we favour broader and more flexible requirements in all circumstances. In some areas, given identified risks of harm, we consider more specific controls/requirements are appropriate. For example, we consider it appropriate to have an explicit requirement for the vetting of all senior staff. This is a safeguard that supports the requirement for the Licensee to be fit and proper.
- 5.7** Our more outcomes-focused approach is also an important statement about our focus and priorities, and about the focus and priorities we expect the Licensee to adopt. This impacts how we expect to monitor Licensee performance, and to assess compliance. Our approach to any given circumstances will be guided, to a significant degree, by the materiality of the associated risks to the achievement of the outcomes set out in the Fourth Licence.

- 5.8** We also recognise that, within an outcomes-focused approach, the Licensee can benefit from further guidance over what we will take into account when assessing compliance with the outcomes-focused conditions of the Fourth Licence. We provide this further guidance within our Monitoring Performance Framework (see volume two). The Monitoring Performance Framework does not provide an exhaustive list of relevant factors and metrics we will consider when assessing compliance, however it does provide a reference point against which we expect to consider the relevance of any other evidence.⁹
- 5.9** Our Regulatory Model encourages the Licensee to be focused on delivering the outcomes set out in the Fourth Licence. This involves the Licensee taking ownership of developing and applying policies, processes and procedures to provide effective means of identifying, mitigating and managing the risks associated with the achievement of the outcomes set out in the Fourth Licence, and satisfying itself as to their ongoing effectiveness. We will expect the Licensee to use assurance statements and other measures (further described in volume three) to demonstrate to us whether, and how, it is achieving these outcomes.
- 5.10** If we identify that outcomes set out in the Fourth Licence have not been achieved, as part of assessing compliance with the Fourth Licence, we will look for evidence of the appropriateness and adequacy of the Licensee's risk management policies, processes and procedures, and the effectiveness with which it has applied these. Our assessments of compliance may take into account the extent to which the Licensee has acted with due diligence in its identification and management of relevant risks. We provide further details on our approach to investigations in our Enforcement Policy (see volume four).

Better aligning incentives between Licensee and Good Causes

- 5.11** A more outcomes-focused approach provides greater scope for the Licensee to explore and pursue different approaches to achieving a given outcome. However, it is critical this greater flexibility sits within an appropriate framework of incentives and accountability. Key to this is aligning the Licensee's incentives with Good Causes.
- 5.12** This alignment has been key to our approach to developing the Incentive Mechanism set out in Schedule 5 of the Fourth Licence. The Incentive Mechanism determines how much money generated from sales of National Lottery tickets is paid to Good Causes, with the remainder available to cover the Licensee's costs and, where applicable, to provide a source of profit. We have sought to ensure the alignment continues to be achieved irrespective of changes that may arise during Fourth Licence, including for example in relation to the range and mix of Games provided, and the relative intensity of play.
- 5.13** In line with our statutory duties, we consider it important that improvements in performance, with respect to Good Causes, are not generated in ways that undermine propriety or the protection of Participant interests. The Licensee must have and apply appropriate and proportionate policies, processes and procedures for identifying, mitigating and managing the risks of harm (in line with the comments above), and must adjust its conduct where appropriate to address and/or guard against this risk.

⁹ The Monitoring Performance Framework includes further guidance on our expectations around "do everything it can" obligations in the Licence and how it differs from the more prescriptive conditions.

5.14 An important feature of the Incentive Mechanism is that the allowable costs of operating the National Lottery are shared between the Licensee and Good Causes (through the application of the proportion of Surplus). This provides a framework that supports an appropriate alignment of incentives and is conducive to the provision of Participant protection that is effective, proportionate and cost efficient.

Providing greater flexibility for the Licensee

5.15 At the core of our Fourth Licence approach is a focus on the outcomes that the Licensee achieves, rather than how these are achieved. Our Regulatory Model allows the Licensee to pursue innovation opportunities that deliver better outcomes for Good Causes and Participants.

5.16 By providing a greater degree of autonomy and flexibility, we want the Licensee to take ownership of the development and delivery of its plans. While we aim to give flexibility, this is subject to the Licensee being able to demonstrate that it has appropriate policies, processes and procedures for identifying, mitigating and managing relevant risks.

5.17 In line with this, we make use of non-prescriptive and flexible Fourth Licence conditions where possible. The use of these outcomes-focused requirements provides the opportunity for the Licensee to develop approaches to compliance that are appropriate to its business activities and that avoid unnecessary restrictions and/or standardisation. Supporting this, the Fourth Licence includes a requirement that the Licensee must comply with Best Practice¹⁰ rather than referring to specified regulatory standards or guidance¹¹.

5.18 An important part of the more flexible approach is the extent to which the Licensee is permitted to make changes to its business activities without seeking our approval.

5.19 The Licensee still needs to obtain our approval before launching and/or promoting new Games or Game changes during the Fourth Licence (that are not covered by its existing Section 6 Licences)¹². However, we limit its scope as follows:

- as a matter of course, we do not intend to assess in detail the commercial merits or otherwise of proposals, and instead we intend to focus on the extent to which Game change proposals, or proposals for the launch of new Games, may entail risks for Participant protection and propriety, and/or any harm to the National Lottery Brand and reputation; and
- subject to receiving appropriate evidence and assurance in relation to the above risks, we intend to provide a streamlined and timely process for the approval of Games or the relevant Game changes, in order to facilitate Licensee innovation for the benefit of Participants and Good Causes.

5.20 Similarly, there are other limited instances specified in the Fourth Licence where the Licensee must obtain our consent or approval before taking certain specified action. In such cases we intend to consent or approve in a timely fashion to avoid

¹⁰ Condition 4.3 of the Licence defines Best Practice as “the standard to be expected of an experienced and professional person doing a particular thing and seeking to secure the outcomes in Condition 1.2” .

¹¹ For example, certain standards relating to technology and security that were specified in the Third Licence have not been referenced in the Fourth Licence.

¹² See Section 6 Licensing Guidance Note document for more detail.

restricting Licensee flexibility, subject to receiving any clarifications or assurance that may be necessary in order for us to fulfil our role and duties as a regulator.

Increasing Licensee ownership over its performance

- 5.21** As explained above, the provision of more Licensee autonomy and flexibility over how to run the National Lottery is central to our Regulatory Model. However, our role and duties as a regulator require that, whilst providing more flexibility and autonomy to the Licensee, we continue to ensure the Licensee's compliance with Fourth Licence obligations, which are aligned to positive outcomes for Participants and Good Causes.
- 5.22** We assign a greater degree of ownership of, and accountability for, compliance to the Licensee. This goes hand-in-hand with reducing our direct involvement in commercial and operational decisions. Under this approach, the Licensee is less reliant on our approval and instead takes a greater degree of ownership for its decisions, including being able to demonstrate it has followed appropriate processes to consider and mitigate compliance risks. We expect to have an effective regulatory relationship with the Licensee which facilitates this, and which supports the delivery of the obligations under the Fourth Licence.
- 5.23** In practice, increased Licensee ownership is formalised through requirements to provide us with assurance of compliance with the Fourth Licence, including through an Annual Assurance Statement which has been certified as approved by the Licensee's board of Directors. Guidance on these requirements is set out in our Assurance and Regulatory Reporting Requirements (see volume three), which also covers the core set of reporting information required.
- 5.24** As part of assigning ownership of performance and delivery to the Licensee, where appropriate, the Licensee will have the opportunity to determine how best to address any performance issues (identified either by the Licensee or by us), rather than requiring the Licensee to follow a remedial course of action determined by us.
- 5.25** Nevertheless, our regulatory approach does encompass the use of robust interventions where performance issues are particularly material or persistent. This includes various formal and informal enforcement tools that we may apply in line with our principles of proportionality, consistency, evidence-based decision making, accountability and transparency, as set out in our Enforcement Policy (see volume four).
- 5.26** Therefore, notwithstanding the greater ownership of performance and delivery by the Licensee, there may be specific instances where our role and duties as a regulator require us to intervene.

Volume two: Monitoring Performance Framework

6. Monitoring Performance Framework context

- 6.1** This volume provides guidance for certain Fourth Licence conditions and concepts where we consider such guidance will support the delivery of our statutory duties. Our guidance includes aspects of compliance, alongside further detailed information on areas such as the Licensee Exit Plan and potential adjustments under the Incentive Mechanism. We provide an overview of how this volume interacts with the other volumes of this Regulatory Handbook and our wider Regulatory Model in section 2 of this document.
- 6.2** We include guidance in the form of examples of the types of factors and evidence we may consider relevant when assessing compliance, including in the context of scrutinising specific areas where we have concerns or consider there is a potential compliance risk. The examples we use are illustrative.
- 6.3** As well as the specific types of factors and evidence discussed in the remainder of this volume, in general we will also take into account the extent to which the Licensee has implemented (or has failed to implement) its Application or any element of that Application¹³, in assessing whether the Licensee has achieved the outcomes set out in the Fourth Licence. Consistent with our regulatory approach, which aims to provide flexibility to the Licensee, we will take into account that the Licensee's approach may reasonably change in order to meet the outcomes set out in the Fourth Licence. Therefore, it is possible for deviations from the Application to be aligned with the requirements of the Fourth Licence, for example due to changes in market circumstances since the date of the Application.
- 6.4** In order to monitor Licensee performance as well as relevant trends and developments, we will have regard to a number of information sources related to different areas of compliance. As a matter of course, and where we are comfortable that the outcomes set out in the Fourth Licence are being achieved, we will not scrutinise in detail all steps taken and due diligence exercised by the Licensee. However, where we have particular concerns or identify potential compliance risk(s), we may scrutinise specific areas of the Licensee's conduct more closely¹⁴.
- 6.5** Information sources may include:
- relevant information or evidence provided by the Licensee as part of the Annual Assurance Statement or as part of Ad Hoc Assurance Statements, as discussed in our Assurance and Regulatory Reporting Requirements (see volume three);
 - periodic information reports provided by the Licensee as described in our Assurance and Regulatory Reporting Requirements;
 - any other relevant Lottery Information we may access or request from time to time (in accordance with Licence Condition 23), including in any instances where we have specific issues or concerns; and
 - any other relevant information or evidence held or collected by us (for example through surveys) or where appropriate, by third parties.

¹³ Save to the extent the same has been varied in accordance with the Enabling Agreement.

¹⁴ Further details on our approach to investigations are set out in our Enforcement Policy (see volume four).

6.6 The rest of volume two is structured as follows:

- section 7 provides guidance on the general concepts used in the Fourth Licence;
- section 8 provides guidance on compliance for Condition 1: Purpose and outcomes;
- section 9 provides guidance on compliance for Condition 5: Fitness and Propriety of the Licensee;
- section 10 provides guidance on compliance for Condition 7: Fitness and Propriety of Critical Function Employees
- section 11 provides guidance on compliance for Condition 8: Protecting Participants' Interests;
- section 12 provides guidance on compliance for Condition 9: Ensuring Access to the National Lottery;
- section 13 provides guidance on compliance for Condition 11: Having an appealing but safe portfolio of Games;
- section 14 provides guidance on compliance for Condition 13: The National Lottery Brand and reputation;
- section 15 provides guidance on compliance for Condition 17: Licensee and its operations to be Fit for Purpose;
- section 16 provides guidance for Condition 18: Financial and Operational Resilience, specifically in relation to Significant Business Events and providing context for Condition 18.20 (Change in Gambling Law or Fundamental Geographic Scope Change);
- section 17 provides further information on the expected contents of the Exit Cooperation Agreement and Exit Plan, which are required under Condition 27: Exit;
- section 18 provides further guidance on Condition 28: Outstanding Liability Fund; and
- section 19 provides further information and detail to support with implementation of adjustments contained in Schedule 5: Good Causes Contribution.

7. General concepts used in the Fourth Licence

7.1 This section provides guidance related to general concepts used within the Fourth Licence. We include further information about the following concepts:

- absolute and other obligations; and
- Matters to be Protected.

Absolute and other obligations

7.2 The Licence includes a limited number of absolute obligations, as explained in Condition 1.3. This form of Licence obligation is used specifically in relation to matters that are under the control of the Licensee.

7.3 The Licence has several other obligations for the Licensee to "do everything it can" to achieve specified outcomes. Condition 1.4 clarifies that such requirements are breached unless the Licensee can satisfy us that it has taken all reasonable steps and exercised all due diligence to achieve the relevant outcome.

7.4 This type of obligation imposes strict liability for achieving an outcome, but allows the Licensee to demonstrate that it has taken all reasonable steps and exercised all due diligence in seeking to do so (a form of "due diligence defence"). Where "do everything it can" requirements are used, the Licensee would be unlikely to be in breach of the relevant Fourth Licence conditions as a result factors beyond its control. Similarly, "all reasonable steps" will not include steps which could only reasonably have been expected to be taken in hindsight, for example because relevant information was not available at an earlier point in time.

7.5 The relevant reasonable steps and due diligence will vary depending on the nature of the specific obligation and on the circumstances at any particular time. In the remainder of this volume, we provide a number of examples of the types of factors and evidence we may consider relevant when assessing compliance with different "do everything it can" obligations.

7.6 We consider that constructing certain conditions in the Fourth Licence as being "do everything it can" obligations rather than absolute obligations has two key benefits:

- consistent with an outcomes-focused approach, it does not prescribe a specific way in which the Licensee must achieve the stated outcome, which provides Licensee flexibility to take its own decisions and is conducive to innovation for the benefit of Participants' interests and Good Causes; and
- it offers greater future-proofing from a regulatory perspective in a context where highly specific requirements may fail to provide for effective protection over time in dynamic environments (for example because they may become out of date in important respects).

7.7 Our regulatory approach (see volume one) assigns ownership of, and accountability for compliance to the Licensee, for both absolute obligations and "do everything it can" obligations. This is reflected in requirements for the Licensee to assure itself, and us, of its approach to achieving compliance and mitigating risk (see volume three). However, for the avoidance of doubt, we are ultimately responsible for determining – based on relevant evidence – whether a breach of a Fourth Licence

condition has occurred, and for pursuing any enforcement steps in line with our Enforcement Policy (see volume four).

Matters to be Protected

- 7.8** Matters to be Protected are defined in the Fourth Licence in Condition 10.1. This concept encompasses a number of areas that are important for the long-term health of the National Lottery and for our ability to meet our statutory duties.
- 7.9** The concept of Matters to be Protected is used throughout the Fourth Licence, including in relation to requirements for the Licensee to do everything it can to protect, or not damage, the Matters to be Protected.
- 7.10** When considering whether the Licensee has done everything it can to protect, or not damage, the Matters to be Protected, we will have regard to relevant factors depending on the circumstances and their potential implications for specific Matters to be Protected.
- 7.11** For example, with regard to Participant interests (which are covered by Matters to be Protected under Condition 10.1(a)) we will have regard to relevant outcomes as set out under Condition 8, for which further guidance is available in section 11 of this document. Similarly, with regard to the National Lottery Brand and reputation (which are covered by Matters to be Protected under Conditions 10.1(c) and (d)) we will have regard to relevant outcomes as set out under Condition 13, for which guidance is provided in section 14 of this document.

8. Condition 1: Purpose and outcomes

- 8.1** This section provides guidance related to the outcomes specified in Licence Condition 1, with a focus on Good Causes Contribution (Condition 1.2(c)). We address the areas of propriety (1.2(a)) and Participants' interests (1.2(b)) separately, see below:
- we set out requirements related to propriety in a number of Fourth Licence conditions, including Conditions 4, 5, 6, 7, 21 and 22. We provide further guidance related to Condition 5 in section 9 and Condition 7 in section 10.
 - we set out requirements related to Participants' interests in Condition 8. We provide further guidance related to this condition in section 11.
- 8.2** In considering compliance with Condition 1.2(c), we expect to consider a broad range of evidence, which may include comparison of actual Good Causes Contributions against relevant forecasts or projections – including those submitted by the Licensee in its Application and provided under regulatory reporting requirements (see section 22) as well as any analysis conducted by us or third parties – and, where appropriate, against historical levels of Good Causes Contributions.
- 8.3** If Good Causes Contributions are materially lower than expected (on the basis of evidence such as that described in the paragraph above), we will seek to understand the underlying reasons for this and the extent to which the Licensee's own conduct is likely to have adversely affected Good Causes Contributions. We will also consider whether we may have reasonably expected the Licensee to act differently and achieve higher Good Causes Contributions, whilst still meeting its other obligations.
- 8.4** As stated in Condition 1.2(c), any assessment may consider payments to Good Causes under the Fourth Licence and potential payments under subsequent licences. When assessing whether this outcome has been achieved, we would therefore take into account any evidence regarding the potential impact of Licensee decisions or strategies (for example, with regard to the development of the National Lottery Brand) on Good Causes Contributions in the future, including under subsequent licences.
- 8.5** We cannot fully define the types of evidence and analysis we expect to consider in assessing compliance with Condition 1.2(c) in advance. For example, it may depend on a range of market developments over the Fourth Licence, including unforeseen aspects of Licensee operations and behaviour. In general terms, we may have regard to evidence related to any aspects of the Licensee's operation which have affected Good Causes Contributions or may affect future Good Causes Contributions. This may include factors affecting the volume of National Lottery sales (such as the Licensee's approach to developing and executing its Game portfolio, distribution channels and the National Lottery Brand).

9. Condition 5: Fitness and Propriety of the Licensee

9.1 The section provides guidance on factors and types of evidence we may have regard to in the context of compliance with Condition 5, specifically in relation to the treatment of Designated Lottery Subcontracts under Conditions 5.6 to 5.8.

9.2 Direction 8 of the Secretary of State Directions imposes requirements related to contracts:

8. The Commission shall exercise its functions under section 7 to include in the licence granted under section 5 of the Act or, as appropriate, in licences granted under section 6 of the Act, conditions which have the following effects:

a) that the Commission and persons authorised by the Commission will have the powers to inspect all forms of records relevant to Lottery contracts or operations held by–

i. any licensee; or

ii. any contractor of any such licensee who in the opinion of the Commission is a significant contractor.

b) that the Commission has the power to approve any party to a contract with any licensee where in the opinion of the Commission the contract is significant¹⁵

9.3 To comply with this Direction, Condition 5 defines the concept of a Designated Lottery Subcontract. This concept allows us to identify a subset of Lottery Subcontracts – either by designating individual Lottery Subcontracts or designating all Lottery Subcontracts within a category that we may specify – whereby the Licensee must provide us with 20 Business Days’ notice before entering into or amending such a Lottery Subcontract. Conditions 5.6 to 5.8 set out the relevant detail.

9.4 Our assessment of which Lottery Subcontracts are Designated Lottery Subcontracts will take into account the Licensee’s Business Plan and operations during the Fourth Licence. In particular, we will assess where Lottery Subcontracts could raise material risks to the operation of the National Lottery and the outcomes set out in Condition 1.2 of the Licence. When undertaking this assessment, and amongst other factors, we may have regard to the scale, nature and complexity of the Lottery Subcontract and whether the Required Standard Terms, as set out in Condition 21, are appropriate given these factors.

9.5 To provide an example, factors which we may consider in determining whether a Lottery Subcontract will be a Designated Lottery Subcontract could include:

- Whether the Lottery Subcontract may prove difficult to replace, for example in the event of contract failure, and whether this could have a material impact on the operation of the National Lottery, for example where there may be a limited pool of qualified suppliers, such as scratchcard or infrastructure providers;
- Whether the Lottery Subcontract involves the delivery of a Critical Function by a Lottery Subcontractor, for example the 4NL Trust, providers of annuity payments or other potentially life-changing Prizes, or the Independent Verification System; or

¹⁵ <https://www.gamblingcommission.gov.uk/PDF/NL-licences/National-Lottery-Directions.pdf>

- Whether the Lottery Subcontract may entail a high-profile reputational risk, for example media or advertising contracts.

9.6 We may specify that a Lottery Subcontract is a Designated Lottery Subcontract either before or after that Lottery Subcontract has been entered into. Once the Lottery Subcontract is specified as Designated, any subsequent amendments will be subject to Conditions 5.7 and 5.8 (noting that the requirements related to Contractors set out separately in Condition 21 of the Licence will, among others, continue to apply).

9.7 Per Condition 5.6(b), we may specify a category of Lottery Subcontracts that will always be specified as Designated Lottery Subcontracts. The Licensee should consider these categories, and the nature of other Designated Lottery Subcontracts, when entering into a new Lottery Subcontract.

10. Condition 7: Fitness and Propriety of Critical Function Employees

10.1 The section provides guidance on factors and types of evidence we may have regard to in the context of compliance with Condition 7.

10.2 Specifically, this section covers:

- general guidance on demonstrating compliance;
- examples of the types of evidence that we may consider relevant to Fit Proper Checks of Critical Function Employees, as specified in Condition 7.2.

General guidance on demonstrating compliance

10.3 At a general level, when considering compliance with Condition 7 we may have regard to the Licensee's organisational approach to ensuring that relevant persons meet the Fit and Proper Requirements, as well as how it evaluates its approach and implementation.

10.4 We may consider if and how the Licensee's approach has developed over time, including in response to:

- risks to the outcome set out in the overriding duty of Condition 7;
- evidence on its effectiveness; and
- legal, regulatory or technological developments.

10.5 In any assessment of compliance we will have regard to evidence of best practice on recruitment practices, including from any relevant government departments and agencies, standards bodies (for example the British Standards Institution) and professional bodies associated with human resources (for example the Chartered Institute of Personnel and Development).

Fit and Proper Checks of Critical Function Employees

10.6 Further considerations in relation to evidence that we may consider relevant to Fit Proper Checks of Critical Function Employees, as specified in Condition 7.2, include how the Licensee has assured itself on that person's identity, financial background and criminal record.

10.7 In respect of criminal convictions, we note that guidance is available from the UK Disclosure and Barring Service¹⁶.

¹⁶ <https://www.gov.uk/government/collections/dbs-eligibility-guidance>

11. Condition 8: Protecting Participants' Interests

11.1 This section provides guidance on the factors and types of evidence we may have regard to in the context of compliance with Condition 8.

11.2 Specifically, this section covers:

- general guidance on demonstrating compliance;
- illustrative examples of factors and types of evidence that we may consider relevant, in relation to Participant's interests specified in Condition 8.2, namely:
 - preventing play by persons under the Legal Age Limit;
 - not encouraging excessive play;
 - provision of adequate information about Games;
 - an adequate complaints and redress system;
 - payment of Prizes; and
 - protection and support for Prize winners.

General guidance on demonstrating compliance

11.3 At a general level, when considering compliance with Condition 8 we may have regard to the Licensee's organisational approach to protecting Participants' interests, including through developing a Participant Protection Strategy in accordance with Conditions 8.17 and 8.18, and supporting it with financial contributions (or equivalent measures) towards research, prevention and treatment of gambling-related harms in accordance with Condition 8.19. We will also consider how the Licensee evaluates its approach, and implementation of its Participant Protection Strategy.

11.4 Where the Licensee's Application included specific proposals in relation to the implementation of its Participant Protection Strategy, we may take account of any failure by the Licensee to implement those proposals in full, in assessing whether the Licensee has fulfilled the requirements of Condition 8.1. At the same time, we recognise that the Licensee's approach may reasonably change over time in order to meet the outcomes set out in the Licence.

11.5 Therefore, we may also consider if and how the Licensee's approach has developed over time, including in response to:

- a range of evidence on the effectiveness of its Participant Protection Strategy;
- market, legal, regulatory or technological developments relevant to the National Lottery; and
- relevant changes in circumstances that might affect the Licensee's ability to protect Participants' interests. These include changes in the Licensee's conduct (for example, changes in marketing strategy); and changes outside the control of the Licensee (for example, broader shifts in relevant consumer behaviour or legislation).

11.6 In any assessment of compliance we will have regard to relevant evidence from the research community, and evidence of Best Practice, including from lottery and

gambling operators in the UK and internationally, and as highlighted in relevant publications such as our National Strategy to Reduce Gambling Harms.

- 11.7** For the avoidance of doubt, when considering any evidence related to gambling harm, we will take into consideration the extent to which such harm appears to be linked to the National Lottery as opposed to other products or activities.
- 11.8** Further considerations in relation to specific elements of Participants' interests are set out below, including potential factors that we may have regard to in each case.

Preventing play by persons under the Legal Age Limit

- 11.9** In the context of assessing the Licence's compliance with Condition 8.3, we may have regard to factors such as the Licensee's approach in the following areas:
- providing any training and guidance to relevant third parties (including Retailers), and evaluating its effectiveness;
 - verifying the age of Participants, including any evidence on effectiveness and alignment with Best Practice;
 - assessing risks of play by persons under the Legal Age Limit and integrating these in relevant operational decision making, including in relation to customer interaction, Game design and research, marketing and advertising, and changes to the use of distribution channels;
 - responding to and addressing identified failings in the above areas; and
 - promoting awareness and education related to prevention of underage play, for example among parents.
- 11.10** Examples of relevant evidence on the extent and risks of play by persons under the Legal Age Limit may include, among other things:
- measures capturing incidents of underage play, reported or otherwise identified;
 - survey evidence, for example, our 2019 Young People Survey found that three percent of 11-15 year olds claim to have played National Lottery Games online using their parents' accounts with permission, and a further one percent without parental permission; and/or
 - results from any sample-based tests concerned with likely success of attempts by persons who are under the Legal Age Limit to play any Game.

Not encouraging excessive play

- 11.11** In the context of compliance with Condition 8.4, we may have regard to factors such as the Licensee's approach in the following areas:
- providing training and guidance to relevant third parties (including relevant Retailers), and evaluating its effectiveness;
 - assessing risks of excessive play and integrating these in relevant operational decision making, including in relation to customer interaction, Game design and research, marketing and advertising, and changes to the use of distribution channels;

- identifying potential cases of excessive play and/or Participants who are at risk of excessive play;
- providing information to Participants that may mitigate risks of excessive play. This may include arrangements for self-exclusion, and/or information about other support and tools; and
- responding to and addressing identified failings in the above areas.

11.12 Examples of relevant evidence on the extent and risks of excessive play could include, among other things:

- measures aimed at capturing the incidence of excessive play. For example, survey evidence we may collect. We will also have regard to the Licensee's own research on the percentage of National Lottery Participants who report or exhibit signs of excessive play;
- methods to identify specific instances of excessive play, or Participants who are at risk of excessive play. For example, findings from the use of algorithms to identify markers of harm;
- measures aimed at estimating the extent to which Retailers are taking steps to prevent excessive play based on observed Participant behaviour;
- measures related to specific Games or Game characteristics that help to assess the risk of encouraging excessive play (including through the use of appropriate tools, for example Asterig or GamGard);
- data on play patterns, spending patterns and distribution, including the percentage of Participants who meet or exceed specific spending or frequency of play thresholds; and
- survey evidence, for example concerning awareness and use of self-control tools.

11.13 We expect to have particular regard to those Games or Game types that we consider are more conducive to excessive play. For example, based on the current Game portfolio, we expect our consideration of risks of excessive play might include a greater emphasis on scratchcards and interactive instant win Games than on draw-based Games. Similarly, we may have particular regard to any specific socio-demographic groups that, based on relevant evidence, may be more vulnerable or susceptible to excessive play¹⁷.

¹⁷ While we do not seek to provide a prescriptive definition of Participants who may be more vulnerable or susceptible to excessive play, these are likely to include (but are not limited to):

- Vulnerable Participants, likely to include people who gamble more than they want to, people who gamble beyond their means and people who may not be able to make informed or balanced decisions about gambling due to, for example, mental health, a learning disability or substance abuse relating to alcohol or drugs. Vulnerability may be long-lasting or temporary.
- Problem gamblers, meaning gamblers who experience severe or serious levels of harm. Problem gambling occurs when someone gambles to a degree that compromises, disrupts or damages family, personal or recreational pursuits.
- Moderate risk gamblers, meaning gamblers who experience a moderate level of problems, leading to some negative consequences.

Provision of adequate information about Games

- 11.14** In assessing compliance with Condition 8.9 we expect to take into account that Participants may have an interest in accessing various types of information relating to the National Lottery. Examples may include information that allows people to:
- access and play National Lottery Games in accordance with applicable rules;
 - form an opinion on potential risks associated with playing National Lottery Games;
 - monitor or control their play;
 - understand the level of Prizes available and likelihood of winning;
 - check if they have won a Prize and how they should collect it; and
 - seek redress, including how to make complaints and access alternative dispute resolution, if required.
- 11.15** In the context of compliance with Condition 8.9, we may have regard to factors such as the Licensee's approach in the following areas:
- providing training and guidance to Retailers related to information about Games;
 - developing channels of information provision that align with Best Practice and satisfy Participant needs, including as Participant needs evolve;
 - receiving and handling of enquiries; and
 - addressing any observed or reported identified failings in the above areas.
- 11.16** Examples of relevant evidence on the extent and quality of information provision, as well as any relevant risks, could include:
- measures aimed at capturing the extent, accuracy and quality of any information made available at point of sale;
 - survey evidence measuring the extent of Participants' satisfaction with the accessibility and quality of information available at point of sale;
 - survey evidence measuring Participants' understanding of the information about Games and any barriers they experience in accessing this information; and
 - details of complaints from Participants in relation to information about Games.
- 11.17** The unavailability of information, or provision of inaccurate or incomplete information, may constitute non-compliance with Condition 8.9. When considering any such instances we will consider factors such as the materiality of any adverse impacts on specific Participants, as well as the breadth of impact in terms of the number of individuals affected¹⁸.
- 11.18** At the start of the Fourth Licence, we expect the Licensee to maintain a high degree of continuity with regard to information provided to Participants about

¹⁸ For reference, we publish details of Third Licence breaches due to the provision of inaccurate information (such as Prize outcomes) on our website, which provides examples of inaccuracies we have considered severe during the Third Licence Term. For the avoidance of doubt, any issues related to inaccurate information during the Fourth Licence is subject to the Fourth Licence conditions and to our Fourth Licence Regulatory Model.

Games that have been carried over from the Third Licence. Any wholesale one-off changes to information provision 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.

Provision of an adequate complaints and redress system

11.19 In the context of compliance with Conditions 8.10 and 8.11, we may have regard to factors such as the Licensee's approach in the following areas:

- receiving and handling of complaints;
- identifying and addressing any instances where the complaints have not been adequately addressed;
- aligning with relevant guidance and standards related to complaints and alternative dispute resolution as published by us, as well as any other relevant third-party guidance, Best Practice, or standards; and
- providing training and guidance to staff related to complaints and redress, and monitoring staff performance in this area.

11.20 Examples of relevant evidence on the extent to which complaints can be easily pursued and are quickly and openly resolved may include:

- measures aimed at capturing the speed, accuracy and quality of the process: for example, the length of time to reach resolution, and the volume of complaints being escalated to an independent dispute resolution mechanism before resolution;
- measures aimed at capturing any barriers to the effective resolution of complaints: for example, metrics detailing the length of time of any periods where complaints or redress online systems were unavailable, or not of a reasonable speed of access, and
- survey evidence of Participant satisfaction with the complaints process, including whether Participants have found it easy to pursue a complaint and reach resolution, and whether they have perceived the process as transparent.

Payment of Prizes

11.21 In the context of compliance with Condition 8.13, we may have regard to factors such as the Licensee's approach in the following areas:

- communicating Game results or outcomes;
- paying Prizes; and
- addressing any observed or reported identified failings in the above areas (including for example due to fraud).

11.22 Examples of relevant evidence on the speed and accuracy of the payment of Prizes and information about winning tickets, as well as any relevant risks, could include:

- measures aimed at capturing the extent, accuracy and quality of information made available to Prize winners and the speed and accuracy of payments to

Prize winners: for example, metrics capturing the number of payments found to be of an incorrect value and requiring compensation under Condition 8.12(c);

- survey evidence of Participant satisfaction with the ease of finding out whether they have won, and with the process for receiving payment where applicable;
- the numbers and total value of unclaimed Prizes; and
- details of any complaints from Participants related to the payment of Prizes or to finding out whether they have won.

Protection of and support for Prize winners

11.23 In the context of compliance with Conditions 8.14 to 8.16, we may have regard to factors such as the Licensee's approach in the following areas:

- determining which Prize winners are offered support and what degree and type of support is provided;
- identifying and addressing any instances where Prize winners may not have received adequate protection and support; and
- providing training and guidance to staff related to the protection and support of Prize winners.

11.24 Examples of relevant evidence on the extent and quality of the protection (for example, Prize winner anonymity) and support for Prize winners, as well as any relevant risks, could include, among other things, details of any complaints from Participants in relation to the protection and support of Prize winners.

12. Condition 9: Ensuring Access to the National Lottery

- 12.1** Condition 9 sets requirements related to maximising the appeal and reach of the National Lottery. However, the provisions of this Condition 9 are subject to Condition 8 on Protecting Participants' Interests, described in section 11 above. This section provides examples of the factors and types of evidence we may have regard to, in relation to compliance with Condition 9.
- 12.2** At a general level, when considering compliance with Condition 9 we may have regard to the Licensee's organisational approach to managing the network of Sales Outlets, as well as how the approach, and its implementation, is evaluated.
- 12.3** Where the Licensee's Application included proposals to launch certain distribution channels during the Term of the Fourth Licence, we may take account of any failure by the Licensee to implement those proposals in full in assessing whether the Licensee has fulfilled the requirements of Condition 9.1. At the same time, we recognise that the Licensee's approach may reasonably change over time in order to meet the outcomes set out in the Fourth Licence.
- 12.4** Therefore, we may also consider if and how the Licensee's approach has developed over time, including in response to:
- evidence on its effectiveness;
 - market, legal, regulatory or technological developments relevant to the National Lottery; and
 - relevant changes in circumstances that might affect the Licensee's approach, including any changes outside the control of the Licensee (for example, broader shifts in relevant consumer behaviour or legislation).
- 12.5** More specifically, we may have regard to factors such as the Licensee's approach in the following areas:
- monitoring and understanding relevant trends and opportunities in consumer behaviour, preferences and perceptions, for example through consumer surveys, analysis of data collected as part of operating the National Lottery, and consideration of wider third-party sources of information and analysis;
 - managing the network of Sales Outlets, including in response to trends and opportunities such as those discussed above, and any relevant wider trends, such as the emergence of new technologies and platforms across consumer sectors, or examples of innovation and best practice from other lotteries and the gambling sector internationally; and
 - encouraging Retailers to contribute to the aim of maximising the National Lottery's appeal and reach, for example by supplying a wide range of National Lottery products that are easily accessible to Participants.
- 12.6** We may have regard to evidence that captures the appeal and reach of the National Lottery (such as consumer survey evidence), as well as any evidence of the impact on National Lottery appeal and reach of any material changes made by the Licensee to the network of Sales Outlets, and any consequent impact on other areas, such as sales volumes and Good Causes Contributions.
- 12.7** We note that the overriding duty set out in Condition 9.1 is subject to restrictions on overseas access, as set out in Condition 9.4. We may have regard to the

robustness of the Licensee's approach to achieving the outcome set out in Condition 9.4.

12.8 We may also have regard to the Licensee's approach to managing and developing Physical Sales Locations, as well as other types of Sales Outlets. The Licensee has flexibility to determine the type and distribution of Physical Sales Locations and Sales Outlets it uses, subject to the Licence definition of these terms, to its Licence obligations (including Condition 9.2, which sets a specific requirement for availability of tickets at Physical Sales Locations) and to any other applicable restrictions such as those stated in the National Lottery Regulations 1994. We may also have regard to the Retailer Charter, which the Licensee is required to establish and operate under Condition 10.5.

13. Condition 11: Having an appealing but safe portfolio of Games

- 13.1** This section provides examples of the factors and types of evidence we may have regard to, in relation to compliance with Condition 11.
- 13.2** At a general level, when considering compliance with Condition 11 we may have regard to the Licensee's organisational approach to managing the portfolio of Games, as well as how the Licensee evaluates its approach, and implementation.
- 13.3** Where the Licensee's Application included proposals to launch certain Games during the Term of the Fourth Licence, we may take account of any failure by the Licensee to implement those proposals in full in assessing whether the Licensee has fulfilled the requirements of Condition 11.1. At the same time, we recognise that the Licensee's approach may reasonably change over time in order to meet the outcomes set out in the Fourth Licence.
- 13.4** Therefore, we may also consider if and how the Licensee's approach has developed over time, including in response to:
- evidence on its effectiveness;
 - market, legal, regulatory or technological developments relevant to the National Lottery; and
 - relevant changes in circumstances that might affect the Licensee's approach, including any changes outside the control of the Licensee (for example, broader shifts in relevant consumer behaviour or legislation).
- 13.5** More specifically, we may have regard to factors such as the Licensee's approach in the following areas:
- monitoring and understanding relevant trends and opportunities in consumer behaviour, preferences and perceptions, for example through consumer surveys, analysis of data collected as part of operating the National Lottery, and consideration of wider third-party sources of information and analysis.
 - developing and managing the Games portfolio, including in response to trends and opportunities such as those discussed above, and any relevant wider trends, such as the emergence of new technologies and platforms across consumer sectors, or examples of innovation and best practice from other lotteries and the gambling sector internationally.
- 13.6** We may have regard to evidence that captures the appeal and accessibility of the National Lottery (such as consumer survey evidence), as well as any evidence of the impact on National Lottery appeal and reach of any material changes made by the Licensee to the portfolio of Games, and any consequent impact on other areas, such as sales volumes and Good Causes Contributions.
- 13.7** In certain circumstances, the outcomes set out in Condition 11.1 and Condition 1.2(c) may be related, for example where low appeal or accessibility of the Games portfolio may have negatively affected Good Causes Contributions, or may negatively affect them in the future. See section 8 for further information.

14. Condition 13: The National Lottery Brand and reputation

14.1 This section provides examples of the factors and types of evidence we may have regard to in the context of compliance with Condition 13.

14.2 Specifically, this section covers:

- general guidance on demonstrating compliance; and
- guidance on the use of brand performance measures.

General guidance on demonstrating compliance

14.3 In considering compliance with this condition, we expect to have regard to specific brand performance measures, as set out below, as well as other relevant factors. Examples of such factors may include:

- the Licensee's conduct in response to any change in circumstances that may be outside of the control of the Licensee (for example, broader shifts in consumer perception, or changes in legislation, regulations or codes related to advertising);
- any changes in circumstances associated with the Licensee's conduct (for example, changes in its Brand Management Plan);
- the Licensee's approach to identifying and monitoring risks to the National Lottery Brand; and
- qualitative evidence of the effectiveness of marketing and advertising campaigns (for example, this evidence might capture issues related to specific demographics which may not be captured by brand performance measures at the aggregate level).

14.4 We recognise that brand measures may be subject to fluctuations, for example due to the timing of marketing campaigns. Therefore, in monitoring performance we will have regard to performance over longer periods as well as shorter periods. We would typically expect to have regard to the performance of the National Lottery over timeframes of at least six months when considering whether there is an indication of potential non-compliance with the conditions of the Fourth Licence, though we may have regard to shorter timeframes in the event of particularly significant or unusual changes in brand performance.

14.5 We expect to have regard to brand measures calculated at aggregate UK-wide level, as well as measures that capture brand performance across UK regions.

Use of brand performance measures

14.6 As part of our approach to monitoring brand health, we expect to consider evidence capturing the extent to which the National Lottery Brand is distinctive, instantly recognisable and associated with core values including:

- being a safe place to play and participate;
- operating with trustworthiness and integrity;
- generating positive sentiment among people;

- engendering diversity and inclusion;
- funding Good Causes;
- having a national profile; and
- offering life-changing Prizes.

- 14.7** In relation to the link between the National Lottery Brand and funding of Good Causes, and consistent with Condition 13.4, we will have regard to the Licensee’s approach to engaging, collaborating and sharing relevant information with key stakeholders such as Distributors and the National Lottery Promotions Unit (NLPU), who can contribute towards maintaining and strengthening this link.
- 14.8** The above core values inform the measures we will use to monitor the Licensee’s compliance with Condition 13.1 – indicative examples of which are listed in Table 1 below. We will finalise this list before the start of the Fourth Licence after considering proposed measures, and any indicative values, included in the Licensee’s Brand Management Plan.
- 14.9** As the use and value of the National Lottery Brand during the Fourth Licence Term will follow, and build upon, the use and value during the Third Licence, we will have regard to the brand health monitoring measures and associated methodology used during the term of the Third Licence, with a view to ensuring a degree of continuity where this is appropriate.

Table 1: Overview of indicative brand performance measures

Indicative brand measures	Indicative description
Brand awareness	Percentage of respondents who have heard of the National Lottery
Brand loyalty	Net Promoter Score, which measures the loyalty of the Licensee’s relationship with Participants
Good Causes	Percentage of respondents who agree the National Lottery supports Good Causes
Life changing	Percentage of respondents who agree the National Lottery changes lives
National profile	Percentage of respondents who agree the National Lottery has a national profile
Safety	Percentage of respondents who agree the National Lottery is a safe place to play
Sentiment	Percentage of respondents who feel positive about the National Lottery
Trustworthiness	Percentage of respondents who agree the National Lottery is trustworthy

Diversity and inclusion	Percentage of respondents who regard the National Lottery as inclusive and engaging with the full range of diverse communities in society
Unprompted brand recall	Percentage of respondents who can recall information about the National Lottery without being prompted

- 14.10** The Licensee will regularly report brand performance measures, as set out in our Assurance and Regulatory Reporting Requirements (see volume three).
- 14.11** We expect to review performance targets at the mid-point of the Fourth Licence in 2028. However, we may review and adjust targets at other times, if this is necessary in order to ensure these are aligned with the objective as set out in Condition 13.1.
- 14.12** We acknowledge brand performance measures are backward-looking. Therefore, we may still request additional information from the Licensee, including towards the end of the Fourth Licence, if we require further confidence it will meet its obligations under Condition 13 and related Condition 1.2(c).

15. Condition 17: Licensee and its operations to be Fit for Purpose

- 15.1** This section provides guidance related to the provisions and requirements set out in Condition 17, which concerns the Licensee and its operations being Fit for Purpose. Condition 17 specifies some of the ways in which the Licensee must do this, and we address each area of this Condition: Licensee Assets and Consumables; Technology Operation; and Independent Verification Systems.
- 15.2** At a general level, when considering compliance with Condition 17 we may have regard to the Licensee's organisational approach to ensuring that the operation of the National Lottery meets the Fit for Purpose Requirements (including through developing a Technology and Data Architecture Strategy and a Security Strategy, in accordance with Condition 17.5), as well as how it evaluates its approach and implementation.
- 15.3** Where the Licensee's Application included specific proposals in relation to the implementation of its Technology and Data Architecture Strategy and its Security Strategy, as well as its operating model in general, we may take account of any failure by the Licensee to implement those proposals in full, in assessing whether the Licensee has fulfilled the requirements of Condition 17.1. At the same time, we recognise that the Licensee's approach may reasonably change over time in order to meet the outcomes set out in the Licence.
- 15.4** Therefore, we may also consider if and how the Licensee's approach has developed over time, including in response to:
- a range of evidence on the effectiveness of its operating model, Technology and Data Architecture Strategy and Security Strategy;
 - market, legal, regulatory or technological developments relevant to the operation of the National Lottery; and
 - relevant changes in circumstances that might affect the Licensee's ability to ensure that the National Lottery operation is Fit for Purpose.
- 15.5** In any assessment of compliance we will have regard to evidence of Best Practice related to technology operations and their security, and on independent verification systems, including from any relevant government departments and agencies, and standards bodies (for example ISO – International Standards Organisation, WLA – World Lottery Association, PCI Security Standards Council).
- 15.6** As with other areas of Licensee compliance, we will have regard to information received through Licensee assurance and reporting when monitoring and assessing compliance risk. In particular, the performance standards report (see Assurance and Regulatory Reporting requirements, Table 3) is expected to cover a range of operational and technology metrics, including with respect to the Independent Verification System (IVS).
- 15.7** In relation to compliance with Condition 17.2 (Licensee Assets), we expect to consider the ongoing condition of Licensee Assets and maintenance arrangements

in support of the (good) condition of assets. At all times, we require Licensee Assets to be in good condition, and that suitable and appropriate security and support is maintained in respect of Licensee Assets and Lottery Data.

- 15.8** The Condition also requires the Licensee to ensure, where Lottery Assets are Consumables, there are sufficient levels of stock to support Fit for Purpose operation. To facilitate continuity, Lottery Assets - other than Consumables - are required to have a “minimum life” of 2 years beyond the Term of the Fourth Licence.
- 15.9** The Technology Operation will be key to a Fit for Purpose operation, and we would expect to consider a broad range of information and evidence related to compliance with Conditions 17.4 to 17.6. For example, in respect of factors listed in 17.4(a), and other provisions in Condition 17, where the Licensee must do everything it can to ensure that the Technology Operation has the necessary capacity, performance, availability, scalability, resilience.
- 15.10** Our approach to assessing compliance with respect to Condition 17.7, regarding the IVS, will be informed by the Licensee’s approach in its establishment, maintenance and operation of the IVS, but also by the information and deliverables from the IVS. While the precise nature of reports, data and other information required from the IVS will be determined and agreed during Implementation prior to the start of the Fourth Licence (and contained in the performance standards report), we expect the IVS to have the necessary ability to perform end-of-day auto balancing between gaming systems (and IVS).

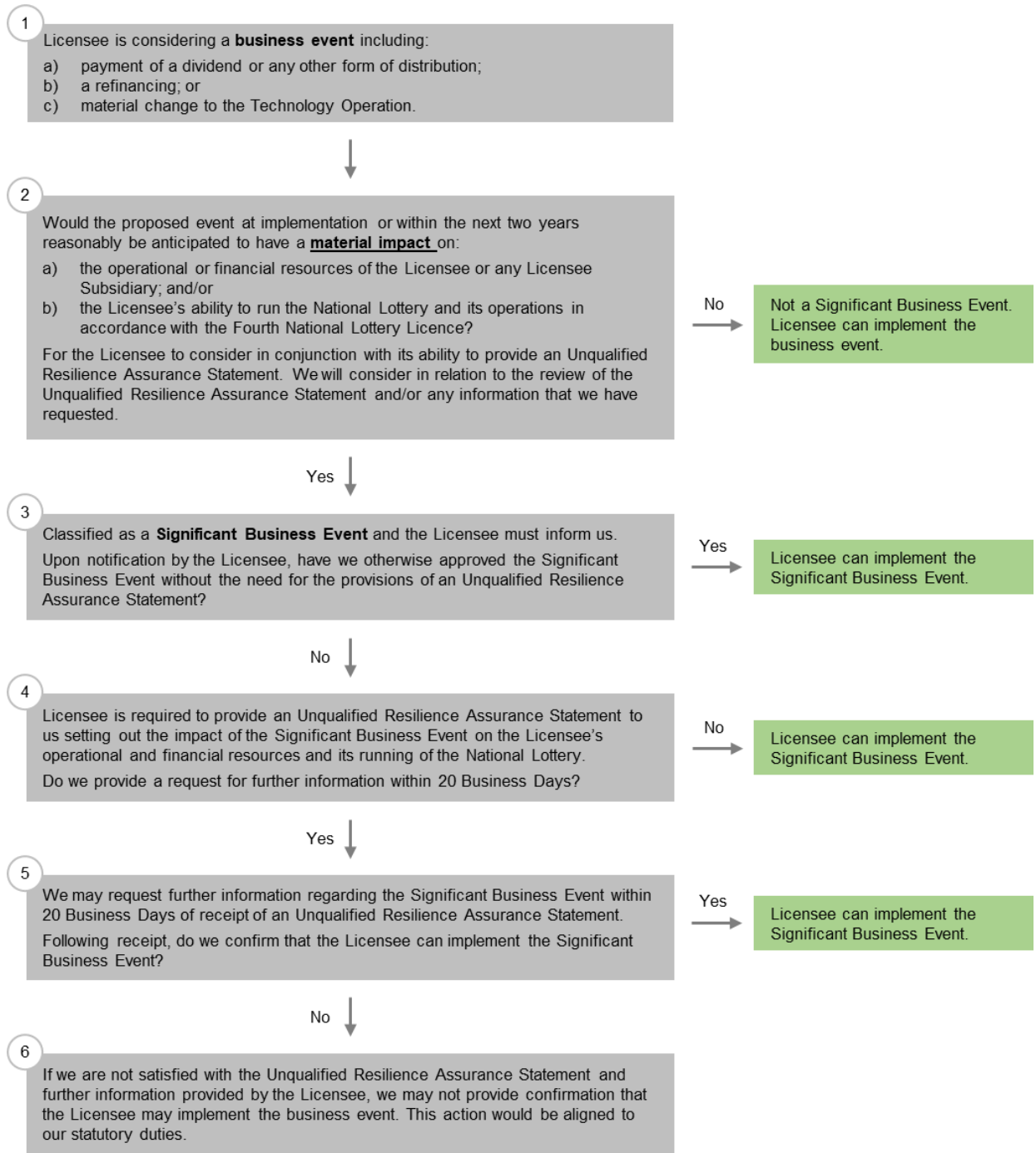
16. Condition 18: Financial and Operational Resilience

- 16.1** This section provides guidance related to Condition 18, specifically with regard to:
- Conditions 18.6 to 18.8 relating to Significant Business Events; and
 - Condition 18.20 relating to a change in Gambling Law or Fundamental Geographic Scope Change.
- 16.2** Note that additional guidance related to Resilience Assurance Statements is provided separately in section 21.

Significant Business Events

- 16.3** Significant Business Events are defined in Condition 18.6 and may arise in relation to dividend payment, refinancing or changes to the Technology Operation, among other things. The definition of Significant Business Events, which is subject to a materiality threshold, means that it is unlikely to capture decisions made as part of the ordinary course of business. For example, a decision to approve a dividend payment may not necessarily constitute a Significant Business Event; this would depend on whether it could reasonably be expected to have a material impact on the National Lottery, the Licensee or a Licensee Subsidiary, as per Conditions 18.6(a) and (b).
- 16.4** Conditions 18.6 to 18.8 enable us to intervene if we conclude that a Significant Business Event will cause material damage to, or risk of material damage to, the operation of the National Lottery in compliance with the Fourth Licence. The requirement for information, provided as part of the Unqualified Resilience Assurance Statement and any additional information we may request, is to enable us to make that assessment.
- 16.5** The intent is not to prevent the Licensee from undertaking business events as part of the ordinary course of business. In all cases we are required to act reasonably in accordance with our public law duties – this means that we would need to have a good reason to seek further information from the Licensee.
- 16.6** Figure 2 below illustrates how Conditions 18.6 to 18.8 would be applied under the Fourth National Lottery Licence.

Figure 2: Significant Business Event process diagram



Change in Gambling Law or Fundamental Geographic Scope Change

16.7 When considering whether to use our powers to vary, add or remove Licence conditions under Section 8 of the Act, our statutory duties and the principles of public law will apply with respect to any decision we make in relation to whether those powers should be used at all, and if so, how they might appropriately be used.

16.8 Without limiting our ability to use those Section 8 powers more generally, we anticipate that it may be appropriate to consider exercising those powers (whether at the request of the Licensee or otherwise) if there is a change in Gambling Law or

a Fundamental Geographic Scope Change which in either case results, or is reasonably likely to result, in a Material Impact on Profitability.

- 16.9** If the Licensee wishes to ask us to consider exercising our powers under Section 8 of the Act in accordance with Condition 18.20 of the Licence, we will expect the Licensee to provide, within 12 months of the relevant change, evidence which satisfies us that the change has resulted, or is reasonably likely to result, in a Material Impact on Profitability, even if the Licensee does, or has done, everything it can to avoid that outcome.
- 16.10** If we are considering exercising our powers under Section 8 of the Act because of a change which has resulted, or is reasonably likely to result, in a Material Impact on Profitability, we would expect to do so on the basis of evidence which satisfies us that such Material Impact on Profitability has taken place or will take place.
- 16.11** As set out in Conditions 2.4 to 2.6, there are certain Licence conditions and definitions that, in accordance with Section 8(3)(b) of the Act, we can only vary with the consent of the Licensee. As per Condition 2.6, this includes Schedule 5 and Appendix 1 to Schedule 5. However, in a limited set of circumstances (a Change of Gambling Law or a Fundamental Geographic Scope Change) that result, or may result, in a positive Material Impact on Profitability, we may vary Schedule 5 and Appendix 1 to Schedule 5 without the consent of the Licensee, if so required in connection with Condition 18.20.
- 16.12** If we vary the Licence under Section 8 of the Act, including in the circumstances outlined in Condition 2.7, we must do so in accordance with our statutory duties and in line with public law principles.

17. Condition 27: Exit

17.1 Condition 27 includes requirements for the Licensee to prepare and maintain an Exit Plan and enter into an Exit Cooperation Agreement, which support the overriding duty set out in Conditions 27.1 to 27.5. These aspects are the focus of this section, which provides further guidance on our expectation of the:

- Exit Cooperation Agreement; and
- Exit Plan.

Exit Cooperation Agreement

17.2 The purpose of the Exit Cooperation Agreement is to ensure the continuity and orderly handover of the National Lottery, including the provision of supplies and services, the operation of any transferring assets, and the orderly management and discharge of obligations and disputes connected with the operation of the National Lottery. It will ensure that the National Lottery can continue with minimum disruption and inconvenience to the public when transitioning from one Licence period to the next and that the Licensee cooperates with us, our representatives, the Next Licensee and any third parties in connection with the transfer of the National Lottery operation.

17.3 As part of the Next Competition, the Exit Cooperation Agreement will be entered into between ourselves, the Licensee and the successful applicant for the Fifth Licence. The Fourth Licence does not specify the form or content of the Exit Cooperation Agreement, but we expect to develop it using the Third to Fourth Licence Cooperation Agreement as a reference point, including any lessons learned from the handover of the National Lottery operation to the Licensee at the start of the Fourth Licence, and where relevant, incorporating the wider obligations and requirements set out in the Fourth Licence.

17.4 We will draft the Exit Cooperation Agreement. Its development will take place before the start of the Next Competition in consultation with the Licensee, with the expectation that the first draft will be shared during the early phase of the Next Competition. The Exit Cooperation Agreement will come into effect from the start of the transition (following the announcement of the award of the Fifth Licence to the successful applicant and prior to the start of the Fifth Licence), and will define each party's commitment to cooperation and support throughout the transition period, as well as describing the mechanics for cooperation, to ensure a seamless and smooth transfer to the Fifth Licence.

17.5 In line with Condition 27.24 we expect that the arrangements specified in the Exit Cooperation Agreement will include:

- transition management arrangements, including to ensure alignment of the Outgoing Licensee Exit Plan with the Incoming Licensee Transition Plan to ensure the smooth implementation of the elements of those plans requiring cooperation. This alignment will include the governance and reporting arrangements in place to support delivery of the plans and alignment of transition timelines;
- arrangements for the orderly transfer of selected items to the Next Licensee including any assets, asset inventories, subcontracts, operations, support and services the Next Licensee may require to be transferred. It will also include the

arrangements for undertaking an asset survey to determine whether assets have been maintained in accordance with Condition 17 or whether rectification or maintenance is required, and provisions for removing and disposing of any unwanted assets.

- arrangements to address any Continuing Obligations¹⁹ and On-going Disputes. For On-going Disputes this will include ensuring the provision of information, access to personnel, reasonable assistance and the provision of an indemnity (see Condition 27.13) associated with the handling of such disputes;
- arrangements to ensure the Licensee will, where appropriate, identify, scope and provide support (including documentation, training and knowledge transfer) and services for the transfer of the National Lottery operation to the Next Licensee, having due regard to the successful applicant's Transition Plan to be implemented by the commencement of the Fifth Licence;
- financial arrangements between the Licensee and the Next Licensee including financial settlement and reconciliation, the transfer of funds from and to Trusts which exist for the protection of Participant funds, and the apportionment of revenue, costs and liabilities;
- arrangements relating to the conduct and behaviours expected from all parties during the transition period to ensure an effective transfer is achieved; and
- provisions for issue management, setting out remedies and consequences if there is evidence of frustration, dispute or non-compliance with the Agreement or which materially harms or delays the Next Licensee's ability to deliver and implement its Transition Plan.

Exit Plan

- 17.6** Condition 27.28 sets out the requirement for the Licensee to maintain an Exit Plan at all times during the Licence Term, consistent with the delivery of the overriding duty set out in Condition 27.1. The Exit Plan must cover the following Exit scenarios: (1) the expiry of the Licence; and (2) the revocation of the Licence.
- 17.7** Consistent with Condition 27.30, we expect that a Senior Executive or Lottery Supervisor is assigned as an Exit Manager, and has responsibility for maintaining and continuously improving the Exit Plan throughout the term of the Licence and for three months after the Expiry Date.
- 17.8** In accordance with Condition 27.28, in terms of the sequencing of Exit Plan development over the Licence Term, we expect that:
- the Exit Plan at the start of the Licence Term will be the Plan submitted as part of the Fourth National Lottery Licence Competition;
 - consistent with Condition 27.30(a), this should be updated and resubmitted to us within six months of the Start Date of the Fourth Licence (or if the Start Date is later, resubmitted promptly following confirmation of Fully Implemented Commencement), to take account of lessons learned during transition;
 - thereafter, we expect the Licensee to update the Exit Plan as relevant on an annual basis to capture changing market and operational conditions. The latest

¹⁹ For example, these might include outstanding prize claims or unclaimed prizes.

version is to be provided to us at least annually, consistent with Table 33 of Assurance and Regulatory Reporting Requirements (volume three);

- in the fifth year of the Term (in support of the Next Competition programme) a full review of the Exit Plan will be undertaken; and
- after the award of the Fifth Licence, within a timeframe to be specified by us, the Exit Plan should be updated considering the successful applicant's approach and plan to transition into the Fifth Licence. This should include alignment with the Exit Cooperation Agreement and the Next Licensee's transition plan as and when required.

17.9 In terms of content, we expect the Exit Plan to:

- have version control, with material changes identified and a clear audit trail of revisions and their rationale;
- include change control mechanisms to capture any significant or material change that affects the delivery of the National Lottery operation. This could include, but is not limited to, changes related to the Technology Operation, use of Lottery Subcontractors and corporate ownership/management;
- include details of the provision of Lottery Information, access to Licensee Assets and support and cooperation which may include, but not be limited to, training and know-how, instructional materials and the provision of licenses to enable the Next Licensee (or its contractors) to use such materials;
- describe the approach to Exit costs to ensure the approach is consistent with Condition 27.2. It should also describe the approach to apportionment of costs where these might apply;
- include complete and accurate records, and define the approach to maintaining records and registers which are required to inform and support the Next Competition and the transfer to the Next Licence, including, but not limited to:
 - documentation held within the Lottery Records Database (Condition 23.6) relating to Lottery Assets, including asset condition, maintenance approach, ownership, control and/or possession and how they would pass to the Next Licensee if required; and
 - the Lottery IP register (Condition 19.7), including the transfer of any and all rights and ownerships.
- describe the process for facilitating transfer or novation of Lottery Subcontracts, transfer of Licensee Assets, including Lottery Data, Lottery IP and the removal and disposal of unwanted assets from the National Lottery estate, ensuring risks are managed and assurance provided; and
- set out the approach to end of Licence financial reconciliation and the process for transferring any Continuing Obligations to the Next Licensee.

17.10 In terms of the substance of our assessment of the Exit Plan and its compliance with the requirements of Condition 27, we expect that the relevant factors and considerations will include:

- the appropriateness and adequacy of the Licensee's risk management policies, processes and procedures in relation to Exit, and the effectiveness with which it has applied these;

- the accuracy of relevant records and registers kept in accordance with Conditions 23.4 to 23.7 and Condition 19.7, and the robustness of procedures to maintain and update these;
- the approach to ensuring mechanisms are in place to support a transfer of Licensee Assets (with a particular focus on those assets and/or contract transfers which are critical to the delivery and ongoing operation of the National Lottery), including ensuring the use of data and entitlement to transfer data, and removal and disposal of unwanted assets;
- the proposed support services available including access to relevant systems, training and know-how to be made available; and
- the approach to ensuring that the running and operation of the National Lottery will be protected up to and including the end of the Term.

18. Condition 28: Outstanding Liability Fund

- 18.1** Condition 28 requires the Licensee to establish and operate an Outstanding Liability Fund. This is to ensure that there are sufficient funds available to meet any fines and penalties - payable by the Licensee - which fall due after the End Date.
- 18.2** The Condition sets out requirements on the Licensee in respect of the timescales for development, establishment and operation, and the amounts to be paid into the Outstanding Liability Fund. In summary:
- the Licensee is required to propose a financial commitment mechanism that will provide protection (for example via escrow, or similarly ringfenced or secured capital) to cover these liabilities to our satisfaction by the start of Licence Year 6;
 - the Licensee is only required to establish the Outstanding Liability Fund from the start of Year 7 of the Licence and until the second anniversary of the End Date (in a form and substance approved by us). Payments will be made to the Outstanding Liability Fund from the first month of Licence Year 7 until the final month of Licence Year 10; and
 - in accordance with Condition 28.1, the Outstanding Liability Fund, proposed by the Licensee, must be in 'cash form' to cover the value of £10m.
- 18.3** Conditions 28.7 and 28.8 enable us to adjust the amount to be paid into the Outstanding Liability Fund to a greater sum (not exceeding £20m). This decision will be made by us no later than the beginning of Licence Year 7. Condition 28.8 allows us to further review the amount paid into the Outstanding Liability Fund, to be concluded – and the Licensee notified – no later than the end of Licence Year 9.
- 18.4** Our approach to compliance with this Condition will consider whether the Licensee's obligations are met in respect of the establishment and operation of an Outstanding Liability Fund.
- 18.5** In terms of Conditions 28.7 and 28.8 (regarding any increase in the amount to be paid into the Outstanding Liability Fund), our approach will be informed by the Licensee's conduct and any fines and penalties that have been levied on the Licensee. Where applicable, the fines and penalties may inform our consideration of any increase of the amount to be paid into the Outstanding Liability Fund (and its quantum).
- 18.6** We will also consider the Licensee's broader conduct relative to requirements specified in Condition 1, and the nature of any breaches of the Licence by the Licensee. This will include consideration of the absolute obligations under the Licence, where the Licensee must do (or refrain from doing) a thing or must ensure an outcome, and other obligations, where the Licensee must do everything it can to ensure a specified outcome is achieved.
- 18.7** In assessing whether to increase the amount, we may also take account of the Conditions under which fines and penalties may have been incurred. For example, Condition 10 specifies certain Matters to be Protected, and these correspond with key Conditions in the Licence on Protecting Participants' Interests (Condition 8), and

ensuring the National Lottery is operated with integrity (Condition 5, Fitness and Propriety of the Licensee).

19. Schedule 5: Good Causes Contribution

- 19.1** Schedule 5 of the Fourth Licence (the Incentive Mechanism) sets out the calculations that define the payments the Licensee will need to make to Good Causes, via the National Lottery Distribution Fund (NLDF). This is consistent with the related obligation set out in Fourth Licence Condition 15.
- 19.2** The calculation of payments to the NLDF is determined, in part, by revenue and cost figures reported by the Licensee. For certain aspects of the calculations we have a role in making determinations of values that may affect the calculation of payments to Good Causes. This section provides further guidance on:
- Lottery Duty and VAT adjustment;
 - treatment of income and costs from Related Party Arrangements; and
 - Wasteful Costs.

Lottery Duty and VAT adjustment

- 19.3** Schedule 5 of the Fourth Licence includes provision for adjustments to address potential changes in Lottery Duty and/or potential changes in VAT arrangements during the Fourth Licence. The adjustments are intended to ensure appropriate and accurate calculation of the Good Causes Contribution, and to mitigate the impacts on the Licensee's cost base from potential changes in Lottery Duty and/or changes in VAT arrangements.
- 19.4** The effect of any proposed adjustment will be demonstrated by the Licensee having applied the relevant formula and definitions as set out in the Fourth Licence. The Licensee is required, as part of its Estimation Methodology, to include in its estimates the impact of the Payment Adjustment.
- 19.5** The Reconciliation process, as set out in Schedule 5, Part C, will take into account any Lottery Duty and/or VAT adjustment(s) put forward by the Licensee.

Treatment of income and costs from Related Party Arrangements

- 19.6** Schedule 5, Part C sets out the treatment of Related Party income and costs. The broad approach to the treatment of Related Party Arrangements for the purposes of the Fourth Licence is as follows:
- the Licensee is required to report on Related Party Revenue and Related Party Costs in line with the Fourth Licence definitions and any further necessary clarifications in our Assurance and Regulatory Reporting Requirements (see volume three);
 - we acknowledge it is possible the revenues and costs associated with Related Party Arrangements reported by the Licensee for the purposes of the Fourth Licence are different to those reported, or applied, in its statutory accounts (for example, definitions used for the purposes of the Fourth Licence may diverge from those used in preparing statutory accounts);
 - we require the Licensee to provide sufficient information to demonstrate the revenues and costs reported for Related Party Arrangements provide Good Value for Good Causes, as set out in our Assurance and Regulatory Reporting

Requirements (see volume three). We expect the Licensee to consider its ability to demonstrate this when entering into a Related Party Arrangement and considering alternatives such as contracting with an independent third party or in house provision; and

- if we are not satisfied the Licensee has demonstrated the requirements on Good Value for Good Causes, we may substitute our own determination of values (representing Good Value for Good Causes) an adjustment to apply to the Related Party revenues or costs used in the calculation of the liability to the NLDF for a particular Licence year, as set out in Schedule 5, Part C of the Fourth Licence.

19.7 We provide below a high-level indication of some of the factors we anticipate will be relevant in assessing whether Related Party Arrangements provide Good Value for Good Causes, and that the Licensee would be required to provide to us. For example, this may include:

- market prices for other products or services;
- evidence on prices offered as part of competitive tender exercises for similar types of arrangement;
- information on the costs incurred by a Related Party; and/or
- information on the costs incurred by the Licensee.

19.8 Where the Licensee intends to support its submissions with information on costs incurred, we also expect to see information on any profit or margin (to the Related Party) in excess of the costs incurred.

19.9 As a default approach, we expect to make an assessment of Related Party Arrangements after the Licensee reports its relevant costs and revenues to us, as per our Assurance and Regulatory Reporting Requirements (see volume three), through the Reconciliation process set out in Schedule 5, Part C of the Fourth Licence.

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Wasteful Costs

19.10 Schedule 5, Part C sets out the treatment of Wasteful Costs. It is conceivable that, despite the financial incentives for efficiency in respect of its cost and operations, the Licensee could still incur wasteful expenditure. In this context, there is a residual risk that any Wasteful Costs incurred by the Licensee act to the detriment of Good Causes. We address this risk through the calculations which implement the Incentive Mechanism and determine the Licensee's liability to Good Causes.

19.11 Table 3 in Appendix 1 to Schedule 5 of the Fourth Licence defines Wasteful Costs and specifies they are Excluded Costs; these are costs excluded from the calculation of the Surplus. As such, these costs are borne by the Licensee and not shared with Good Causes. We provide some high-level guidance on how we expect to approach such a determination below.

19.12 Our default position is that we presume costs incurred by the Licensee, which are not excluded costs, are efficient (and reasonable to share with Good Causes), unless and until we determine they are Wasteful Costs according to the definition given in the Fourth Licence.

19.13 For the avoidance of doubt, Wasteful Costs could include costs incurred in relation to activities carried out by the Licensee directly, as well as amounts paid to Lottery Subcontractors. We note that other requirements in the Fourth Licence should also serve to mitigate the risk of incurring Wasteful Costs, for example Condition 21.4 which requires the Licensee to follow Best Practice in relation to certain aspects of subcontracting.

19.14 In terms of the substance of our assessment of Wasteful Costs, we provide an indication of the approach and factors that we anticipate will be relevant:

- we would not expect a well-run and efficient Licensee of the National Lottery to incur Wasteful Costs (as defined in Appendix 1 to Schedule 5). We intend the Fourth Licence measures around Wasteful Costs to act as a safeguard, not something we expect to be used routinely.
- our assessment of Wasteful Costs will likely involve examination of specific costs, or specific categories of costs, to identify where waste may have occurred.
- we expect to take account of the view that even a well-run and reasonably efficient company may, from time to time, incur costs that might be considered wasteful, but that such companies would have arrangements in place to limit the materiality and incidence of any such instances.
- we expect our assessment to take account of both the extent to which we might consider specific costs incurred by the Licensee to be wasteful in their own right, and of the Licensee's governance arrangements, internal processes and decision-making for any costs we suspect of being wasteful.
- as set out in Appendix 1 to Schedule 5 of the Fourth Licence, Wasteful Costs are those costs which we are satisfied would not have been incurred by the Licensee if it had acted as a reasonably efficient operator on the basis of information reasonably available at the time the cost was incurred. As such, this does not extend to costs that can only be perceived as inefficient or wasteful with the benefit of hindsight.
- we recognise there will tend to be uncertainty about the success of activities such as marketing and research and development, and we do not seek to penalise the Licensee for initiatives reasonably expected to be worthwhile at the time they were carried out.

19.15 In determining whether Licensee costs are Wasteful Costs, we provide an indication of the approach and factors that we anticipate may be relevant in our assessment:

- it is at our discretion, as part of the Reconciliation set out in Schedule 5, whether we undertake an assessment to determine whether any Licensee costs are Wasteful Costs.
- any assessment we make about Wasteful Costs will involve a review of information on costs reported by the Licensee as part of the Assurance and Regulatory Reporting Requirements and requests for further information from the Licensee.
- if required, our assessment of Wasteful Costs may involve other evidence, potentially including evidence from external experts.
- the Licensee will have an opportunity to provide assurance information in relation to whether certain costs are Wasteful Costs.

- we will first undertake an initial stage where we first consider whether it could be proportionate for us to investigate the Wasteful Costs in question. We will only proceed with an investigation if we conclude it is proportionate for us to do so.
- we will endeavour to notify the Licensee (and potentially other stakeholders) in advance that we are considering making a determination that the Licensee has incurred Wasteful Costs as part of the reconciliation process. This process will be carried out in line with our Corporate Governance Framework and decision-making responsibilities for the Fourth Licence.
- we will publish a decision, redacted as necessary, on any determination of Wasteful Costs which includes our reasoning. Apart from notifying the Licensee of the incidence and scale of any Wasteful Costs, the publication will also provide information to help the Licensee, and potential future Licensees, better understand our approach to considering Wasteful Costs within the context of the calculations in Schedule 5, Part B.
- we envisage that any determination on Wasteful Costs would be undertaken as part of, and within the timeframes set out in, the reconciliation process in Schedule 5, Part C of the Fourth Licence. However, there may be instances where we will require additional time to investigate and make a reasoned decision on any Wasteful Costs. We may therefore have to notify the Licensee in a financial year subsequent to that in which the relevant costs are incurred. Given the biannual cost expenditure reporting requirements, we envisage that this would be in exceptional circumstances only, however this is dependent upon events in the course of the Fourth Licence period. For the purposes of the calculation required under Schedule 5, Part A, the effect is to change the Licensee's liability to good causes in respect of a previous financial year. This will, in turn, affect the Licensee's annual reconciliation calculations and may require an adjustment to the Actual Annual Amount for a prior Licence Year, as set out in Schedule 5, Part C, 5.14.
- in estimating its weekly payments to good causes, and in carrying out its annual reconciliation of payments made to good causes, the Licensee will take appropriate account of any notification from us about of Wasteful Costs.
- we will endeavour to avoid any undue delays in the process of our assessment.

Volume three: Assurance and Regulatory Reporting Requirements

20. Assurance and Regulatory Reporting Requirements context

- 20.1** During the Fourth Licence, we expect the Licensee to demonstrate that it has appropriate risk management processes in place to protect the delivery of the outcomes in the Fourth Licence. This volume provides guidance on how we expect the Licensee to demonstrate this. Our reporting requirements set out where we require timely access to key data, which we need to effectively regulate the National Lottery. We will use Licensee assurance and reporting information to monitor compliance risk. We provide an overview of how this volume interacts with the other volumes of this Regulatory Handbook and our wider Regulatory Model in section 2 of this document.
- 20.2** Under the Fourth Licence the Licensee must provide us with information and assurance (Condition 23). Further, there are certain conditions of the Fourth Licence which require specific reporting or assurance to be provided by the Licensee. This volume contains information on the assurance and reporting requirements that the Licensee is subject to, including in relation to:
- our approach to Assurance Statements;
 - the types of information we require from the Licensee (including, where applicable, raw data, results of data analysis or research, and other factual information about the Licensee's operations);
 - the level of content for each of these; and
 - the frequency at which each of these is to be provided.
- 20.3** These requirements are intended to ensure we have timely access to information that is necessary in order to fulfil our role and duties as a regulator. In addition to these requirements, we retain the right to request additional information not set out in this volume, under Condition 23.12. We will use this right appropriately in a proportionate and risk-based manner, including in response to compliance risks or issues.
- 20.4** We note that toolsets supporting management information and business intelligence have evolved considerably over the last ten years, through advances in information technology. We expect the Licensee to harness these positive developments and implement a general reporting solution (distinct from their operational systems) where it will place the Lottery Information it is required to provide and keep up to date on a monthly basis. This solution is referred to within Licence Condition 23.6 as the Lottery Records Database.
- 20.5** We can then access and review this information, consistent with Condition 23.7, to carry out our regulatory role and duties, considering a range of information formats, including:
- Licensee prepared summary reports for our review;
 - raw data in tabular format which we can analyse and manipulate ourselves; and
 - registers of information and supporting documents in relation to National Lottery operations which we may want to confirm as being available to us and being up to date.

20.6 We expect the Lottery Records Database to reduce the cost involved in providing information to us on an ongoing basis and significantly increase the flexibility offered.

20.7 The rest of volume three is structured as follows:

- section 21 outlines our assurance approach, including the requirements for an Annual Assurance Statement and Ad Hoc Assurance Statements; and
- section 22 outlines our reporting requirements, split thematically with reference to areas of the Fourth Licence. The reports vary by frequency and scope.

21. Assurance requirements

- 21.1** Our assurance requirements reflect that we expect the Licensee to take ownership of its decisions, including being able to demonstrate it has followed appropriate processes to consider and mitigate compliance risks. In this section we provide high-level guidance to complement the relevant Fourth Licence conditions that describe assurance requirements.
- 21.2** We expect the Licensee to use assurance statements to demonstrate to us it has appropriate processes, systems and governance arrangements in place to mitigate risks of compliance. Assurance statements may include evidence from policies and procedures developed by the Licensee to support the delivery of outcomes.
- 21.3** We expect the Licensee’s approach to be proportionate, including based on the degree of compliance risk identified in different areas of its operations. We expect this to be reflected in the level of detail provided in the Assurance Statement across different areas.
- 21.4** The Licensee must produce an Annual Assurance Statement as set out under Condition 23.17 and 23.18 of the Fourth Licence, and an annual Resilience Assurance Statement as per Condition 18.5, as well as Assurance Statements in other certain circumstances. The Annual Assurance Statement addresses compliance across all areas of the Licence for the previous Licence Year, whereas the annual Resilience Assurance Statement focuses on “forward looking” compliance over a period of 2 years from the date of the statement, on the financial and operational resilience aspects of the Licence.
- 21.5** Following receipt of Assurance Statements, we will:
- review the adequacy of the statements both in terms of clarity, and in relation to any supporting information available;
 - adopt a risk-based approach by considering, for example, the materiality of any potential compliance risks, and evidence of appropriate processes to mitigate those risks; and
 - depending on the above, seek any further clarification or information from the Licensee. Where necessary we will consider escalation to other enforcement tools.
- 21.6** In this section we cover guidance on:
- the Annual Assurance Statement requirement;
 - an Ad-hoc Assurance Statement;
 - a Resilience Assurance Statement (annual); and
 - a Resilience Assurance Statement in the event of a Significant Business Event.

Annual Assurance Statement guidance

- 21.7** The requirement for an Annual Assurance Statement is set out in Conditions 23.17 and 23.18. A key feature of the Annual Assurance Statement is confirmation that the Licensee has completed the Compliance and Risk Management Audit, which is set out in Conditions 23.13 to 23.16.

- 21.8** We expect the Licensee to include a sufficient level of supporting information in the Annual Assurance Statement to demonstrate it has appropriate risk identification, mitigation and management processes in place (and that these processes are appropriately enacted). We will then assess whether the level of assurance information is adequate across different business areas. Within our assessment we will also consider and review Licensee performance standards (see Regulatory Reporting Requirements, Table 3).
- 21.9** Consistent with the requirements set out in Condition 23.18, we expect the Annual Assurance Statement to demonstrate that the Licensee:
- has an accurate understanding of its Fourth Licence obligations;
 - has complied with the Fourth Licence or, where the Licensee has identified any breaches of the Licence, has taken steps to address any matters giving rise to any breach²⁰;
 - has appropriate systems and processes in place to allow it to identify, manage and review its risks;
 - has taken or will take remedial steps to manage and/or mitigate any material risks identified, in a manner that is proportionate to the relevant risks; and
 - has satisfied itself it has sufficient and adequate processes and internal systems of control in place to continue to meet its obligations in full.

Ad Hoc Assurance Statement guidance

- 21.10** We may require the Licensee to submit an Ad Hoc Assurance Statement (see Condition 23.19) outside of the Annual Assurance Statement timelines at certain times. For example, Conditions 10.3 and 10.4 identify some specific circumstances concerned with changes to arrangements related to the distribution of National Lottery products in which we require an Ad Hoc Assurance Statement. We may also require an Ad Hoc Assurance Statement in other circumstances, for example following instances of exception reporting by the Licensee which raise specific concerns (see Condition 24.2).
- 21.11** The contents of an Ad Hoc Assurance Statement may vary depending on the specific circumstances. Indicatively we expect it to cover areas such as the following:
- the completion of risk assessments across business areas, and the identification of material compliance risk(s);
 - assessment of adequacy of existing risk management and development of mitigation plans where applicable; and
 - stress testing of business plans and forecasts, where applicable.

Resilience Assurance Statement guidance (annual)

- 21.12** The Licensee is required to provide, annually, either an Unqualified Resilience Assurance Statement or a Qualified Resilience Assurance Statement, as set out in Condition 18.5.

²⁰ Note the requirements for exception reporting are set out in Condition 24.

21.13 Where an annual Unqualified Resilience Assurance Statement is provided, we expect it to demonstrate the Licensee has appropriately identified and managed relevant risks. Among other things, we expect this statement to provide evidence of stress testing, including in relation to business plans and forecasts, and liquidity, equity and profitability. It should also include an assessment of the financial and operational strength of Key Subcontractors and, where relevant, their supply chains.

Resilience Assurance Statement guidance (before a Significant Business Event)

21.14 Unless otherwise approved by us, we require the Licensee to submit an Unqualified Resilience Assurance Statement before it implements a Significant Business Event, as set out in Condition 18.7.

21.15 Where the Licensee provides an Unqualified Resilience Assurance Statement in relation to a Significant Business Event under Condition 18.7, we expect it to demonstrate that the board of Directors of the Licensee have a reasonable expectation that, after implementing the Significant Business Event, the Licensee will have, or will have available to it, sufficient financial and operational resources to operate the National Lottery in compliance with the Fourth Licence for a period of two years from the date of such statement.

21.16 Consistent with Condition 18.7, we expect the Unqualified Resilience Assurance Statement to cover matters such as:

- the nature of the Significant Business Event;
- the level of associated regulatory and compliance risks; and
- the approach to mitigating risks and to ensuring that this approach is adequate.

21.17 Within 20 Business Days of receipt of an Unqualified Resilience Assurance Statement related to a Significant Business Event, we may request for the Licensee to provide us with additional information as necessary to understand how the Licensee is managing risks, including:

- assessments of the impact of relevant Significant Business Event on the Licensee's ability to meet all Licence conditions during the Fourth Licence; and
- performance against risk mitigation plans, business plans, and forecasts.

21.18 Additional guidance related to Significant Business Events is provided separately in section 16, which includes a process diagram (Figure 2) that illustrates how Conditions 18.6 to 18.8 would be applied under the Fourth Licence.

22. Regulatory reporting requirements

- 22.1** This section sets out a core set of information that we require the Licensee to report to us during the Fourth Licence, consistent with Condition 24.10. The regulatory reporting requirements are designed to complement other elements of our Regulatory Model and embed the assurance requirements outlined in section 21.
- 22.2** In defining these requirements, we focus on areas where access to regular and timely information is expected to be important in order for us to form an appropriate understanding of the Licensee's operations. This in turn will facilitate our monitoring and assessment of Licensee compliance with Fourth Licence conditions and support the delivery of our statutory duties.
- 22.3** In addition to the regular reporting requirements, there are notification requirements, including in relation to exception reporting (as set out in Condition 24 and Table 9 below), which requires the Licensee to promptly notify us about breaches and exceptions. Notification requirements are important to ensure that, where appropriate, we are made aware of changes in circumstances in a timely manner.
- 22.4** Some of the reporting requirements are dependent on the Licensee's business plan for the Fourth Licence, its financial arrangements and other elements of its operations or structure. In these cases, the reports are only defined at a high level in the current version of this document. More specific definitions of the contents of these reports will be developed at a later stage²¹ and included in an updated version of this Regulatory Handbook, as outlined in section 2.
- 22.5** Our requirements are split thematically and flow from various areas of the Fourth Licence as follows:
- Compliance and good governance (Conditions 4 and 22)²², covering reporting and notification requirements in selected areas necessary for us to maintain appropriate visibility over the Licensee's approach to compliance and governance;
 - Protecting Participants' interests (Condition 8), covering key information we require outside of the annual assurance cycle in order to monitor performance and trends related to Participant interests;
 - Access and Distribution (Conditions 9 and 10), covering key information to help us understand the appeal and reach of the National Lottery and the distribution of National Lottery products;
 - Branding and National Lottery IP (Conditions 13 and 19), covering important information which we need to be aware of as owners of the National Lottery brand;
 - Good Causes Contribution (Condition 15 and Schedule 5), covering financial information that allows us to monitor payments to Good Causes;

²¹ Reporting requirements that are dependent on the Incoming Licensee's Application – for example, the performance standards report and the Participant behaviour and protection report – will be fully developed and updated in this Regulatory Handbook during Implementation prior to the start of the Fourth Licence.

²² Note that Conditions 4 and 22 are directly related to compliance and good governance respectively, but under this category we also include requirements related to compliance and governance that are linked to other conditions, as set out in the relevant tables below.

- Financial and operational resilience (Condition 18), covering the business continuity of the National Lottery through Resilience Assurance Statements, as well as the notification of any Financial Distress Events; and
- Exit (Condition 27), covering the Exit Plan that will have to maintained and provided to us during the Fourth Licence.

22.6 In this section we:

- present a summary overview of our reporting requirements; and
- for each of reporting areas listed above, detail the reports expected to be required and their expected contents and frequency.

Overview of reporting requirements

22.7 Table 2 below provides a snapshot of the reporting requirements, noting the number of items within each reporting area and their frequencies. Further detail is then provided on each of the reporting areas in the remainder of this section.

22.8 Consistent with Condition 24.11, where reporting is required on a regular basis (i.e. annually, quarterly, etc.) for a particular reporting requirement and the date of submission has not been provided in the Fourth Licence, the reporting dates will be agreed between us and the Licensee, and documented in the Regulatory Handbook.

Table 2: Overview of reporting requirements

Area	Overview	Requirements	Frequency	Location
Compliance and good governance	1 Quarterly report 1 Biannual report 3 Annual reports 13 Ad hoc requirements	Performance standards report	Quarterly	Table 3
		Organisation Chart	Biannual	Table 4
		Assurance Statement	Annual	Table 5
		Audited accounts and Annual Report	Annual	Table 6
		Internal Audit Plan	Annual	Table 7
		Ad Hoc Assurance Statement (Section 6 application)	Ad Hoc	Table 8
		Notification requirements	Ad hoc	Table 9
Protecting Participants' interests	1 Monthly report 2 Quarterly reports	Prize payments	Monthly	Table 10
		Participant behaviour and protection	Quarterly	Table 11
		Enquiries and complaints	Quarterly	Table 12
Access and Distribution	1 Monthly report 1 Annual report 2 Ad hoc requirements	Availability	Monthly	Table 13
		Sales Outlets	Annual	Table 14
		Ad Hoc Assurance Statement (Distribution)	Ad hoc	Table 15
		Notification requirements	Ad hoc	Table 16
Branding and National Lottery IP	1 Quarterly report 2 Ad hoc requirements	Brand KPIs	Quarterly	Table 17
		Notification requirements	Ad hoc	Table 18
Good Causes Contribution	1 Weekly report 2 Monthly reports 1 Quarterly report 1 Biannual report	Sales and Good Causes Contribution	Weekly	Table 19
		Other NLDF components	Monthly	Table 20
		Revised Estimated Annual Payment and Scheduled Weekly Payments	Monthly	Table 21
		Good Causes Contribution Forecasts	Quarterly	Table 22

	4 Annual reports	Cost expenditure	Biannual	Table 23
		Ancillary Activities	Annual	Table 24
		Estimated Annual Payment and Scheduled Weekly Payments	Annual	Table 25
		Reconciliation Certificate	Annual	Table 26
		Related Party Arrangements	Annual	Table 27
Financial and operational resilience	1 Weekly report 1 Quarterly report 1 Annual report 3 Ad hoc requirements	Trust Reporting	Weekly	Table 28
		Financial Covenants	Quarterly	Table 29
		Resilience Assurance Statement	Annual	Table 30
		Unqualified Resilience Assurance Statement related to Significant Business Events	Ad hoc	Table 31
		Notification requirements	Ad hoc	Table 32
Exit	1 Annual report	Exit Plan	Annual	Table 33

Compliance and good governance

22.9 This reporting area consists of the following:

- Performance standards report (required quarterly);
- Organisation Chart (required biannually);
- Annual Assurance Statement (required annually);
- Audited accounts and Annual Report (required annually);
- Internal Audit Plan (required annually);
- Ad Hoc Assurance Statement (Section 6 application); and
- Ad hoc notification requirements.

Table 3: Performance standards report

Overview	
Report area	Performance standards report
Frequency	Quarterly
Purpose	<p>A set of overarching operational performance metrics will be monitored through this report, which will be complemented by the other reporting requirement on specific areas set out in the rest of this section.</p> <p>This reflects Condition 24.9, which states that the Regulatory Handbook “may include certain standards or targets for performance which the Commission will consider when monitoring the Licensee’s compliance with this Licence”.</p>
Expected contents	

- The specific content of this report will be agreed with the Licensee, as it will depend on their proposed approach to monitor performance against outcomes, including relevant operating metrics, as set out in its Application. We will review and discuss proposed performance measures with the Incoming Licensee during Implementation prior to the start of the Fourth Licence, and agree reporting levels, including the contents of this performance standards report.
- We expect that performance standards should establish a baseline of performance, that can be monitored over time, covering a range of measures that captures process (i.e. leading indicators) and outcomes (i.e. lagging indicators).
- We require the data in this report to be relevant to the Licensee's obligations, and representative of conditions across different operational areas. We expect the data will allow us to sufficiently understand patterns and trends over time. We also expect the report contents are within context of other complementary and supporting information, submitted by the Licensee through other assurance and reporting requirements.
- We expect that the relevant performance standards may reasonably evolve over the Fourth Licence. For example, the appropriate performance management regime may vary because of changes in circumstances, such as industry or regulatory trends, or new performance criteria might be introduced where we have concerns about the Licensee's risk management for delivering outcomes.

Table 4: Overview of Organisation Chart

Overview	
Report area	Organisation Chart
Frequency	Biannual
Purpose	Condition 6.15 sets requirements related to the provision of information regarding Lottery Beneficiaries and Lottery Supervisors, within which the requirement for the Licensee to provide an organisation chart is intended to allow us to maintain clear oversight of the ownership and management of the Licensee.
Expected contents	
<ul style="list-style-type: none"> • An Organisation Chart and any supporting information to set out accurately the legal and beneficial ownership, the organisation and management of the Licensee. 	

Table 5: Overview of Assurance Statement

Overview	
Report area	Assurance Statement

Frequency	Annual
Purpose	For the Licensee to provide assurance in relation to compliance with the Fourth Licence, as discussed in section 21.
Expected contents	
<ul style="list-style-type: none"> • See section 21 (assurance requirements). 	

Table 6: Overview of Audited accounts and Annual Report

Overview	
Report area	Audited accounts and Annual Report
Frequency	Annual
Purpose	Annual Reports and financial accounts are a key element of the compliance process. As part of this annual cycle we also expect to be informed of any material irregularities identified by external auditors.
Expected contents	
<ul style="list-style-type: none"> • The audited annual accounts and Annual Report issued by the Licensee in compliance with Condition 22.15, as well as any other relevant obligations including under Companies Act 2006 and in conformity with International Financial Reporting Standards. • In order to comply with Best Practice, the Licensee may have regard to relevant guidance about the content of annual reports²³. • The Annual Report will be expected to cover a range of financial and non-financial matters, including reporting of Licensee performance in areas such as sustainability, diversity, ethics, values, workforce management, corporate social responsibility and environmental matters. This will also be expected to include details of ESG (Environmental, Social and Governance) criteria applied as part of the treasury policy. • Any report from the external auditors (including such reports as may not be made public), concerning any incidents of fraud, irregularities or failure to adhere to procedures of financial control. 	

²³ For example, guidance published by the Institute of Chartered Secretaries and Administrators.

Table 7: Overview of Internal Audit Plan

Overview	
Report area	Internal Audit Plan
Frequency	Annual
Purpose	Conditions 22.8 and 22.9 set requirements related to internal audit. While the emphasis is on the Licensee to determine how best to comply with Condition 22.8, we require visibility over the Licensee’s Internal Audit Plan, as per Condition 22.9, in order to be aware of the proposed scope and focus of activities and, where necessary, verify that this includes any risks or concerns raised by us.
Expected contents	
<ul style="list-style-type: none"> • Full details of the proposed scope and timing of internal audit work that is planned for the upcoming year by the relevant committee. The Licensee should also notify us subsequently if there are material changes to these plans during the Licence Year (see Table 9 below). • Note that generally we do not require the Licensee to provide individual internal audit reports or recommendations. However, we may specifically request these under Condition 23.12, and, in any event, may require notification of internal audit findings, for example significant or material failings, as part of exception reporting (see Table 9 below and Licence Condition 24). 	

Table 8: Overview of Ad Hoc Assurance Statement (Section 6 application)

Overview	
Report area	Ad Hoc Assurance Statement (Section 6 application)
Frequency	Ad Hoc
Purpose	Under Section 6 of the National Lottery Act, we issue Licences to authorise the promotion of different National Lottery Games. In assessing and approving applications for new or varied Section 6 Licences, we will have regard to our statutory duties. This assurance statement, which will accompany such applications, is intended to facilitate the approval process and ensure that the Licensee has a strong focus on developing an appealing Game portfolio that is consistent with the statutory duties.
Expected contents	

- Assurance statement from the Licensee’s Board, confirming that the proposals will be consistent with the first two outcomes set out in Condition 1 of the Fourth Licence (i.e. propriety and protecting Participants’ interest), and summarising how this has been established.

Table 9: Overview of notification requirements

Overview	
Report area	Compliance and good governance notification requirements
Frequency	Ad hoc
Purpose	Below we summarise, for reference, conditions within the Fourth Licence which require the Licensee to provide notifications or specific information to us on an ad hoc basis, in various areas related to compliance and governance. For further information, please refer to the relevant Licence conditions.
Expected contents	
<ul style="list-style-type: none"> • Condition 5: requirements to notify us in relation to Designated Lottery Subcontracts or Related Party Arrangements; • Condition 6: requirements to notify us in certain circumstances in relation to Fitness and Propriety of the Licensee, Lottery Beneficiaries and Lottery Supervisors; • Condition 7: requirements to notify us in certain circumstances in relation to Fitness and Propriety of Critical Function Employees; • Condition 14: requirements to notify us in relation to changes in Ancillary Activities; • Condition 17: requirement to notify us in relation to issues affecting the Technology Operation; • Condition 21: requirements to notify us in relation to changes to Key Subcontractors; • Condition 22: requirement to notify us of any provisions in the UK Corporate Governance Code which the Licensee considers it does not require to implement; and requirement to notify us if there is a material change to the Licensee’s Internal Audit Plan during the Licence Year; • Condition 24: requirements to report Licence breaches and certain irregularities, incidents, changes, disclosures or investigations²⁴; 	

²⁴ As noted in paragraph 21.9, exception reporting might then lead to further steps, such as a requirement for the Licensee to provide an Ad Hoc Assurance Statement in relation to specific risks (see Condition 23.19).

- Condition 25: requirement to notify us at certain points in relation to Independent Performance Reviews;
- Condition 29: requirements to notify us in relation to disclosure and treatment of Confidential Information; and
- Condition 31: requirement to provide us reasonable advance notice before any change in Licensee address.

Protecting Participants' interests

22.10 This reporting area consists of the following:

- Prize payments (required monthly);
- Participant behaviour and protection (required quarterly); and
- Enquiries and complaints (required quarterly).

Table 10: Overview of Prize payments report

Overview	
Report area	Prize payments
Frequency	Monthly
Purpose	Condition 8 of the Fourth Licence covers payment of Prizes, among other Participants' interests. This report allows us to monitor speed of Prize payments as well as Prize payout percentages (as a proportion of sales), which is an important element of Section 6 Game Licences.
Expected contents	
<ul style="list-style-type: none"> • Total monetary value of Prizes, broken down by Game, and expressed as a percentage of the monetary value of sales; and • Data on speed and source of Prize payment to winners following a valid claim, with breakdowns by Game. This level of granularity is helpful in capturing the interests of all Participants, given that certain Participants will play only some Games (or only one Game) and not others. 	

Table 11: Overview of Participant behaviour and protection report

Overview	
Report area	Participant behaviour and protection

Frequency	Quarterly
Purpose	This report complements the Annual Assurance Statement process, as set out in section 21. It ensures we receive more frequent reporting across a core set of indicators related to Participant behaviour and protection, in order to retain visibility over key trends related to Participant interests, and potentially receive early warning of any issues.
Expected contents	
<p>The specific content of this report will be agreed with the Licensee, as it is likely to depend on its Participant Protection Strategy and other aspects of operations.</p> <p>We expect this report to include information related to a number of Participant interests, including those identified in Condition 8, including:</p> <ul style="list-style-type: none"> • Evidence and analysis produced by the Licensee in accordance with Condition 12.3. • Other indicators developed by the Licensee in accordance with Condition 8.17. • Data based on transactional data, such as: <ul style="list-style-type: none"> • Data related to customer participation and customer retention; • Participant access across different distribution channels or different technological means of accessing the National Lottery; and • Breakdowns of the above data by Game and/or Game type (i.e. Draw-based Games, scratchcards, interactive instant win Games, and any other Game types), and socio-demographic data, where available. 	

Table 12: Overview of Enquiries and complaints report

Overview	
Report area	Enquiries and complaints
Frequency	Quarterly
Purpose	Regular reporting of data related to enquiries and complaints from members of the public is important in terms of assessing compliance with conditions related to Participant information, complaints and redress, under Condition 8. Moreover, this data can be valuable more broadly if the pattern of complaints highlights any potential issues which might be causing harm to Participant interests.
Expected contents	

The specific content of this report will be agreed with the Licensee, as it is likely to depend on its operational model and approach to dealing with enquiries and complaints.

The data would be expected to include:

- Volume of enquiries and complaints received across various channels of communication and the volume that have been escalated to the independent dispute resolution mechanism;
- The time taken to resolve enquiries and complaints;
- Classification of the subject matter of enquiries and complaints; and
- The outcomes of enquiries, complaints and disputes escalated to the independent resolution mechanism.

Access and Distribution

22.11 This reporting area consists of the following:

- Availability report (required monthly);
- Sales Outlets report (required annually);
- Ad Hoc Assurance Statement (Distribution); and
- Ad hoc notification requirements.

Table 13: Overview of Availability report

Overview	
Report area	Availability
Frequency	Monthly
Purpose	Availability of systems and terminals necessary to play National Lottery Games is a key issue in relation to both Condition 9 (Ensuring Access to the National Lottery) and Condition 17 (Licensee and its operations to be Fit for Purpose). Frequent reporting will provide us visibility over trends related to these conditions, including any significant issues or outages.
Expected contents	

We will agree the specific content of this report with the Licensee, as it is likely to depend on its approach to technology and use of different distribution channels.

Indicatively, we expect relevant content could include the following information, which may be broken down by different time periods or different times of day:

- Central system availability and/or system availability in relation to specific Game types;
- Availability of specific channels of distribution or communication, such as website and/or mobile application;
- Service outages, duration and number of Sales Outlets affected; and
- Availability of Physical Sales Location facilities such as facilities for ticket sales, printing and validating tickets.

Table 14: Overview of Sales Outlets report

Overview	
Report area	Sales Outlets
Frequency	Annual
Purpose	The information in this report will allow us to understand the breadth and distribution of the network of Sales Outlets, which is relevant with regard to Condition 9 in terms of appeal and reach.
Expected contents	
<ul style="list-style-type: none"> • Full list of Physical Sales Locations where National Lottery Games are available²⁵, including name and address; • Number of Physical Sales Locations by postcode district; and • Full list of online, app-based or other Sales Outlets where National Lottery Games are available. 	

²⁵ The meaning of “available” in this context will be defined in consultation with the Licensee (for example, in the case of any Retailers having limited opening hours, the definition may specify a minimum amount of time for which Game purchase must be possible in order for the Games to be considered available for the purpose of this report).

Table 15: Overview of Ad Hoc Assurance Statement (Distribution)

Overview	
Report area	Ad Hoc Assurance Statement (Distribution)
Frequency	Ad hoc
Purpose	Ad Hoc Assurance Statements are required under Conditions 10.3 and 10.4 in order to provide us assurance that any risks related to certain changes, including in relation to distribution arrangements, are being adequately addressed.
Expected contents	
The contents will depend on the specific context. Section 21 provides some guidance on assurance requirements.	

Table 16: Overview of notification requirements

Overview	
Report area	Ensuring access to the National Lottery notification requirements
Frequency	Ad hoc
Purpose	Below we summarise, for reference, conditions within the Fourth Licence which require the Licensee to provide notifications or specific information to us on an ad hoc basis, in relation to ensuring access to the National Lottery. For further information, please refer to the relevant Licence conditions.
Expected contents	
<ul style="list-style-type: none"> Condition 9: requirement to explain to us the reason for any instance where it has not been possible for the Licensee to achieve the objective set out in Condition 9.2. 	

Branding and National Lottery intellectual property (IP)

22.12 This reporting area consists of the following:

- Brand KPIs (required quarterly); and
- Ad hoc notification requirements.

Table 17: Overview of Brand KPIs report

Overview	
Report area	Brand KPIs
Frequency	Quarterly
Purpose	Condition 13 defines requirements related to the National Lottery Brand. As part of our approach to assessing compliance with this condition, we require reporting of Licensee performance with respect to Brand KPIs. Further details are provided in our Monitoring Performance Framework (see volume two).
Expected contents	
<p>The specific content of this report will be agreed with the Licensee, as it is likely to depend on its Brand Management Plan and any metrics identified as part of that.</p> <p>Our Monitoring Performance Framework sets out indicative brand measures, which may be revised, including in consideration of any measures set out in the Licensee's Brand Management Plan. For reference, the indicative brand measures cover:</p> <ul style="list-style-type: none"> • Brand awareness and recall; • Overall sentiment towards the brand; • Brand perceptions related to: Good Causes; life-changing; diversity and inclusion; safety; trustworthiness; national profile; and • Brand loyalty. 	

Table 18: Overview of notification requirements

Overview	
Report area	Branding and National Lottery IP notification requirements
Frequency	Ad hoc
Purpose	<p>Below we summarise, for reference, conditions within the Fourth Licence which require the Licensee to provide notifications or specific information to us on an ad hoc basis, in relation to National Lottery IP.</p> <p>For further information, please refer to the relevant Licence conditions.</p>
Expected contents	
<ul style="list-style-type: none"> • Condition 13: requirement to notify us of intended deviations from the Brand Management Plan; and 	

- Condition 19: requirements to notify us in relation to certain Other Lottery IP the Licensee identifies, and in relation to potential infringement of Core Lottery IP.

Good Causes Contribution

22.13 This reporting area consists of the following:

- Sales and Good Causes Contribution report (required weekly);
- Other National Lottery Distribution Fund (NLDF) components report (required monthly);
- Revised Estimated Annual Payment and Scheduled Weekly Payments (required monthly);
- Good Causes Contribution Forecasts (quarterly);
- Cost expenditure report (required biannually);
- Ancillary Activities report (required annually);
- Estimated Annual Payment and Scheduled Weekly Payments (required annually);
- Reconciliation Certificate (required annually); and
- Related Party Arrangements report (required annually).

Table 19: Overview of Sales and Good Causes Contribution report

Overview	
Report area	Sales and Good Causes Contribution
Frequency	Weekly
Purpose	We will use the information to monitor the amount paid to the NLDF and to monitor the Sales and Good Causes Contribution information for the year to date. It is required on a weekly basis as there is a weekly payment schedule for payments into the NLDF.
Expected contents	
<ul style="list-style-type: none"> • Advance and actual sales for each Draw-based Game; • Scratchcards sales summary (including actual sales); • Interactive Instant Win Game sales summary (including actual sales); • Any over/under payment; and • The total weekly contribution due to the NLDF (with sub-totals by Game type). 	

Table 20: Overview of other NLDF components report

Overview	
Report area	Other NLDF components
Frequency	Monthly
Purpose	We use this information to monitor the amount paid to NLDF from other components, including Unclaimed Prizes, lost and stolen scratchcards, dormant wallets and interest. These drive a smaller element of Good Causes Contribution than Sales and will be required on a monthly, rather than weekly basis.
Expected contents	
<ul style="list-style-type: none"> • Unclaimed Prizes due to the NLDF; • Contributions from lost and stolen scratchcards to the NLDF; • The amount of total NLDF unutilised wallet balance entitlement (associated with dormant user accounts) to be paid from any relevant trust account (or equivalent); and • The Licensee's liability with respect to interest earned on any relevant trust account or equivalent. 	

Table 21: Overview of Revised Estimated Annual Payment and Scheduled Weekly Payments

Overview	
Report area	Revised Estimated Annual Payment and Scheduled Weekly Payments
Frequency	Monthly
Purpose	For the Licensee to provide an updated estimated annual payment and weekly payment schedule (as reported annually – see Table 25), in accordance with Licence Schedule 5, Part C, 3.5, in order to reflect any changes or discrepancies which may have arisen.
Expected contents	
<ul style="list-style-type: none"> • Any revisions to the Estimated Annual Payment. In calculating this, the Licensee will apply the Estimation Methodology as appropriate. The Licensee will provide details of this calculation and of any changes to these amounts as a result. • Any revisions to the Scheduled Weekly Payments, taking account both of any change to the Estimated Annual Payment and of any change to the anticipated 	

profile of the Scheduled Weekly Payments. In calculating this, the Licensee will apply the Scheduling Methodology as appropriate. The Licensee will provide details of this calculation and of any changes to these amounts as a result.

Table 22: Overview of Good Causes Contribution Forecasts report

Overview	
Report area	Good Causes Contribution Forecasts
Frequency	Quarterly
Purpose	This information will inform long-term expected Good Cause Contributions, and provide DCMS, National Lottery Distributors and the NLPD with forecasts for contributions to Good Causes.
Expected contents	
<ul style="list-style-type: none"> • Good Causes Contribution forecasts, split by Game type (i.e. Draw-based Games, scratchcards, interactive instant win Games, and any other Game types) and on a monthly basis, for a rolling five-year period (or during the last five years of the Fourth Licence, up to the end of the Fourth Licence); • Historical variances between previous forecasts and observed Good Cause Contributions; • Commentary to explain the Good Cause Contribution forecasts, including a comparison to the previous quarter's forecast and commentary on any changes; and • A copy of the latest Forecasting Methodology Assurance Report. 	

Table 23: Overview of Cost expenditure report

Overview	
Report area	Cost expenditure
Frequency	Biannual
Purpose	We require a breakdown of operating and other costs across functional business areas, and cost allocations against the different National Lottery types of Game, business activity and/or function ²⁶ .

²⁶ To provide further detail to Applicants we have issued in the Virtual Data Room the following report "Draft Cost Reporting Guidelines for The Fourth National Lottery Licence – An Initial View". This report, produced by NERA, provides further detail about the potential cost categories, cost allocation principles and the potential format of a reporting template. We will develop and finalise Fourth Licence cost reporting requirements through engagement with the Incoming Licensee.

Expected contents

- Prize liabilities arising from sales in the financial year (differentiating Prizes paid versus liabilities with respect to Unclaimed Prizes);
- Lottery duty; VAT; Retailer commission and any other commission;
- Liability to NLDF;
- Recoverable Implementation costs (as set out in any Enabling Agreement and within agreed scope);
- Finance costs (including any interests payments, financing charges or gains or losses on foreign exchange or derivative financial instruments);
- Consumables (includes production and logistics costs associated with scratchcards, ticket rolls and play slips);
- Marketing (includes advertising and promotion, direct marketing, PR costs, market research and new product development, marketing staff costs);
- Technology (including application software, infrastructure and operations, third party support costs, technology staff);
- Licence fees (including fees related to Licences under both Section 5 and Section 6 and third-party licensing - fees due to licensing and/or branding arrangements with third-parties);
- Capital expenditure (includes retail capital, technology capital, facilities and security capital);
- Other costs and revenue (for example sundry income, bank transaction fees).
- Staff, administrative and facilities costs (for example permanent salary costs, outsourcing, training, contractors);
- Depreciation and amortisation on a basis consistent with audited financial statements;
- Depreciation and amortisation on a historical cost basis;
- In addition, we expect reporting of items which are specific to the calculation of liability to the NLDF at Schedule 5 of the Fourth Licence. For example:
 - The value of any lost or stolen scratchcards;
 - The value of the VATCostHat term in relation to the adjustment (if any) for VAT at Schedule 5;
 - Each individual line of excluded revenues in Table 2 in Appendix 1 to Schedule 5 of the Fourth Licence; and

- Each individual line of excluded costs in Table 3 in Appendix 1 to Schedule 5 of the Fourth Licence (except where certain Excluded Costs are determined by us).

Table 24: Overview of Ancillary Activities report

Overview	
Report area	Ancillary Activities
Frequency	Annual
Purpose	We will use this information to verify that only approved Ancillary Activities have been undertaken and the correct payments have been made to the NLDF in respect of them. These activities are expected to be a small part of NLDF income, so the information is only required on an annual basis.
Expected contents	
<ul style="list-style-type: none"> • A list of Ancillary Activities carried out in-year; • Income and expenditure incurred in relation to Ancillary Activities and other amounts due to the NLDF from Ancillary Activities; • Explanation of the methodologies used for revenue and cost allocation to Ancillary Activities; and • Details of any bespoke arrangements for Good Causes Contribution from the activities. 	

Table 25: Overview of Estimated Annual Payment and Scheduled Weekly Payments

Overview	
Report area	Estimated Annual Payment and Scheduled Weekly Payments
Frequency	Annual
Purpose	For the Licensee to provide an estimate of the annual payment for the forthcoming year in accordance with Licence Schedule 5, Part C, 1.1 - 1.3, as well as the expected weekly payment schedule in accordance with Licence Schedule 5, Part C, 2.1 - 2.3.
Expected contents	

- Calculation of Estimated Annual Payments, including a breakdown of revenue and costs, Surplus, and Good Causes Contribution. In calculating this, the Licensee will apply the Estimation Methodology as appropriate. The Licensee will provide details of this calculation to us.
- Calculation of Scheduled Variable Weekly Payments, reflecting the Licensee's best estimate of the Payment Adjustment. In calculating this, the Licensee will apply the Scheduling Methodology as appropriate. The Licensee will provide details of this calculation to us.

Table 26: Overview of Reconciliation Certificate

Overview	
Report area	Reconciliation Certificate
Frequency	Annual
Purpose	We will receive a draft Reconciliation Certificate (and any subsequent amendments to finalise this) in order to confirm the Licensee's compliance with Condition 15 and Schedule 5 of the Fourth Licence with respect to payments to the NLDF. It is required annually after the end of the Licence Year and would be subject to third-party assurance.
Expected contents	
	<ul style="list-style-type: none"> • Calculations of annual liability to Good Causes under Schedule 5; • Calculation of any over or under payment; and • Certification of the reconciliation (process of certification to include third-party review and assurance).

Table 27: Overview of Related Party Arrangements report

Overview	
Report area	Related Party Arrangements
Frequency	Annual
Purpose	We will use this information to monitor and verify that transactions with Related Parties are undertaken and operated in accordance with the relevant Licence obligations. This information will be required annually so as to be consistent with annual submissions on cost expenditure and any related assurance reporting.

Expected contents
<ul style="list-style-type: none"> • A list of all transactions with Related Parties occurring in the year; • Revenues (and any other income) from Related Party Arrangements (in total and by transaction); • Costs of any Related Party Arrangements (in line with the Fourth Licence definitions) (in total and by transaction); and • Statement of all costs and revenues – from Related Party Arrangements – that have been treated as excluded (in the calculation of contributions to NLDF).

Financial and operational resilience

22.14 This reporting area consists of the following:

- Trust Reporting (required weekly);
- Financial Covenants (required quarterly);
- Resilience Assurance Statement (required annually);
- Unqualified Resilience Assurance Statement related to Significant Business Events (ad hoc); and
- Ad hoc notification requirements.

Table 28: Overview of Trust Reporting

Overview	
Report area	Trust Reporting
Frequency	Weekly
Purpose	The report will be provide assurance that the Licensee is meeting its commitments under Condition 16 and the Trust Documents with regard to payments made to the trust.
Expected contents	
<p>The report is expected to show the flow of funds in and out of the relevant bank accounts. The specific scope of the report will be determined at a later stage, depending on the Licensee’s proposal.</p> <p>Trust reporting details will be further developed once trust arrangements are fully developed.</p>	

Table 29: Overview of Financial Covenants

Overview	
Report area	Financial Covenants
Frequency	Quarterly
Purpose	For the Licensee to provide periodic information related to financial covenants entered into by the Licensee, which will be captured in Schedule 6 of the Fourth Licence.
Expected contents	
<ul style="list-style-type: none"> Dependent on specific financial covenants entered into by the Licensee 	

Table 30: Overview of Resilience Assurance Statement (annual)

Overview	
Report area	Resilience Assurance Statement
Frequency	Annual
Purpose	For the Licensee to provide assurance in relation to its financial and operational resources, as discussed within section 21.
Expected contents	
<ul style="list-style-type: none"> See section 21 (assurance requirements). 	

Table 31: Overview of Unqualified Resilience Assurance Statement related to Significant Business Events

Overview	
Report area	Unqualified Resilience Assurance Statement related to Significant Business Events
Frequency	Ad hoc
Purpose	We require an Unqualified Resilience Assurance Statement before any Significant Business Event, as discussed in section 21.
Expected contents	
<ul style="list-style-type: none"> See section 21 (assurance requirements). 	

Table 32: Overview of notification requirements

Overview	
Report area	Financial and operational resilience notification requirements
Frequency	Ad hoc
Purpose	<p>Below we summarise, for reference, conditions within the Fourth Licence which require the Licensee to provide notifications or specific information to us on an ad hoc basis, in relation to ensuring access to the National Lottery.</p> <p>For further information, please refer to the relevant Licence conditions.</p>
Expected contents	
<ul style="list-style-type: none"> • Condition 16 requires the Licensee to notify us of the Funds Protection Criteria. • Condition 18 requires the Licensee to notify us in relation to Financial Distress Events. 	

Exit

22.15 This reporting area consists of the following:

- Exit Plan (required annually).

22.16 Further reporting requirements related to Exit may be developed during the course of the Fourth Licence, as necessary. This is expected to include reporting related to the Outstanding Liability Fund and Good Causes Underpayment Arrangements.

Table 33: Overview of Exit Plan

Overview	
Report area	Exit Plan
Frequency	Annual
Purpose	The Licensee is required to prepare, maintain, and provide an Exit Plan to us for review and approval, and which meets its obligations under Condition 27.
Expected contents	

Guidance on the expected contents, over and above the requirements of Condition 27, is included in the Monitoring Performance Framework (see section 17). In summary, contents include:

- Approach to facilitating the Next Competition and a smooth transition to the Next Licence, including a plan, timeline and key deliverables for Exit;
- Records related to Lottery Assets and IP; and
- Approach to financial reconciliation and transfer of subcontracts, Licensee Assets, IP and obligations to the Next Licensee.

Volume four: Enforcement Policy

23. Enforcement Policy context

- 23.1** This volume sets out our approach to enforcement and explains how we will use our powers in an appropriate and proportionate manner. It details the enforcement measures available and the factors we are likely to consider when deciding on regulatory action. It also sets out some of the steps we may take ahead of initiating a formal investigation which will determine whether we need to apply enforcement action. We provide an overview of how this volume interacts with the other volumes of this Regulatory Handbook and our wider Regulatory Model in section 2 of this document.
- 23.2** This Enforcement Policy is not a guide to the law, nor to Section 5 or 6 Licence conditions. Copies and links to legislation and Licences can be found on our website²⁷. Generally, we will apply enforcement actions consistently with this volume. However, in the event of any departures from this, we will explain our reasons for doing so.
- 23.3** To avoid duplication and inconsistencies and ensure we take the most appropriate action, we will, as necessary, work with other regulators and law enforcement agencies to ensure we coordinate our respective powers.
- 23.4** The rest of volume four is structured as follows:
- section 24 gives an outline to our general enforcement principles;
 - section 25 describes our risk-based escalation (and de-escalation) of enforcement activity, and how we may initially respond once we are aware of a compliance risk;
 - section 26 captures the different stages within a formal investigation;
 - section 27 outlines the process to our final decision including communication of preliminary findings to the Licensee;
 - section 28 summarises the possible outcomes of any formal investigation and lists our formal enforcement actions;
 - section 29 summarises our approach to regulatory settlements; and
 - section 30 describes our process to publish findings from our enforcement investigations.

²⁷ www.gamblingcommission.gov.uk

24. Our general enforcement principles

24.1 The general principles we apply in our enforcement decisions are shown below and flow from our Public Law Duties. These are consistent with our more outcomes-focused regulatory approach, wider gambling regulation, and regulatory best practice. Our general principles and enforcement policy apply to the Fourth Licence granted under Section 5 of the Act, and to licences issued to promote lotteries under Section 6 of the Act. These principles are:

- **Proportionality:** we only intervene where necessary with targeted enforcement actions appropriate to secure our statutory objectives are met. Our approach is targeted and focused on the most important operational issues, factors and risks.
- **Consistency:** We will treat similar cases in a similar way unless we have a good reason not to. However, where there are repeated failures by the Licensee, we reserve our right to escalate enforcement action.
- **Evidence-based decision making:** We will seek and make use of the best available evidence when making enforcement decisions. We will adopt a risk-based and proportionate approach to evidence gathering such that we may adopt more streamlined approaches to evidence gathering where more straightforward matters are assessed.
- **Accountability and transparency:** We will explain to our key stakeholders how we make our enforcement decisions and the actions we take. Our key stakeholders include the Licensee, Participants, potential Participants (the general public), Retailers, Distributors, the NLPU, DCMS, Parliament, consumer groups and any other interested parties.

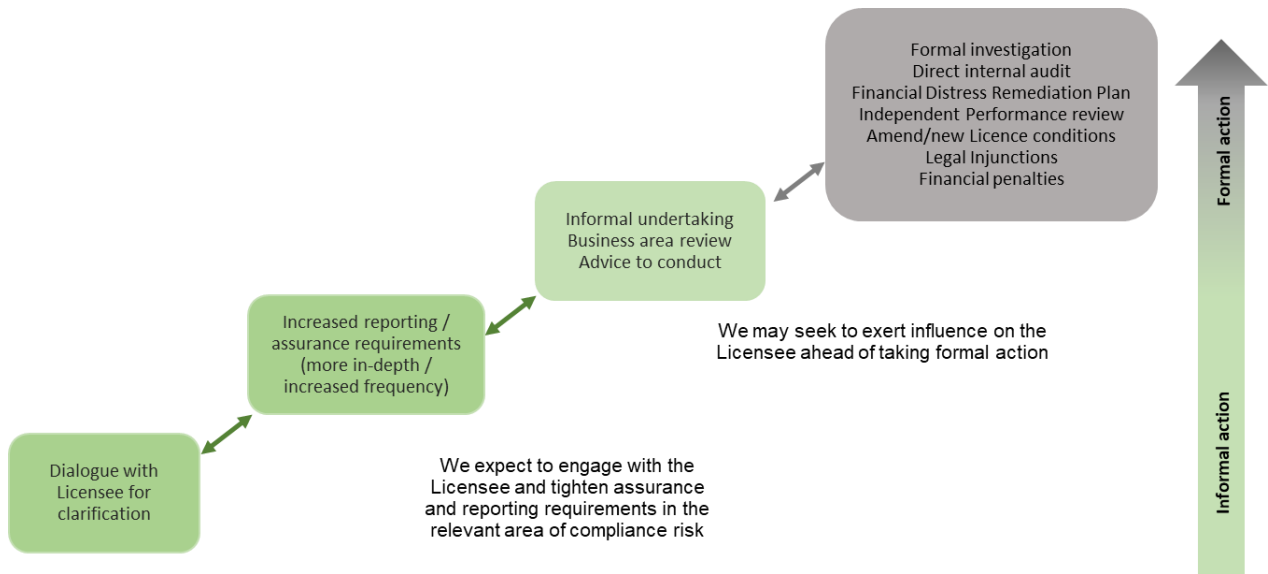
We will be clear and open about our enforcement decisions. This will help to ensure our stakeholders understand our regulatory concerns and how we seek to address these with our regulatory and enforcement actions

- **Human rights compliant:** We will comply with our obligations under the Human Rights Act 1998 as a public authority.

25. What will trigger an investigation

- 25.1** When we become aware of a compliance risk or suspected Section 5 or 6 Licence breach, we first expect to escalate our monitoring activities in the relevant area. Depending on the evidence from our increased monitoring activity we will then consider further options for informal action, although in some circumstances - for example, because of the seriousness or repeated occurrence of a compliance risk – we may consider it appropriate to proceed immediately to opening a formal investigation.
- 25.2** Where we initiate informal action, we would still expect to open a formal investigation if the informal action proves insufficient to address the compliance risk sufficiently. We will seek to identify the circumstances around the potential compliance risk(s) to determine how best to respond. We will draw on the most appropriate intervention(s) available (the specific interventions we apply are therefore not pre-determined). This is consistent with wider regulatory best practice.
- 25.3** We may become aware of a compliance risk or suspected Licence breach from different sources of information, for example:
- meetings with the Licensee;
 - participant complaints or enquiries to us;
 - analysis of data and subsequent trends;
 - regulatory reporting data and assurance reporting (including Licensee performance standards; see Assurance and Regulatory Reporting Requirements, Table 3);
 - formal reports provided under Licence requirements;
 - public interest disclosures;
 - issues raised by the Licensee’s staff or subcontractors.
- 25.4** Examples of informal action that may form part of our escalation process ahead of opening a formal investigation are as follows:
- dialogue with Licensee to seek clarification (for example, meetings, letters);
 - increased depth of reporting requirements (for example, more in-depth and detailed evidence/assurance requirements);
 - increased frequency of certain reporting/assurance requirements;
 - review of relevant Licensee policies, processes, and procedures;
 - an informal undertaking based on evidence from above activity.
- 25.5** If our informal actions are not sufficiently effective, and/or we have sufficient concerns regarding the matter under consideration, we expect to then proceed to formal enforcement activity by opening an investigation.
- 25.6** In Figure 3 below we show an overview of our risk-based escalation approach, which illustrates the stepped approach to enforcement that we would often expect to consider appropriate. As is noted above, however, under certain circumstances – for example, because of the seriousness and/or urgency of the relevant compliance risks - we may consider it appropriate to move directly to opening a formal investigation.

Figure 3: Risk-based escalation (and de-escalation) of enforcement activity (regulatory escalator)



26. Approach to formal investigations

- 26.1** If a decision is made to commence a formal investigation, we will issue a 'notice of investigation' in writing to the Licensee and begin an investigation. Our approach to an investigation includes three stages.²⁸
- 26.2** The rest of this section is split into separate sub-sections, one for each stage of our investigation process:
- Stage one – Gather relevant evidence;
 - Stage two – Consider circumstances and purpose of any sanction; and
 - Stage three – Consider the appropriate regulatory action.

Stage one – *Gather relevant evidence*

- 26.3** During the first stage of our investigation, we may hold an initial meeting with the Licensee to clarify and narrow the issues and to establish any further information we will require during our investigation.
- 26.4** In addition to requesting specified information, we may also wish to interview persons who we consider can supply relevant information in connection with the investigation. These interviews may be recorded and if this is the case, we will inform the Licensee in advance. We reserve the right to use the contents of the interview as evidence. Our requirements for the Licensee to provide timely evidence and representations are captured in Condition 24 in the Fourth Licence.
- 26.5** We will only request documents or records from the Licensee or third party which we believe are necessary. The Licensee is obliged to provide the requested information to allow us to carry out our role and duties and exercise our powers under the Act. We have powers to request personal information from the Licensee or third party and this is within the bounds of data protection regulation.

Stage two – *Consider circumstances and purpose of any sanction*

- 26.6** After gathering and reviewing the evidence we will:
- Consider the circumstances of the case; and
 - Consider the purpose of any sanction in line with our sanction principles.
- 26.7** We will consider all the circumstances of the case in determining what regulatory action (if any) we should take including, but not limited to, the extent to which our statutory duties have been compromised or placed at risk.
- 26.8** The box below provides an example of factors we will consider when reviewing the circumstances of the case.

²⁸ Though these stages would apply to any investigation, the nature of each specific investigation may vary, in line with our general enforcement principles (for example, proportionality) and depending on the specific circumstances of each case. In circumstances where the relevant evidence is easily obtainable and unambiguous (for example, in the case of a very clear and isolated error), it is likely that an investigation can be conducted and concluded in a more timely fashion than in other cases.

Outcomes for the National Lottery

- The extent to which the statutory objectives under Section 4 of the Act have been compromised or placed at risk.
- The extent to which the National Lottery reputation is affected or potentially affected.
- The duration of the circumstances giving rise to the investigation and whether these continued after the Licensee became aware of the matter.
- The effectiveness and timeliness of any corrective action taken by the Licensee.
- The speed with which the Licensee brings the issue to our attention.
- Any compensatory measures taken or proposed to reduce the loss in sums paid to Good Causes.

Outcomes for Participants involved

- The extent to which any Participants involved are disadvantaged, misled, and/or treated unfairly.
- The Licensee's pro-active role in making Participants aware of their complaints procedure and that participants may refer issues to us if they remain dissatisfied.
- The restorative measures taken or proposed for Participants who have been disadvantaged.

Outcomes for Good Causes

- Extent to which proceeds to Good Causes are impacted upon
- Any compensatory measures taken or proposed to reduce the loss in sums paid to Good Causes.

Licensee's financial gain from non-compliance

- The Licensee's financial gain or the potential for financial gain from non-compliance with Section 5 or 6 Licence conditions.

Licensee's governance and controls

- The adequacy of steps taken to prevent recurrence.
- Whether the matters would have been apparent to a diligent Licensee.
- Whether the matters were the result of reckless or negligent actions.
- Whether the matters were the result of deliberate actions.
- The extent of historically similar matters or root cause problems.
- The Licensee's effectiveness in managing Licensee staff, contractors and retailers.
- The actions taken by the Licensee in bringing the case to our attention and its degree of cooperation with us.
- The extent to which the Licensee attempted to conceal matters from us.

- The prior involvement of senior management or lack of action on the part of senior management.

Additional factors specific to circumstances

- The impact on any sanction or other action on the commercial viability of the Licensee.

26.9 Having considered the circumstances of the case, we will consider the purpose of any sanction, applying the following principles²⁹:

- **We aim to change non-compliant behaviour.** To ensure the Licensee changes behaviour and moves back to compliance.
- **We aim to eliminate any Licensee financial gain or benefit from noncompliance.** In doing so, we will ensure any benefit to the Licensee or loss to Good Causes following on from any Section 5 or 6 Licence breaches, financial or otherwise, can be recouped, removing any incentive towards non-compliance.
- **We aim to be responsive and consider what is appropriate for the Licensee and the regulatory issue.** We will use discretion in imposing sanctions and consider the reason for compliance failure. Our aim is always to bring the Licensee back to compliance and therefore a flexible approach is necessary in order to uphold a credible enforcement and sanctioning regime.
- **We aim to be proportionate to the breach and harm caused.** We will assess the individual circumstances of each case, considering the nature and duration of the non-compliance and the consequences including the extent of harm caused or the risk of harm posed
- **We aim to restore the harm caused by regulatory non-compliance where appropriate.** In addition to ensuring the Licensee takes responsibility for its actions, we will consider Licensee arrangements for compensating disadvantaged Participants and to restoring any detriment to Good Causes Contribution.
- **We aim to deter future non-compliance.** We consider it important the Licensee expects us to investigate risk of non-compliance with and, if appropriate, be subject to enforcement action in accordance with this policy.

Stage three – Consider the appropriate regulatory action

26.10 After considering the specific circumstances of the case, and taking into account Licensee speed of disclosure of all relevant facts and appropriate admissions, we will consider the appropriate regulatory action, including any sanctions.

26.11 The appropriate action will be considered within the framework of our general enforcement principles. We will decide between the following options:

²⁹ Our principles are adapted from the Macrony report “Regulatory Justice: making sanctions effective”. Cabinet Office (2006). Note: In order to reflect our unique regulatory position in relation to our National Lottery duties (we regulate one business operation and have a specific duty to maximise the Good Causes Contribution), we adapted the wording of some so we can apply these appropriately.

- no formal enforcement action; or
- a formal enforcement action.

26.12 Further information on specific regulatory actions we may take is provided separately in section 28.

26.13 The above steps will enable us to reach a view of the facts of the case and the appropriate action for us to take. This will be reflected in preliminary findings of the investigation; the next section sets out the process for arriving at a final decision.

27. Process to our final decision

27.1 In this section we set out the process to our final decision, including:

- preliminary findings of our investigation;
- our final decision; and
- appeals.

Preliminary findings of our investigation

27.2 Once we have completed our formal investigation, we will compile our preliminary findings and include these in a letter to the Licensee. The letter and any accompanying documents will contain information about the following:

- the facts³⁰ of the investigation;
- how the facts relate to any apparent breach of a Section 5 or 6 Licence condition or risk to the statutory objectives;
- notification of our preliminary view of the appropriate regulatory action, if any (possible regulatory actions are set out separately in section 28);
- details of documents, and other evidence on which we rely; and
- details of any documents which might be said to undermine our case or assist the Licensee's case.

27.3 The Licensee can then make a written representation³¹ in response to our preliminary findings. We will normally request representation within 21 days; however, we may impose a shorter period in cases requiring further urgency.

Our final decision

27.4 We will consider the Licensee's representation before deciding whether the Licensee has acted in breach of a Licence condition, or otherwise not acted in accordance with our statutory duties, and our associated regulatory action.

27.5 The investigation will be led by an appropriate internal governance group who will recommend a final decision. We will make our decision in accordance with our Corporate Governance Framework³². We set out our functions and delegated authority of the National Lottery Committee and employees under the Act (see appendix four of our Corporate Governance Framework).

Appeals

27.6 The Licensee has the statutory right to appeal against certain sanctions, as detailed in the Act. The right of appeal against a financial penalty or revocation of a licence is to the High Court (or Court of Session in Scottish cases). In relation to a court

³⁰ If there is any dispute of fact, we will apply the civil standard of proof when making findings of fact.

³¹ If we intend to impose a financial penalty the Licensee can request an oral hearing for representation.

³² www.gamblingcommission.gov.uk/about/Corporate-governance-and-business-plan/Corporate-governance-framework.aspx

injunction/interdict or court order made by the High Court (or the Court of Session in Scottish cases) then the right of appeal is to the Court of Appeal.

27.7 There are no other statutory routes of appeal to bodies outside of the Commission for any other decision³³.

³³ All our decisions are susceptible to judicial review in the Courts on the usual bases.

28. Possible regulatory actions

- 28.1** In this section we summarise the possible outcomes of any formal investigation, based on the principles and processes set out in the sections above.
- 28.2** We may decide to take **no formal enforcement action**. This may involve no further action or we may instead apply informal procedures (see section 25).
- 28.3** If we decide to apply **formal enforcement action**, we have a range of statutory and non-statutory regulatory options we can impose. We include a summary of each of these, and the order we expect to consider them.
- 28.4** The first action we will consider is whether to issue a **notification of Licence breach**. If there is a Section 5 or 6 Licence breach this allows us to formally record it without necessarily taking any further action. This outcome may be appropriate where:
- (a) there is no risk to the statutory objectives, but a licensing requirement is breached;
 - (b) the breach is not considered serious in light of the factors set out in stage two of our investigation; and
 - (c) there is no loss or limited loss Good Causes Contribution (likely to be less than £1000).
- 28.5** If we consider it appropriate, we will then decide whether to issue other formal enforcement action(s), see examples from the list below³⁴:
- undertakings;
 - directing the Licensee's internal audit (see Condition 22.8 of the Fourth Licence);
 - Financial Distress Remediation Plan (see Conditions 18.11 to 18.15 of the Fourth Licence);
 - lock up restrictions (see Condition 18.16 of the Fourth Licence);
 - requirement for an Independent Performance Review (see Condition 25 of the Fourth Licence);
 - imposing new or amended Section 5 or 6 Licence conditions (see Section 8 of the Act);
 - court injunction/interdict or court order (see Section 9 of the Act).
- 28.6** We will also consider the following:
- financial penalty (see Section 10A of the Act);
 - revoke a Licence (the Act allows us to revoke a Section 5 or 6 Licence if any of the grounds for revocation apply³⁵, including a breach of condition in that Licence). We would only apply this in the most extreme of scenarios and once we had exhausted all other potential interventions. As explained further below,

³⁴ Note the actions are not ranked in order of seriousness, nor do we need to address each one when reaching our decision.

³⁵ See Section 10 and Schedule 3 of the Act. In addition to setting out discretionary grounds for licence revocation, Section 10 of the Act also highlights non-discretionary circumstances where we must revoke a licence.

the Act requires us to revoke a Section 5 or Section 6 Licence if we are no longer satisfied that the licensee is a fit and proper person. Therefore, in these circumstances, revocation is the only sanction available to us.

28.7 We next provide more information about each of these.

28.8 Undertakings are a set of actions the Licensee commits to implement. These include an explanation of the events which gave rise to the undertaking, the actions to be taken and the timeline for achieving these. We may also consider an undertaking alongside other sanctions. Although the intention is for an undertaking to be proposed by the Licensee there is no reason to preclude us from taking the initiative.

28.9 We may consider an undertaking to be appropriate where either:

- (a) one of the statutory objectives is jeopardised, along with one or more Licensing requirement;
- (b) one of the statutory objectives is jeopardised and there is public concern, however there is no specific breach of any Licence condition;
- (c) the overall statutory objectives are not jeopardised, but a Licensing requirement is breached

And...

- (d) the breach of Licence and/or effect on statutory objectives can be rectified by way of undertaking; and
- (e) there is no loss or limited loss on Good Causes Contribution (likely to be less than £1000).

28.10 We will only accept an offer for undertaking where we consider it an appropriate enforcement response, and if implemented will achieve an effective outcome. Previous agreement is not a basis for our future acceptance of an undertaking. The success or otherwise of earlier agreements will be a key factor in determining suitability.

28.11 We cannot require the Licensee to enter into an undertaking and there is no requirement for us to accept any offer made. Any failure by the Licensee to implement an undertaking, where there is continued or recurring breach of a Section 5 or 6 Licence condition, will inform our decision whether to impose a financial penalty in respect of that breach.

28.12 We will consider **directing the Licensee's internal audit function** (see Condition 22.8 of the Fourth Licence) to review and formally report to us on particular risks or concerns we may have, with a view to getting the Licensee, if required, to strengthen its governance, risk management and controls.

28.13 In the event of the Licensee entering financial distress, evidenced through the occurrence of a Financial Distress Event, we may require the Licensee to prepare, submit to us for review and approval, and implement a **Financial Distress Remediation Plan** (see Conditions 18.11 to 18.15 of the Fourth Licence) with the objective of returning the Licensee to operational and financial stability and protecting the National Lottery asset.

28.14 The Financial Distress Remediation Plan must set out the steps the Licensee will take to remedy any associated Financial Distress Events, and we may require the Licensee to:

- amend and improve its plan to our satisfaction; and
- report to us on the status of implementation of the plan, at a frequency determined by us, until the Financial Distress Event has been remedied to our satisfaction.

28.15 In the occurrence of a Financial Distress Event for the Licensee, we may consider activating **lock up restrictions** (see Condition 18.16 of the Fourth Licence), which requires the Licensee to:

- not pay any dividends or make any other distribution to its shareholders, including the distribution of any tax losses;
- not make any payments under a Related Party Arrangement, other than payments owed under arrangements which are on arm's length terms and represent Good Value for Good Causes; and
- not make any payment to repay any debt, or interest on any debt, owed by the Licensee under any Finance Agreement between the Licensee and a Connected Party.

28.16 We will review the Licensee progress in addressing the relevant Financial Distress Event through its Financial Distress Remediation Plan and inform the Licensee in writing when the lock up restrictions cease to apply.

28.17 We may consider a requirement for an **Independent Performance Review** (see Condition 25 of the Fourth Licence) is appropriate in any of the following circumstances:

- (a) if achieving one of our overall statutory duties is jeopardised, along with one or more Licensing requirement; or
- (b) if achieving our overall statutory duty is not jeopardised but a Licensing requirement is breached;

And...

- (c) if we believe an Independent Performance Review will improve our regulatory oversight and help us to understand where problems have arisen with the Licensee.

28.18 If we require an Independent Performance Review, we expect to be involved in determining the associated terms and conditions of the review. The Licensee must not appoint an independent third party without our prior written agreement. The Licensee will have an opportunity to engage and help address any performance issues identified by the review. Any and all costs in connection with the operation of an Independent Performance Review will be at the Licensee's own cost (it is an excluded cost for the purpose of the Incentive Mechanism set out in Schedule 5 of the Fourth Licence).

28.19 As per Section 8 of the Act, we have the ability to **impose new or amended Section 5 or 6 Licence conditions** to address a risk to our statutory duties. We

may vary, add, or omit any condition³⁶ without the Licensee's consent, if the Licensee has been given a reasonable opportunity of making representation. Any amendment we make under Section 8 of the Act would need to be undertaken in accordance with our statutory duties and public law principles. The updated Licence then continues with the additional or amended conditions.

28.20 Conditions 2.4 to 2.6 of the Fourth Licence set out the conditions in the Licence that, per Section 8(3)(b), we can only vary with the consent of the Licensee.

28.21 We seek to ensure Participants are not seriously disadvantaged or affected by any new or amended Licence conditions, either directly or indirectly, and that the conditions will protect Participants and the general public during the period they are in force. If we apply this action we shall serve a notice on the Licensee to inform them about the Licence variation and state the variation shall take effect at the end of such period as may be specified in the notice³⁷.

28.22 We may consider the imposition of new or amended Licence condition(s) to be appropriate in the following circumstances:

- (a) if one of our statutory objectives is jeopardised, along with one or more Licensing requirement; or
- (b) if one of the statutory objectives is jeopardised and we consider there is public concern, however, there is no specific breach of any Licence condition;

And...

- (c) the Licensee has demonstrated understanding and insight of the issues or concerns which gave rise to the review;
- (d) we consider the risk of repetition to be low;
- (e) the matter is capable of correction;
- (f) we can formulate appropriate, realistic and practicable Licence conditions; and
- (g) we consider there is no significant risk of repetition if the Licensee complies with the additional Licence conditions.

28.23 We may consider a **court injunction / interdict or court order** to be appropriate where we seek to compel the Licensee to do or refrain from specific acts. If the Licensee fails to comply with an injunction, they can face criminal or civil penalties. We do not envisage we will use this sanction frequently in the context of enforcement around the National Lottery.

28.24 Under Section 9 of the Act the court may grant an injunction restraining the contravention (or, in Scotland, an interdict prohibiting the contravention) or make an order requiring the Licensee (and any other person who appears to the court to have been party to the contravention) to take such steps as the court may direct to remedy it where the court is satisfied:

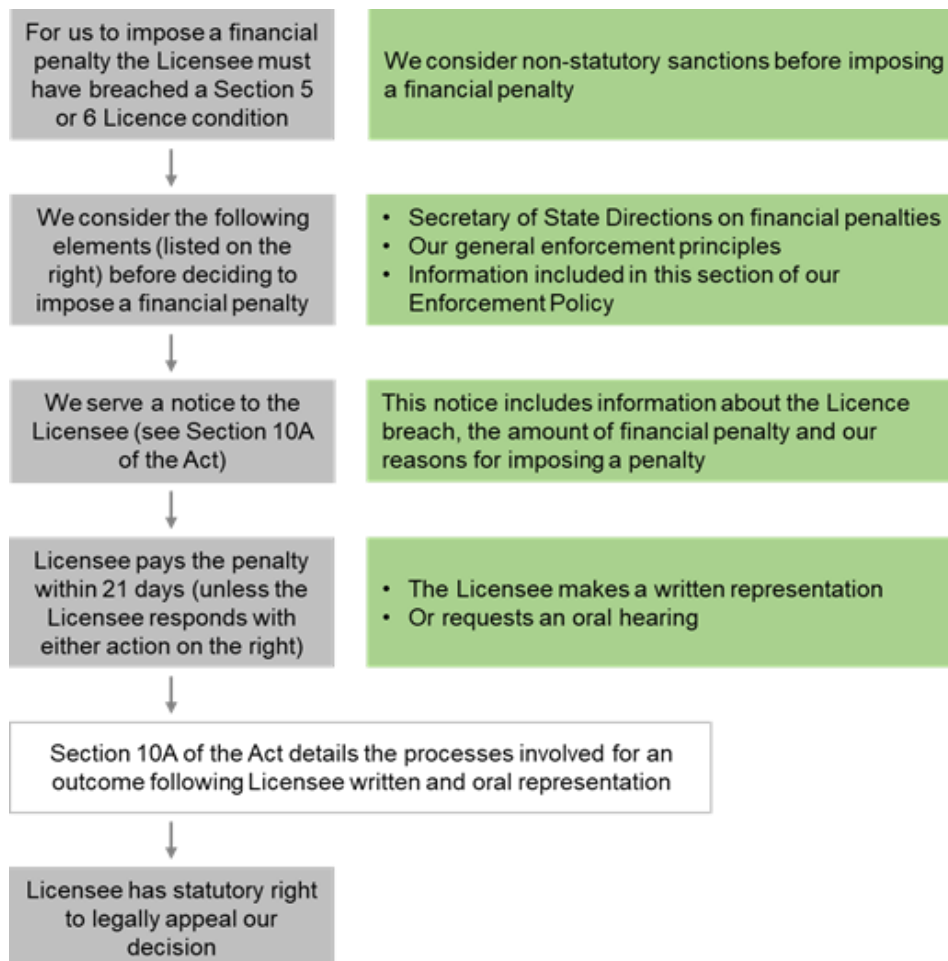
³⁶ There are two exceptions where we cannot vary existing conditions in the Licence, and these are set out at Section 8(3) of the Act. These are (a) where the variation would result in a condition requiring the Licensee to transfer any property or rights, or (b) in the case of a Licence granted under Section 5 of the Act, in relation to a condition that the Licence provides may only be varied with the consent of the Licensee.

³⁷ Under Section 8(5) of the Act the period specified in the notice shall be a period of at least 21 days beginning with the date of the notice.

- there is a reasonable likelihood that a person will contravene a condition in a Licence granted under Section 5 or 6 of the Act;
- a person has contravened such a condition and there is a reasonable likelihood the contravention will continue or be repeated;
- a person has contravened such a condition and there are steps that could be taken for remedying the contravention.

28.25 After considering the above sanctions, we may impose a **financial penalty** if we are satisfied the Licensee has contravened a Section 5 or 6 Licence condition. Our aim of a financial penalty is twofold; to deter persons from contravening conditions in Licences under Section 5 or 6 of the Act, and to eliminate any financial gain/benefit from non-compliance with Licence conditions. Figure 4 below shows the high-level process for imposing a financial penalty. We then explain more detail in the following paragraphs.

Figure 4: Overview of process for financial penalties



28.26 We may consider a financial penalty appropriate in the following circumstances where:

(a) one of our statutory objectives is jeopardised, along with one or more Licensing requirement;

And (one or more of the following factors are present) –

(b) there is a serious impact, or potentially serious impact on the National Lottery's reputation (including for fairness, consumer protection, systems integrity or customer satisfaction);

(c) there is a significant impact on Participants involved or for potential Participants;

(d) there is a significant impact on Good Causes Contribution;

(e) the Licensee has derived a financial advantage from the breach;

(f) the Licence breach was as a result of deliberate action or negligence;

(g) the Licensee was aware or should have been aware of the breach;

(h) the Licensee has committed similar contraventions in the past;

(i) there was a systematic failure to comply with a Licence condition;

(j) the Licensee did not report the issue to us;

(k) there is a lack of effective remedial action after the breach or failure becomes apparent to the Licensee;

(l) a financial penalty is necessary to deter future contraventions or failures and to encourage compliance, on the part of both the Licensee and other operators.

28.27 We are required by law to act in accordance with Sections 10A and 10B of the Act and the DCMS Director General's publication 'Financial penalties: principles and procedures'³⁸. There are a number of procedural steps we must take before we can impose a financial penalty, as shown in Figure 4, including the service of a notice³⁹ on the Licensee setting out the details of the breach and giving the Licensee the opportunity to make written representations or to notify us of their intention to make oral representations.

28.28 In certain cases where we are considering a financial penalty, or a payment in lieu of financial penalty, and we receive timely disclosure and admissions by the Licensee, we may seek to give a discount to the penal aspect of a financial penalty.

28.29 Licence revocation (see Section 10 of the Act) is the most serious sanction and we will only consider this in the most extreme of scenarios and once all other potential interventions are exhausted.

28.30 We must revoke a Licence:

(a) granted under Section 5 if we are satisfied the Licensee no longer is, or never was, a fit and proper body to run the National Lottery;

(b) granted under Section 6 if we are satisfied the Licensee no longer is, or never was, a fit and proper person to promote lotteries under the Licence;

³⁸ <https://www.gamblingcommission.gov.uk/PDF/NL-licences/National-Lottery-Directions.pdf>

³⁹ Section 10A(3) and (4) sets out what we are required to include in the notice.

- (c) granted under Section 5 or 6 if the Licensee fails to pay the annual fee in accordance with Section 7A of the Act, but we may disapply this if we think that a failure to pay is attributable to administrative error.

28.31 We may revoke a Licence granted under Section 5 or 6 if:

- (a) it appears to us that any of the discretionary grounds for revocation set out in Part I of Schedule 3 of the Act applies⁴⁰; or
- (b) the Licensee consents.

28.32 Licence revocation is subject to the process set out in Part II of Schedule 3 of the Act, except where the Licensee consents or has failed to pay the annual fee in accordance with Section 7A of the Act.

⁴⁰ Part I of Schedule 3 of the Act states the following are discretionary grounds for revocation:

- “1. A Condition in the licence has been contravened.
- 2. Any information given by the licensee to the Director General—
 - (a) in or in connection with the application for the licence,
 - (b) in pursuance of a Condition in the licence, or
 - (c) in making representations under Section 8(2) or Part II of this Schedule, was false in a material particular.
- 3. (1) A proposal for a voluntary arrangement under Part I of the Insolvency Act 1986 or Part II of the Insolvency (Northern Ireland) Order 1989 has been made in relation to the licensee.
(2) A petition for an administration order to be made in respect of the licensee or for the winding up of the licensee has been presented to the court.
(3) A resolution for the voluntary winding up of the licensee has been passed.
(4) A receiver or manager of the whole or any part of the licensee’s property has been appointed.
(5) An administration application has been made or a notice of intention to appoint an administrator or a notice of an appointment of an administrator under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (c. 45) has been filed.
- 4. In the case of a licence granted under Section 5—
 - (a) the licensee is not providing or proposing to provide facilities that are necessary or desirable for running the National Lottery;
 - (b) any person who is managing the business or any part of the business of running the National Lottery under the licence is not a fit and proper person to do so;
 - (c) any person for whose benefit that business is carried on is not a fit and proper person to benefit from it.
- 5. In the case of a licence granted under Section 6—
 - (a) the licensee is not taking or proposing to take steps that are necessary or desirable for preventing the commission of fraud by participants in any lottery promoted under the licence;
 - (b) a person who is managing the business or any part of the business of promoting lotteries under the licence is not a fit and proper person to do so;
 - (c) a person for whose benefit that business is carried on is not a fit and proper person to benefit from it.”

29. Regulatory settlements

29.1 In this section we set out our approach to regulatory settlements.

29.2 Regulatory settlements are proposed by the Licensee and can allow us to avoid a protracted investigation or conclude an investigation in a timely manner. We will only consider a settlement when it meets an appropriate regulatory outcome. We will set timetables for settlement discussions, and it is likely we will revert to formal regulatory action if these are not adhered to.

29.3 We may consider a regulatory settlement appropriate where the Licensee is:

- (a) open and transparent in its dealings with us;
- (b) able to make timely disclosures of material facts;
- (c) able to suggest actions that would prevent the need for us to take formal action;
- (d) prepared, where appropriate, to agree to us making a public statement setting out the failings in order to ensure transparency, deter future non-compliance and/ or share learning that may be beneficial to other stakeholders including the public;
- (e) prepared to divest itself of profits or cost savings which accrued as a result of the failings;
- (f) prepared to follow advice and implement procedures to ensure there is no repetition of the failings; or
- (g) prepared to volunteer a payment to Good Causes in lieu of the financial penalty we might otherwise impose for breach of a Licence condition.

30. Publication of our decision

30.1 Openness and transparency are central to our work. Publication of our enforcement work plays an important role in improving compliance and in increasing confidence in us as a regulator. In this section we set out our approach:

- to publishing during our investigation;
- to publishing after we make our final decision; and
- to considering the removal of published notices.

During our investigation

30.2 Generally, we will only publicly announce an investigation in exceptional circumstances. This is to protect the integrity of investigations and protect the Licensee from being unfairly associated with unsubstantiated allegations. Exceptional circumstances may involve where matters under investigation have become the subject of public concern, speculation or rumour. We will only make an announcement if we consider it is desirable to:

- maintain public confidence in the National Lottery or the regulation thereof;
- protect Participants;
- prevent or deter widespread malpractice;
- help the investigation itself, for example by bringing forward witnesses;
- maintain the smooth operation of the National Lottery.

30.3 We will consider any potential prejudice caused to the Licensee who is, or likely to be, subject to investigation, and weigh this against the benefits of making an announcement.

30.4 We will not generally publish details of any preliminary findings during our investigations. In many cases, restrictions on the disclosure of information obtained in the course of exercising our role and duties is likely to prevent publication. These restrictions may include disclosing someone's confidential or legally privileged information or prejudicing other investigations or legal proceedings.

30.5 In exceptional circumstances, and where we are not prevented from doing so, we may publish details of an ongoing investigation. Circumstances in which we may do so include those where our investigation concern is made public, by ourselves or otherwise, and we subsequently conclude our concerns are unwarranted. In this example the Licensee may wish us to clarify the matter.

After we make our final decision

30.6 After we make our final decision, we will ordinarily publish our decision within 14 days (even if our decision is subject to appeal). Unless we have reason not to, we will also publish decisions resulting in regulatory settlement, and details of any undertaking. Consistent with our wider fairness and transparency obligations, we would expect to engage with the Licensee prior to publication.

Our considerations for the removal of published notices

30.7 Upon request we will review any compliance or enforcement-related notices that are published on our website. We will determine whether continued publication is appropriate, or whether such notices should be removed or amended.

30.8 In completing our review, we will consider relevant factors, in particular:

- the seriousness of the misconduct;
- the nature of our action and the level of any sanction imposed;
- whether we have continuing concerns in respect of the Licensee and any risk they might pose to the National Lottery objectives;
- whether the publication sets out our expectations regarding behaviour for an area;
- whether that message still has educative value and the public interest in the case (both at the time and subsequently);
- whether continued publication is necessary for deterrence or consumer protection;
- the length of time since publication; and
- any representations made by the Licensee on the continuing impact on them of the publication.

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