

Changes to our enforcement strategy for the National Lottery

Consultation

October 2017

1 Introduction

- 1.1** Consumers have always been at the core of our approach to regulation of gambling and the National Lottery. To reinforce our focus on consumers, we recently consulted on changes to our enforcement strategy under the Gambling Act. That consultation concentrated solely on the enforcement work we conduct in pursuance of the licensing objectives set out in the Gambling Act 2005. It did not cover our enforcement work involving the National Lottery, because there are some important differences between the legislation that underpins that work.
- 1.2** This proposes changes to our National Lottery enforcement policy. The proposed changes are intended to:
- streamline the policies and processes that govern National Lottery enforcement
 - align our approach to National Lottery enforcement more closely with our general approach to our other enforcement work
 - build on our experience of working with the current policy, whilst maintaining the legal and procedural safeguards that have always been a feature of the regulatory framework for the National Lottery.
- 1.3** The key changes we propose to the National Lottery enforcement policy are:
- an updated set of general principles in section 2
 - a clearer distinction between investigation and decision making
 - removing the requirement for decision-makers to decide on whether the overall regulatory significance of a breach is low, medium, or high, as in practice added that assessment added complexity but had little impact on the eventual outcome
 - Separating out the arrangements for informal procedures in section 5 and in the same section, including some provisions about settlement
 - in section 7 more information on publication.
- 1.4** We have also taken this opportunity to review the language we use in the enforcement policy to make it clearer and more accessible. We have attached (see annex one) a copy of new draft National Lottery enforcement policy for you to compare with the current version.
- 1.5** This consultation will run for six weeks and will close on **21 November 2017**. Details on how to respond and where to find our response template are set out at the end of this document.

2 Regulating the National Lottery

- 2.1** We became responsible for regulating the National Lottery in October 2013. Before that date, regulation of the National Lottery was the responsibility of the National Lottery Commission. Our statutory duties in relation to the National Lottery are set out in Section 4 of the National Lottery etc Act 1993 (as amended) (the Act). These duties require that we exercise our functions in the manner we consider most likely to secure:
- that the National Lottery is run and every lottery that forms part of it is promoted with all due propriety
 - that the interests of every participant in a lottery that forms part of the National Lottery are protected

and subject to the above

- in exercising these functions that we do our best to secure that the net proceeds of the National Lottery are as great as possible.

- 2.2** We grant a licence under Section 5 of the Act to operate the National Lottery and licences, under Section 6 of the Act, to promote National Lottery games.
- 2.3** Our approach to enforcement is set out in the National Lottery enforcement policy. We have reviewed the policy in line with our intention to:
- place a renewed focus on consumers
 - create greater consistency and clarity about our approach to all of our enforcement activity, whether specific to the National Lottery or in accordance with the Gambling Act
 - stream-line and speed-up decision-making processes
 - provide more information about the range of possible sanctions.
- 2.4** Within this consultation we have summarised the key changes we propose to the National Lottery enforcement policy and annexed a draft of the new policy.

3 National Lottery enforcement policy

- 3.1** In pursuit of the statutory duties we set out above we publish a policy which sets out our approach to enforcement and how we will use our powers in an appropriate and proportionate manner. It also sets out what enforcement measures are available to us and the factors that we take into account when we decide on what action to take.
- 3.2** The key changes that we now propose to each Section of the enforcement policy are set out below. These reflect our intention to secure consumer protection and standard-raising as primary drivers for our regulatory activity.

Section 1 - Introduction

- In Section 1, we have included some new wording which sets out the aims for our regulatory enforcement activity in protecting consumers and raising standards. This wording links our approach to National Lottery enforcement to our wider approach to regulation in support of both the licensing objectives and our statutory duties under the Act.
- Within the entire policy we have replaced all references to “voluntary settlement” within the policy with the term “regulatory settlement”. This more accurately describes the settlement process and outcome where this is linked to enforcement proceedings and is consistent with our approach to enforcement under the Gambling Act

Section 2 – General principles

- In Section 2 we now set out solely the general principles to which we will refer when we make regulatory decisions. The sanction principles which we aim to follow when we take enforcement action are now set out in Section 4.
- We have refined the wording in Section 2 and in so doing have reduced the number of general principles from seven to five. Each general principle is supported by an explanation of how the principle will be applied in practice. These amendments to Section 2 are intended to give greater visibility to the overarching principles which apply to our enforcement work.

Section 3 – Investigations

- Section 3 of the Enforcement Policy sets out our approach to investigations. Previously, much of the process of investigation was set out elsewhere within the policy. This was confusing. We have therefore expanded Section 3 to include not only the circumstances which might trigger an investigation but also to detail the process we will follow when we commence an investigation. This provides greater clarity for the operator about the investigative process.

Section 4 – General principles

- Section 4 of the Enforcement Policy, which previously dealt with actions available, is now focussed on the decision-making process.
- The key change to Section 4 is a streamlined decision-making process. Over the past few years it has become clear that the current decision-making process is cumbersome and includes some redundant steps. We have addressed this by removing step 2 in the current decision-making process. At present, step 2 requires decision-makers to consider all of the factors at step 1 and to then decide whether the overall regulatory significance of the issue or non-compliance is low, medium or high. This is superfluous, creates unnecessary complexity and can fetter the ultimate outcomes of the investigation. We propose that instead, in working through step 1, decision-makers will make an initial determination about the seriousness of the issue which can then be applied flexibly to the available regulatory outcomes. We have therefore removed Step 2 from the decision-making process to create a 3-step process.
- We are further proposing that to streamline the investigative process and align it more closely with the process we use under the Gambling Act, the National Lottery Committee will not participate in the decision-making stage. Instead, officials alone will form a view on the facts and the seriousness of the breaches. The operator will then be permitted to make appropriate representations before officials present their findings and proposals for final determination.
- We have attached a copy of the current Schedule of Delegations from the National Lottery Committee (see annex two). This sets out which officers are responsible for decision making and which decisions must be referred to the National Lottery Committee.
- At paragraph 4.5 we have updated the principles that we take into account when we impose a sanction and made clear that not all of these principles have to be present for a sanction to be imposed. The changes we propose are intended to make it clear that one of the aims of a sanction is to eliminate operator gain or benefit from non-compliance. This includes recouping losses to good causes as a result of non-compliance.
- At paragraph 4.11, Sanction 6 we have removed the word ‘significant’ from the description of the circumstances in which we will investigate non-compliance. This has created an unrealistic expectation that anything less than significant non-compliance will be dealt with by means other than investigation. It is essential that when we are considering possible non-compliance, all options, including investigation, remain available to us and that the operator should expect an investigation where we have any concerns about non-compliance.

- At stage 3 of the decision-making process, we set out in more detail our proposals for giving credit for cooperation and timely disclosure during an investigation. This approach is consistent with the approach we are taking to our wider enforcement action under the Gambling Act. Across the Commission we have seen the benefit of early and voluntary reporting of breaches by licensees and in contrast, the cost to resources and finances when licensees do not cooperate. As a proportionate and risk-based regulator, we want to encourage and incentivise early disclosure, admissions and cooperation with our investigations where it is otherwise appropriate to do so.

Section 5 – Informal procedures and settlements

- At section 5 we now set out a non-exhaustive list of the instances where a more informal approach might be available to address concerns with the operator, as opposed to the formal investigation and enforcement approach set out in Sections 3 and 4.
- We want to incentivise the operator to make timely admissions about non-compliance and to cooperate fully with our investigations. Where this is the case, and provided there is no or limited impact on propriety, consumer protection and return to good causes, we propose to deal with issues by way of regulatory settlement (paragraph 5.3).

Section 6 – Appeals

- There are no changes to this section.

Section 7 – Publicity

- We are committed to openness and transparency in our regulatory work. In general we would expect to publish information about our enforcement decisions unless there is good reason not to do so. This is consistent with our consumer-focus; we want consumers to be informed and to understand the reasons why we take enforcement action. We have amended Section 7 to include more detail on the circumstances in which we would publish our decisions and the reasons for doing so. We have also clarified our approach to publication whilst investigations are ongoing and where we have concluded an investigation and reached a decision.

4 How to respond to this consultation

4.1 The Commission is committed to a full and open consultation and would welcome comments on any aspect of this document. A response template will be available on our website. We would prefer respondents to complete the response template provided and send it by email to: consultation@gamblingcommission.gov.uk

4.2 Alternatively, responses can be sent by post to:
National Lottery enforcement strategy consultation
Gambling Commission
Victoria Square House
Victoria Square
Birmingham
B2 4BP

4.3 The deadline for responses to this consultation is **21 November 2017**. Respondents are of course welcome to comment on any or all of the areas addressed by this consultation.

- 4.4 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding as an individual, please mention your own interest.
- 4.5 Please note that responses may be made public or published in a summary of responses to the consultation unless you state clearly that you wish your response and/or name to be treated confidentially. Confidential responses will be included in any statistical summary of numbers of comments received. If you are replying by email or via the website, unless you specifically include a request to the contrary in the main text of your submission, we will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
- 4.6 Any information or material sent to us and which we record may be subject to the Freedom of Information Act 2000 (FOIA). The Commission's policy on release of information is available on request or by reference to our website at www.gamblingcommission.gov.uk. The Commission will treat information marked confidential accordingly and will only disclose that information to people outside the Commission where it is necessary to do so in order to carry out the Commission's functions or where the Commission is required by law to disclose the information. As a public authority the Commission must comply with the requirements of FOIA and must consider requests for information made under the Act on a case-by-case basis. Therefore when providing information, if you think that certain information may be exempt from disclosure under FOIA, please annotate the response accordingly so that we may take your comments into account.
- 4.7 All information provided to the Commission will be processed in accordance with the Data Protection Act 1998. However, it may be disclosed to government departments or agencies, licensing authorities and other bodies when it is necessary to do so in order to carry out the functions of the Commission and where the Commission is legally required to.
- 4.8 This consultation is being conducted in line with the Cabinet Office consultation principles published in January 2016. The criteria are listed on www.gov.uk and the Commission's website, together with details of who to contact with any comments on the consultation procedure or complaints about the way it is being conducted.

October 2017

Keeping gambling fair and safe for all

www.gamblingcommission.gov.uk

Enforcement policy in relation to the National Lottery

October 2017

1 Introduction

- 1.1** The Gambling Commission is the regulator of the National Lottery.
- 1.2** We grant a licence under section 5 of the National Lottery etc. Act 1993 (as amended) (hereafter referred to as the Act) and licences under section 6 of the Act to promote National Lottery games.
- 1.3** This Enforcement Policy (hereafter referred to as the policy) is a public statement. It aims to set out clearly our approach to enforcement and to demonstrate how we will use our powers in an appropriate and proportionate manner. It details the enforcement measures available and the factors that are likely to be considered by us when deciding on action to be taken.
- 1.4** We shall exercise our functions under this policy in the manner we consider the most likely to secure the following¹:
- (a) that the National Lottery is run, and every lottery that forms part of it is promoted, with all due propriety
 - (b) that the interests of every participant in a lottery that forms part of the National Lottery are protected
 - (c) subject to (a) and (b), that the net proceeds of the National Lottery are as great as possible.
- 1.5** We will, as necessary, work with other regulators and law enforcement agencies to ensure that we coordinate our respective powers. This will avoid duplication and inconsistencies and ensure that the most appropriate action is taken
- 1.6** This policy is a key part of the overall regulatory regime implemented by us. Although not bound by it, we will generally apply enforcement actions consistently with this policy. In the event of any departures from this, we will explain our reasons for doing so.

2 General principles

- 2.1** The general principles to which we will seek to apply overall in decisions as to regulatory action are as follows:

Proportionality

- 2.2** To only intervene where necessary with targeted enforcement actions appropriate to secure that the statutory objectives are met. These are set out at paragraph 1.4 of this policy. Our approach will be targeted and focused on the most important operational issues, factors and risks.

Consistency

- 2.3** To treat similar cases in a similar way unless there is a good reason not to. However, where there are repeated failures by the operator, we reserve our right to escalate enforcement action.

Evidence-based decision-making

- 2.4** To seek and make use of the best available evidence when making enforcement decisions.

¹ As per Section 4 of the Act

Accountability and transparency

- 2.5** To explain to key stakeholders how enforcement decisions are made and what actions have been taken. Key stakeholders include the operator, players, potential players (the general public), Parliament, the Government, consumer groups and any other interested parties.
- 2.6** We seek to be clear and open about our enforcement decisions and how they are arrived at. This will help ensure that there can be an understanding of our regulatory concerns and how regulatory and enforcement actions seek to address these.

Human rights compliant

- 2.7** To comply with our obligations under the Human Rights Act 1998 as a public authority.

3 Investigations

What will trigger an investigation?

- 3.1** A regulatory investigation may be commenced if the Commission thinks that the operator may have breached a licence condition or because there is an issue that gives rise to a risk to the statutory objectives set out in paragraph 1.4.
- 3.2** The first step in deciding whether to commence an investigation is to decide whether our regulatory powers should be used at all. It may be that before an investigation is commenced we decide that no further action is necessary.
- 3.3** Matters may come to our attention through a number of channels, including:
- compliance reviews
 - formal incident reports provided under licensing requirements
 - formal performance reports provided under licensing requirements
 - player complaints or enquiries to the Commission
 - analysis of trends associated with the above
 - issues raised by the operators staff and subcontractors and their staff (in accordance with procedures approved under licensing requirements)
 - public interest disclosures
 - condition 17 reviews.

How will an investigation be conducted?

- 3.4** The information received is initially reviewed and then submitted to the Issues Management Group, who decide how to progress the matter. It may be that we gather more information regarding the matter initially. If a decision is made to commence a formal investigation then a 'Notice of Investigation' will be sent in writing to the operator.
- 3.5** This policy sets a broad framework of the procedure that will usually be adopted, however we retain a discretion to conduct investigations in a manner we consider appropriate and proportionate.

Initial meetings

- 3.6** We may, either when considering whether to commence an investigation, or after notifying the operator that we propose to commence an investigation, hold an initial meeting with the operator to clarify and narrow the issues and to establish exactly what information will be sought during the investigation. However, in many cases, such an initial meeting will be unnecessary because the issues will be sufficiently clear.

Interviews

- 3.7** In addition to requesting specified information, we may wish to interview persons who we consider can supply relevant information in connection with the investigation. Such interviews may be recorded on tape. If an interview is recorded on tape we will inform the operator of this in advance. We reserve the right to use the contents of the interview as evidence.

Requests for information and/or documents

- 3.8** A request for the production of information will be made either orally or in writing, dependent upon the individual circumstances of each case. Wherever possible, the operator or third party will be given a reasonable period of time to comply with the request. We will only ask the operator or third party to produce documents or records which we believe are necessary. Under condition 10 of the licence the operator shall in the manner prescribed provide the requested information to allow us to carry out our duties and exercise our powers under the Act. We are of the view that the operator/ third parties will not breach the requirements of the Data Protection Act (DPA) if they supply information that we have requested even if this relates to personal information that they hold. We have the power to request this information under DPA.

Preliminary findings following an investigation

- 3.9** At the conclusion of the investigation we will send a preliminary findings letter to the operator. The letter and documents which accompany it will normally contain details of the following:
- the facts found during the investigation
 - how those facts relate to any apparent breach of a licence condition or risk to the statutory objectives
 - notification of the recommendation as to what (if any) regulatory action should follow the investigation
 - details of the documents, and other evidence on which we rely
 - details of any documents which might be said to undermine our case or assist the operator's case.
- 3.10** The operator will then be offered the opportunity to make written representations in response to our preliminary findings. The operator will normally be given 21 days to make such representations, however a shorter period may be imposed in cases where there is a need for urgency.
- 3.11** Whilst we recognise that there are likely to be many cases in which there will be no dispute of fact, if there is a dispute of fact, we will apply the civil standard of proof when making findings of fact.

4 Decision making

Who will make decisions?

- 4.1 Decisions will be taken in accordance with our *Corporate Governance Framework* which sets out the *Delegation of Functions under the National Lottery etc Act 1993* (as amended) (contained at Appendix 4 of that document).

How will decisions be reached?

- 4.2 The operator will have an opportunity to make written representations before a decision is reached as to whether they have acted in breach of a licence condition or otherwise not acted in accordance with the statutory objectives under section 4 of the Act. The operator will also have an opportunity to make written representations as to what sanction or other action (if any) we decide to impose or take².
- 4.3 We will follow a four staged approach as to decisions on what regulatory action (if any) should be taken. This approach is set out below:

Stage one

- 4.4 The decision maker should consider all of the circumstances of the case in determining what regulatory action (if any) should be taken, including but not limited to the factors set out below:

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 operator became aware of the matter.
- The effectiveness and timeliness of any corrective action taken by the operator.
- The speed with which the operator brings the issue to our attention.
- Any compensatory measures taken or proposed to reduce the loss in sums paid to good causes.
- The level of public interest shown or anticipated in the case.

Outcomes for players involved

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

Outcomes for good causes

- Extent to which proceeds to good causes were impacted upon
- Any compensatory measures taken or proposed to reduce the loss in sums paid to good causes.

² This is subject to the specific rules governing the imposition of Financial Penalties where the operator can request an oral hearing to make representations

Operator's financial gain from non-compliance

- The operator's financial gain or the potential for financial gain from non-compliance with licence conditions.

Operator's governance and controls

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

Stage two

- 4.5** Having assessed the case by reference to the factors at Stage One, the decision maker should then consider the purpose of any sanction in line with the following sanction principles (this should not be read as a list or as principles that all need to be present):³

A sanction should aim to change non-compliant behaviour

- 4.6** To ensure that the operator changes in behaviour and moves back to compliance.

A sanction should aim to eliminate any operator financial gain or benefit from non-compliance

- 4.7** In doing so, sanctions will ensure that any benefit to the operator or loss to good causes following on from licence breaches, financial or otherwise, can be recouped, removing any incentive towards non-compliance.

A sanction should aim to be responsive and consider what is appropriate for the operator and the regulatory issue

- 4.8** Discretion should be used in imposing sanctions, taking into account the reason for compliance failure. The aim will always be to bring the operator back to compliance and therefore a flexible approach is necessary in order to uphold a credible enforcement and sanctioning regime.

A sanction should aim to be proportionate to the offence and harm caused

- 4.9** The individual circumstances of the case should be considered, taking into account the nature and duration of the non-compliance and also the consequences including the extent of harm caused or the risk of harm posed.

³ These principles are adopted from the Macrory Report. 'Regulatory Justice: making Sanctions Effective. Cabinet Office November 2006

A sanction should aim to restore the harm caused by regulatory non-compliance, where appropriate

- 4.10 In addition to ensuring the operator takes responsibility for its actions, consideration should be given to arrangements adopted by the operator for compensating disadvantaged players and to restoring any detriment to good causes.

A sanction aims to deter future non-compliance

- 4.11 It is important that the operator should expect that non-compliance with regulatory requirements will be investigated, and, if appropriate, be subject to enforcement action in accordance with this policy.
- 4.12 In order to reflect our unique regulatory position in relation to our National Lottery duties, in that we regulate one business operation and have a specific duty to maximise the returns to good causes, the wording of the principles has been adapted so we can apply these principles appropriately.
- 4.13 Following the use of any sanction or other action we will normally undertake assurance reviews and/or compliance checks on case issues. This will be in a timely manner dependent on the seriousness of the regulatory concerns and will assist in focusing the operator on future compliance and in the measuring of regulatory success. If matters remain unresolved it may be appropriate to take further enforcement action.

Stage three

- 4.14 Based on the assessment undertaken at stages 1 and 2 and all the circumstances of the case the decision maker will then consider what sanction is appropriate.
- 4.15 As a general principle, the earlier that disclosure of all relevant facts and appropriate admissions are made during the investigation process, the more credit will be given to the operator for making such a disclosure. The amount of credit to be given will be decided on a case by case basis.
- 4.16 The options for the decision maker are:
- no further action
 - notification of licence breach without the imposition of a financial penalty
 - undertakings (may be used in combination with sanctions)
 - requirement for an independent review (although this is not necessarily a matter which requires a prior investigation – see conditions 17.1 and 17.2 of the third licence to operate the National Lottery)
 - imposing new or amended licence conditions
 - court injunction/ interdict or court order
 - financial penalty
 - licence revocation.

No further action

- 4.17 Decision makers should first decide whether it is appropriate to take any action at all. Deciding that there should be no further action may be appropriate if the decision maker considers that there are no matters of concern, or where further formal action would not be a proportionate response to the established facts as there is no ongoing risk to the statutory objectives. In the latter case it may be appropriate to give the operator some advice as to their future conduct.

Notification of licence breach without the imposition of a financial penalty

- 4.18** This is the next sanction that should be considered if it is deemed that no further action is inappropriate. The notification approach allows us to formally record the licence breach without going on to take 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 at Stage One
 - (c) there is no loss or limited loss on returns to good causes (likely to be less than £1000).
- 4.19** If the decision maker is of the view that the above options at 1 and 2 are inappropriate they may wish to consider any of the following sanctions at 3. It is important to note that the following sanctions are not ranked in order of seriousness (nor does the decision maker need to address each one when reaching their decision as to sanction) but they represent the possible options available depending on the exact circumstances of the case:

Undertakings

- 4.20** Undertakings are a set of actions which the operator commits to implement. These will 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 these alongside sanctions. Although the intention is for these to be proposed by the operator there is no reason precluding the initiative being taken by us.
- 4.21** The operator cannot be required to enter into an undertaking and there is no requirement for us to accept any offer made.
- 4.22** We will only accept an undertaking where it is an appropriate enforcement response and if implemented will achieve an effective outcome. Previous use should not be taken as a basis for our future acceptance of an undertaking. The success or otherwise of earlier agreements will be a key factor in determining suitability.
- 4.23** Our usual approach will be to publish the details of any undertakings, however we recognise that there might be good reasons for departing from that approach in particular cases.
- 4.24** An undertaking may be considered 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, 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
- (e) there is no loss or limited loss on returns to good causes (likely to be less than £1000).

Requirement for an independent review

- 4.25** A requirement for an independent review may be considered appropriate in any of the following circumstances:
- (a) if achieving one of the overall statutory duties is jeopardised, along with one or more licensing requirement

- (b) if achieving the overall statutory duty is not jeopardised but a licensing requirement is breached

And...

- (c) if we believe that an independent review would better help us to understand where problems have arisen with the operator for the purposes of improving regulatory oversight.

Imposing new or amended licence conditions

4.26 Amending conditions of a licence or imposing additional conditions is a flexible means of dealing with a concern. A finding of breach is not required to impose a new or amended licence condition. The licence continues with the additional or amended conditions that have been considered necessary to minimise the risk to the statutory objectives in the future.

4.27 We will seek to ensure that players will not be seriously disadvantaged or affected by any new or amended conditions, either directly or indirectly, and that the conditions will protect players and the general public during the period they are in force.

4.28 The imposition of new or amended licence condition(s) may be considered appropriate in the following circumstances:

- (a) if one of the statutory objectives is jeopardised, along with one or more licensing requirement
- (b) if one of the statutory objectives is jeopardised and there is public concern, however, 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) the risk of repetition is considered to be low
- (e) the matter is capable of correction
- (f) appropriate, realistic and practicable conditions can be formulated
- (g) there is no significant risk of repetition if the additional licence conditions are complied with.

4.29 In seeking to impose new or amended conditions to the licence the decision maker will need to ensure that, in the absence of the operator's consent, that the operator has been given a reasonable opportunity to make written representations about the variation.⁴ The decision maker shall serve a notice on the operator informing them of the variation, and state the variation shall take effect at the end of such period as may be specified in the notice⁵. Any written representations made by the operator will be taken in to consideration when making the final decision as to whether or not to make the variation.

Court injunction/ interdict or court order

4.30 This remedy may be appropriate where we seek to compel the operator to do or refrain from specific acts. If the operator failed to comply with an injunction they can face criminal or civil penalties. It is not envisaged that these will be used frequently in the context of enforcement surrounding the National Lottery.

⁴ There are two exceptions where we are not allowed to 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, in relation to a condition that the licence provides may only be varied with the consent of the licensee.

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

- 4.31** 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:
- (a) that there is a reasonable likelihood that a person will contravene a condition in a licence granted under section 5 or 6
 - (b) that a person has contravened such a condition and there is a reasonable likelihood that the contravention will continue or be repeated
 - (c) that a person has contravened such a condition and there are steps that could be taken for remedying the contravention.

- 4.32** Only if the decision maker considers that the sanctions at 1,2 and 3 are inappropriate based on their assessment at Stages One and Two will they go on to consider a financial penalty.

Financial penalty

- 4.33** If the decision maker is satisfied that the operator has contravened a condition in a licence under section 5 or 6, he may impose a financial penalty. The aims of a financial penalty are twofold, namely to deter persons from contravening conditions in licences under section 5 or 6, and to eliminate any financial gain/ benefit from non-compliance with licence conditions.

- 4.34** In certain cases in which we are considering a financial penalty, or a payment in lieu of financial penalty, and in which timely disclosure and admissions have been made by a licensee, we will seek to give a discount to the penal aspect of a financial penalty.

- 4.35** We are required by law to act in accordance with the attached extract from the former Director General of the National Lottery's publication *Financial Penalties: Principles and Procedures* (contained at Appendix A) and sections 10A and 10B of the Act. There are a number of procedural steps which must be taken before we can impose a financial penalty, including the service of a notice on the operator setting out the details of the breach⁶ and giving the operator the opportunity to make written representations or to notify us of their intention to make oral representations.

- 4.36** A financial penalty may be considered appropriate in the following circumstances where:
- (a) one of the statutory objectives is jeopardised, along with one or more licensing requirement

And...

- (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 players involved or for potential players
- (d) there is an significant impact on returns to good causes
- (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) where the operator was aware or should have been aware of the breach
- (h) the operator has committed similar contraventions in the past
- (i) there was a systematic failure to comply with a licence condition
- (j) the operator 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

⁶ Section 10A(3) and (4) sets out what we are required to include in the notice

- (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.

Licence revocation

- 4.37** Licence revocation is the most serious sanction and should only be considered where it is decided that all other sanctions are inappropriate. We shall revoke the licence where:
- (a) the operator no longer is, or never was, a fit and proper body to run the National Lottery
 - (b) in relation to the licence granted under section 6 if we are satisfied that the licensee no longer is, or never was, a fit and proper body to promote lotteries under the licence.
- 4.38** We may revoke a licence granted under section 5 or 6 if:
- (a) if it appears to us that any of the grounds for revocation set out in Part I of Schedule 3 applies⁷
 - (b) if the operator consents.
- 4.39** As a final check, the decision maker will conduct an overall assessment to ensure that the proposed regulatory action is compliant with the general principles in section 2.

5 Informal procedures and settlement

Informal resolution

- 5.1** There may be instances where a more informal procedure is required to address issues with the operator, as opposed to the formal investigation and enforcement approach set out above. This may be where, for example, the operator has admitted licence breaches therefore diminishing the need for an investigation or where there are issues with the operator linked to governance issues that may be better addressed otherwise than by way of the use of enforcement powers.
- 5.2** There may also be other situations where an informal process would assist and a decision will be taken on the facts of the specific case as to whether this approach is appropriate.

Regulatory settlement

- 5.3** In certain circumstances we may seek, where appropriate, to fulfil our statutory obligations and pursue the licensing objectives through means that stop short of formal enforcement action. One means of achieving this will be by way of regulatory settlement, which we may consider appropriate, particularly where the operator has been:
- (a) open and transparent in its dealings with us
 - (b) able to make timely disclosures of material facts
 - (c) able to demonstrate that they have insight into apparent failings
 - (d) able to suggest actions that would prevent the need for us to take formal action

⁷ Schedule 3 states the following are discretionary grounds for revocation:

1. A condition in the licence has been contravened.

2 Any information given by the operator—

(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(a) 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.

(b) 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.

(c) A resolution for the voluntary winding up of the licensee has been passed.

(d) A receiver or manager of the whole or any part of the licensee's property has been appointed.

- (e) prepared, where appropriate, to agree to us making a public statement setting out the failings in order to deter future non-compliance and/ or share learning that may be beneficial to other stakeholders including the public
- (f) prepared to divest itself of profits or cost savings which accrued as a result of the failings
- (g) prepared to follow advice and implement procedures to ensure there is no repetition of the failings
- (h) prepared to contribute to our direct costs of investigating the matter in respect of which a regulatory settlement is sought
- (i) prepared to volunteer a payment in lieu of the financial penalty we might otherwise impose for breach of licence condition.

5.4 Regulatory settlements can allow us to avoid a protracted investigation or conclude an investigation more swiftly than would often be the case but will only be appropriate where they meet an appropriate regulatory outcome. A decision to settle early should not be seen as a soft option. We will set timetables for settlement discussions and where these are not adhered to we are likely to revert to formal regulatory action.

6 Appeals

6.1 Rights of appeal against sanctions are detailed in the legislation governing the National Lottery. The right of appeal in relation to a decision taken by us to revoke a licence or impose a financial penalty is to the High Court (or Court of Session in Scottish cases). In relation to a court injunction/interdict or court order made by the High Court (or the Court of Session in Scottish cases) the right of appeal lies to the Court of Appeal.

6.2 The only regulatory actions that are not subject to a statutory right of appeal are as follows:

- notification of a licence breach
- undertaking
- requirement for an independent review
- new or amended licence condition(s).

6.3 Undertakings are voluntary agreements and as such there is no need for appeal arrangements. However, any failures to implement an undertaking, where there is continued or recurring breach of a licence condition, will, if appropriate lead us to consider a financial penalty. The appeal process in such instances are the same as for financial penalties where no case related undertaking has been given.

7 Publication of decisions and the reasons for decisions

7.1 Openness and transparency are central to our work. Publication of details of our work in enforcement plays an important role in improving compliance in and beyond the licensed community, and in increasing confidence in us as a regulator.

General approach to publication in cases where the investigation is ongoing

7.2 In making decisions on publication in enforcement cases, we will at all times bear in mind the public interest, and we will act compatibly with the right to privacy enshrined in Article 8 of the European Convention on Human Rights.

Generally, we will limit the release of information about on-going regulatory investigations, only releasing details if we have determined that it is in the public interest to do so. This protects the integrity of investigations and protects the operator from being unfairly associated with unsubstantiated allegations.

- 7.3** This means that generally we will only announce publicly that we are investigating a matter in exceptional circumstances; we will only make such an announcement if we consider it is desirable to:
- maintain public confidence in the National Lottery or the regulation thereof
 - protect players
 - prevent or deter widespread malpractice
 - help the investigation itself, for example by bringing forward witnesses
 - maintain the smooth operation of the National Lottery.
- 7.4** In deciding whether to make an announcement, we will consider the potential prejudice that may be caused to the operator who is or is likely to be, subject to investigation and weigh this against the benefits of making an announcement.
- 7.5** The exceptional circumstances referred to above may arise where the matters under investigation have become the subject of public concern, speculation or rumour. In this case it may be desirable for us to make public the fact of investigation in order to allay concern, or contain speculation or rumour.
- 7.6** We will not normally publish details of the information found or conclusions reached during the course of our investigations. In many cases, restrictions on the disclosure of information obtained by us in the course of exercising our functions are likely to prevent publication. These restrictions may include disclosing someone's confidential or legally privileged information or prejudicing other investigations or legal proceedings.
- 7.7** In exceptional circumstances, and where we are not prevented from doing so, we may publish details. Circumstances in which we may do so include those where the fact that we are investigating has been made public, by ourselves or otherwise, and we subsequently conclude that the concerns that prompted the investigation were unwarranted. This is particularly so if the operator wishes for us to clarify the matter.

General approach to publication in enforcement cases once a formal regulatory decision has been taken

- 7.8** However, once a formal regulatory decision has been taken, such as the imposition of a financial penalty, the issuing of a warning, or the suspension or revocation of a licence, we will ordinarily publish all such decisions in full, even if a decision is subject to review or appeal. Such publication will take place 14 days after a decision has been taken. Even if a regulatory settlement has been reached, such decisions will ordinarily be published.

Removal of notices

- 7.9** As stated above, publicity is important to ensure the transparency of our decision-making; it informs the public and helps to maximise the deterrent effect of enforcement action. Notwithstanding that, we will upon request 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.
- 7.10** In carrying out the review we will consider all relevant factors. In particular, we will take into account:
- the seriousness of the misconduct
 - the nature of the action taken by us and the level of any sanction imposed
 - whether we have continuing concerns in respect of the operator and any risk they might pose to the National Lottery objectives
 - whether the publication sets out our expectations regarding behaviour in a particular 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 reasons
- how much time has passed since publication
- any representations made by the operator on the continuing impact on them of the publication.

8 Other information

- 8.1 This document is not intended to be a guide to the law or licence conditions. Copies and links to the legislation and licences can be found on our website at: www.gamblingcommission.gov.uk.

October 2017

Keeping gambling fair and safe for all

www.gamblingcommission.gov.uk

National Lottery Committee terms of reference

Introduction

1. In accordance with Paragraph 8 of Schedule 4 of the Gambling Act 2005 the Commission has established a National Lottery Committee.
2. These terms of reference set out the purpose, membership and delegated authority of the National Lottery Committee and employees under the National Lottery, etc Act 1993 (the 1993 Act).

Purpose

3. The National Lottery Committee has been established to exercise powers in respect of National Lottery matters by way of decisions or advice to the Board of Commissioners (the Board) and the Chief Executive in relation to the exercise of the Commission's functions under the 1993 Act and provide oversight of National Lottery operator's stewardship of the National Lottery.

Membership

4. Membership of the National Lottery Committee shall comprise a minimum of four Commissioners and may include nominated employees.
5. The Board will appoint the Chair of the National Lottery Committee (the NLC Chair) and the other members of the Committee. The Chairman of the Board (the Chair of the Board) will not normally be the NLC Chair.

Agenda

6. Within a reasonable time in advance of each meeting, the NLC Chair and the Executive Director responsible for the National Lottery should agree the agenda for the meeting.
7. The agenda and meeting papers will be made available to members of the committee and all those attending at least 4 working days prior to a meeting.

Delegated powers

8. In accordance with Paragraph 8 of Schedule 4 of the Gambling Act 2005 (as amended) the Commission hereby delegates the functions set out in Table 1 to the persons set out in that table.
9. Any other decisions to grant a licence or take regulatory action which are not otherwise specifically delegated under these terms of reference are hereby delegated to the Chief Executive or an Executive Director (for the purposes of delegated decision making the term 'Executive Director' includes the Commission's General Counsel).
10. Where it is considered appropriate by the Chair of the Board, the NLC Chair, a Commissioner, the Chief Executive, or a member of staff nominated in the table, a case may be referred up to the National Lottery Committee or the Board of Commissioners, who will determine that case instead of the persons otherwise delegated to carry out that function.
11. The Board authorises the National Lottery Committee to seek:
 - a. independent professional advice it requires in meeting its responsibilities if it considers this necessary.
 - b. Information from officials

c. Information from the National Lottery operator

12. It will be normal practice to channel such requests through the Chief Executive or another member of the Executive Team.

Functions and duties

13. In addition to making decisions under the scheme of delegations, the National Lottery Committee is responsible for the following:

Providing oversight of and challenge to the performance and strategy of the National Lottery operator

- a. To understand risks to and progress against National Lottery outcomes, in line with the statutory duties under the 1993 Act
- b. To include consideration of the wider context in which the National Lottery sits, such as stakeholders, consumer and commercial trends
- c. To include meeting twice a year with the operator to discuss annual business plans and forward strategies

Providing advice to the Board of Commissioners about the licensing and regulation of the National Lottery

- d. To make recommendations about the annual budget for National Lottery regulation
- e. To make recommendations about expenditure in excess of budget and/or any increase in the overall budget for the year

14. The Board authorises the National Lottery Committee to consider the issues relevant to the functions set out in these terms of reference.

Meetings

15. The National Lottery Committee shall meet a minimum of four times in each financial year.

16. Additional meetings may be convened if considered necessary by the NLC Chair.

17. The Chair of the Board or Chief Executive may convene additional meetings to discuss particular issues on which they want the Committee's advice.

18. Meetings of the National Lottery Committee may be conducted at face-to-face meetings, or by telephone or video conference.

Quorum

19. The quorum shall be two Commissioners who are members of the Committee, provided one of those is the NLC Chair. If the NLC Chair is not present, the quorum shall be three members of the Committee, of which two must be Commissioners.

20. Voting for all decisions made will require a simple majority. In instances where there is a tie, then the NLC Chair shall have the deciding vote. In instances where the NLC chair is not present then the acting chair for the meeting will have the deciding vote.

Attendance at Committee meetings

21. The Chief Executive may designate such staff as she considers appropriate to attend meetings of the National Lottery Committee to assist or advise the Committee but those staff may not take part in the decision making process.

22. Meetings of the National Lottery Committee will normally be attended by: an Executive Director, the Programme Director National Lottery and the Secretary to the Committee. Other employees of the Commission may be requested by the Committee to attend meetings to assist with discussions on any particular matter. Advisers may also attend if the Chair of the Board, NLC Chair or Chief Executive considers that appropriate.
23. The National Lottery Committee may ask any or all of those who attend, but who are not members, to withdraw.

Reporting

24. The NLC Chair will report on matters considered by the National Lottery Committee at each of its meetings at the next meeting of the Board.
25. The Board and Chief Executive shall be provided with minutes of the National Lottery Committee's proceedings after each meeting.
26. The National Lottery Committee will make a written report at least annually on its activities to the Board. The Commission's regulation of the National Lottery will be reported in the Commission's Annual Report

TABLE 1

DELEGATION OF FUNCTIONS UNDER THE NATIONAL LOTTERY ETC ACT 1993 (as amended)

1: Decisions which must be taken by the Board of Commissioners

- (a) Licensing
 - o Grant of Section 5 Licence issued under the 1993 Act
- (b) Enforcement
 - o Revocation of the Section 5 Licence
- (c) Cases referred to the Board
 - o Any other decisions that may fall under paragraph 8 in the Committee Terms of Reference

2: Decisions which are delegated to the National Lottery Committee

- (a) Licensing
 - o Grant of Section 6 licence that **does** raise new issues of principle or contentious issues
 - o Grant of variation to the Section 5 and 6 licences that **does** raise new issues of principle or contentious issues
- (b) Vetting
 - o Novel or contentious vetting cases
 - o Vetting cases where officials have indicated that they are minded to refuse and the person concerned wants the view of officials to be reviewed
- (c) Enforcement
 - o Proposing a financial penalty
 - o Imposition of financial penalty and the level of such penalty
 - o Seeking a declaration from the High Court
 - o Revocation of a licence issued under section 6 of the 1993 Act
- (d) Ancillary Activity
 - o Consent for any Ancillary Activity which raises new issues of principle or contentious issues, determine any conditions attached to such Ancillary Activity and the amount of any payment to the good causes, under Condition 6
- (e) Fit and proper appeals
 - o Considering appeals against decisions to find an individual or company not fit and proper
- (f) Other
 - o Invoking the power to seek an independent review under licence condition 17 of the section 5 licence
 - o Any other decisions that may fall under paragraph 8 in the Committee Terms of Reference

3: Decisions which are delegated to the Head of Licensing and Enforcement (or above)

- Licensing
 - o Grant of variation to the Section 5 licence when no new issues of principle or contentious issues are raised
 - o Approve applications for Section 6 licences which do not raise new issues of principle or contentious issues
 - o Grant of variation to Section 6 licences (including class licences) which do not raise new issues of principle or contentious issues
- Approvals
 - o Approve changes to scratch card game rules, game specific rules, game procedures and to the template for scratch card game procedures agreed under the class licence
 - o Approve changes to the terms and conditions and rules and procedures for draw-based games under Condition 7.16 of the Section 5 licence
 - o Approve the Under 16s notice required under Condition 7.28 of the Section 5 licence

- Approve 'Codes of Practice', 'Guides' and 'Strategies' as defined by schedule 7 of the Section 5 licence
 - Grant licensee consent under Condition 21.17 of the Section 5 licence to use, copy, publish or register any item of Lottery Intellectual Property
- Enforcement
 - The decision to commence enforcement procedures in respect of potential breaches of the Section 5 and Section 6 licences
 - The decision to record breaches of the Section 5 and Section 6 licences when the imposition of financial penalties would not be appropriate
- Ancillary Activity
 - To give consent for any Ancillary Activity which **does not** raise new issues of principle or contentious issues, determine any conditions attached to such Ancillary Activity and the amount of any payment to the good causes, under Condition 6
- Other
 - Signing witness statements and similar legal documents on behalf of the Commission where required to do so to protect the Commission's rights and property in proceedings undertaken by the National Lottery operator under requirements placed on it by way of licence conditions
 - Exercise the Commission's powers acquired under licence conditions to the extent that they are not reserved elsewhere in this scheme of delegation



Department for Culture Media & Sport

DIRECTIONS TO THE GAMBLING COMMISSION

UNDER SECTION 11 OF THE NATIONAL LOTTERY ETC. ACT 1993

Interpretation

1. In these directions-

"the Act" means the National Lottery etc. Act 1993;

"the Commission" means the Gambling Commission;

"the constituent lottery" means a lottery that forms part of the National Lottery;

"draw", in relation to a lottery, includes any process by which a prize in the lottery is allocated;

"licensee" means any person who holds a licence granted under sections 5 or 6 of the Act;

"NLDF" means the National Lottery Distribution Fund;

"play" has the same meaning as in the interpretation to the Schedules to the licence granted under section 6 of the Act relating to the National Lottery Lotto; and

"Secretary of State" means the Secretary of State for Culture, Media and Sport.

The directions given to the National Lottery Commission by the Secretary of State on 26 September 2013 are revoked.

Types of lottery

2. The Commission shall exercise its functions under sections 5 and 6 of the Act in such a manner as to ensure that no licence is granted which authorises the promotion of any lottery or lotteries of any description which in the opinion of the Commission:

a) encourage persons to participate excessively in such lotteries; or

b) do not allow for sufficient controls to prevent persons who have not attained the age of 16 years from participating in such lotteries.

3. The Commission shall exercise its functions under section 6 of the Act in such a manner as to ensure no licence is granted which allows more than two draws to take place in any period of two hours, save and except for the EuroMillions draws only for which a maximum of four draws are permitted in any two hour period. This applies irrespective of whether the draws are made in the same or different lotteries authorised to be promoted under the licence.

4. The Commission shall exercise its functions under section 6 of the Act in such a manner to ensure that no licence is granted where the effect would be to allow more than one draw to take place in any period of one hour where the draws are made in associated lotteries. For the purposes of this direction two lotteries promoted under separate licences under section 6 of the Act are to be treated as associated lotteries where:

a) one lottery is of the same description as the other lottery (apart from any variation with respect to the time when any draw in the lottery can take place); or

b) in the opinion of the Commission, one lottery is of the same description as the other lottery except for a minor variation in the timing, prize structure, entry price or some other aspect of the lotteries.

5. But directions 3 and 4 shall not apply to any lottery where each prize in the lottery:

a) is allocated to a ticket or play before any ticket or play is sold; or

b) is pre-determined at the point of purchase of any ticket or play.

Limit on ticket prices

6. The Commission shall exercise its functions under section 5 and 6 in such a manner as to ensure that no licence is granted which authorises the promotion of a lottery, the price of tickets and plays for which is, in the opinion of the Commission, unreasonably high.

Unclaimed prizes

7. The Commission shall:
 - a) exercise its functions under sections 5 and 6 of the Act in such a manner as to ensure that the rules of every constituent lottery provide for a period for claiming prizes which in the opinion of the Commission is reasonable in order to allow a claim for a prize to be made; and
 - b) exercise its powers under section 5 of the Act to include a condition in the licence granted under section 5 of the Act which provides that all prizes which have not been claimed in accordance with the rules of the relevant constituent lottery are paid to the Secretary of State.

Further conditions in licences

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 significant;
 - c) that information for participants as to whether they have won a prize in any constituent lottery is available without any payment to the licensee being required and without undue inconvenience to the participant;
 - d) that no tickets or plays in a constituent lottery are given away free or sold for less than the full price applicable in accordance with the rules of the relevant constituent lottery (whether in connection with the advertisement or marketing of the National Lottery or any constituent lottery or otherwise) unless:
 - i. a payment reflecting the full price of the ticket or play is made, whether by a licensee or another person;
 - ii. the price of the ticket or play applicable in accordance with the rules of the relevant constituent lottery is counted in full in the value of sales when calculating the licensee's primary contribution in accordance with the terms of the licence granted under section 5 of the Act; or
 - iii. subject to direction 9, the Commission has given its consent;
 - e) that the identity of any person who has won a prize in a constituent lottery shall not be disclosed without the consent of that person, unless required by law. For the purpose of this direction 8(e), where a ticket in a constituent lottery is presented by a player to a retailer to ascertain whether that ticket is a prize-winner, or to claim a prize, a sound made by a lottery terminal to indicate that a winning ticket has been presented and/or the presentation of a prize entitlement message will not of itself constitute disclosure of a person's identity; and
 - f) that information as to the percentages of the NLDF which are allocated for the good causes referred to in paragraphs (a) to (f) of section 22 (3) of the Act as it has effect from time to time is available at places where tickets in constituent lotteries are sold.
9. For the purpose of direction 8(d)(iii) the Commission shall only consent to a proposal to give away free tickets or plays or sell tickets or plays for less than full price if it is satisfied that:
 - a) the proposal will not encourage excessive or underage play; and
 - b) the proposal is likely to increase overall returns to good causes.

Financial penalties

- c) In the exercise of its functions under section 10A of the Act, the Commission shall act in accordance with the attached extract from the former Director General of the National Lottery's publication "Financial Penalties: Principles and Procedures". The Commission shall not amend that extract without having first obtained the consent of the Secretary of State for that amendment.

Performance standards

- d) The Commission shall establish and publish appropriate performance standards in respect of its functions under sections 5 to 10A of the Act. Such performance standards should, in particular, relate to the Commission's relationship with licensees and the public. The Commission shall report its performance against those standards in the annual report it is required to make by section 14 of the Act.

Raising public awareness

- e) The Commission shall facilitate the operation of a body whose purpose shall be to raise positive public awareness of and support for the benefits of the distribution of funding from the proceeds of the National Lottery, with the aim of helping to maximise returns to good causes from the proceeds of the National Lottery.

Olympic Lottery proceeds

- f) The Commission shall not exercise its functions under section 21(2) of the Horserace Betting and Olympic Lottery Act 2004 in relation to the determination of the proportion of proceeds of lotteries forming part of the National Lottery that is attributed to Olympic Lotteries without having first obtained the approval of the Secretary of State.

Promotional prize activity

- g) The Commission shall exercise its functions in respect of any licence granted under section 5 of the Act such that any adjustment to the sum that is payable under section 5(6) of the Act for the purposes of any promotional prize activity to be undertaken by the licensee shall:
- i. be subject to the consent of the Commission;
 - ii. not exceed, in any financial year, the amount of unclaimed prizes paid to the Secretary of State in accordance with Direction 7b in the previous financial year; and
 - iii. be subject to repayment on such terms as the Commission shall require.



**On behalf of the Secretary of State
Department for Culture, Media and Sport
2 September 2016**

Financial penalties

Financial penalties: principles and procedures

Statement by the Director General of the National Lottery

The National Lottery Act 1998 ("the 1998 Act") allows me to impose financial penalties for contraventions of conditions in licenses granted under sections 5 or 6 of the National Lottery etc. Act 1993 ("the 1993 Act"). This power will enable me to deal more flexibly with contraventions without prejudice to my being able in particularly serious cases to revoke a licence or apply for an injunction. In using the new power I will act reasonably and proportionately, both in considering whether to impose a financial penalty and in assessing its amount. It may be helpful if I describe the other principles that I will follow in using the power and procedures that I expect to adopt.

Principles

Subject to my duties to ensure that the National Lottery is run with all due propriety, to protect the interests of every participant and, subject to those factors, to do my best to secure that the net proceeds are as great as possible, I will in exercising the new power take due account of any likely effect on the commercial viability of the licensees.

The 1998 Act states that the matters to which I may have regard in imposing a financial penalty may include the desirability of deterring further contraventions and of recovering any financial loss to the National Lottery Distribution Fund. Where there is a clear and direct financial loss of this kind I will not necessarily seek to recover all the loss but will take account both of the size of the loss and the profitability of the licensee concerned.

Under the 1998 Act my consideration need not be limited to the matters which it mentions. I intend to include, but not limit myself to, the following among the other factors that I will take into account in deciding whether to impose a penalty and in assessing its amount:

- whether key principles underlying the relevant licenses as indicated by my statutory duties as mentioned above have been infringed;
- whether the National Lottery has been brought into disrepute;
- the extent of any financial advantage that the licensee may have derived from the contravention;
- the capacity of the licensee to have avoided the contravention and whether it has been the result of deliberate action or negligence;
- the extent to which the licensee has committed similar contraventions in the past; and
- the financial position of the licensee, calculated on the basis that distributions of profits have been within the limits set in the licence(s) which apply to the licensee.

Before issuing a proposal to impose a financial penalty, I will normally invite comments on a statement of my reasons for believing that there had been a contravention. In subsequently considering whether to issue a proposal and assessing the amount of a penalty, I will make allowance for the effectiveness and timeliness of any corrective action that the licensee has taken, and will view seriously any failure to take such action.

My predecessor stated in his Annual Report for you for the year up to 31 March 1997 that if he had been empowered to impose financial penalties on Camelot it was likely that he would have used them in connection with the failure to meet the licence requirement for the number of retail operational outlets to be operational at the first two quarter ends during 1996. I regard the factors above as likely to have led me to the same conclusion. By way of another example, I would regard the failure by Camelot to comply with its licence requirement to use its best endeavours to comply with the Player Code of Practice with regard to the prohibition of sales to persons under 16 years of age, and the taking of appropriate action also to point to the use of a financial penalty. I will, of course, need to consider any case that arises on its merits.

Procedures

I reserve the discretion to issue a proposal to impose a financial penalty as soon as a contravention comes to my notice if I consider that it is sufficiently clear and grave or that corrective action is sufficiently urgent. A licensee will under the 1998 Act then have 21 days in which to make written representations or notify me of an intention to make oral representations.

However, in other cases I will invite a licensee to comment within 21 days on a statement of my reasons for believing that there has been a contravention. I will require the licensee within the same timescale to demonstrate that existing systems are adequate or to take or initiate any corrective action that is needed to come into line with licence requirements. If I decide after that period to issue a proposal to impose a financial penalty, the licensee will under the 1998 Act have a further 21 days to make written representations or to notify me of an intention to make oral representations. In cases involving a significant infringement of key principles under the licence such as propriety, or player protection, or clear financial loss to the National Lottery Distribution Fund, but where I have not issued a proposal to impose a financial penalty at the outset, I may decide to issue a proposal to impose one notwithstanding the fact that corrective action has been taken. I may also decide to issue a proposal if the licensee has committed similar contraventions in the past.

The contravening of a licence condition is a ground in the 1993 Act under which I may revoke a licence. The 1998 Act does not change this power or my ability to apply to the court to grant an injunction restraining a contravention or to take steps to remedy it. While I reserve the right to make immediate use of any of my statutory powers, I would expect to revoke a licence following a contravention of a licence condition only if I believed that the integrity of the National Lottery had been seriously compromised.

10 July 1998